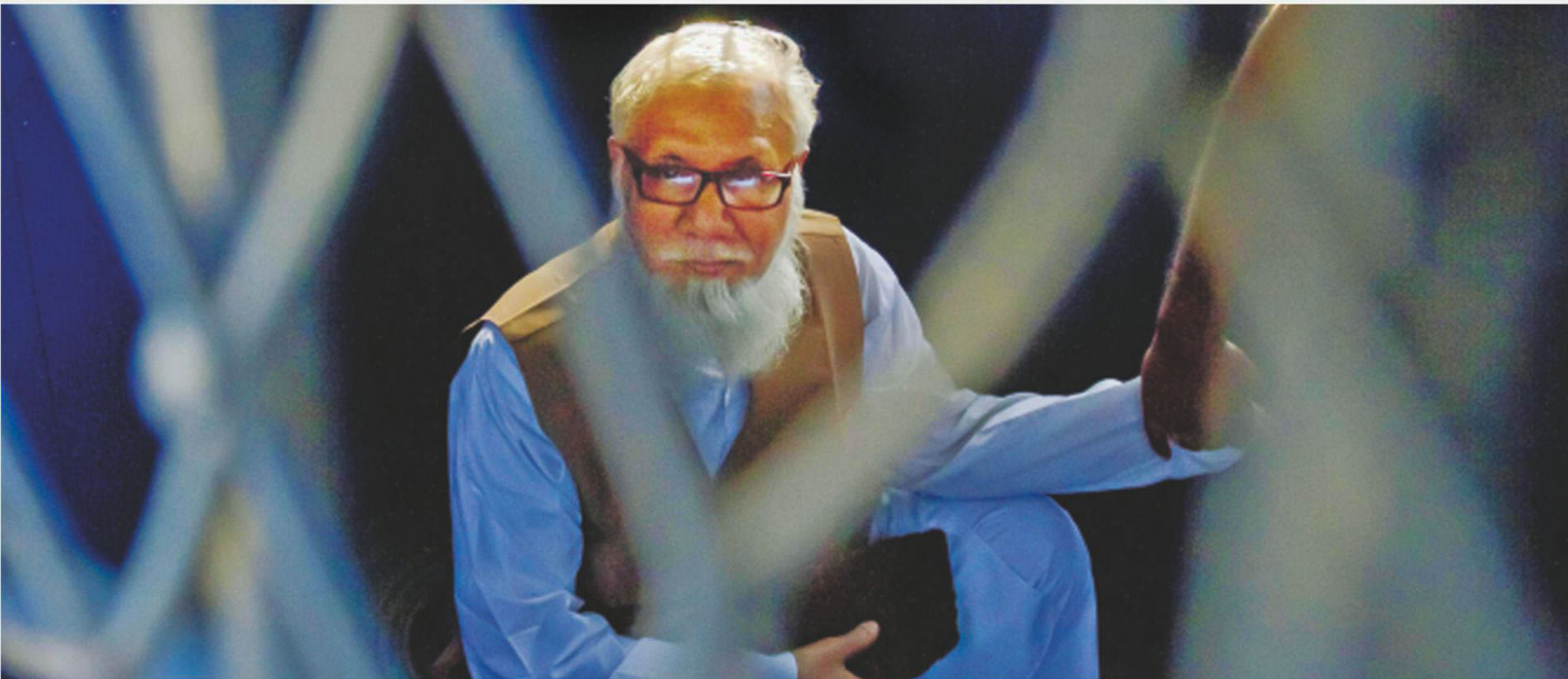


A synopsis of ICT performance: 2014



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2014 has been a crucial year for the International War Crimes Tribunals (ICT) that saw verdicts delivered in five war crimes cases while a few of them are awaiting verdicts.

The year added extra significance since the country could have witnessed a change in government. It was feared that the fate of the two tribunals along with the cases would change in case of a change of government since the opposition BNP had taken a stance against the trial and the party made no secret of its intention to dismantle the tribunals if voted to power while its main ally Jamaat has been demanding an outright dissolution of the tribunals.

From the beginning of 2014, trial at ICT-1 was stalled for 54 days as the office of the chairman fell vacant when its previous chairman went into retirement on December 31 last year. The proceedings of five cases, including the one against Jamaat chief Matiur Rahman Nizami, saw no progress till the government appointed a new chairman to the post on February 23.

At last, June 23 was set for delivering the verdict of Nizami's case after the 22-month-long trial proceedings. However, the tribunal postponed the pronouncement of verdict, just hours before, due to Nizami's illness. This postponement gave rise to unfortunate criticisms from both the friends and the foes of the trials.

However, defying all the conjectures, verdict on Nizami's case was announced on October 29, handing death penalty to the Jamaat-e-Islami chief. His appointment as a minister by the BNP-led government was a slap in the face of our Liberation War, as well as for the martyrs, observed the tribunal chair Justice Enayetullah Rahim.

