

**MEMORANDUM TO HER EXCELLENCY, THE PRIME MINISTER,  
PEOPLE'S REPUBLIC OF BANGLADESH, DHAKA, BANGLADESH**

**In the matter of**

**Request to remove the International Commission of Jurists (ICJ), Geneva,  
from the List of Honourees for Contribution in the Liberation War of  
Bangladesh 1971 on 40th anniversary of the Independence of Bangladesh**

Submitted by  
**International Crimes Strategy Forum (ICSF)**  
<http://icsforum.org>

12 March 2011

Representing the position of ICSF coalition networks/members in -

Australia: Sydney, Melbourne; Bangladesh: Dhaka, Chittagong, Sylhet, Rajshahi; Belgium:  
Brussels; Canada: Toronto, Montreal; India: Calcutta, Delhi, Mumbai, Bangalore; Indonesia:  
Jakarta; Germany: Berlin, Kessel; Japan: Tokyo; Malaysia: Kualalampur; Saudi Arabia: Jeddah;  
Sweden: Stockholm, Orebro, Uppsala; United Kingdom: London, Oxford, Manchester,  
Nottingham, Reading, New Castle, Cardiff, Canterbury; United States: New York, Washington,  
Irving, Dallas, North Carolina, Urbana-Champaign, Albuquerque; UAE: Dubai.

**MEMORANDUM TO HER EXCELLENCY, THE PRIME MINISTER,  
PEOPLE’S REPUBLIC OF BANGLADESH, DHAKA, BANGLADESH**

**Re: Request to remove the International Commission of Jurists (ICJ), Geneva, from the List of Honourees for Contribution in the Liberation War of Bangladesh 1971 on 40th anniversary of the independence of Bangladesh.**

Excellency,

1. We, the International Crimes Strategy Forum (ICSF- <http://icsforum.org>), an independent global coalition of activists and experts, who are all deeply dedicated to the spirit of our historic Liberation struggle of 1971, joined together and established the network, the ICSF, to support the international crimes and justice process initiated by your Government through the International Crimes Tribunal (ICT), Bangladesh, to investigate and prosecute those responsible for international crimes committed in 1971. Since its inception, ICSF been interacting and engaging with the ICT and other relevant authorities to assist the Government in its timely and momentous initiative of bringing to account the war criminals of 1971.

2. The attention of the ICSF was recently drawn to a laudable decision taken by the Government of Bangladesh to honour a number foreign nationals and organisations for their contribution to the Liberation War of Bangladesh in 1971 at its 40th anniversary of national independence on March 26, 2011. According to [published news](#)<sup>1</sup> (see Annexe I) 50 individuals and 4 organisations have been nominated for receiving this honour. The decision was taken in a Cabinet meeting chaired by your Excellency the Prime Minister. The Liberation War of Bangladesh in 1971 was fought in numerous fronts and many individuals, groups and organisations, regardless of their nationality, played a crucial part to promote our cause of independence through generating favourable public opinion and international support. The task of honouring such individuals and organisations by an ‘independent Bangladesh’ in recognition of their contributions is without a doubt a long-overdue one.

While we commend the Government for this excellent initiative, we also consider it our duty to raise our reservations regarding one particular organisation so chosen to be honoured. The full list has not been made public but based on the newspaper reports, we noted that the Geneva

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<sup>1</sup> The report in the Daily Star is available online: <http://www.thedailystar.net/newDesign/news-details.php?nid=176847> (last accessed 12 March 2011).

based [International Commission of Jurists \(ICJ\)](#)<sup>2</sup> is one such organisation nominated for this unique honour.

3. While the ICSF is aware of the reported input of the International Commission of Jurists (ICJ) along with many others, in the drafting of the International Crimes (Tribunals) Act, 1973, the ICSF has taken serious exception to the ICJ's enquiry report titled [The Events in East Pakistan, 1971, A Legal Study by the Secretariat of the International Commission of Jurists](#)<sup>3</sup>. The ICJ Report published in June 1972 by Mr. Niall MacDermot, its Secretary General, claimed that it "contains a factual account of events which occurred in East Pakistan from March to December 1971, together with a discussion of some of the legal issues involved" (p.5).

The ICSF finds the ICJ enquiry Report affront to sacrifices made by the people in 1971 and hits at the very basis of Bangladesh, its declaration of independence, by Bangabandhu Sheikh Mujibur Rahman, which the Report concluded as "not entitled in international law" suggesting that such declaration of independence was illegal under international law, effectively nullifying legitimacy of Bangladesh. Moreover, the Report unfairly equated crimes committed by the army and local collaborators against the people of Bangladesh with that of sufferings of Biharis. The Report categorically stated that both sides committed similar crimes, which were gross distortion of facts.

