



**Dissertation on**  
**A Critical Assessment of Transitional Justice on the Case of International  
Crimes Tribunal of Bangladesh**

**Course Title: Supervised Dissertation**

**Course Code: LAW 406**

**Submitted to:**

**Mohammed Shahjalal**

**Senior Lecturer**

**East West University**

**Submitted by:**

**Fazlur Rahman Emon**

**ID: 2017-3-66-031**

**Date of submission:**

**7 September 2023**

**Word Count: 5959 (excluding footnotes and bibliography)**

**Consent Form**

The dissertation titled “**A Critical Assessment of Transitional Justice on the Case of International Crimes Tribunal of Bangladesh**” prepared by Fazlur Rahman Emon, ID 2017-3-66-031 submitted to Mohammed Shahjalal, Senior Lecturer of the Department of Law of East West University for the fulfillment of the requirements of Course 406 (Supervised Dissertation) for LL.B. (Hons.) degree offered by the Department of Law, East West University is approved for submission.

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Signature of the Supervisor

Date:

### Acknowledgement

First and foremost, I acknowledge my gratefulness towards almighty Allah, by whose grace I was able to come so far. I am also thankful to my respected supervisor Mohammed Shahjalal, Senior Lecturer of the Department of Law of East West University, who assisted me in determining my thesis topic and guided me in this journey, and provided various research supports to conduct my thesis work. My sincere gratitude is hereby extended to Dr. Md. Mehedi Hasan, Chairperson of the Department of Law of East West University for giving me the chance to complete my supervised dissertation course. On this note, I extend my heartfelt gratitude towards Dr. Abdullah Al Faruque, Dean of Department of Law of University of Chittagong for his lecture on research methodology which helped immensely towards completing this paper. I want to thank all of East West University's Department of Law faculty members for their advice and support throughout my undergraduate journey. Finally, I want to thank my family and friends for motivating me at every stage of my life.

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Signature

Date:

### Declaration

I, Fazlur Rahman Emon, do hereby confirm that the research paper titled “**A Critical Assessment of Transitional Justice on the Case of International Crimes Tribunal of Bangladesh**” has been prepared by my own findings and efforts. I declare that this research paper has been originally prepared by me and is not submitted for any other degree or professional certification. Any information or content which was useful in finishing this study is acknowledged and specifically cited.

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Signature

Date:

### **List of Abbreviation**

BCO:	Bangladesh Collaborators (Special Tribunals) Order
ECCC:	Extraordinary Chambers in the Courts of Cambodia
ICC:	International Criminal Court
ICTA:	International Crimes (Tribunal) Act 1973
ICTBD:	International Crimes Tribunal Bangladesh
ICTY:	International Crimes Tribunal for the former Yugoslavia
ROP:	Rules of Procedure
Vs.:	Versus

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## **Abstract**

The International Crimes Tribunal Bangladesh (ICTBD) played pivotal role in addressing human rights violations during the 1971 Liberation War. The ICTBD has already accomplished much in eradicating impunity and has shown unwavering commitment to truth-seeking and historical documentation. However, this paper attempted to acknowledge the prevailing challenges, including concerns related to fairness, due process, and political interference. Through comparative analysis with other tribunals, the paper underscores the importance of adopting a balanced approach that combines judicial and non-judicial measures in the pursuit of comprehensive transitional justice. The lessons derived from this comparative study contribute to the broader global endeavors aimed at accountability, healing, and peace in post-conflict societies.



## **Chapter 1: Introduction**

### **1.1 Background of the Study:**

Transitional justice is an important aspect of post-conflict societies to address human rights violations and to ensure accountability, promote justice. Transitional justice holds two-fold methods, such as judicial and non-judicial measures in it. The Government of Bangladesh enacted the International Crimes (Tribunals) Act 1973 on 20 July 1973 which aimed at providing for the detention, prosecution and punishment of persons for genocide, crimes against humanity, war crimes and other crimes under international law.<sup>1</sup> The International Crimes Tribunal of Bangladesh (hereinafter, ICTBD) was established as a judicial mechanism of transitional justice by the government of Bangladesh. The ICTBD is a significant component of Bangladesh's transitional justice process, which aimed to address the grave human rights violations caused during the war while other non-judicial measures were also implemented.

However, the ICTBD has faced criticism for its limited scope, political interference, and flaws in the trial process. This raises questions about the effectiveness of the ICTBD in achieving the broader goals of transitional justice. Therefore, this thesis aims to evaluate the success of the ICTBD in achieving transitional justice goals in Bangladesh.

### **1.2 Research question and objectives:**

This research will examine:

- (1) Whether the ICTBD's mechanisms and procedures were sufficient for achieving transitional justice goals?

This research tries to understand and assess the effectiveness of the ICTBD in attaining transitional justice objectives as an individual element. First, this aims to understand the extent to which the ICTBD has been successful in accomplishing its transitional justice goals within the Bangladeshi context. Second, the research focuses on the impact of the ICTBD's activities on addressing the needs of victims who suffered due to past atrocities. It also tries to understand whether the tribunal was capable to address the needs of survivors of the war and to provide healing to different parts of the post-conflict society. And, finally, the study tries to identify and analyze the challenges and

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<sup>1</sup> Preamble to the International Crimes (Tribunals) Act 1973.

limitations faced by the ICTBD in its pursuit of transitional justice goals. Through this analysis, the research aims to focus on the factors that may have limited the full achievement of certain objectives and to come up with suggestions which can be used in similar contexts in the future, thus contributing to a more equitable and peaceful world.

### **1.3 Overview of the structure of the thesis:**

This research analyses the International Crimes Tribunal Bangladesh (ICTBD) as a means of transitional justice. The following Chapter provides a review of the relevant literature covering topics such as transitional justice, international criminal law and the specific aspects of the ICTBD. The following chapter reviews the ICTBD by discussing its background, political context and legal framework. The next chapter assesses the accomplishments of the ICTBD in promoting justice while also addressing challenges and criticisms that have arisen. To gain insights, there is an analysis with other tribunals and an overview is shown between the judicial and non-judicial measures of transitional justice mechanism. Finally, in Chapter 5 the findings are consolidated, implications are discussed, and ways forward are recommended.

