

# Children and the International Crimes Tribunal of Bangladesh

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## 1. Background

There are no existing authoritative policies for the sentencing of international crimes due to limited international precedent and consensus around sentencing theories developed through internationally co-operative research.<sup>1</sup> The International Military Tribunals at Nuremberg and Tokyo did not establish sentencing policies.<sup>2</sup> Tribunals prosecuting core international crimes, both at the domestic and international levels, have had to establish their own sentencing theories and practices, which remains the situation in light of substantial differences in the circumstances of each situation, case and degree of involvement by the accused ('fair labelling').<sup>3</sup>

This policy brief analyses sentencing in the case of *Chief Prosecutor vs. Khalilur Rahman et al.* ('Khalilur Rahman')<sup>4</sup> before the International Criminal Tribunal in Bangladesh ('ICT-BD' or 'Tribunal'), in particular the reasoning of the Tribunal in its first-ever verdict of acquittal. While doing so, we analyse the sentencing trend of the Tribunal and what the latest judgment means in that regard. In its verdict, one of the accused, Md. Abdul Latif, was acquitted by the Court, the first time that a suspect's young age during the 1971 war between Pakistan and Bangladesh – known in the latter as the 'Liberation War' – is given decisive weight. The ICT-BD was established to prosecute alleged violations that occurred during this war. The charges in the *Khalilur Rahman* case concerned crimes allegedly committed in the area of Police Station Gafargaon (currently Pagla) in the Mymensingh District. The accused were charged with directing the civilian population to terrorize and wipe out pro-liberation Bengali civilians, in furtherance of a policy and plan of the Pakistani army which was occupying Bangladesh at the

time.<sup>5</sup>

The idea to set up a domestic tribunal dates back to 1973 when the International Crimes (Tribunals) Act was adopted.<sup>6</sup> However, considering the context of the Liberation War of Bangladesh, the national and international political situation impeded the full implementation of the Act, establishing a culture of impunity for many years. Finally, in 2009 the government of Bangladesh established the tribunals set to adjudicate the relevant international crimes.<sup>7</sup> Formed 40 years after the war, the International Crimes Tribunal was a long time coming.

At the time of writing, 105 persons have been prosecuted, with 104 convictions. The Prosecution is trying an additional 235 persons. The ICT-BD has completed 45 trials over a period of 12 years. This shows a significantly higher performance than many international, hybrid and national courts exercising jurisdiction over international crimes. The ICT-BD has been able to achieve this mainly due to the political will of the people of Bangladesh. The fact that the Tribunal was established nearly 40 years after the Liberation War showcased the government's determination to ensure that the perpetrators will not remain unpunished and justice is provided to the victims.<sup>8</sup>

## 2. Juvenile Justice in Bangladesh and at the International Crimes Tribunal

The main laws governing juvenile justice in Bangladesh are the Penal Code of 1860, the Children Act of 2013, the Children Rules of 1976 and the Code of Criminal Procedure of 1898. In 2004, Bangladesh raised the minimum age of criminal responsibility from 7 to 9 years. The criminal liability of children between the ages of 9 and 12 is subject to judicial assessment of their capacity to understand the nature and consequences of their actions.<sup>9</sup>

The Children Act of 2013 aims to realize the objectives of juvenile justice and, therefore, discourages any sort of punishment of children who have allegedly committed crimes. The Act also provides for the creation of 'children's courts' in every district head-

<sup>1</sup> This brief was greatly improved by the extensive research done by Dr. Shahram Dana in the field of international law and international criminal justice mechanisms. His publications on the International Criminal Court, the International Criminal Tribunal for Rwanda, the International Criminal Tribunal for the former Yugoslavia and the Special Court for Sierra Leone were very helpful to analyse the evolution and current status of the sentencing policies for international crimes around the world.

<sup>2</sup> Mark A. Drumbl and Kenneth S. Gallant, "Sentencing Policies and Practices in the International Criminal Tribunals", in *Federal Sentencing Reporter*, 2002, vol. 15, no. 2, pp. 140–144.

<sup>3</sup> James Chalmers and Fiona Leverick, "Fair Labelling in Criminal Law", in *Modern Law Review*, 2008, vol. 71, no. 2, p. 219.

<sup>4</sup> ICT-BD, *Chief Prosecutor vs. Khalilur Rahman et al.*, Judgment, 11 February 2021, ICT-BD 06 of 2017 ('Khalilur Rahman') (<https://www.legal-tools.org/doc/e40670/>). The ICC Legal Tools Database contains a comprehensive collection of ICT-BD documents in its Bangladesh Collection (under 'National Criminal Jurisdictions').

<sup>5</sup> *Ibid.*, para. 4.

<sup>6</sup> International Crimes (Tribunals) Act, 1973, 20 July 1973, Act No. XIX of 1973 (<https://www.legal-tools.org/doc/c09a98/>).

<sup>7</sup> International Commission of Jurists, *The Events in East Pakistan, 1971: A Legal Study*, Geneva, 1972.