In light of these findings and detail analysis below, it is the humble submission of the ICSF before the Government to review this selection and remove the International Commission of Jurists (ICJ) from the list of honourees.

Excellency,

4. Based on the proposal adopted in an international conference in Aspen (Colorado) in September 1971, a three-member Enquiry Commission of the ICJ was set up in November of the same year to enquire: "into the reported violations of human rights and the rule of law in East Pakistan since March 1, 1971, and, insofar as they are shown to be well-founded, to enquire into their nature, extent and causes and to report, with recommendations." The Enquiry Commission was eventually cancelled due to the non-cooperation by the Pakistan Government. Subsequently, the ICJ Secretariat resolved to carry out a Staff Study covering the same issue with extended terms of reference. The finding of the Staff Study was published by ICJ Secretariat in June 1972

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<sup>2</sup> Official website of the organization: <http://www.icj.org/> .

<sup>3</sup> Secretariat, International Commission of Jurists. *The Events in East Pakistan, 1971: A Legal Study*. Geneva, 1972. Full text of the report is available on ICSF E-Library: <http://icsforum.org/library/show.php?record=329>

in the form of a report titled: [\*The Events in East Pakistan, 1971, A Legal Study by the Secretariat of the International Commission of Jurists\*](#)<sup>4</sup>.

5. Although the report acknowledges that international crimes including Crimes of Genocide were committed in 1971 against the Bengali people, it was subsequently suggested in the same sentence of the report that similar crimes were committed by "*Bengali insurgent forces (read Muktiyoddhas)... against Biharis and other non-Bengalis*". The Summary of Conclusion of the report [reads](#) (in p.97, See Annexe II):

(1) During the civil war from 25 March to 3 December and during the international war from 4 to 18 December, massive violations of human rights occurred in East Pakistan. These were committed (a) by the Pakistani army and auxiliary forces against Bengalis, and in particular against members of the Awami League, students, and Hindus, and (b) by Bengali insurgent forces and mobs against Biharis and other non-Bengalis (Part II (b)).

5.1. The ICSF believes that the report's key failure is its inability to distinguish between crimes committed by the invading Pakistani forces (and their collaborators) and the alleged violations of rights of the Biharis and other non-Bengalis. Unfortunately, the ICJ report places these two different sets of facts under the same bracket. Equating these two sets of alleged atrocities is problematic and misleading because it not only blurs the distinction between the 'perpetrator and victim' and 'parties/groups invading each other' but also poses serious legal challenges in terms of prosecution. The fact remains that the alleged human rights violations against the Biharis and other non-Bengalis, however condemnable they may be, were never part of any systematic plan on the part of the Bengali liberating forces. They were neither endorsed nor organised by any authority. There is not a shred of evidence to suggest that the then Mujibnagar Government or the Sector Commanders fighting in 1971 were ever involved in these alleged atrocities. The alleged atrocities on the Biharis and other non-Bengalis no matter how serious, were mostly isolated incidents. It is also worth mentioning here that there is ample evidence to suggest that the Government of independent Bangladesh led by Bangabandhu Sheikh Mujibur Rahman had in fact taken initiatives to protect the Bihari population from such common wartime atrocities of retaliatory nature.

5.2. Moreover, paragraphs/points 2 and 3 of the ICJ report's Summary of Conclusion [reads](#) (p.97, see Annexe II):

(2) These violations involved the indiscriminate killing of civilians, including women and children; the attempt to exterminate or drive out of the country a large part of the Hindu population of approximately 10 million people; the arrest, torture and killing without trial

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<sup>4</sup> Ibid.

of suspects; the raping of women; the destruction of villages and towns; and the looting of property. The scale of these crimes was massive, but it is impossible to quantify them. Figures given by both sides tend to be greatly exaggerated (Part II (b)).

(3) In addition to criminal offences under domestic law, there is a strong prima facie case that criminal offences were committed in international law, namely war crimes and crimes against humanity under the law relating to armed conflict, breaches of Article 3 of the Geneva Conventions 1949, and acts of genocide under the Genocide Convention 1949 (Part IV).

**5.3.** While paragraph/point 2 of the report's Summary of Conclusion lists the types of atrocities committed, point-3 identifies the "international crimes" these atrocities fell under, such as: war crimes, crimes against humanity and genocide. By putting the Pakistani army and the Bengali Liberation Forces, i.e. the *Muktibahini*, at par in terms of commission of these international crimes, and also by failing to expressly disassociate the *Muktibahini* from these offences - the report not only distorted historical facts, but also performed a gross disservice to justice under the guise of an 'impartial finding'. Equating alleged violations (if there were any) of the *Muktibahini* with that of the proven "international crimes" committed by the Pakistani forces' simply does not stand definitional scrutiny.