### **1.4 Methodology:**

The research was conducted using desk-based analysis which focused on available data. For review, academic articles, news reports and publicly available resources were used. This methodology is chosen for its time-effectiveness and efficiency in comprehensively reviewing existing literature and resources related to the ICTBD and transitional justice mechanisms.

### **1.5 Limitations:**

There are certain limitations of the thesis. Due to the desk-based approach, primary data sources and their in-depth analysis were not possible. Also, there might be biased perspectives due to absolute dependency on publicly available materials. Again, the comparative analysis is not comprehensive since covering all transitional justice mechanisms could not be covered. And finally, the time constraint in conducting the research has limited the scope of the research to a great extent.

## **1.6 Literature Review:**

The idea of transitional justice was shaped from various human rights movements which was assisted by the human rights and humanitarian laws.<sup>2</sup> The idea of transitional justice is related to transitioning from political situation or from war times to healing and stability in a post-conflict society.<sup>3</sup> While the value of transitional justice in words mean justice, it does not always mean criminal justice only.<sup>4</sup> With the transitional justice approach, mass and systematic human rights violations are addressed.<sup>5</sup>

Transitional justice consists of four traditional elements such as - criminal justice, reparation, truth, and institutional reform.<sup>6</sup> A mixed method of judicial and non-judicial methods are used in attaining transitional justice for past human rights abuses.<sup>7</sup> Transitional justice with its four pillars attempts to achieve truth-seeking, to ensure justice, seeks reparation for victims, and guarantees the non-repetition of such violence.<sup>8</sup> The idea of transitional justice is to address past human rights abuse for the societies who are emerging from conflict to promote accountability.<sup>9</sup> And, the measures used to ensure transitional justice have a mixed method of criminal, restorative and social justice.<sup>10</sup>

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<sup>2</sup>What is transitional justice? United Nations, Available at: [https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/26\\_02\\_2008\\_background\\_note.pdf](https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/26_02_2008_background_note.pdf), accessed on 18 August 2023.

<sup>3</sup> Edward Newman, "Transitional Justice': The Impact of Transnational Norms and the UN", *International Peacekeeping*, Vol. 9.2 (2002), pages- 31-50.

<sup>4</sup> Peter Dixon and Tenove Chris, "International criminal justice as a transnational field: Rules, authority and victims", *International Journal of Transitional Justice*, Vol 7.3 (2013), pages- 393-412.

<sup>5</sup> What is transitional justice? United Nations, Available at: [https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/26\\_02\\_2008\\_background\\_note.pdf](https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/26_02_2008_background_note.pdf), accessed on 18 August 2023.

<sup>6</sup> TRANSITIONAL JUSTICE EXPLAINED (INFOGRAPHIC), Justice Info, available at: <https://www.justiceinfo.net/en/30518-transitional-justice-explained-infographic.html>, accessed on 15 August 2023.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Brianna Weissman, "TRANSITIONAL JUSTICE: THE KEY TO DEMOCRACY, DEVELOPMENT, AND SUSTAINABLE PEACE WITHIN TRANSITIONING SOCIETIES IN LATIN AMERICA", *Ramapo Journal of Law and Society*, available at: <https://www.ramapo.edu/law-journal/thesis/transitional-justice-the-key-to-democracy-development-and-sustainable-peace-within-transitioning-societies-in-latin-america/>, accessed on 15 August 2023.

<sup>10</sup> Briony Jones, "The performance and persistence of transitional justice and its ways of knowing atrocity", *Cooperation and Conflict*, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8107769/>, accessed on 14 August 2023.

Bangladesh, as a country, has its history of the liberation war of 1971 which affected the lives of millions.<sup>11</sup> During the liberation war of Bangladesh, around three million people were reportedly killed by the Pakistani occupation army, thousands of women were sexually abused and millions of people had to take refuge to neighboring countries.<sup>12</sup> The International Crimes Tribunal Bangladesh (ICTBD) was set up in 2009 to prosecute those responsible for the war crimes.<sup>13</sup> The purpose was to investigate and prosecute suspects, such as the Pakistani occupation armies and their local collaborators such as the Razakars, Al-Badr and Al-shams, for the war crimes committed in 1971.<sup>14</sup>

The ICTBD has made some achievements in promoting transitional justice, including ensuring accountability for past human rights abuses, providing some redress to victims, and contributing to the process of truth-seeking.<sup>15</sup> However, the ICTBD's limited focus on the criminal prosecutions might have affected the broader goals of transitional justice, including addressing the needs of victims. While the ICTBD has succeeded in prosecuting some of the horrible offenders of war crimes, some non-judicial measures of transitional justice were left untouched and thus overall justice might have not been ensured which will be explored on the later parts of the paper.

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<sup>11</sup> Willem Van Schendel, "A war within a war: Mizo rebels and the Bangladesh liberation struggle", *Modern Asian Studies*, Vol. 50.1 (2016), pages- 75-117.

<sup>12</sup> Sarmila Bose, "The Question of Genocide and the Quest for Justice in the 1971 War" *Journal of Genocide Research*, Vol- 13.4 (2011), pages- 393-419.

<sup>13</sup> Md Awal Hossain Mollah, "War Crimes Trials in Bangladesh: Justice or Politics?" *Journal of Asian and African studies*, Vol- 55.5 (2020), pages- 652-665.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

## **Chapter 2: Understanding Transitional Justice:**

### **2.1 Introduction:**

Transitional justice is a wholesome process which aims to respond to mass human rights violations through a number of mechanisms. Mechanisms included in the transitional justice process include judicial remedies, institutional reforms, seeking truth and ensuring reparatory justice for the post-conflict society. This consists of judicial and non-judicial processes applied to provide remedy to the sufferers of human rights abuses.

