

The International Crimes (Tribunals) Act, 1973

(ACT NO. XIX OF 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;
 - ¹[(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;

²[***]

(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. ³[(1) A Tribunal shall have the power to try and punish any individual or group of individuals, ⁴[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 detainees, 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.

⁵[(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.]

⁶[(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 ⁷[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