



London, 26 September 2013

STATEMENT

Retroactive application of legislation used to impose the death sentence on Abdul Quader Mollah

On 5th February 2013, Abdul Qader Mollah, a senior leader in the opposition Jamaat-e-Islami Party, was convicted of war crimes by the International Crimes Tribunal (ICT) for atrocities committed during Bangladesh's 1971 war of liberation and was sentenced to life imprisonment. At the time that judgment was passed, the prosecutor was only allowed to appeal an acquittal. The Government of Bangladesh, in response to major public protest, passed an amendment retroactively to the International Criminal (Tribunals) Act 1973, permitting the prosecution to appeal that life sentence, thereby allowing the prosecutor to seek the death penalty.

On 17 September 2013, the Appellate Division of the Supreme Court of Bangladesh, retroactively applied the amended legislation and reversed the life sentence imposed on Mollah and imposed the death penalty, strikingly without any right of appeal.

The Bar Human Rights Committee of England and Wales (BHRC) expresses grave concerns that the amendment violates fundamental principles of fair trial and the rule against double jeopardy, as enshrined in the International Covenant on Civil and Political Rights (ICCPR), to which Bangladesh is a state party. Article 15, in particular, provides that no heavier penalty shall be imposed than the one that was applicable at the time when the criminal offence was committed.

The BHRC has expressed serious concerns over many aspects of the ICT practice and procedure over the past year, leading it to call for the entire process to be halted pending a full and impartial investigation into those concerns and allegations. This latest pronouncement only adds further to that growing list of concerns. International law is clear that 'super due-process' must be applied in capital cases. States must ensure that all of the minimum guarantees and safeguards for a fair trial imposed by Article 14 ICCPR are provided for defendants facing the death penalty. The UN Special Rapporteur on extrajudicial, summary, or arbitrary executions has stated that fair trial guarantees in death penalty cases "must be implemented in all cases without exception or discrimination", and that "proceedings leading to the imposition of capital punishment must conform to the

highest standards of independence, competence, objectivity and impartiality of judges and juries, in accordance with the pertinent international legal instruments.”

The BHRC has expressed previously that it supports the need for accountability in Bangladesh for the grave crimes committed in 1971, but such accountability must be provided in accordance with international fair trial norms and guarantees. The Bangladesh government has expressed in the past its desire to comply and conform with international law. The BHRC again urges the Bangladeshi Government to suspend the ICT pending an independent investigation into the concerns which have been raised over the preceding months, to repeal the amendment to the Constitution which allows the removal of constitutional safeguards against retrospective application of the law in cases involving war crimes and immediately to commute the death sentence handed down to Mollah.

END.

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. See previous BHRC statements related to the International Crimes Tribunal (ICT) of Bangladesh [here](#).

BHRC website

<http://www.barhumanrights.org.uk/>