The primary idea of transitional justice is to provide the victims or sufferers of mass human rights violations with rebuilt trust, ensuring justice, bringing democracy in the society.<sup>16</sup> The attempt to bring the positive change in the society requires incorporating all measures of transitional justice, both judicial and non-judicial measures. Transitional justice primarily focuses on the victims, ensuring their rights and dignity as human beings, by ensuring accountability, seeking truth and justice.<sup>17</sup>

### **2.2 Pillars of Transitional Justice:**

There are four pillars of transitional justice – truth, justice, reparations and institutional reform. Truth focuses on the acknowledgement of the commission of crimes against a particular society, documenting the facts about past human rights violations and abuses. Truth commissions or documentation processes try to keep record of the facts, actual events of atrocities. Through the truth-seeking process, victims can share their experiences, histories are preserved. Thus, the newer generation of the country can remember the atrocities committed against them.<sup>18</sup>

The second pillar is justice which focuses on ensuring criminal justice by holding those responsible for human rights violations accountable for their actions. Justice, being a judicial measure, includes

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<sup>16</sup> TRANSITIONAL JUSTICE EXPLAINED (INFOGRAPHIC), Justice Info, available at: <https://www.justiceinfo.net/en/30518-transitional-justice-explained-infographic.html>, accessed on 15 August 2023.

<sup>17</sup> Brianna Weissman, “TRANSITIONAL JUSTICE: THE KEY TO DEMOCRACY, DEVELOPMENT, AND SUSTAINABLE PEACE WITHIN TRANSITIONING SOCIETIES IN LATIN AMERICA”, *Ramapo Journal of Law and Society*, available at: <https://www.ramapo.edu/law-journal/thesis/transitional-justice-the-key-to-democracy-development-and-sustainable-peace-within-transitioning-societies-in-latin-america/>, accessed on 15 August 2023.

<sup>18</sup>TRANSITIONAL JUSTICE EXPLAINED (INFOGRAPHIC), Justice Info, available at: <https://www.justiceinfo.net/en/30518-transitional-justice-explained-infographic.html>, accessed on 15 August 2023.

trials and prosecutions. The purpose of the judicial mechanisms is to ensure that responsible individuals are held accountable and face appropriate consequences.

Criminal justice ensures the end of any impunity against the accused individuals as well as redress to victims and their families.<sup>19</sup> The third pillar of transitional justice is reparatory justice which serves both victims and the next generation citizens. Reparatory justice includes a number of methods, such as compensation, rehabilitation, overall ensuring social justice in a form to rehabilitate the victims by removing their past traumas.<sup>20</sup> The last pillar is institutional reform which means bringing reformation within key institutions to prevent future recurrence of human rights violations. This includes reforming legal system and the rule of law. This is essential for building a more just and accountable society.<sup>21</sup>

### **2.3 Government initiated transitional justice efforts in Bangladesh**

The government of Bangladesh, at different times, have taken several initiatives to ensure transitional justice by addressing the human rights violations of the 1971 liberation war.<sup>22</sup> Different measures include the official recognition of rape survivors as 'Birangona' to acknowledge their suffering as a way of inclusion in the mainstream society rights after the liberation.<sup>23</sup> Right after achieving victory at the war, the government of Bangladesh introduced the Bangladesh Collaborators (Special Tribunals) Order, 1972<sup>24</sup> (BCO) in an attempt to hold accountable all those who had directly or indirectly assisted the Pakistan Army. The law aimed to punish those persons in accordance with due process of law.<sup>25</sup>

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<sup>19</sup> Sarmila Bose, "The Question of Genocide and the Quest for Justice in the 1971 War" *Journal of Genocide Research*, Vol- 13.4 (2011), pages- 393-419.

<sup>20</sup> Tapos Kumar Das, 'Reparatory Justice Practice in ICC and ICT-BD: Transitional Justice in Bangladesh in Context', ELCOP Yearbook of Human Rights 2017 (pages- 67-80).

<sup>21</sup> TRANSITIONAL JUSTICE EXPLAINED (INFOGRAPHIC), Justice Info, available at: <https://www.justiceinfo.net/en/30518-transitional-justice-explained-infographic.html>, accessed on 15 August 2023.

<sup>22</sup> Fatima Zahra Ahasan Raisa, Between ashes and hope: Why ensuring transitional justice for the victims of our Liberation War is now more important than ever, Dhaka Tribune, 01 April 2023, available at: <https://www.dhakatribune.com/opinion/op-ed/308037/between-ashes-and-hope>.

<sup>23</sup> Nayanika Mookherjee, History and the Birangona, The Daily Star, 21 June 2021, available at: <https://www.thedailystar.net/in-focus/news/history-and-the-birangona-2114681>.

<sup>24</sup> President's Order No. 8 of 1972.

<sup>25</sup> Preamble to the Bangladesh Collaborators (Special Tribunals) Order, 1972.

Additionally, the Bangladesh Freedom Fighter Welfare Trust was established to provide financial support and various services to freedom fighters and their families.<sup>26</sup> The ICTA 1973 established the International Crimes Tribunal of Bangladesh to ensure justice. The declaration by the government of the Gallantry Awards, the establishment of the National Martyrs Memorial, the Independence Day Award, and other honors recognize the contributions and sacrifices of those who played significant roles in the Liberation War.

The government of Bangladesh has recently recognized survivors of sexual violences, the 'Birangona' women, as freedom fighters and declared 25<sup>th</sup> March as 'Genocide Day,' which shows the government's commitment to addressing the sufferings during the war. The Liberation War Museum, although not a government agency, plays a crucial role in educating the younger generation about the war's history and human rights through various programs. These initiatives collectively reflect Bangladesh's multifaceted approach to transitional justice, memorialization, and recognition of the Liberation War's significance in the country's history.

#### **2.4 Historical Context of ICTBD:**

As a standalone initiative of judicial redress for gross human rights violations during the 1971 liberation war, the International Crimes (Tribunals) Act was enacted in 1973 right after the war of independence of Bangladesh. However, the ICTBD was established in 2009, after long 40 years. Looking back to the history of Bangladesh, the creation of Bangladesh was a result of the liberation war which took place between East Pakistan and West Pakistan.

