

## **THE INTERNATIONAL CRIMES (TRIBUNALS) ACT, 1973**

(ACT NO. XIX OF 1973).

[20th July , 1973]

### **An Act to provide for the detention, prosecution and punishment of persons for genocide, crimes against humanity, war crimes and other crimes under international law.**

WHEREAS it is expedient to provide for the detention, prosecution and punishment of persons for genocide, crimes against humanity, war crimes and other crimes under international law, and for matters connected therewith;

It is hereby enacted as follows:-

#### **Short title, extent and commencement**

1. (1) This Act may be called the International Crimes (Tribunals) Act, 1973.
- (2) It extends to the whole of Bangladesh.
- (3) It shall come into force at once.

#### **Definitions**

2. In this Act, unless there is anything repugnant in the subject or context,-

(a) "auxiliary forces" includes forces placed under the control of the Armed Forces for operational, administrative, static and other purposes;

<sup>1</sup>[ (aa) "armed forces" means the forces raised and maintained under the Army Act, 1952 (XXXIX of 1952), the Air Force Act, 1953 (VI of 1953), or the Navy Ordinance, 1961 (XXXV of 1961); ]

(b) "Government" means the Government of the People's Republic of Bangladesh;

(c) "Republic" means the People's Republic of Bangladesh;

<sup>2</sup>[ \*\*\* ]

(e) "territory of Bangladesh" means the territory of the Republic as defined in article 2 of the Constitution of the People's Republic of Bangladesh;

(f) "Tribunal" means a Tribunal set up under this Act.

#### **Jurisdiction of Tribunal and crimes**

3. <sup>3</sup>[ (1) A Tribunal shall have the power to try and punish any individual or group of individuals, <sup>4</sup>[ or organisation,] or any member of any armed, defence or auxiliary forces, irrespective of his nationality, who commits or has committed, in the territory of Bangladesh, whether before or after the commencement of this Act, any of the crimes mentioned in sub-section (2).]

(2) The following acts or any of them are crimes within the jurisdiction of a Tribunal for which there shall be individual responsibility, namely:-

(a) Crimes against Humanity: namely, murder, extermination, enslavement, deportation, imprisonment, abduction, confinement, torture, rape or other inhumane acts committed against any civilian population or persecutions on political, racial, ethnic or religious grounds, whether or not in violation of the domestic law of the country where perpetrated;

(b) Crimes against Peace: namely, planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;

(c) Genocide: meaning and including any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, religious or political group, such as:

(i) killing members of the group;

(ii) causing serious bodily or mental harm to members of the group;

(iii) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(iv) imposing measures intended to prevent Births within the group;

(v) forcibly transferring children of the group to another group;

(d) War Crimes: namely, violation of laws or customs of war which include but are not limited to murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population in the territory of Bangladesh; murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages and deteneues, plunder of public or private

property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

(e) violation of any humanitarian rules applicable in armed conflicts laid down in the Geneva Conventions of 1949;

(f) any other crimes under international law;

(g) attempt, abetment or conspiracy to commit any such crimes;

(h) complicity in or failure to prevent commission of any such crimes.

#### **Liability for Crimes**

4. (1) When any crime as specified in section 3 is committed by several persons, each of such person is liable for that crime in the same manner as if it were done by him alone.

(2) Any commander or superior officer who orders, permits, acquiesces or participates in the commission of any of the crimes specified in section 3 or is connected with any plans and activities involving the commission of such crimes or who fails or omits to discharge his duty to maintain discipline, or to control or supervise the actions of the persons under his command or his subordinates, whereby such persons or subordinates or any of them commit any such crimes, or who fails to take necessary measures to prevent the commission of such crimes, is guilty of such crimes.

#### **Official position, etc not to free an accused from responsibility for any crime**

5. (1) The official position, at any time, of an accused shall not be considered freeing him from responsibility or mitigating punishment.

(2) The fact that the accused acted pursuant to his domestic law or to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal deems that justice so requires.

#### **Tribunal**

6. (1) For the purpose of section 3, the Government may, by notification in the official Gazette, set up one or more Tribunals, each consisting of a Chairman and not less than two and not more than four other members.

<sup>5</sup>[ (2) Any person who is a Judge, or is qualified to be a Judge, or has been a Judge, of the Supreme Court of Bangladesh, may be appointed as a Chairman or member of a Tribunal.]

