



BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND AND WALES

November 16th 2012.

Statement on the International Criminal Tribunal in Bangladesh (ICT)

Bar Human Rights Committee of England and Wales

The Bar Human Rights Committee of England Wales (BHRC) expresses its concern that the International Criminal Tribunal in Bangladesh (ICT), set up in 2010 in order to deal with atrocities that took place in the 1971 War of Independence from Pakistan, is failing to meet international fair trial standards. In particular, the BHRC expresses urgent concern following the alleged abduction of a defence witness, Shukho Ranjon Bali, (“Bali”) in front of the International Crimes Tribunal on Monday 5th November 2012.

The BHRC is the international human rights arm of the Bar of England and Wales. It is an independent body primarily concerned with protecting the rights of advocates and judges around the world. It is also concerned with defending the rule of law and internationally recognised legal standards pertaining to the right to a fair trial.

Bali – the defence witness

The BHRC is informed that Bali changed from being a prosecution witness to a defence witness for Delwar Hossain Sayedee. The BHRC is informed that Bali was to testify that material changes had been made to his witness statement by the prosecution without his knowledge or agreement.

The Court was told that Bali had been driven through Dhaka on the morning of the 5th November with two defence lawyers. Upon arrival at the court building, at around 10.30am, 2 plain-clothes men identified themselves as members of the police Special Branch and forcibly took Bali away in a van marked “Police”. There are reportedly some 10-12 witnesses to the incident. There are no confirmed reports that Bali has been seen or heard from since the 5th November.

The defence lawyers asked the trial chamber to investigate the allegations. Instead, it is understood that the Presiding Judge charged the Chief Prosecutor

with the investigation. The BHRC considers this direction inappropriate in the circumstances. The allegations are serious and an independent, impartial investigation should have been instigated.

The BHRC is informed that, after a short while, the Prosecution issued a denial that the abduction had taken place at all and alleged that the whole incident had been fabricated. It is understood that the Attorney General testified before the High Court that the abduction claim had been fabricated by the defense to bring the Tribunal into disrepute. Moreover, it is understood that the police are refusing to permit any complaint about the alleged abduction to be made claiming that they have no power to act without the permission of the trial chamber.

The BHRC is extremely concerned that the Court did not order an immediate investigation into the incident. It continues to be vital that an independent and impartial investigation be ordered. Failure to do so inevitably suggests either complacency or bias on the part of the tribunal against the defence. Therefore it is critical that the Bangladeshi authorities determine the circumstances relating to Bali's disappearance and his present whereabouts.

It is trite to state that integrity of the war crimes process is called into question as a result of these allegations. The failure by the Court to respond to the defence lawyers' petition by ordering an immediate impartial inquiry to resolve the truth of the alleged abduction, casts serious doubt upon the application of minimum international fair trial rights standards in this case. As such, this matter now threatens to invalidate the fairness and credibility of the proceedings altogether. Moreover, there is a real danger that Bali's life is at risk and both the ICT and the government, must investigate.

Concern over increased and unacceptable levels of interference in the defence case

The BHRC is concerned that this alleged abduction comes in the wake of increased and unacceptable levels of interference with the way in which the defence is being allowed to run its case. The Tribunal issued an order in mid-October 2012 which effectively closed the defence case for Sayedee after just six weeks. The BHRC is concerned about reports made to it that unacceptable restrictions have been placed on the defence to properly prepare, meet and conduct its case fully and thoroughly, including placing apparently arbitrary and disproportionate restrictions on the number of witnesses which the defence is entitled to call. A petition was filed at the end of October by the defence team to call Bali and other prosecution witnesses who were prepared to testify that they had been forced to give false testimony on behalf of the prosecution. That hearing was due to take place on 5th November 2012, the morning on which Bali allegedly was abducted.

Concerns over harassment, intimidation and surveillance of members of the defence legal team

The BHRC, alongside other international organisations, has been informed that there has been harassment, intimidation and surveillance of members of the defence legal team. Further, at least two members of the defence legal team from the UK have been prevented from travelling to Bangladesh both by deportation at the airport in August 2011, and since then, by a continuous refusal to provide entry visas to the lawyers. The Senior Defence lawyer, Abdur Razzaq, has been threatened with criminal proceedings. International law, as well as domestic law, recognises the importance of all lawyers being able to work and communicate fully, properly and without fear with and for their clients, including the right to privileged communications. Full and fair treatment of both sides is essential to ensure a fair trial process and it is imperative that both sides are treated equally, transparently and in accordance with due process.

Article 47(A) denies constitutional rights to the accused

The BHRC is further concerned that article 47(A) of the Constitution effectively denies the defendants any of their fundamental rights under the ICT Act denies any accused, including the most basic safeguards against arbitrary arrest and detention.

Concerns over perceived bias and lack of independence

Concerns have also been raised with the BHRC as to the perceived lack of independence of Tribunal members, the lack of independence of the Chief Prosecutor from both the Tribunal members and the government, as well as the inability to challenge any decisions or judgments made by the Tribunal to the Supreme Court. The BHRC has been informed that the current Chairman of ICT-1, Mr Justice Md. Nizamul Haque Nasim, is listed as a member of the Secretariat of the Peoples' Inquiry Commission which prejudged these cases in the 1990s. Some of the individuals convicted under that Commission are now before the same Chairman, leading to concerns about perceived bias and a preconceived outcome. Similar concerns as to independence, perceived or otherwise, arise following statements made by the Minister of Justice condemning the accused of being war criminals and murderers, before any convictions have been made. This breaches both the domestic and international presumption of innocence until proven guilty.

The BHRC respectfully calls on the Bangladesh government, which has ratified the International Covenant of Civil and Political Rights as well as the International Criminal Court's Statute of Rome, as well as the ICT immediately to respond to the concerns raised and, as a matter of urgency, to investigate what has happened to Bali. It is vital that international standards of fairness, transparency and due process are met in order to ensure legitimacy of the ICT and its processes. A number of international organisations have expressed serious concern about the lack of basic

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safeguards of the rights of the accused at the ICT as well as concern about the independence, impartiality and integrity of the ICT process. The BHRC adds its voice to that growing body of concern and calls on the Bangladesh government immediately to take steps to rectify these serious concerns.



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