During the war, widespread human rights abuses, including genocide, rape, and torture were committed by the Pakistani occupation armies with collaborations from local collaborators in Bangladesh.<sup>27</sup> After the war, the establishment of the ICTBD was a response to demand for justice and accountability for these abuses. However, it took around 40 years after the violations to establish the tribunals under the ICTA 1973.<sup>28</sup>

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<sup>26</sup> Wounded freedom-fighters, families to get Tk 400cr, The Daily Star, 7 June 2018, available at: <https://www.thedailystar.net/bangladesh-national-budget-2018-19/wounded-freedom-fighter-families-get-tk-400-crore-fiscal-year-2018-19-bangladesh-1587832>.

<sup>28</sup> Tapos Kumar Das, 'Reparatory Justice Practice in ICC and ICT-BD: Transitional Justice in Bangladesh in Context', ELCOP Yearbook of Human Rights 2017 (pages- 67-80).

The tribunal has jurisdiction over genocide, crimes against humanity, war crimes, and other international crimes committed during the Liberation War of Bangladesh. From the beginning till now the tribunals of ICTBD tribunals have pronounced judgment on 53 cases. While heinous criminal offenders were brought under justice by ending the impunity, the ICTBD faced criticism for not adhering to international standards of a fair trial and due process.<sup>29</sup> The limited focus of the ICTBD on criminal prosecutions may hinder the broader goals of transitional justice, including addressing the needs of victims and promoting reconciliation.<sup>30</sup>

The ICTBD's work has broader societal and political implications within the context of Bangladesh. Criticisms faced by the ICTBD involves political interference undermining the credibility and impartiality of the tribunal. Also, throughout the criminal justice process, other non-judicial measures were not covered by the tribunal. Therefore, the limited focus of the ICTBD on criminal prosecutions poses questions against the broader goals of transitional justice, including addressing the needs of victims.<sup>31</sup>

## **2.5 Conclusion:**

In conclusion, the concept of transitional justice involves multi-layer approach which aims at addressing mass human rights violations in post-conflict societies. The four pivotal pillars of transitional justice such as - truth, justice, reparations, and institutional reform together try to ensure trust, bring justice and accountability and ensure societal healing. Looking at the context of Bangladesh, the government has undertaken various initiatives over the years which acknowledge the human rights violations which took place during the 1971 liberation war, and attempted to rectify those with initiatives relating to criminal prosecutions as well. These initiatives such as the recognition of "Birangona" women as freedom fighters to the establishment of the International Crimes Tribunal of Bangladesh shows Bangladesh's commitment towards transitional justice and also ensures that the atrocities of the past are not forgotten.

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<sup>29</sup> Lina Gong, NTS Insight June 2013: Transitional justice in South and Southeast Asia: Integrating judicial and non-judicial measures, Centre for Non-Traditional Security Studies, Available at: <https://reliefweb.int/report/bangladesh/nts-insight-june-2013-transitional%20justice%20in%20south%20and%20southeast%20asia%20integrating>, accessed on 23 August 2023.

<sup>30</sup> A.B.M. Najmus Sakib, "Victimization during the liberation war of 1971 and Transitional Justice: The case of Bangladesh", available at: <http://arno.uvt.nl/show.cgi?fid=146808>, accessed on 23 August 2023.

<sup>31</sup> Ibid.





## **Chapter 3: ICTBD as Transitional Justice:**

### **3.1 Introduction:**

The International Crimes Tribunal Bangladesh (ICTBD) played an important role in advancing transitional justice within the context of Bangladesh. Established to address the grave rights violations committed during the 1971 Liberation War, the ICTBD has achieved significant milestones that contribute to the attainment of transitional justice, including accountability, redress for victims, and truth-seeking.

### **3.2: Accountability through criminal prosecution:**

One of the most notable achievements of the ICTBD is that the tribunal was able to put an end to the impunity that the actual perpetrators were enjoying. The ICTBD has successfully prosecuted some of the remarkable cases. These prosecutions have been instrumental in ensuring accountability for past human rights abuses. The trials conducted by the tribunal have sent a powerful message that those who have committed grave crimes against humanity will be held to account, regardless of their positions of power or influence. For example, the tribunal prosecuted Abdul Quader Molla for different charges relating to killings, sexual violence and other crimes. His trial and execution showed the commitment of the ICTBD in ensuring justice by holding the accused accountable for their actions.<sup>32</sup>

### **3.3 Truth seeking by the ICTBD:**

Furthermore, the ICTBD's work extends to truth-seeking, a fundamental element of transitional justice. The tribunal's proceedings and investigations have been instrumental in uncovering the truth about past human rights abuses. This truth-seeking function serves as a crucial step in acknowledging the historical facts surrounding the 1971 Liberation War, ensuring that the atrocities committed during that period are not forgotten or denied. Through its investigations and trials, the tribunal has documented accounts of survivors, witnesses, and experts, creating a comprehensive record of the historical events. This documentation not only serves as a testament

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<sup>32</sup> Nasrin, Khadiza. "War Victim's Rights and Reparation within International Crimes Tribunal Bangladesh (ICTBD): An Evaluation of Issues and Challenges." *Dhaka Univ. Stud. Part F* 30 (2019): 157.

to the suffering endured but also helps preserve true narratives of the events that took place many years back.<sup>33</sup>

### **3.4 Reparations by ICTBD:**

The International Crimes (Tribunal) Act, 1973 (ICTA) initially did not have any clause of reparation within the Act. However, in 2012, the Rules of Procedure (ROP) was amended and Rule 46(3) of the ROP empowered the tribunal to impose fines and pass reparation orders proportional to the gravity of the crime when convicting individuals.<sup>34</sup> This represented a significant step towards acknowledging the rights of victims and their need for redress. The prosecution of ICTBD in a number of cases argued for compensation or reparation for the victims of sexual violence during the war. In the case of *The Chief Prosecutor vs. Syed Md. Qaiser*<sup>35</sup> the prosecution argued that some form of ‘reparation’ or ‘compensation’ will provide solace to the survivors of the sexual violence.

