

Building the Diverse Community

Beyond Regionalism in East Asia

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Transitional justice and its impact on security and internal stability in South-East Asia – the case of Bangladesh

Introduction

Transitional justice dilemmas – how to reckon with past abuses, how to discuss over the past evils' legacy – are witnessed by numerous post-conflict, post-authoritarian or post-neocolonial states. Undoubtedly, when the *transitional justice* notion appears in the public discourse, it mostly refers to the cases of Latin American and Eastern European transitions in the 1980s and 1990s or African post-conflict efforts undertaken since the mid 1990s, with the most famous post-apartheid Truth and Reconciliation Commission in Republic of South Africa (Teitel 2000; Ambos, Large & Wierda 2009).¹ The South-East Asia region is located beyond the scope of the transitional justice debates, merely because of only a few comprehensive legal and social mechanisms applied *in* and *by* the post-violence countries and the limited involvement of the international community aiding in a process of pursuing justice in the region. The United Nations-backed retributive responses to the crimes of the past in Cambodia and Timor-Leste (Cryer 2005, pp. 65–71) remain the most significant legal measures implemented in order to achieve justice and – potentially –

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¹ Transitional justice mechanisms contain: (I) criminal prosecutions; (II) truth-seeking and truth-telling processes (as symbolized by the work of different truth and reconciliation commissions); (III) reparations programs; (IV) vetting procedures (in the Central and Eastern Europe known as *lustration*); (V) institutional reforms. They can be classified either by judicial or non-judicial nature, or official and unofficial character of undertakings (such as collective memory preservation).

reconciliation in the given countries of the region. Nevertheless, one of the most interesting examples of post-conflict endeavors in South-East Asia brings around the case of Bangladesh, currently in a process of socio-legal evaluation of the 1971 genocide, struggling for fundamental justice for victims and their families more than 40 years after the commitment of those heinous crimes.

The post-conflict efforts of Bangladesh are symbolized by the work of the special *International Crimes Tribunal of Bangladesh*, the fully domestic court, established in order to prosecute and punish the most responsible wrongdoers - (international) criminals of 1971, the year of the national Liberation War of Bangladesh. The history of the Tribunal (which was formally created by the *Act of Parliament* of 1973), operating after a few decades, when crimes did happen is not out of the controversies and concerns raised by: (I) the international community and NGOs (mostly from the United States (US) and United Kingdom (UK)) over the international legal standards of the proceedings and death penalty; (II) radical Islamic angle of Bangladeshi society – gathered among *Jamaat-e-Islami* – at the same time, forming the biggest group of individually and collectively prosecuted persons by the Tribunal (claiming the purely political character of the court); and (III) Pakistan itself, especially since January 2014, when the Chief Prosecutor decided to open investigations against 195 (former) members of the 1971 Pakistani Army.

As a result, transitional justice strategies crafted by Bangladesh have a direct impact on the internal stability of the country (*vide* the boycotted parliamentary elections of January 2014 won undisputedly – no real political opponents left on the scene – by a ruling party the *Awami League*) and its external relations with neighboring states, underlining the social and political dimensions of legal choices.

The main question to be answered is whether states after the transition from war to peace or illiberal rule to democracy may make use of any mechanisms, irrespective of its legal or political nature, and to confront it with the international law framework. This article is to shed more light on the work of International Crimes Tribunal of Bangladesh, the central figure of the post-genocide measures applied by this Southeast Asian country. In the first part of the paper, the Author explores the Bangladeshi genocide of 1971, which may serve as a historical background and a direct reason of the subsequent establishment of the International Crimes Tribunal of Bangladesh to prosecute and punish the perpetrators of the 1971 massacres. The second part deals with the creation of the Tribunal in 1973

and the pursuit of justice barred for almost 40 years after the political shift to political Islam occurred in Bangladesh following the assassination of Mujibur Rahman, a symbol of the Bangladeshi independence in 1975. In the following part, the Author discusses the legal nature of the Tribunal (re-established in 2010), mainly the question of its jurisdiction and controversies raised by its work in the eyes of the international community. Furthermore, the Author presents the social and political consequences of the functioning of the Tribunal, mostly after the execution of Abdul Quader Mollah as a result of the Tribunal's judgment. Mollah's death led to riots across the country, political tensions and boycotted parliamentary elections of January 2014. The paper is based on field research conducted by the Author in December 2013 in Dhaka, at the invitation of the Office of the Prosecutor of the Tribunal.²