**6.** Alarming, the ICJ report also declared that the Awami League leaders (read Bangabandhu and Mujibnagar Government) were not entitled to proclaim independence of Bangladesh under international law in 1971. The relevant portion from the report [is quoted here](#) (p.97, see Annexe II):

(6) The Awami League leaders were not entitled in international law to proclaim the independence of Bangladesh in March 1971 under the principle of the right of self-determination of peoples (Part V).

**6.1.** First of all, it is ICSF's understanding that the ICJ report underplays the "Proclamation of Independence" describing it as a mere partisan declaration by the "Awami League Leaders". This assertion is in total contradiction to the real facts because the "Proclamation of Independence" was issued not by any singular political party but was rather an official declaration made by a legitimate Government in exile (i.e., the Mujibnagar Government).

**6.2.** This wrongful position taken by the ICJ in its report also demonstrates that the ICJ was fundamentally misinformed on the issue of declaration of independence in Bangladesh in 1971. In fact, there were two separate declarations which the ICJ in its report failed to note or distinguish. The first was issued by Bangabandhu Sheikh Mujibur Rahman on 26 March 1971, known as the "Declaration of Independence". The other declaration was the "Proclamation of

Independence" issued by the Mujibnagar Government on 10 April 1971. It is the "Proclamation of Independence"<sup>5</sup> made by the then Mujibnagar Government that is integral part of the Constitution of Bangladesh (see Annexe III).

**6.3.** The above position taken by the ICJ lacks support under international law. Furthermore, the ICSF believes that there indeed are influential interpretations and dominant practices that refute the position taken by the ICJ. The Right of Self Determination is a collective right based on the international law principle that nations (or peoples) have a right to freely choose their international political status or sovereign mode of governance. Opinions of different schools may diverge as to what constitutes "nation" or which "people" can legitimately claim this right, but summarily rejecting Bangabandhu Sheikh Mujibur Rahman or the Mujibnagar Government's right to proclaim independence clearly exposes the bias that lies within the ICJ report, mostly due to its failure to engage with the other dominant views on the point.

**6.4.** The ICJ's position on Bangladesh's Right of Self Determination is a contradiction in itself. On the one hand the ICJ finds quite correctly, that the population of East Pakistan, using international law principles, could be considered as "people" (p.72, see Annexe II) for the purpose of Right of Self Determination. Strangely, after reaching this correct analysis, the ICJ wrongly concludes that when such "people" are denied the right to self-govern (following the gaining of absolute majority in the national elections of 1970), and when a reign of terror is unleashed upon them (on the Dark Night of 25 March 1971 during which the Pakistan Army carried out what was infamously called 'Operation Searchlight'), the same people cannot assert their Right of Self Determination (pp.74-75, see Annexe II). Surprisingly, in page-75 (see Annexe II), the ICJ report states just the opposite and again contradicts itself. Here, after dubbing the martial regime in Pakistan as illegal, recognising the breakdown of the old Constitution and characterising the regime of Yahya Khan as a 'self-appointed and illegal military regime', the ICJ ironically reaches the conclusion that the Proclamation of Independence of Bangladesh was illegal under international law (p.75).

**6.5.** It is also worth mentioning here that the placing of the historic [6-Point Demands](#)<sup>6</sup> (Annexe IV) spearheaded by Bangabandhu Sheikh Mujibur Rahman in 1966 bears great similarity with the spirit enshrined in 1970 [Resolution No. 2625 \(XXV\) of the United Nations General Assembly](#) titled *Declaration on the Principles of International Law concerning Friendly*

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<sup>5</sup> "Bangladesh Proclamation of Independence." *ILM*. 119 (1972): 119 (2). Full text of the Proclamation can be directly downloaded from ICSF E-Library using this link:  
[http://icsforum.org/library/files/50\\_Unknown1972.pdf](http://icsforum.org/library/files/50_Unknown1972.pdf)

<sup>6</sup> *Historic Six-Point Demand that led to the Independence of Bangladesh*. Dhaka: East Pakistan Awami League, 1966. Full text of the document can be directly downloaded from ICSF E-Library using this link:  
[http://icsforum.org/library/files/264\\_Islam1966.pdf](http://icsforum.org/library/files/264_Islam1966.pdf)

*Relations and Co-operation among States in accordance with the Charter of the United Nations (A/8082<sup>7</sup>), which reads (Annexe V):*

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right to freely determine, without external interference, and their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