While the tribunal concluded that it lacked jurisdiction to award compensation to the rape survivors, it made observations on the need for constituting a compensation board for rape survivors and also identified the necessity for social service packages for the survivors of rape.<sup>36</sup>

Other than monetary reparation, the ICTBD tribunal also made observations on the need to memorialise the contribution of wartime rape survivors, such as the Birangonas, in school textbooks.<sup>37</sup>

### **3.5 Conclusion:**

Despite some of the challenges and criticisms, the ICTBD's achievements in advancing transitional justice in Bangladesh should not be underestimated. The tribunal's prosecutions have brought perpetrators to justice and sent a powerful message that impunity for grave international crimes will not be tolerated. Also, directions from the ICTBD regarding the memorialization of the victims and survivors of violence along with urging for the establishment of compensation scheme

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<sup>33</sup>A.B.M. Najmus Sakib, “Victimization during the liberation war of 1971 and Transitional Justice: The case of Bangladesh”, available at: <http://arno.uvt.nl/show.cgi?fid=146808>, accessed on 23 August 2023.

<sup>34</sup> ROP 2012 of the ICTA 1973, Chapter VIA and Rule 58A.

<sup>35</sup> *The Chief Prosecutor vs. Syed Md. Qaiser*, ICTBD (II) Case No. 04 of 2013, Paragraph 290.

<sup>36</sup> *Ibid*, para 983.

<sup>37</sup> *The Chief Prosecutor vs. A. T. M. Azharul Islam*, ICTBD (I) Case No. 05 of 2013, Paragraph 332.

or board emphasis the attempt of the ICTBD in providing redress for victims and their families, acknowledging their suffering, and helping them rebuild their lives.

## **Chapter 4: International Laws on Transitional Justice:**

### **4.1 Introduction:**

The issue of fairness and due process has been a subject of debate within the context of the ICTBD. Some critics argue that the tribunal's proceedings have not consistently met international standards of fairness, with allegations of inadequate legal representation for the accused and limitations on the defense's ability to present evidence. These concerns raise questions about the overall legitimacy of the tribunal's verdicts.

Critics also argue that the tribunal's decisions and proceedings have been influenced by political considerations, particularly in the context of Bangladesh's complex political landscape. Such allegations can undermine public confidence in the tribunal's ability to deliver impartial justice. Moreover, the ICTBD's legitimacy has been questioned by some international observers and human rights organizations. While the tribunal's efforts to hold perpetrators accountable are commendable, concerns about its adherence to international standards and its perceived bias have led to calls for greater international oversight and involvement in its proceedings.<sup>38</sup>

### **4.2 Legal Challenges:**

One of the prominent challenges faced by the ICTBD is related to the legal framework within which it operates. Some critics have raised concerns about the retroactive application of laws, which means that individuals are being prosecuted and sentenced for crimes that were not considered criminal at the time they were committed. This practice has sparked debates over the fairness of such proceedings and whether it aligns with international legal standards.<sup>39</sup> Also, the provision of capital punishment against the perpetrators of serious crimes was criticized as being inhumane and violative of the accused person's human rights.<sup>40</sup>

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<sup>38</sup> Islam, Md Shahriar. *Intergenerational Memories of Genocide and Trust in Governance in Bangladesh: Implications for Preventing the Reoccurrence of Mass Atrocity*. Diss. State University of New York at Binghamton, 2022.

<sup>39</sup> Khadiza Nasrin, "War Victim's Rights and Reparation within International Crimes Tribunal Bangladesh (ICT-BD): An Evaluation of Issues and Challenges." *Dhaka Univ. Stud. Part F* 30 (2019): 157.

<sup>40</sup> Fazi, Muhammad Abdullah, Pardis Moslemzadeh Tehrani, and Azmi Bin Sharom. "12 A Legal Analysis of the International Crimes Tribunal Bangladesh: A Fair Trial Perspective." *The Asian Yearbook of Human Rights and Humanitarian Law*. Brill Nijhoff, 2018. 350-366.

### **4.3 Procedural Challenges:**

Procedural challenges have also cast a shadow over the operations of the ICTBD. Concerns have been raised about the fairness and impartiality of the tribunal's proceedings. Some argue that the defense has been hindered in presenting its case effectively, potentially undermining the principle of a fair trial. Questions have been raised about the adequacy of legal representation for the accused and whether they have been afforded the opportunity to defend themselves.

These procedural challenges have led to criticisms of the tribunal's overall legitimacy. The perception that proceedings may be politically influenced or that the accused are not receiving fair trials has fueled doubts about the tribunal's ability to deliver impartial justice.<sup>41</sup>

### **4.4 Political Challenges:**

The ICTBD has not been immune to allegations of political interference and the use of the tribunal for political purposes. Critics argue that political motivations have influenced the selection of cases and the timing of trials. This has led to suspicions that the tribunal may be utilized as a tool to target political opponents or suppress dissent. Such allegations of political interference can erode public confidence in the tribunal's independence and impartiality. They highlight the complex and often politically charged environment in which transitional justice processes unfold.<sup>42</sup>

### **4.5 Criticisms and Controversies:**

Beyond the overarching challenges, specific criticisms and controversies have arisen in connection with the ICTBD's operations. Legitimacy concerns have been at the forefront, with questions raised about the fairness, transparency, and impartiality of the tribunal's proceedings. These concerns are closely tied to the procedural and political challenges mentioned earlier. Perceived biases have also been a source of controversy. Some critics allege that the ICTBD has disproportionately targeted members of opposition parties while potentially ignoring crimes committed by others. This has led to accusations of bias in case selection and the overall direction of the tribunal's work. Controversies have also emerged around the retroactive sentencing of some individuals by the

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<sup>41</sup> M. Rafiqul Isla, *National trials of international crimes in Bangladesh: transitional justice as reflected in judgments*. Brill, 2019.