<sup>8</sup> The International Crimes Tribunal of Bangladesh was established in 2010.

<sup>9</sup> Penal Code (Amendment) Act, 2004, Act No. XXIV of 2004, Sections 82 and 83, amending Penal Code, 6 October 1860, Act No. XLV of 1860 (<https://www.legal-tools.org/doc/8ae8e9/>).

quarters and every metropolitan area, empowered with exclusive jurisdiction over the case of a child in conflict with the law.<sup>10</sup> Section 33 of the Act outlaws the death penalty and life imprisonment for children, so a court can only sentence to imprisonment if sending the child to a certified correctional facility is not an option. The death penalty under Section 302 of the Penal Code, 1860, or any other special laws – such as Nari o Shishu Nirjaton Domon (Bishes Bidhan) Ain, 2000 (Prevention of Oppression against Women and Children Act, 2000)<sup>11</sup> – goes against the fundamental objective of the juvenile justice system: to facilitate re-orientation of the child offender into the society.

The Supreme Court has issued numerous directives to avoid confusion on the hierarchy of the different laws that govern children and their rights, stating that the provisions of the Children Act must be followed by the trial court when dealing with a child in conflict with the law. In the case of *State vs. Deputy Commissioner, Satkhira*,<sup>12</sup> the Supreme Court's High Court Division declared that all subordinate courts, including the Courts of Magistrates, must adhere to the rules of the Children Act while dealing with matters involving juvenile offenders.

Similarly, the High Court Division in the case of *Bangladesh Legal Aid and Services Trust (BLAST) vs. Bangladesh*<sup>13</sup> found the District and Session Judge of Cumilla to be in violation of the Children Act. In this case, the accused, a 16-year-old boy, was tried under the Nari O Shishu Nirjaton Domon (Bishes Bidhan) Ain Act of 2000.<sup>14</sup> The High Court Division also ordered the Deputy Commissioner of Cumilla and the Divisional Commissioner of Chittagong to issue instructions to government law officers on how to handle cases involving children in conflict with the law. Furthermore, it directed the Registrar of the Supreme Court to seek an explanation from the District and Sessions Judge of Cumilla as to how it could sentence a juvenile offender to life in prison while ignoring the Children Act, and to issue an order to all sessions judges across the country advising them to discuss the provisions of the Children Act with officials working under their jurisdiction.

In the case of *Roushan Mondal*,<sup>15</sup> the special nature of the Children Act was again re-iterated. The Supreme Court stated that the Act is unique in that it deals only with children in conflict with the law, and that no other law will override the Act's jurisdiction over children if it is not specifically addressed.

Coming back to the application of the International Crimes (Tribunals) Act over an accused who was a child in 1971, the ICT-BD is the only forum enjoying exclusive jurisdiction over the trial, not a children's court. To ensure whether a person was a child in 1971, the ICT-BD considers a number of factors, such as whether there is any school document or birth certificate confirming the age of the person in 1971. Absent such documents, it will rely on the

<sup>10</sup> Children Act, 2013, 20 June 2013, Act No. XXIV of 2013, Section 16 (<https://www.legal-tools.org/doc/oxlvw2/>).

<sup>11</sup> The Act is originally drafted in Bengali. The English translation of the title is 'Prevention of Oppression against Women and Children Act, 2000': Nari-O-Shishu Nirjatan Daman Ain, 2000 (Women and Children Protection Act, 2000), 14 February 2000, Act No. VIII of 2000 (Bengali: <https://www.legal-tools.org/doc/4xnlep/>, unofficial English translation: <https://www.legal-tools.org/doc/64lie1/>).

<sup>12</sup> Supreme Court of Bangladesh, *State vs. Deputy Commissioner, Satkhira*, Judgment, 9 December 1992, Criminal Miscellaneous Case No. 504 of 1992, p. 643 (<https://www.legal-tools.org/doc/btx3ag/>).

<sup>13</sup> Supreme Court of Bangladesh, *Bangladesh Legal Aid and Services and another v. Bangladesh*, Judgment, 2 March 2010, Writ Petition No. 8283 of 2005 (<https://www.legal-tools.org/doc/jkdhny/>).

<sup>14</sup> See *supra* note 11.

<sup>15</sup> Supreme Court of Bangladesh, *State vs. Roushan Mondal*, Judgment, 9 July 2006, 59 (2007) DLR, para. 72 (<https://www.legal-tools.org/doc/ar80p2/>).

oral evidence of witnesses and victims. Thirdly, the Tribunal considers historical books or documents written or produced during 1971 or shortly after 16 December 1971. One book widely referred to by the Tribunal is *Sunset at Midday* by Mohiuddin Chaudhury.<sup>16</sup> Regarding the mental capacity of a teenager and the fact that teenagers participated in the Liberation War, the Tribunal expressed its views in the following manner:

Mohiuddin Chaudhary [...] has been now residing in Pakistan since immediate after Independence of Bangladesh, who after his son's death by an accident, wrote a book titled "*Sunset at midday*" [...] which was published in December, 1998 long before the inception of the Tribunal. In that book at page 119 he has stated that his brother-in-law [younger brother of his wife-Nargis], a student of class VIII who was courageous, energetic and dynamic than his age, joined the Al-Badr Bahini. Joining Al-Badr Bahini at the age of 14 years the boy showed capability in his duty properly as disclosed by his own brother-in-law in the said book. So, the age is not a factor in such cases.

