



BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND AND WALES

London, 4 March 2013

STATEMENT

The BHRC expresses grave concern at the verdict in the Sayedee case. BHRC is opposed to the death penalty in all circumstances.

Following its two statements of November 16th and December 14th 2012 in which the Bar Human Rights Committee (“BHRC”) raised serious concerns as to procedural and substantive flaws in the conduct of the trial of Delwar Hossein Sayedee before the Bangladesh International Crimes Tribunal (“ICT”), the BHRC now expresses grave concern at the verdict in the Sayedee case handed down yesterday by the ICT in which he was found guilty on eight counts out of twenty counts. In respect of two of those counts, Sayedee has been sentenced to capital punishment. The BHRC is opposed to the death penalty in all circumstances.

The BHRC regrets that its earlier calls for a retrial in the Sayedee case have not been heeded. This now leads to an untenable position in which the verdict is unalterably flawed through the failure to comply with due process.

The BHRC acknowledges the deep-seated national desire for justice and accountability amongst the Bangladeshi population which has led to major protest and unrest following the first two verdicts of the ICT released earlier this year. The BHRC is supportive of a legal process designed to bring an end to decades of impunity, but such a process must be fair, transparent and in accordance with the rule of law. It is necessary for guilt to be determined in the impartial, independent setting of a courtroom which is free from all outside interference, be that governmental, political or by public behest.

Events leading up to this verdict, including the most recent retrospective changes in the law to allow a prosecutor to appeal a life sentence in favour of a death sentence, suggest that the legal process has been unduly influenced by external factors.

The credibility of the entirety of the ICT process has been compromised by the so-called “Skypegate” disclosures at the end of 2012, following which the presiding Judge Nizamul

Huq then resigned. Such allegations required an immediate and impartial investigation by the Bangladeshi authorities which has not taken place. Instead, the court has purported to deal with the criticism by effectively preventing any further public discussion of those disclosures, both before judgment yesterday, and within it. Such an approach fails to acknowledge the fundamental attack on the integrity of the ICT itself which results from those allegations. Further, it taints not just the Sayedee trial with politicisation, but also both the preceding two verdicts, as well as any subsequent trials. In order to ensure and restore public trust in the independence of the ICT process, which is crucial for the mission of the tribunal, the Bangladeshi authorities must fully and transparently respond to these very serious and credible allegations of alleged collusion between the ICT Judges, the prosecutors and the Bangladesh government.

The Sayedee trial itself has been beset with serious allegations including the alleged kidnapping of a defence witness, the failure to produce prosecution witnesses to give live evidence in court when it appeared that such evidence was in fact available and arbitrary limitations on the ability of the defence to put its case properly, including restrictions on both cross examination of prosecution witnesses and disproportionate restrictions on the defence calling its own relevant witnesses which have not been dealt with properly within the Sayedee judgment. The tribunal rightfully acknowledges that reliable testimony may be difficult to achieve some forty years after the events themselves. However, as the BHRC has already raised, this verdict has been reached by a panel of judges, none of whom have seen and heard the entirety of that testimony and evidence themselves in any event. These concerns go to the heart of a fair trial, which now cannot be said to have taken place. The failure to deal with these inherent fairness concerns leaves the Sayedee verdict, and subsequent death sentence, demonstrably unsafe.

The BHRC notes with alarm that the Sayedee verdict has been met with violent unrest in Bangladesh, with rising numbers of people being killed in the protests. It calls for immediate restraint on all sides. The BHRC considers that it is imperative that legal process be free from political influence of all hues in order to ensure that the rule of law functions fully and independently. Only in such conditions will the people of Bangladesh be able to have full confidence in their legal system, and the confidence to know that legitimate verdicts have been reached which provide proper accountability for the atrocities committed in 1971.

The BHRC also records that some of its concerns with the way in which the judgment in the Sayedee case was reached were also pertinent to the two first verdicts of the ICT. In particular, convictions appear to have been reached on evidence that is often unconvincing and underwhelming both in its nature, strength and quantity. In conjunction with serious, and disproportionate restrictions placed on the defence in both the Sayedee case and the Mollah verdict, there are legitimate concerns as to the sustainability of at least part of those judgments. In those circumstances, the application of the death penalty is particularly concerning.

During the formation of the ICT, the Bangladeshi government stressed that the trials would be compliant with international standards as to fair trials. Indeed, all three verdicts to date have been concerned to point out how and why the tribunals are internationally compliant. It is now abundantly clear that there has been grave failure to meet those international standards. Accountability and rule of law must prevail despite a heightened public and political climate which calls for retribution, irrespective of the rights of the accused. The BHRC calls urgently upon the Bangladeshi authorities to respond immediately to these

allegations and to suspend directly all ICT processes, decisions and verdicts pending an immediate, impartial and independent inquiry into the serious concerns raised as to the processes and procedures of the tribunal.

NOTES FOR EDITORS

1. The Bar Human Rights Committee of England and Wales (“BHRC”) is the international human rights arm of the Bar of England and Wales. It is an independent body concerned with protecting the rights of advocates, judges and human rights defenders around the world. The Committee is concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial. The remit of BHRC extends to all countries of the world, apart from its own jurisdiction of England & Wales. This reflects the Committee's need to maintain its role as an independent but legally qualified observer, critic and advisor, with internationally accepted rule of law principles at the heart of its agenda.
2. On November 16th 2012, the BHRC expressed concern that the International Criminal Tribunal in Bangladesh (ICT) was failing to meet international fair trial standards. In particular, following the alleged abduction of a defence witness, Shukho Ranjon Bali, (“Bali”) in front of the International Crimes Tribunal on Monday 5th November 2012. [See statement](#)
3. On December 14th 2012, following concerns raised by the BHRC on November 16th as to the fairness of proceedings before the Bangladesh International Crimes Tribunal (“ICT”), the BHRC urgently called for there to be a retrial in the case of Delwar Hossein Sayedee. [See statement](#)

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BHRC website

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