<sup>42</sup> Kashpee Wahid, "Sentencing Under the International Crimes Tribunals in Bangladesh: A Critical Analysis." *ANU College of Law Research Paper* 14-07 (2014).

ICTBD. The practice of imposing sentences for crimes that were not considered criminal when committed has sparked debates over the legality and fairness of such actions.<sup>43</sup>

#### **4.6 Comparative analysis:**

The experiences and outcomes of the International Crimes Tribunal Bangladesh (ICTBD) cannot be examined in isolation; they must be placed in the broader context of international and regional tribunals that have been engaged in transitional justice efforts. To understand the challenges and limitations, it needs to be compared with other tribunals.

##### **4.6.1 The International Criminal Tribunal for former Yugoslavia:**

The ICTY was established in 1993 which was established for ensuring justice for the crimes committed during the conflicts in the former Yugoslavia.<sup>44</sup> The ICTY also share a common goal as the ICTBD to attain justice in the wake of widespread human rights abuses in the context of conflict. One of the ICTY's notable achievements lies in its prosecution of high-profile cases. These trials contributed to ensuring accountability for past atrocities, like the ICTBD's convictions. However, there have been similar criticisms against the ICTY as well.

A critical lesson drawn from the ICTY's experience is the need for a comprehensive transitional justice approach. While prosecutions are crucial, they must be complemented by initiatives that address the needs of victims and promote reconciliation. The ICTY's relative shortcomings in these areas emphasize the importance of a holistic approach, which the ICTBD can also benefit from incorporating.<sup>45</sup>

##### **4.6.2 International Criminal Court:**

The International Criminal Court (ICC) was founded in 2002. It has jurisdiction over genocide, crimes against humanity and war crimes worldwide to prosecute individuals responsible for those

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<sup>43</sup>A.B.M. Najmus Sakib, "Victimization during the liberation war of 1971 and Transitional Justice: The case of Bangladesh", available at: <http://arno.uvt.nl/show.cgi?fid=146808>, accessed on 23 August 2023.

<sup>44</sup> Clark, Janine Natalya. "International war crimes tribunals and the challenge of outreach." *International Criminal Law Review* 9.1 (2009): 99-116.

<sup>45</sup> Clark, Janine Natalya. "International war crimes tribunals and the challenge of outreach." *International Criminal Law Review* 9.1 (2009): 99-116.

crimes.<sup>46</sup> Its scope is broader than that of the ICTBD, which specifically targets crimes committed during the 1971 Liberation War in Bangladesh.

The ICC has faced criticism, primarily due to its limited jurisdiction and resource constraints. It has been unable to prosecute individuals for crimes committed in certain regions, highlighting the challenges of achieving global accountability. In contrast, the ICTBD operates within a more specific context but still grapples with issues of jurisdiction, particularly in terms of retroactivity. The ICC's experience underscores the importance of defining the tribunal's jurisdiction clearly and addressing any ambiguities or limitations in the legal framework. This lesson resonates with the ICTBD, where debates over the retroactive application of laws have raised concerns about legal fairness.<sup>47</sup>

#### **4.6.3 The Extraordinary Chambers in the Courts of Cambodia:**

The ECCC was established in 2006 which has similarities with the ICTBD in terms of its regional focus.<sup>48</sup> The ECCC's mandate is to prosecute individuals responsible for crimes committed in Cambodia, an approach like the ICTBD's concentration on crimes committed during the 1971 Liberation War.

Like the ICTBD, the ECCC has achieved notable successes in prosecuting cases. These trials have contributed to ensuring accountability for past atrocities. However, like the ICTBD and the ICTY, the ECCC has faced criticisms, particularly for its limited focus on criminal prosecutions and its challenges in addressing the needs of victims. This recurring theme highlights the complexities of balancing accountability with the broader goals of transitional justice.

#### **4.7 Lessons for the ICTBD:**

The comparative analysis of these international and regional tribunals provides valuable lessons for the ICTBD and its endeavors in promoting transitional justice in Bangladesh. The International

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<sup>46</sup>Weller, Marc. "Undoing the global constitution: UN Security Council action on the International Criminal Court." *International Affairs* 78.4 (2002): 693-712.

<sup>47</sup> Weller, Marc. "Undoing the global constitution: UN Security Council action on the International Criminal Court." *International Affairs* 78.4 (2002): 693-712.

<sup>48</sup> Nasrin, Khadiza. "War Victim's Rights and Reparation within International Crimes Tribunal Bangladesh (ICT-BD): An Evaluation of Issues and Challenges." *Dhaka Univ. Stud. Part F* 30 (2019): 157.



Crimes Tribunal Bangladesh (ICTBD) faces several challenges and considerations in its pursuit of transitional justice for the 1971 Liberation War.

First, there is a need for a holistic approach that goes beyond criminal prosecutions to address the broader goals of transitional justice, including victim support and reconciliation. Second, ensuring adherence to international standards of fair trial and due process is crucial to enhance the tribunal's legitimacy and effectiveness. Third, truth-seeking is significant, as the ICTBD's work contributes to uncovering past human rights abuses and emphasizes the importance of transparency and historical documentation.

Resource constraints and jurisdictional limitations have been common issues for national, regional or international courts, highlighting the importance of providing adequate resources and clarifying jurisdiction. Also, international involvement and support from the global community and human rights organizations can enhance the credibility and impact of transitional justice efforts, but this involvement must be balanced with respect for national sovereignty.<sup>49</sup>

Comparing the experiences and outcomes of the ICTBD with other international and regional tribunals involved in transitional justice efforts offers valuable insights into the challenges and limitations the ICTBD has faced. These lessons emphasize the need for a comprehensive approach to transitional justice, adherence to international legal standards, and a careful balance between accountability and reconciliation. Moreover, the experiences of these tribunals underscore the complexities inherent in pursuing justice and accountability in the aftermath of grave human rights abuses and conflicts. They serve as a reminder that transitional justice processes must be adapted to the specific context and needs of the affected population while upholding fundamental principles of fairness, transparency, and legality.