<sup>6</sup>[ (2A) The Tribunal shall be independent in the exercise of its judicial functions and shall ensure fair trial.]

(3) The permanent seat of a Tribunal shall be in <sup>7</sup>[ Dhaka]:

Provided that a Tribunal may hold its sittings at such other place or places as it deems fit.

(4) If any member of a Tribunal dies or is, due to illness or any other reason, unable to continue to perform his functions, the Government may, by notification in the official Gazette, declare the office of such member to be vacant and appoint thereto another person qualified to hold the office.

(5) If, in the course of a trial, any one of the members of a Tribunal is, for any reason, unable to attend any sitting thereof, the trial may continue before the other members.

(6) A Tribunal shall not, merely by reason of any change in its membership or the absence of any member thereof from any sitting, be bound to recall and re-hear any witness who has already given any evidence and may act on the evidence already given or produced before it.

(7) If, upon any matter requiring the decision of a Tribunal, there is a difference of opinion among its members, the opinion of the majority shall prevail and the decision of the Tribunal shall be expressed in terms of the views of the majority.

(8) Neither the constitution of a Tribunal nor the appointment of its Chairman or members shall be challenged by the prosecution or by the accused persons or their counsel.

#### **Prosecutors**

7. (1) The Government may appoint one or more persons to conduct the prosecution before a Tribunal on such terms and conditions as may be determined by the Government; and every such person shall be deemed to be a Prosecutor for the purposes of this Act.

(2) The Government may designate one of such persons as the Chief Prosecutor.

#### **Investigation**

8. (1) The Government may establish an Agency for the purposes of investigation into crimes specified in section 3; and any officer belonging to the Agency shall have the right to assist the prosecution during the trial.

(2) Any person appointed as a Prosecutor is competent to act as an Investigation Officer and the provisions relating to investigation shall apply to such Prosecutor.

(3) Any Investigation Officer making an investigation under this Act may, by order in writing, require the attendance before himself of any person who appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

(4) Any Investigation Officer making an investigation under this Act may examine orally any person who appears to be acquainted with the facts and circumstances of the case.

(5) Such person shall be bound to answer all questions put to him by an Investigation Officer and shall not be excused from answering any question on the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such person:

Provided that no such answer, which a person shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding.

(6) The Investigation Officer may reduce into writing any statement made to him in the course of examination under this section.

(7) Any person who fails to appear before an Investigation Officer for the purpose of examination or refuses to answer the questions put to him by such Investigation Officer shall be punished with simple imprisonment which may extend to six months, or with fine which may extend to Taka two thousand, or with both.

(8) Any Magistrate of the first class may take cognizance of an offence punishable under sub-section (7) upon a complaint in writing by an Investigation Officer.

(9) Any investigation done into the crimes specified in section 3 shall be deemed to have been done under the provisions of this Act.

#### **Commencement of the Proceedings**

9. (1) The proceedings before a Tribunal shall commence upon the submission by the Chief Prosecutor, or a Prosecutor authorised by the Chief Prosecutor in this behalf, of formal charges of crimes alleged to have been committed by each of the accused persons.

(2) The Tribunal shall thereafter fix a date for the trial of such accused person.

(3) The Chief Prosecutor shall, at least three weeks before the commencement of the trial, furnish to the Tribunal a list of witnesses intended to be produced along with the recorded statement of such witnesses or copies thereof and copies of documents which the prosecution intends to rely upon in support of such charges.

(4) The submission of a list of witnesses and documents under sub-section (3) shall not preclude the prosecution from calling, with the permission of the Tribunal, additional witnesses or tendering any further evidence at any stage of the trial:

Provided that notice shall be given to the defence of the additional witnesses intended to be called or additional evidence sought to be tendered by the prosecution.

(5) A list of witnesses for the defence, if any, along with the documents or copies thereof, which the defence intends to rely upon, shall be furnished to the Tribunal and the prosecution at the time of the commencement of the trial.