The historical background of transitional justice tools in Bangladesh: the genocide of 1971

Bangladesh became an independent country on December 16, 1971, after a bloody national Liberation War conducted by Bangladeshi freedom fighters against Pakistan. Even though the crucial turning point of the war was the military involvement of India that enabled to achieve the final victory over the Pakistani troops (13-day war), it was still a Bangladeshi triumph, aimed at establishing the fully independent state of Bangladesh.³

Prior to the brief description of war, crimes committed and bloody reign of terror, it is necessary to mention the historical background of the bilateral relations between Pakistanis and Bengalis (even though, legally speaking it was one country till the year 1971). After the partition of the post-colonial British Empire on the subcontinent in 1947, when India and Pakistan emerged as independent states, the area of East Bengal became an integral part of Pakistan, till then consisting of two, geographically separated parts: West Pakistan and East Pakistan (today's Bangladesh). The reason behind the partition of British India, which is very often invoked – the religious division of Hindus and Muslims and the necessity of pro-

² The field research and academic visit to the Tribunal was conducted between 9 and 23 December 2013. During the stay, I was able to take part in the court's hearings, the team of the prosecutor meetings and to make interviews with different prosecutors from the Office of the Prosecutor, alongside other officials of the Tribunal.

³ India recognized Bangladesh as a state on December 6, 1971.

viding them a safe place to live – shall be viewed as a fiction (to mention Sikhs as the other significant religious minority left alone). The partition itself was marked by bloody pogroms and enormous displacement (up to 14 million people were subjected to the enforced mass migration) (Brass 2003, pp. 71–101).

From the beginning the West Pakistani policy was to subordinate the eastern wing of a country, e.g. by refusing to recognize *Bangla*, spoken by the people of East Pakistan, as an official state language, claiming *Urdu* as the one official language. This decision directly led to the creation of the “*Bangla Language Movement*,” a political effort of students and intellectuals to protect the native language, spoken by almost the entire population of Bangladesh (98%) (Ahamed 2013, p. 34). On February 21, 1952, students of the University of Dhaka commenced protests, sacrificing several of themselves during fighting with police in order to preserve the native language.⁴ To mark the day and keep the memory of the *Bangla* fighters, UNESCO named February 21 as UNESCO’s International Mother Language Day in 2000 (UNESCO n.d.).⁵

The independence movement was strongly accelerated, since the first direct, democratic elections, held by Pakistan in December 1970 were won by the *Awami League*, an openly pro-American party, led the Sheikh Mujibur Rahman, “the father of the nation.” In fact, the frustration of the Bengalis resulted in the subsequent *Awami League* victory, which was rooted in the devastating outcome of the cyclone that had struck East Pakistan just one month before the election. According to the words of one of the officers of the US Consulate in Dhaka: “the cyclone was the real reason for the final break” (Saunders 2014, p. 36). The proposal of the establishment of a coalition government consisting of Rahman and his followers alongside Zulfikar Ali Bhutto, elected by the Western Pakistani voters, failed. General Yahya Khan, the military President of Pakistan, postponed the first gathering of the National Assembly (scheduled for March 3, 1971), causing the general strike (*hartal*), launched by Bengalis living in East Pakistan. The subsequent events – the banning of the *Awami League* by General Yahya, arrest of Mujib Rahman – led directly to war

⁴ *Saheed Minar* is a sculpture based close to the University of Dhaka area in the capital of Bangladesh, installed in remembrance of the martyrs of the *Bangla Language Movement* of 1952. It is worth mentioning the policy of collective memory as one of the possible transitional justice mechanisms, having a social and psychological character of keeping the national history as one narrative and as a mean of reconciliation of the post-violence society.