. . . The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

**6.6.** It is also a historic fact that the Pakistan Government paid no heed to the [6-Point Demands](#), refused to recognise the newly elected sweeping majority of the Awami League led by Bangabandhu Sheikh Mujibur Rahman following the parliamentary elections of 1970 and staged ‘Operation Searchlight’ on the night of 25 March 1971 mercilessly killing thousands of innocent Bengalis. It was in response to this position taken by the Pakistan Government that the Bengalis validly exercised their Right of Self Determination which was expressed through the Declaration of Independence by Bangabandhu Skeikh Mujibur Rahman on 26 March 1971, the Proclamation of Independence made by the Mujibnagar Government on 10 April 1971, and war of national liberation that followed and concluded on 16 December 1971.

**6.7.** It is also undisputed that Article 1(4) of [Protocol I of the Fourth Geneva Convention 1949](#)<sup>8</sup> (Annexe VI) extends the traditional definition of ‘international armed conflict’ to include armed conflicts in which people are fighting against colonial domination, alien occupation or racist regimes ‘in the exercise of their right to self-determination’, i.e. wars of national liberation. It is an uncontested fact that the Bengalis were validly exercising their Right of Self Determination against the colonial and racist Pakistani regime throughout 1971 under the leadership of Bangabandhu Sheikh Mujibur Rahman and the Mujibnagar Government.

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<sup>7</sup> UN General Assembly. *Declaration on Principles of International Law concerning Friendly relations and Cooperation among States in Accordance with the Charter of the United Nations (Res. 2625) 1970.* Full text of the document can be directly downloaded from ICSF E-Library using this link:

[http://icsforum.org/library/files/328\\_UNGeneralAssembly.pdf](http://icsforum.org/library/files/328_UNGeneralAssembly.pdf)

<sup>8</sup> <http://www.icrc.org/ihl.nsf/FULL/470?OpenDocument>

**6.8.** The above contention of the ICSF is supported by relatively recent *Kosovo Case (2010)*<sup>9</sup> where the International Court of Justice with regard to unilateral declaration of independence stated (paragraph 76 of the judgment):

During the eighteenth, nineteenth and early twentieth centuries, there were numerous instances of declarations of independence, often strenuously opposed by the State from which independence was being declared. Sometimes the declaration resulted in the creation of a new State, at others it did not. In no case, however, does the practice of States as a whole suggest that the act of promulgating the declaration was regarded as contrary to international law. On the contrary, State practice during this period points clearly to the conclusion that international law contained no prohibitions of declarations of independence. During the second half of the twentieth century, the international law of self-determination developed in such a way as to create a right to independence for the peoples of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation.

Excellency,

**6.9.** It is the humble submission of the ICSF that uncritically accepting views as biased and misconceived as the ICJ's on the "Proclamation of Independence" and Bangladesh's right of self-determination will have certain adverse implications. It would tantamount to conceding that - the Declaration of Independence itself by Bangabandhu Sheikh Mujibur Rahman, the Proclamation of Independence by Mujibnagar Government, the conduct and administration of the Liberation War in those nine months of 1971 - were all illegitimate. It is for this biased and misconceived position taken by the ICJ that it should not have been chosen for this unique honour by the State of Bangladesh.

**7.** To add to the controversy, the ICJ report has also described the larger part of Bangladesh's Liberation War of 1971 as a "civil war". Describing our glorious Liberation War as such is not only factually and legally incorrect, but also represents a revisionist position frequently adopted by the pro-'war criminal lobby' in both Bangladesh and abroad. The legal regime that applies to internal conflict (read "civil war") is distinct from an international one. Although some may claim that the distinction has now become somewhat academic, the application of the former regime is consistently favoured by the war criminal lobby for obvious

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<sup>9</sup> *Advisory Opinion of the International Court of Justice determining Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo*. International Court of Justice, 2010. Full text of the judgment available for download at ICSF E-library: <http://icsforum.org/library/show.php?record=258>.

strategic reasons. In line with the spirit of the liberation movement, the correct view is that the liberation war was an international war. It was not fought among civilians, rather it was a war where a nation stood together to expunge an invading foreign army in exercise of its recognised collective right of self-defence.