As the ICTBD continues its work in Bangladesh, these lessons from comparable tribunals can inform and guide its efforts in addressing the human rights violations and promoting reconciliation in the country. Transitional justice is a complex and ongoing process, and the experiences of these

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<sup>49</sup> A.B.M. Najmus Sakib, "Victimization during the liberation war of 1971 and Transitional Justice: The case of Bangladesh", available at: <http://arno.uvt.nl/show.cgi?fid=146808>, accessed on 23 August 2023

tribunals offer valuable insights as Bangladesh strives to reckon with its past and build a more just and reconciled future.

#### **4.8 Balancing Justice and Healing: Assessing the Role of the ICTBD as a Judicial Measure in Transitional Justice**

The International Crimes Tribunal Bangladesh (ICTBD) has been a prominent judicial mechanism in the pursuit of transitional justice within the country. To evaluate its effectiveness and significance, it is essential to compare it with other non-judicial measures employed in transitional justice processes. This assessment will explore the strengths and limitations of the ICTBD as a judicial measure and contrast it with non-judicial measures.

##### **4.8.1 Strengths and Limitations of the ICTBD as a judicial measure:**

Accountability and Justice is one of the primary strengths of the ICTBD as it is able to hold individuals accountable for crimes which were committed during the 1971 Liberation War.<sup>50</sup> By prosecuting perpetrators, the tribunal reinforces the principle that impunity for grave human rights abuses is not tolerated. This contributes significantly to achieving justice for victims and their families. Secondly, the truth seeking, through the ICTBD's judicial proceedings plays a crucial role in uncovering the facts about past atrocities.<sup>51</sup> Through investigations and trials, it documents historical facts and acknowledges the suffering endured by victims.

Truth-seeking is an essential component of transitional justice, and the tribunal contributes to this process. Finally, the ICTBD carries symbolic significance in Bangladesh. It signifies the nation's commitment to addressing the rights violations and providing a sense of closure for the victims and their families.<sup>52</sup> This symbolism can be a powerful force for reconciliation and healing.

As for the limitations, the legal framework of the ICTBD poses challenges in its implementation. The retroactive application of laws and certain legal framework issues have raised concerns about

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<sup>50</sup> Borda, Aldo Zammit, and Sajib Hosen. "The challenges of long-delayed prosecutions in fighting impunity in Bangladesh." *Leiden Journal of International Law* 35.4 (2022): 987-1014.

<sup>51</sup> Afroz, Tureen. *Justice for 1971 War Rapes: Trial and Beyond*. Partridge Publishing Singapore, 2022.

<sup>52</sup> Zammit Borda, A., and S. Hosen. "The challenges of long-delayed prosecutions in fighting impunity in Bangladesh (City Law School Research Paper 2022/07)." *London, UK: City Law School, City, University of London. This is the published version of the paper. This version of the publication may differ from the final published version* (2022).

the fairness and legality of the ICTBD's proceedings. These limitations have generated debates and criticism regarding the tribunal's adherence to international legal standards.

Secondly, the limited focus, primarily on criminal prosecutions though vital, may overshadow other critical aspects of transitional justice, such as addressing the needs of victims and promoting reconciliation. This limited focus can potentially hinder the broader goals of transitional justice. And another alleged challenge was the fairness and impartiality of the tribunal. Concerns have been raised about the fairness, transparency, and legitimacy of the ICTBD's proceedings. Allegations of political interference and perceived biases have the potential to undermine public confidence in the tribunal's independence and impartiality.

#### **4.8.2 Non-Judicial Measures in Transitional Justice:**

Non-judicial measures complement judicial mechanisms like the ICTBD and play a crucial role in achieving comprehensive transitional justice. Non-judicial measures often include reparations programs that provide financial assistance, healthcare, education, and psychosocial support to victims and their families. These programs aim to alleviate the suffering of victims and help them rebuild their lives.

While the government of Bangladesh took several initiatives to provide reparatory justice to the survivors of the liberation war, the ICTBD did not have any express provision for allowing reparation for victims of crimes.<sup>53</sup> In case of documentation of historical records, archives, and oral histories related to human rights abuses, the ICTBD played strong roles through its investigation and trial of war crimes. This documentation contributes to truth-seeking efforts and helps preserve the historical memory of the conflict.<sup>54</sup>

#### **4.8.3 Comparing Judicial and Non-Judicial Measures:**

Judicial measures like the ICTBD primarily focus on accountability through prosecutions. Non-judicial measures, on the other hand, take a more holistic approach by addressing the needs of victims, promoting reconciliation, and documenting historical facts. A combination of both

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<sup>53</sup> A.B.M. Najmus Sakib, "Victimization during the liberation war of 1971 and Transitional Justice: The case of Bangladesh", available at: <http://arno.uvt.nl/show.cgi?fid=146808>, accessed on 23 August 2023

<sup>54</sup> Ibid.

approaches can provide a more comprehensive transitional justice process. Judicial mechanisms, when properly structured and conducted, can provide a high level of legal legitimacy and impartiality. However, concerns about fairness and political interference can arise.

Non-judicial measures are often perceived as less prone to political manipulation but may lack the legal weight of judicial processes. As for impact, judicial measures can have a direct impact on individual accountability but may have limited capacity to address the broader social and psychological impacts of conflict. Non-judicial measures, including reparations and reconciliation initiatives, target these broader impacts, contributing to long-term stability and peace.

Ultimately, the effectiveness of transitional justice efforts in Bangladesh may hinge on a balanced approach that combines the strengths of judicial mechanisms like the ICTBD with the multifaceted contributions of non-judicial measures. Such an approach can help address the complex challenges and goals inherent in transitional justice processes, fostering healing, reconciliation, and a more just society.

#### **4.9 Conclusion:**

In conclusion, the International Crimes Tribunal Bangladesh (ICTBD) has been a central component of transitional justice efforts in Bangladesh, but it has faced numerous challenges and criticisms. The issue of fairness and due process has been a subject of ongoing debate, with concerns about inadequate legal representation for the accused and political interference casting shadows over its legitimacy. The legal framework of the ICTBD, including retroactive application of laws and the provision of capital punishment, has sparked concerns about its adherence to international standards. Procedural challenges have further fueled doubts about the tribunal's overall legitimacy, with questions raised about the fairness and impartiality of proceedings. Political challenges, including allegations of the tribunal's use for political purposes, have also eroded public confidence in its independence.