⁵ Read more on <http://www.unesco.org/new/en/education/themes/strengthening-education-systems/languages-in-education/international-mother-language-day/>.

and the idea of the total extermination of the Bengali nation by Pakistan (the campaign of violence was named as “Operation Searchlight”).

Genocide was a part of Pakistani policy to annihilate the Bengali intellectuals (the biggest murder occurred on December 14, 1971, just two days before the independence of the country (Chowdhury 2013, p. 2)) and subordinate Bangladesh to West Pakistan for generations. The reign of violence seemed to become the “forgotten genocide,” as it was soon after called by numerous experts and politicians, and if it had not been for Anthony Mascarenhas, the world would have remained silent over the mass murders that occurred in East Pakistan. Mascarenhas, who was the Pakistani journalist travelling with the Pakistani Army (at their invitation), wrote an poignant article, entitled simply “Genocide.” Mascarenhas’ report was published by the English *Sunday Times of London* on June 13, 1971 (Mascarenhas 1971). Soon after the Pakistani journalist moved his family to England and then himself, trying to avoid “the revenge of his motherland.” Pakistani soldiers and their Bengali collaborators, *Razakars*, slaughtered Bengali Hindus as well as Muslims, together with everyone, who opposed the Pakistani policy of keeping East Bengal tied with Pakistan. Mascarenhas invokes memories of trucks loaded with human bodies, pogroms of towns and villages, lists of people to be liquidated (belonging to the Mujib movement of independence) – needless to say, these are just observations of one man, moreover, limited to a certain time and space extent.

The Pakistani plan was to rapidly crush the enemy and take control over the territory – in the course of achieving the abovementioned goals they found assistance of the radical, fundamental parties, such as *Jamaat-e-Islami* (Hoque 2013). The indiscriminate killing of the inhabitants of Dhaka and other regions of East Bengal (mostly unarmed civilians), started on March 26, 1971, and lasted for almost 9 months, resulting in 3 million people murdered, 10 million refugees (who fled to India) and up to 400 thousand women raped (although the death toll varies, according to different sources) (Muhith 1992).

Mascarenhas’ article shocked the UK and the international community, nevertheless, in spite of diplomatic efforts undertaken, e.g., by US authorities (notably by Henry Kissinger, the main architect of US foreign policy in the 1970s), no decisive military response was conducted. This situation lasted until India interfered in December 1971. Considering Kissinger’s involvement in Bangladesh and other South Asian countries, the International Crimes Tribunal of Bangladesh (ICT-BD) Chief Pros-

ecutor's team deliberates over opening inquiries against Dr. Kissinger's potential crimes committed, at present.⁶

Even after many years have passed, we can still say that the "forgotten genocide" does not attract the attention of scholars of genocide studies, neither historians (Beachler 2001, p. 31), nor lawyers (Robertson 2006), as other examples of exterminations of nations in the 20th century, starting with the most crucial one – the Holocaust. One hypothesis touches upon the possibility of a lack of political interest – too little political capital potentially gained from sympathizing with victims of a particular cleansing – of main actors on the international scene, including the US. Thus, the common knowledge of the functioning of the main, criminal response to past evils – the ICT-BD must appear as very limited. Undoubtedly, the Tribunal in Dhaka remains on a margin of international community interest (besides the UK), not only because of geography, but also because of a lack of awareness of its existence.

The International Crimes Tribunal of Bangladesh (ICT-BD) – a domestic response to international crimes: challenges and limitations

Just after the Liberation War led to the independence of the country, Bangladeshis seemed to be determined to craft a strong, retributive response to the crimes of 1971, adopting the Statute of the International Crimes Tribunal of Bangladesh, by the *International Crimes (Tribunal) Act* of Parliament of July 20, 1973 (The Parliament of Bangladesh 1973).⁷ It is necessary to underline that the Statute was drafted by two renowned international scholars, experts on the (at that time) emerging discipline on international criminal law, Professor Hans-Heinrich Jescheck and Professor Otto Triffterer, during the "dark times" of international justice.