#### **Procedure of trial**

10. (1) The following procedure shall be followed at a trial before a Tribunal, namely:-

(a) the charge shall be read out;

(b) the Tribunal shall ask each accused person whether he pleads guilty or not-guilty;

(c) if the accused person pleads guilty, the Tribunal shall record the plea, and may, in its discretion, convict him thereon;

(d) the prosecution shall make an opening statement;

(e) the witnesses for the prosecution shall be examined, the defence may cross-examine such witnesses and the prosecution may re-examine them;

(f) the witnesses for the defence, if any, shall be examined, the prosecution may cross-examine such witnesses and the defence may re-examine them;

(g) the Tribunal may, in its discretion, permit the party which calls a witness to put any question to him which might be put in cross-examination by the adverse party;

(h) the Tribunal may, in order to discover or obtain proof of relevant facts, ask any witness any question it pleases, in any form and at any time about any fact; and may order production of any document or thing or summon any witness, and neither the prosecution nor the defence shall be entitled either to make any objection to any such question or order or, without the leave of the Tribunal, to cross-examine any witness upon any answer given in reply to any such question;

(i) the prosecution shall first sum up its case, and thereafter the defence shall sum up its case:

Provided that if any witness is examined by the defence, the prosecution shall have the right to sum up its case after the defence has done so;

(j) the Tribunal shall deliver its judgement and pronounce its verdict.

(2) All proceedings before the Tribunal shall be in <sup>8</sup>[ Bangla or] English.

(3) Any accused person or witness who is unable to express himself in, or does not understand, English may be provided the assistance of an interpreter.

(4) The proceedings of the Tribunal shall be in public:

Provided that the Tribunal may, if it thinks fit, take proceedings in camera.

(5) No oath shall be administered to any accused person.

### **Trial in absentia**

<sup>9</sup>[ 10A. (1) Where a proceeding is commenced under sub-section (1) of section 9, the tribunal, before fixing the date for the trial under sub-section (2) of the said section, has reason to believe that the accused person has absconded or concealed himself so that he cannot be produced for trial, may hold the trial in his absence following the procedure as laid down in the Rules of Procedure made under section 22 for such trial.

(2) Where the accused person is tried under sub-section (1), the Tribunal may direct that a Counsel shall be engaged at the expense of the Government to defend the accused person and may also determine the fees to be paid to such Counsel.]

### **Powers of Tribunal**

11. (1) A Tribunal shall have power-

(a) to summon witnesses to the trial and to require their attendance and testimony and to put questions to them;

(b) to administer oaths to witnesses;

(c) to require the production of document and other evidentiary material;

(d) to appoint persons for carrying out any task designated by the Tribunal.

(2) For the purpose of enabling any accused person to explain any circumstances appearing in the evidence against him, a Tribunal may, at any stage of the trial without previously warning the accused person, put such questions to him as the Tribunal considers necessary: Provided that the accused person shall not render himself liable to punishment by refusing to answer such questions or by giving false answers to them; but the Tribunal may draw such inference from such refusal or answers as it thinks just;

(3) A Tribunal shall-

(a) confine the trial to an expeditious hearing of the issues raised by the charges;

(b) take measures to prevent any action which may cause unreasonable delay, and rule out irrelevant issues and statements.

(4) A Tribunal may punish any person, who obstructs or abuses its process or disobeys any of its orders or directions, or does anything which tends to prejudice the case of a party before it, or tends to bring it or any of its members into hatred or contempt, or does anything which constitutes contempt of the Tribunal, with simple imprisonment which may extend to one year, or with fine which may extend to Taka five thousand, or with both.

(5) Any member of a Tribunal shall have power to direct, or issue a warrant for, the arrest of, and to commit to custody, and to authorise the continued detention in custody of, any person charged with any crime specified in section 3.

(6) The Chairman of a Tribunal may make such administrative arrangements as he considers necessary for the performance of the functions of the Tribunal under this Act.

#### **Power to transfer cases**

<sup>10</sup>[ 11A.(1) At any stage of a case, a Tribunal may, on its own motion or on the application of the Chief Prosecutor, by an order in writing, transfer the case to another Tribunal, Whenever it considers such transfer to be just, expedient and convenient for the proper dispensation of justice and expeditious disposal of such cases.

(2) Where a case has been transferred under sub-section (1), the Tribunal which thereafter tries such case shall, subject to the provisions of this Act, proceed from the stage at which it was so transferred.]

#### **Provision for defence counsel**

12. Where an accused person is not represented by counsel, the Tribunal may, at any stage of the case, direct that a counsel shall be engaged at the expense of the Government to defend the accused person and may also determine the fees to be paid to such counsel.

#### **Restriction of adjournment**

13. No trial before a Tribunal shall be adjourned for any purpose unless the Tribunal is of the opinion that the adjournment is in the interest of justice.