On the point of history, in exercise of our right of self-determination, Bangladesh's sovereign independence was manifested the day when the national flag was raised, i.e., on 2 March 1971. Referring to this particular period, even the Secretary General of ICJ, Niall MacDermot QC, in one of his writings acknowledged that "*it is hardly an exaggeration to say that Awami League led by Mujibur Rahman provided the de facto government of East Pakistan*"<sup>10</sup>. This was followed by the Declaration of Independence by Bangabandhu Sheikh Mujibur Rahman himself on 26 March 1971 at 1:30 am immediately prior to his arrest (as per Radio Pakistan's news on 29 March 1971), which was followed first by a formal Proclamation of Independence and then by the formation of the first Government of the People's Republic of Bangladesh in Mujibnagar on 10 April 1971. These are but a few of the legally significant historical facts supporting Bangladesh's statehood which makes 1971 an international armed conflict. ICJ's unapologetic depiction of our glorious liberation war as a "civil war" or "insurgency" are both improper and misconceived, and we are of the opinion that the Government of Bangladesh should not reward such impropriety by honouring this institution.

8. Throughout the report, ICJ characterised the *Muktibahini* collectively as "insurgents" which is not only demeaning to the Freedom Fighters of Bangladesh's Liberation War but is also an affront to the liberation movement itself. Freedom Fighters also known as *Muktijodhdhas*, i.e. members of the *Muktibahini*, command the highest possible regard in independent Bangladesh, and the people of Bangladesh have a special place in their hearts for these heroes who once risked and sacrificed their lives and limbs for their country. It would be a travesty to watch a pro-liberation Government that carries with it the true spirit of 1971 bestowing honour to an entity like the ICJ that has failed to show any respect to our liberation war heroes.

9. The ICJ report concluded with three very problematic indictments against India, one of the staunchest allies of Bangladesh during the Liberation war of 1971. The report [reads](#) (p.98):

(9) India's supply of arms and training facilities to the insurgent forces was in breach of her duty of neutrality under international law (Part VII).

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<sup>10</sup> See: Niall Macdermot. "Crimes Against Humanity in Bangladesh". *International Lawyer* 7.2 (1973): 476-484, at p.477. Available at ICSF E-Library: <http://icsforum.org/library/show.php?record=34>

(10) India's claim that her invasion of Pakistan was justified in international law under the doctrine of self-defence and on the grounds that she was acting in support of her Bangladesh ally cannot be accepted (Part VII).

(11) India could, however, have justified the invasion on the grounds of humanitarian intervention, in view of the failure of the United Nations to deal with the massive violations of human rights in East Pakistan which were causing a continuing and intolerable refugee burden to India (Part. VII).

**9.1.** The above mentioned indictments against India do not need any further explanation as they are typical of the bias inherent in the ICJ report. The report simply echoed the position against India that was vigorously put forward by West Pakistan and its allies (such as USA and China) in 1971. These findings alone say a lot about the credibility that this so-called "independent report" actually carries. The Government of Bangladesh should be extra cautious before endorsing such biased views against India, a country that has been one of our greatest allies during our liberation struggle and has also remained a friendly State to this date. Therefore, bestowing honour to the ICJ could also as a consequence lead to embarrassment in the diplomatic arena.

**10.** From the above discussion, the ICSF sincerely hopes that it is evident before the Government that the ICJ report is not a balanced one, neither it is impartial. The ICJ report does not reflect the correct position of international law on a number of points. Moreover, it is full of observations which are misleading and untrue. Only for this Report alone, the ICJ should not be awarded this honour as that would tantamount to endorsement of its findings which are problematic factually, legally, strategically, and diplomatically. At a time when the country is bracing itself to try the perpetrators of 1971, it is important that the Government maintains a consistent strategy over it's position on the events culminating to and during 1971.

**11.** It is therefore the humble submission of the ICSF that the Government re-evaluate its decision to honour the International Commission of Jurists (ICJ) because the legal position undertaken by the ICJ on our glorious Liberation War of 1971 is not in line with that taken by the Government, i.e. the line taken by the legitimate and emerging principles of international humanitarian law.

Excellency, we remain.

International Crimes Strategy Forum (ICSF)  
<http://icsforum.org>

12 March 2011

Representing the position of ICSF members/networks in:

- a. Australia: Sydney, Melbourne
- b. Bangladesh: Dhaka, Chittagong, Sylhet, Rajshahi
- c. Belgium: Brussels
- d. Canada: Toronto, Montreal
- e. India: Calcutta, Delhi, Mumbai, Bangalore
- f. Indonesia: Jakarta
- g. Germany: Berlin, Kessel
- h. Japan: Tokyo;
- i. Malaysia: Kualalampur
- j. Saudi Arabia: Jeddah
- k. Sweden: Stockholm, Orebro, Uppsala
- l. United Kingdom: London, Oxford, Manchester, Nottingham, Reading, New Castle, Cardiff, Canterbury
- m. United States: New York, Washington, Irving, Dallas, North Carolina, Urbana-Champaign, Albuquerque
- n. UAE: Dubai.