Doubtlessly, since the Cold War efficiently barred the establishment of any international tribunal (or domestic ones, but dealing with international crimes), the ICT-BD Statute remains one of the first, factual efforts in the framework of international criminal law to fight against impunity of the most responsible wrongdoers after the post-war International Military

⁶ Personal interview with one of the prosecutors of the ICT-BD.

⁷ To underline, the first set of laws – the *Bangladesh Collaborators (Special Tribunals) Order* 1972 – was proclaimed on January 24, 1972.

Tribunal in Nuremberg and its Far East equivalent in Tokyo. Moreover, the adoption of the ICT-BD Statute in 1973 stayed in line with international efforts undertaken to establish the first, permanent international criminal tribunal, emphasized by the Third International Criminal Law Conference, held in Dhaka in December 1974 (Kibria 2002). Even though the creation of the International Criminal Court (ICC) was “completed” during the Rome Conference of 1998 (24 years after the conference in Dhaka took place), Bangladesh maintains (or would like to maintain) its position of one of the first countries – especially beyond the sphere of the traditional main actors of international law and international relations – standing on the frontline of international justice. Needless to say, Bangladesh was, again, one of the first states in the Southeast Asian region that ratified and became a party to the Rome Statute of the ICC on March 23, 2010. Certainly, Bangladesh serves as a positive example on this “ocean of reluctance” showed by other Asian states (including China, which ultimately opposed the adoption of the ICC Statute) towards the international (criminal) mechanisms (Freeland 2013, pp. 1029–1057).

The process of pursuing justice for victims of the 1971 genocide was suspended for almost 40 years due to the assassination of Mujibur Rahman on August 15, 1975, the decisive turn of Bangladesh to political Islam (martial law was introduced, which remained in power for the next 15 years) and amnesty laws barring prosecutions being adopted. The return of Bangladesh to parliamentary democracy in 1991 launched the time of the political duel between the *Bangladesh Nationalist Party* and *Awami League*, winning and again losing power to the main rival. Eventually, the latter won the general elections of December 2008, assumed in power in January 2009 and has remained in that position until the time of writing.

The ICT-BD recommenced functioning, this time factually, on March 25, 2010 (as a consequence of the 2009 amendments to the Act of 1973).⁸ Two years later, the Bangladeshi government established the so-called *International Crimes Tribunal – 2* (ICT-BD2) (with separate rules of procedure, but the same jurisdiction as the first one). Nevertheless the creation of the ICT-BD2 may be compared to the establishment of the second chamber in an average court, when the complexity and huge number of cases do not allow to smoothly adjudicate them.⁹ From the first days of

⁸ The day of the notification of the establishment of the ICT-BD in the Official Gazette of Bangladesh.

⁹ Whenever there is a need of constituting “the next Tribunal” (like ICT-BD3, 4 or 10), it is possible to create one according to the Statute (Article 6).

its “new life” the Tribunal faced the huge criticism raised by the Western states and the prominent nongovernmental organizations working in the field of human rights protection and promotion, like Human Rights Watch. At the same time, with the exception of *Jamaat-e-Islami* members or supporters, claiming the Tribunal to be a highly politicized instrument in the hands of the *Awami League* (and the government), most Bangladeshi society stands for the ICT-BD.

ICT-BD – the legal nature of the Tribunal

Concerning the legal aspect of ICT-BD – in fact the primary one – we have to underline a few crucial issues. Firstly, the ICT-BD as any other criminal court, either international or domestic, deals solely with the *individual responsibility of a perpetrator*. As a result, the Tribunal addresses crimes committed only by individuals, group of individuals or organizations (jurisdiction *ratione personae*), but not by states. Thus, Pakistan as a state entity cannot be found responsible for its campaign of terror and genocide before the Bangladeshi Tribunal.