#### **Statement or confession of accused persons**

14. (1) Any Magistrate of the first class may record any statement or confession made to him by an accused person at any time in the course of investigation or at any time before the commencement of the trial.

(2) The Magistrate shall, before recording any such confession, explain to the accused person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him and no Magistrate shall record any such confession unless, upon questioning the accused making it, he has reason to believe that it was made voluntarily.

#### **Pardon of an approver**

15. (1) At any stage of the trial, a Tribunal may with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any of the crimes specified in section 3, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the crime and to every other person concerned, whether as principal or abettor, in the commission thereof.

(2) Every person accepting the tender under this section shall be examined as a witness in the trial.

(3) Such person shall be detained in custody until the termination of the trial.

#### **Charge, etc**

16. (1) Every charge against an accused person shall state-

(a) the name and particulars of the accused person;

(b) the crime of which the accused person is charged;

(c) such particulars of the alleged crime as are reasonably sufficient to give the accused person notice of the matter with which he is charged.

(2) A copy of the formal charge and a copy of each of the documents lodged with the formal charge shall be furnished to the accused person at a reasonable time before the trial; and in case of any difficulty in furnishing copies of the documents, reasonable opportunity for inspection shall be given to the accused person in such manner as the Tribunal may decide.

#### **Right of accused person during trial**

17. (1) During trial of an accused person he shall have the right to give any explanation relevant to the charge made against him.

(2) An accused person shall have the right to conduct his own defence before the Tribunal or to have the assistance of counsel.

(3) An accused person shall have the right to present evidence at the trial in support of his defence, and to cross-examine any witness called by the prosecution.

#### **No excuse from answering any question**

18. A witness shall not be excused from answering any question put to him on the ground that the answer to such question will criminate or may tend directly or indirectly to criminate such witness, or that it will expose or tend directly or indirectly to expose such witness to a penalty or forfeiture of any kind:

Provided that no such answer which a witness shall be compelled to give shall subject him to any arrest or prosecution or be proved against him in any criminal proceeding, except a prosecution for giving false evidence.

#### **Rules of evidence**

19. (1) A Tribunal shall not be bound by technical rules of evidence; and it shall adopt and apply to the greatest possible extent expeditious and non-technical procedure, and may admit any evidence, including reports and photographs published in newspapers, periodicals and magazines, films and tape-recordings and other materials as may be tendered before it, which it deems to have probative value.

(2) A Tribunal may receive in evidence any statement recorded by a Magistrate or an Investigation Officer being a statement made by any person who, at the time of the trial, is dead or whose attendance cannot be procured without an amount of delay or expense which the Tribunal considers unreasonable.

(3) A Tribunal shall not require proof of facts of common knowledge but shall take judicial notice thereof.

(4) A Tribunal shall take judicial notice of official governmental documents and reports of the United Nations and its subsidiary agencies or other international bodies including non-governmental organisations.

#### **Judgement and sentence**

20. (1) The Judgement of a Tribunal as to the guilt or the innocence of any accused person shall give the reasons on which it is based:

Provided that each member of the Tribunal shall be competent to deliver a judgement of his own.

(2) Upon conviction of an accused person, the Tribunal shall award sentence of death or such other punishment proportionate to the gravity of the crime as appears to the Tribunal to be just and proper.

<sup>11</sup>[ (2A) A copy of judgement under the seal and signature of the Registrar of a Tribunal shall be provided, free of cost, to the prosecution and the accused person on the date of delivery of the judgement.

(2B) Notwithstanding anything contained in any other law, rule or legal instrument for the time being in force, when a copy of Judgement is provided under sub-section (2A), it shall be used as certified copy of the judgement of the Tribunal for the purpose of preferring an appeal under section 21.]

(3) The sentence awarded under this Act shall be carried out in accordance with the orders of the Government.

#### **Right of Appeal**

<sup>12</sup>[ 21. (1) A person convicted of any crime specified in section 3 and sentenced by a Tribunal may appeal, as of right, to the Appellate Division of the Supreme Court of Bangladesh against such conviction and sentence.

(2) The Government or the complainant or the informant, as the case may be, may appeal, as of right, to the Appellate Division of the Supreme Court of Bangladesh against an order of acquittal or an order of sentence.

(3) An appeal under sub-section (1) or (2) shall be preferred within 30 (thirty) days from the date of conviction and sentence, or acquittal or any sentence, and no appeal shall lie after the expiry of the aforesaid period.