On November 1, ICT-2 handed death penalty to Mir Quasem Ali, for committing crimes against humanity during the 1971

Liberation War. Mir Quasem is known as a key financier of Jamaat. While pronouncing the verdict, tribunal chair Justice Obaidul Hassan said the offences, for which Quasem was sentenced to death, "indubitably falls within the kind of such gravest crimes which trembles the collective conscience of mankind".

On November 12, a BNP leader M A Zahid Hossain Khokon was awarded death penalty by ICT-1 on six charges of crimes against humanity committed in Faridpur during the Liberation War in 1971. Khokon is assumed to have fled the country and is living in Sweden.

On November 23, ICT-1 handed death penalty to a former Jamaat and later a local Awami League leader Mobarak Hossain for gunning down 33 people in Brahmanbria during the country's Liberation War in 1971.

In the meantime, the Supreme Court (SC) on September 16 commuted the death sentence of Jamaat leader Delawar Hossain Sayedee to imprisonment till death. On the other hand, on November 2, the SC upheld the death penalty of war criminal and Jamaat-e-Islami leader Muhammad Kamaruzzaman. Execution of his death penalty is awaiting release of the written judgement of the SC. However, it was unfortunate to note the contradictory statements from the Law Minister and the Attorney General as to the timing of execution of the verdict.

Meanwhile the challenge of the ICT, both from within and outside country, still remains an important aspect of the trial process. BNP, has not changed its stance on the trials. Even in numerous recent public meetings of the BNP placards are carried and balloons are flown demanding the release of convicted and under trial war criminals.

Regarding the verdicts, UN special rapporteurs on summary executions, Christof Heyns, and on the independence of judges and lawyers, Gabriela Knaul, expressed

serious concern on reports that Kamaruzzaman's death penalty was upheld by the SC. In a press release issued on November 6, Heyns and Knaul opined that capital punishment "may be imposed only following a trial that complied with the most stringent guarantees of fair trial and due process." However, neither did the UN rapporteurs elaborate what 'stringent guarantees' are missing in the trials, nor did they disclose the source of their information with regard to the absence of 'fair trial and due process'.

Both the European Union (EU) and Amnesty International (AI) repeated their demand for the abolition of the death penalty. However, new EU head of Dhaka clarified that the EU was not taking sides with the war criminals in Bangladesh by issuing statements against death penalty. EU head's statement is, of course, different from AI's tone in that "death penalty will not bring justice to the millions of victims of the independence war. Bangladesh must overturn the death sentence against Matiur Rahman Nizami and all others. The death penalty is the ultimate cruel, inhuman and degrading punishment and can never be a way to deliver justice," said Abbas Faiz, Amnesty International's Bangladesh Researcher. The AI researcher must recognize that it is the victims in particular and the people of Bangladesh in general who possess the unimpeded right to decide what form of punishment would 'deliver justice' as long as it is done under the law enacted by the lawmakers of this sovereign country.

One would be surprised to note that AI has termed Jamaat's anarchistic reaction to every verdict as 'peaceful demonstration' and asked security forces to ensure people's right to demonstrate peacefully.

For the first time, the ICT-2 found a Dhaka-based British journalist David Bergman guilty of contempt for his comments intended to demean the court's authority. The tribunal sentenced him to

imprisonment till rising of the court and fined him Tk 5,000 under section 11(4) of International Crimes (Tribunals) Act, 1973.

On the positive side, the US ambassador-at-large for war crimes Stephen Rapp, who visited Bangladesh a number of times over the past years to monitor the trial process, has emphatically lauded all attributes of the trial process.

Conversely, the most outrageous declaration came from an advisor to the BNP chairperson, a defence lawyer in the trials, when he said, "If voted to power BNP would try those involved in the war crimes trials." It is thus incumbent on the government to amend laws to make the process free of loopholes so that with the change of government the convicts cannot be granted any mercy. Reassuringly, on October 19, the Law Minister underscored the need for an amendment to that effect so that the convicted war criminals cannot get presidential clemency.

With regard to trial of Jamaat as a party, the Law Minister in May observed that it was not possible to try Jamaat for its crimes against humanity as there is no rule in the existing law for punishing an organisation accused of war crimes. To circumvent the deficiency, on December 7, the Law Minister hinted at the amendment to the related law keeping provision to try an organisation for wartime offences that might be passed in the first session of parliament next year.

The ICT investigation team has already completed probing the war crimes allegedly committed by the Jamaat as a political party in 1971. If the party is charged with war crimes, the case will be the first of its kinds in Bangladesh. If the law is passed as predicted by the Law Minister, after Germany (Nuremberg), Bangladesh will be the first country to try an organisation for genocide, crimes against humanity and war crimes.

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