The Office of the Chief Prosecutor did commence its inquiries on prosecuting the nationals of Bangladesh, potential wrongdoers of the 1971 crimes. Most of them belonged to paramilitary units aiding and instigating the Pakistani forces, such as *razakars*, *al-badr* or *al-shams* (that may be classified as auxiliary forces). However, the statute in the Article 3 (1) makes it legally possible to accuse anyone irrespective of his or her nationality, stating the mandatory condition of the crime committed on Bangladeshi soil. In January 2014 the Chief Prosecutor decided to open investigations against the 195 Pakistani former prisoners of war, previously moved beyond the scope of criminal justice on a basis of the *Simla Agreement of 1972* and *Tri-partite (Delhi) Agreement of 1974* (Mustafa & Gill 2014, pp. 114–118).

Secondly, it is the jurisdiction *ratione materiae* of the Tribunal. The ICT-BD is entitled to investigate and adjudicate the cases of (Article 3 (2) of the *Act*): (I) crimes against humanity; (II) crimes against peace; (III) genocide; (IV) war crimes; (V) violations of the Geneva Conventions of 1949 (international humanitarian law infringements); and (VI) any other crimes under international law. These crimes belong to the specific group of *international (core) crimes*, the most heinous crimes, against the whole of humankind. That is why, the name of the court

incorporates the adjective *international*, in spite of the fully domestic character of ICT-BD.

As stated before, the Statute of the Tribunal was tailored by the most renown experts of their era, thus the jurisdictional matters are drafted in the compliance with international law. On the other hand, the 40-year time gap between the creation of the Statute and the Tribunal itself left an imprint on this legal text. Crimes against peace are known today as crime(s) of aggression, what is more, most probably, genocide as the “crime of crimes” would be mentioned first in the list before any other crime, as it is experienced by modern international criminal tribunals. Does it have to affect the evaluation of the ICT-BD as being the “out-of-date court”? Not necessarily, however, this argument serves quite often the opponents of the Tribunal, challenging its legal value as well (to underline it very clearly, this statement is a very weak argument against the ICT-BD).

The third big question touches upon the issue of temporal jurisdiction – *ratione temporis* – of the Tribunal and the possible interference of the ICC postulated by some commentators (although, definitely not lawyers). The International Crimes (Tribunal) Act states that the ICT-BD is entitled to adjudicate anyone who committed crimes listed in the Tribunal’s Statute “whether before or after the commencement of this Act” (Article 3 (1)). However, this term concerns solely crimes of 1971, even though, from the formal point of view, the temporal scope of the ICT-BD jurisdiction is much broader.

With regard to the potential inclusion of the ICC in the Bangladeshi genocide reckoning, it must be stressed that the ICC does not have jurisdiction to deal with Bengali case. The Hague can try cases concerning crimes committed only after entry into force of its Statute, i.e., July 1, 2002. What is more, with reference to a particular state, the time boundary shifts to the day of the ratification of the Statute (March 23, 2010, in the case of Bangladesh), preventing the ICC from getting involved in the adjudication of crimes that occurred during the Liberation War of 1971. Additionally, Bangladeshi authorities ensure that even if the ICC interference concerning *ratione temporis* was possible, since their capability and will to try offenders, Bangladesh complies also with the complementarity principle, the basic rule of the functioning of the ICC (Rahman 2012, pp. 14–15).¹⁰

¹⁰ The ICC system is based on the principle of complementarity – the Hague’s Tribunal is a court of the last resort. The Court may interfere only, if a national jurisdiction fails or does not want

Having in mind the problem of time and the possible argument of retroactivity of criminal punishment,¹¹ it is necessary to emphasize that any statute of limitations, barring the potential prosecution because of time passing, does not apply to the situation of international crimes.¹² The ICT-BD deals only with international crimes, thus the prohibition of retroactivity of criminal law enforcement shall be abandoned. Moreover, it is clear that states can prosecute wrongdoers for international crimes committed *even before* the prosecuting state was created – the *Eichmann* case held by the court in Jerusalem, but also Bangladesh, can serve as the most pertinent examples (Willis 2014, p. 432).

