

For Immediate Release:

Bangladesh: Conviction of Journalist Chills Speech War Crimes Court Uses Broad Contempt Powers to Quell Criticism

The December 2 conviction of journalist David Bergman by Bangladesh's International Crimes Tribunal (ICT) further shrinks the narrowing space for observers to comment on the war crimes proceedings, Amnesty International, Human Rights Watch, and the International Commission of Jurists said today.

Bergman was sentenced to a symbolic "simple imprisonment till the rising of the court" and a fine of Taka 5,000 (about US\$56) for comments he made in three separate blog postings regarding legal proceedings before the ICT.

The ICT is a specially constituted court set up to bring to account those responsible for grave violations of international law during the country's 1971 war of independence. Concerns over its statute, rules of procedure, and practices have been raised since its inception, including by international monitors and legal experts.

"Rather than respecting the right to freedom of expression, the ICT has used contempt of court proceedings against some of its critics, and those who are convicted have no right of appeal," said Richard Bennett, Asia-Pacific director at Amnesty International. "The conviction of Bergman sends a chilling message to journalists and human rights defenders that the ICT will not tolerate fair criticism."

Contempt charges have been selectively pursued against others who have offered critical comments on the court's proceedings. In an apparent attempt to silence criticism, Human Rights Watch, journalists from *The Economist*, and local journalists have been tried for contempt for publishing material critical of some aspect or issue relating to the ICT.

In its verdict against Bergman, the ICT took particular exception to a blog post in which he questioned the number of dead in the 1971 war. The Bangladeshi government has regularly stated that 3 million were killed, a figure which the ICT has declared as a proven fact. Some observers have estimated that the number could be closer to 300,000, while still others suggest a range between 300,000 and 3 million.

In its judgment the court found that Bergman's questioning of whether there was an established number of war killed "disgraces and demeans the nation's wishes and holy emotion" and that it was based on "malicious intent" designed to "scandalize" the court, and ordered him to refrain from writing on "historically settled issues." The ICT further ruled that there was no legitimate public interest in Bergman's article on either this matter or on the question of the legality of *in absentia* trials, the subject of another blog post. Human Rights Watch, the International Commission of Jurists, and Amnesty International take no position on the number of people who were killed during the 1971 war, but believe that this is a matter on which reasonable and fair-minded people may disagree without malicious intent.

"The issues Bergman raised were all well within the purviews of legitimate commentary," said Brad Adams, Asia director at Human Rights Watch. "These are the kinds of complex factual and legal issues which war crimes tribunals around the world have to grapple with. Bergman is a longstanding supporter of trials for these heinous crimes, so it is perverse to convict him for raising reasonable questions. If a journalist can be held in contempt for criticizing proceedings and issues before the tribunal, why not bring proceedings against US Ambassador for War Crimes Stephen Rapp, who has raised many similar concerns?"

The rights groups pointed out that there is language in the judgment that is disturbingly vague and allows the ICT broad scope to continue going after its critics. The judgment also contains poorly defined interpretations of what constitutes a legitimate subject for critical reportage on its proceedings.

As a state party to the International Covenant on Civil and Political Rights (ICCPR), all of Bangladesh's branches of governmental authority, including the judiciary, must respect and protect freedom of expression. Any restrictions on free speech must be necessary and strictly proportionate to protect national security, public order, public health, morals, or the rights of others – none of which were at stake in Bergman's blogs.

International human rights mechanisms, including the Special Rapporteur on Freedom of Expression, have expressed concern about provisions that criminalise the right to freedom of expression. The UN's Human Rights Committee, the body that is mandated to monitor states' implementation of the ICCPR, has clarified that laws which criminalise the expression of opinions about historical facts are incompatible with the obligations on states to respect freedom of expression and opinion. It has stated that a two-year sentence for calling a Supreme Court ruling 'shameful' was a violation of the right to freedom of expression guaranteed under the ICCPR. The European Court of Human Rights has ruled that issues concerning the functioning of a justice system constitute questions of public interest.

"The ICT is dealing with incredibly complex factual and emotional issues of tremendous interest to people in Bangladesh and across the world, and part of this process is establishing public confidence in the legal system," said Sam Zarifi, Asia director at the International Commission of Jurists. "Holding a credible and highly regarded journalist in contempt for raising important questions doesn't end the debate surrounding the ICT's performance, in fact it undermines confidence in the court's commitment to justice."

Under the International Crimes Tribunal Act, Bergman is not entitled to appeal his contempt of court conviction. Only those convicted under Article 3 of the Act for a number of crimes that include genocide, crimes against humanity, and crimes against peace are entitled to appeal.

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