The ICTBD's experiences and controversies can be contextualized through a comparative analysis with other international and regional tribunals engaged in transitional justice efforts. The International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Court (ICC), and the Extraordinary Chambers in the Courts of Cambodia (ECCC) all offer valuable lessons. These tribunals have demonstrated the need for a comprehensive transitional justice approach that includes victim support and reconciliation alongside criminal prosecutions.

Furthermore, the introduction of non-judicial measures, such as reparations programs and truth-seeking efforts, can complement judicial mechanisms like the ICTBD. Such a balanced approach recognizes the strengths and limitations of both judicial and non-judicial measures. While judicial mechanisms can provide legal legitimacy and individual accountability, non-judicial measures address the broader social and psychological impacts of conflicts, contributing to long-term stability and peace.

As Bangladesh continues its journey toward reconciliation with its past and building a more just future, it can draw valuable insights from the experiences of these tribunals. Transitional justice is a complex and ongoing process, and the lessons learned emphasize the importance of a holistic approach that upholds fundamental principles of fairness, transparency, and legality while addressing the multifaceted challenges of healing and reconciliation.

## **Chapter 5: Conclusion:**

In conclusion, the ICTBD represents a significant component of Bangladesh's transitional justice process, aimed at addressing the human rights violations during the 1971 Liberation War. This paper has examined the ICTBD's strengths, limitations, and contributions within the broader context of transitional justice. It has also compared the ICTBD with other international and regional tribunals and assessed the role of judicial and non-judicial measures in achieving transitional justice goals.

The ICTBD stands as a significant pillar in the pursuit of transitional justice within the context of Bangladesh. In its mission to address the painful legacy of human rights abuses during the 1971 Liberation War, the ICTBD has achieved remarkable milestones not only within the nation but also across the global stage. One of the most compelling achievements of the ICTBD is its unwavering commitment to ending impunity. Before the tribunal's inception, perpetrators of grave international crimes during the Liberation War were enjoying impunity, evading accountability for their heinous actions.

The establishment of the ICTBD marked a transformative moment when those responsible for atrocities could no longer evade justice. High-profile cases brought before the tribunal, such as that of Abdul Quader Molla, who faced charges of killings, sexual violence, and other crimes, symbolized a profound shift in the paradigm of accountability. The verdicts delivered by the ICTBD served as a resounding declaration that individuals who committed grave human rights abuses would be held to account, irrespective of their positions or influence. This shift in the power dynamic between the perpetrators and their victims represented a significant achievement in the pursuit of justice.

Furthermore, the ICTBD's truth-seeking efforts have played a pivotal role in uncovering the historical facts surrounding the 1971 Liberation War. Truth-seeking is an integral component of any transitional justice process, and the ICTBD has demonstrated an unwavering commitment to this endeavor. Through its rigorous investigations and comprehensive trials, the tribunal has not only brought perpetrators to justice but also preserved the narratives and experiences of survivors and witnesses. These testimonies serve as a testament to the suffering endured during the war, ensuring that the truth is documented, acknowledged, and safeguarded for future generations. The documentation of historical facts extends beyond the courtroom and reaches into the hearts and

minds of the Bangladeshi people. The ICTBD's work has contributed to shaping a collective memory of the Liberation War, providing a comprehensive and accurate record of the past. It prevents the erasure of the painful chapters of the nation's history and reaffirms the commitment to never forget the atrocities committed during the war.

In essence, the ICTBD's achievements are deeply rooted in its dedication to ensuring that justice prevails and that the truth about past human rights abuses is uncovered and preserved.<sup>55</sup> Its prosecutions have ended the impunity that once shielded perpetrators, sending a resounding message that accountability is paramount. Simultaneously, its truth-seeking efforts have documented the historical facts, ensuring that the suffering of victims and the atrocities committed during the 1971 Liberation War will forever be acknowledged, upheld, and remembered. These accomplishments represent not only milestones in the pursuit of transitional justice but also a testament to the resilience and determination of the Bangladeshi people to confront their painful past and build a more just and reconciled future.

However, the ICTBD is not without its challenges and criticisms. Concerns about fairness, due process, and political interference have raised questions about the tribunal's legitimacy and impartiality. The limited focus on criminal prosecutions, while crucial, may have overshadowed other essential aspects of transitional justice, such as addressing the needs of victims and promoting reconciliation. Comparative analysis with other tribunals, such as the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Court (ICC), and the Extraordinary Chambers in the Courts of Cambodia (ECCC), has highlighted common challenges and lessons. These tribunals have faced similar issues related to fairness, legal frameworks, and the need for a comprehensive transitional justice approach.

In light of these findings, it is evident that transitional justice is a complex and multifaceted process that requires a balanced approach. The ICTBD, like other tribunals, must strive to strike a balance between accountability through prosecutions and the broader goals of addressing victims' needs and promoting reconciliation.<sup>56</sup> Efforts to address these challenges, clarify legal frameworks, and

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<sup>55</sup> Truth and memory, International Center for Transitional Justice, <https://www.ictj.org/truth-and-memory>, accessed on 20 August 2023.

<sup>56</sup> Bina D'Costa, "Of impunity, scandals and contempt: chronicles of the justice conundrum." *International Journal of Transitional Justice*, Vol- 9.3 (2015), pages- 357-366.

ensure fairness are essential for the ICTBD's continued effectiveness and legitimacy. As Transitional justice remains an ongoing and evolving process, and the lessons learned from these tribunals contribute to the global pursuit of accountability, healing, and lasting peace. Ultimately, a comprehensive approach that combines the strengths of both judicial and non-judicial measures will be instrumental in achieving the broader goals of transitional justice in Bangladesh and beyond.



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