Eventually, probably the most problematic issue – especially for the international NGOs, working in the field of human rights protection and promotion is the death penalty, one of the sanctions issued by the Tribunal. It is true that none of the United Nations (UN) courts (including the ICC) incorporates the death penalty in their “legal constitutions.” Nevertheless, the international law itself does not prohibit the death penalty (only encourages to abolish it).¹³

Social and political implications of the post-genocide Bangladeshi Tribunal

The December 2013 execution of the first convict – Abdul Quader Mollah (The Supreme Court of Bangladesh), known as “The Butcher from Mirpur,” one of Jamaat-e-Islami’s biggest figures, dramatically increased the political tensions and riots across the country. Mollah’s trial was in fact the ninth completed court case (others concerned such perpetrators as Ghulam Azam, Delowar Hossain Sayedee or Salahuddin Quader Chowd-

to proceed trials to prosecute and punish those responsible for international core crime occurrence.

¹¹ The prohibition of retroactivity was formed to secure that no one will be punished for acts or omissions not penalized during the moment of particular conduct.

¹² Rule governed by the international customary law, embodied in the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity of 1968. Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-6&chapter=4&lang=en.

¹³ For instance, Bangladesh is not a state party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty of 1989. Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-12&chapter=4&lang=en.

hury). However, since the ICT-BD previous life sentence was raised by the Appellate Division of the Supreme Court of Bangladesh to death penalty, it echoed not only in Dhaka, but also in London and Washington D.C. – sending a huge amount of critical views against the Tribunal. Mollah's conviction and execution led to the general mobilization of his followers and supporters (gathered mostly around the dissolved Jamaat-e-Islami), announcing hartal across the whole country. Immediately after Mollah's hanging, the Pakistani parliament issued a resolution condemning the ICT-BD verdict (Chowdhury 2013).

The headlines of English-language Bangladeshi newspapers (e.g., *The Daily Star*, *The Independent*, *Dhaka Tribune*) of those days proclaimed: "Jamaat-Shibir Goes Berserk," "PM urges opposition to stop killing, hindering academic life" or "Another AL man killed by Jamaat" reflected the social flame of mind – the majority being under strong physical and socio-political pressure of the minority. The people of Bangladesh generally accept the ruling party and the work of the ICT-BD – as a response towards the Jamaat-e-Islami hartal, numerous peaceful demonstrations were held in Dhaka, in order to show their support for the process of pursuing justice (Huque & Oette 2009, pp. 51–72). Nevertheless, Mollah's death exerted a powerful influence on the outcome of the general elections of January 2014. The biggest opposition party, the Bangladesh Nationalist Party decided not to take part in voting, boycotting the elections. As a result the Awami League took 232 of 300 elected seats, but it could not stop the post-election violence, directed notably against ethnic and religious minorities. A large number of Western diplomats, alongside the UN officials, expressed huge concerns over the condition of democracy in Bangladesh, as well as the internal stability of the country (Barry 2014).

The stream of critical views against the ICT-BD may be observed mostly on the international scene, however, some voices of discontent are heard also in Bangladesh itself (obviously raised by the Tribunal opponents). The ICT-BD adversaries in Bangladesh or region (Pakistan, in particular) talk about "the political vendetta" via the use of a judicial tool, underlining human rights violations, lack of guarantees of the accused before the Tribunal (Abdul Jalil 2010, pp. 114–116). International commentators, GOs and NGOs (e.g. the International Commission of Jurists (2013), Bar Human Rights Committee of England and Wales (2012) and Human Rights Watch) or official state organs (The British Parliament 2012) invoke the argument of not abiding by the "international standard of proceedings." For instance, we have to emphasize the Tribunal's oppo-

nents' allegations: the retroactive application of the amendment allowing the Prosecutor to appeal a life sentence and seek the death penalty as in the case of Mollah; a lack of witness protection mechanisms; insufficient evidence gathered for the criminal conviction of an individual; the death penalty and large politicization of a "one-sided court" established for the particular interests of the Awami League (in fact most of indicted persons were members of Jamaat-e-Islami, others represent the Bangladesh Nationalist Party) (Sen 2012, pp. 33–43).