(4) The appeal shall be disposed of within 60 (sixty) days from the date of its filing.

(5) At the time of filing the appeal, the appellant shall submit all documents as may be relied upon by him.]

#### **Rules of procedure**

22. Subject to the provision of this Act, a Tribunal may regulate its own procedure.

### **Certain laws not to apply**

23. The provisions of the Criminal Procedure Code, 1898 (V of 1898), and the Evidence Act, 1872 (I of 1872), shall not apply in any proceedings under this Act.

### **Bar of Jurisdiction**

24. No order, judgement or sentence of a Tribunal shall be called in question in any manner whatsoever in or before any Court or other authority in any legal proceedings whatsoever except in the manner provided in section 21.

### **Indemnity**

25. No suit, prosecution or other legal proceeding shall lie against the Government or any person for anything, in good faith, done or purporting to have been done under this Act.

### **Provisions of the Act over-riding all other laws**

26. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

### **Annotations**

1 Clause (aa) was inserted by section 2(a) of The International Crimes (Tribunals) (Amendment) Act, 2009 (Act No. LV of 2009).

2 Clause (d) was omitted by section 2(b) of The International Crimes (Tribunals) (Amendment) Act, 2009 (Act No. LV of 2009).

3 Sub-section (1) was substituted by section 3 of The International Crimes (Tribunals) (Amendment) Act, 2009 (Act No. LV of 2009).

4 The words and comma "or organisation," were inserted after the word and comma "individuals," by section 2 of the International Crimes (Tribunals) (Amendment) Act, 2013 (Act No. III of 2013) (with effect from 14th July, 2009).

5 Sub-section (2) was substituted by section 4 (a) of The International Crimes (Tribunals) (Amendment) Act, 2009 (Act No. LV of 2009).

6 Sub-section (2A) was inserted by section 4 (b) of The International Crimes (Tribunals) (Amendment) Act, 2009 (Act No. LV of 2009).

7 The word "Dhaka" was substituted for the word "Dacca" by section 4 (c) of The International Crimes (Tribunals) (Amendment) Act, 2009 (Act No. LV of 2009).

8 The words "Bangla or" were inserted before the word "English" by section 5 of The International Crimes (Tribunals) (Amendment) Act, 2009 (Act No. LV of 2009).

9 Section 10A was inserted by section 2 of The International Crimes (Tribunals) (Second Amendment) Act, 2012 (Act No. XLIII of 2012).

10 Section 11A was inserted by section 2 of the International Crimes (Tribunals) (Amendment) Act, 2012 (Act No. XXI of 2012).

11 Sub-section (2A) and (2B) were inserted by section 3 of The International Crimes (Tribunals) (Second Amendment) Act, 2012 (Act No. XLIII of 2012).

12 Section 21 was substituted by section 3 of the International Crimes (Tribunals) (Amendment) Act, 2013 (Act No. III of 2013) (with effect from 14th July, 2009).

### **Amending Law(s)**

The International Crimes (Tribunals) (Amendment) Act, 2013 (Act No. III of 2013).

The International Crimes (Tribunals) (Second Amendment) Act, 2012 (Act No. XLIII of 2012).

The International Crimes (Tribunals) (Amendment) Act, 2012 (Act No. XXI of 2012).

The International Crimes (Tribunals) (Amendment) Act, 2009 (Act No. LV of 2009).

### **Provision(s) Repealed/Omitted by**

#### **Law(s) Referred to**

The Constitution of the People's Republic of Bangladesh, 1972, article 2.

The Geneva Conventions of 1949.

The Criminal Procedure Code, 1898 (V of 1898).

The Evidence Act, 1872 (I of 1872).

**Definitions**

"auxiliary forces" includes forces placed under the control of the Armed Forces for operational, administrative, static and other purposes. [Section 2(a) of the International Crimes (Tribunals) Act, 1973].

"armed forces" means the forces raised and maintained under the Army Act, 1952 (XXXIX of 1952), the Air Force Act, 1953 (VI of 1953), or the Navy Ordinance, 1961 (XXXV of 1961). [Section 2(aa) of the International Crimes (Tribunals) Act, 1973].

(e) "territory of Bangladesh" means the territory of the Republic as defined in article 2 of the Constitution of the People's Republic of Bangladesh. [Section 2(e) of the International Crimes (Tribunals) Act, 1973].