Conclusion

Bangladesh is one of only a few Asian states that implemented at least one of the transitional justice mechanisms in order to reckon with past abuses – the genocide of 1971. Genocide itself does not attract people's minds across the globe, thus the level of knowledge or awareness of the post-1971 trauma and the work of the ICT-BD is limited.

The Bangladeshi Tribunal should be treated as an unique example of domestic, criminal response to international crimes, established without any help of the UN or any other (regional) organization. At the same time, the Tribunal is hugely criticized by international actors. Undoubtedly, the ICT-BD is not the crystal, "academic" example of special criminal court, although these voices claiming the dissolution of the Tribunal as a political court, serving just one party cannot prevail over the reasonable evaluation of its work. Most probably, the Tribunal should be more open for visitors coming to Dhaka to challenge its functioning, as well as for the active participation in the serious international debate on the issues of international criminal justice. Being permanently on the margin of interest does not help the ICT-BD in the positive promotion of its involvement in post-conflict Bangladesh – to emphasize the predominant support of the common people of Bangladesh.

It is necessary to underline that other transitional justice measures, especially considering truth-telling processes (like truth and reconciliation commission) are not welcomed in Dhaka, since they are perceived as ineffective in the specific context of Bangladesh (Afroz & Baul 2014) (although in the neighboring Nepal a truth commission is being established at present (The President of Nepal, 2013)). Another non-judicial mechanism, for instance reparations programs, cannot be broadly implemented, since the economic situation of the country does not allow to craft widespread compensation projects.

What is interesting, Bangladeshis treat the ICT-BD, undoubtedly a retributive instrument, as a remedy for all possible transitional challenges – with the inclusion of the *right to truth* of the nation as well (Afroz & Baul 2014). As it seems, the criminal trial does not represent the best forum for disclosing the whole truth of what factually occurred during the time of the genocide (court's truth, actually narrowed by charges formed by the prosecutor). The ICT-BD Statute does not include the possibility of victim participation in proceedings (contrary to ICC regulations), thus victims may take part in trials *just* as witnesses – in fact victims of the 1971 crimes do not have any legal power to interfere in the transitional justice strategies in Bangladesh, tailored solely by the state officials. Collective memory is secured by the work of the National Liberation War Museum in Dhaka, established in 1996, while the social awareness of the genocide legacy remains at the relatively higher-than-average level.

To conclude, the Tribunal in Dhaka should be viewed from the perspective of the constant development of international criminal justice system, seeking more often for the domestic, strong institutions to assist the ICC in pursuing justice. The ICT-BD is an example of the *peace v. justice debate*, where in a view of most Bangladeshis, justice cannot be substituted by any other – soft – mean of transitional justice. Moreover, bearing in mind a special context of numerous Asian states that due to political reasons have never reckoned with past crimes, the Tribunal should serve as an interesting socio-political laboratory of backward-looking justice – ready to implement or modify. For instance, in today's China, "the transition" can be viewed *only* from the perspective of "power transition at the central level," without the real change of political route of a country – the commencement of the process of democratization in particular (Mierzejewski 2010, pp. 2–3), although we cannot exclude the future desire of the nation to hold accountable those responsible for the 1989 "Tiananmen Square massacre," even though it sounds impossible at the very moment. Simultaneously, the auto-isolation of the court, combined with the low understanding of the local context of Bangladeshi transitional dilemmas beyond the region, *decrease the value* of socially, internally accepted post-conflict mechanisms *at the level* of the international community awareness.

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