The position and the conducts as well as mental growth of a teenager are the main important considerations to be assessed an issue Raised. There are so many instances in the birth history of Bangladesh that at the age of 14/15 years many youths joined the liberation war in 1971. During the liberation war Pakistani invading forces had no ideas over the identifications of the pro-liberation Bangalee people. So, they [Pakistani Junta] needed to have absolute assistance by picking up reliable persons such as the accused and his cohorts to have executed Their common plan and design upon eradicating the wholehearted Independence seekers from the part of this territory.<sup>17</sup>

Judges hold wide discretion in sentencing for international crimes, taking into account aggravating and mitigating factors, while not straying from the overall sentencing practices (in the case of ICT-BD, mainly retribution and deterrence).<sup>18</sup> The weight of these factors cannot, however, be generally determined: rather, a case-by-case sentencing approach is required although an underlying trend can be recognized by analysing ICT-BD judgments.

### 3. Sentencing Trend

Since its formation, the ICT-BD has announced life sentence and death penalty verdicts in most cases. Judge A.H.M. Shamsuddin Chowdhury, in his appellate division judgment of *Abdul Quader Molla*<sup>19</sup> on sentencing of persons convicted of committing international crimes, adopted the following principles, quoting Lord Chief Justice Peter Murray Taylor:

The seriousness of an offence is clearly affected by how many people it harms and to what extent. For example, a violent sexual attack on a woman in a public place gravely harms her. But if such attacks are prevalent in a neighbourhood, each offence affects not only the immediate victim, but women generally in that area, putting them in fear and limiting their freedom of movement. Accordingly, in such circumstances, the sentence commensurate with the seriousness of the offence may need to

<sup>16</sup> Mohiuddin Chaudhury, *Sunset at Midday*, Qirtas Publications, 1998. He was the former President of Jamaat-e-Islami party of the greater Noakhali district and Secretary of the District Peace Committee in 1971. Both the Jamaat-e-Islami and the Peace Committee were auxiliary forces of the Pakistani army at that time.

<sup>17</sup> ICT-BD, *Chief Prosecutor vs. A.T.M. Azharul Islam*, Judgment, 30 December 2014, ICT-BD 05 of 2013, paras. 68 and 69 (sic.) (<https://www.legal-tools.org/doc/bb7efc/>).

<sup>18</sup> Sajib Hosen, "What lessons may be learnt from the operation of the ICT-BD in the areas of international criminal law and transitional justice?"; Ph.D. thesis, Anglia Ruskin University, Cambridge, 2020, p. 278.

<sup>19</sup> Supreme Court of Bangladesh, Appellate Division, *Bangladesh v. Abdul Quader Molla*, Judgment, 17 September 2013 Criminal Appeal Nos. 24–25 of 2013 (<https://www.legal-tools.org/doc/4vavb2/>).

be higher than elsewhere [...].<sup>20</sup>

After analysing the sentencing pattern of the UN *ad-hoc* tribunals, he made the following observations:

In determining the appropriate term of imprisonment, the *ad hoc* Tribunals shall have recourse to the sentencing practice of the Courts of Rwanda and the former Yugoslavia (see Article 23(1) of the ICTR Statute [and] 24(1) ICTY Statutes). The Statutes expressly make reference to the gravity of an offence and the individual circumstances of an accused as factors to consider in imposing sentence (see Articles 23(2) and 24(2) respectively). Article 19 of the Statute establishing the Special Court for Sierra Leone requires the court to have recourse to the sentencing practice of the ICTR and the national practice of the courts of Sierra Leone. The ECCC Law and Internal Rules are silent on this matter. Article 24(1) of the Statute of the Special Tribunal for Lebanon provides that the Trial Chamber shall, as appropriate, have recourse to international practice regarding prison sentences and to the practice of the national courts of Lebanon (also see STL rule 172(B)(iii)).<sup>21</sup>

Most of the judges of the five-member Appellate Division bench hearing the appeal agreed with his principles, except Judge Md. Abdul Wahhab Miah. He concluded that the prosecution failed to establish the case against the convict-appellant in most of the charges except charge No. 6, where he was sentenced to imprisonment. In the majority of the charges, he did not find any corroboration among the statements of the witnesses used as evidence in the case, and found that most of the witnesses were not sufficiently specific while identifying the convict-appellant.

Further analysis of the judgments will reveal that the ICT-BD has followed sentencing principles of the International Criminal Tribunal for the former Yugoslavia ('ICTY') and the International Criminal Tribunal for Rwanda ('ICTR'). Both tribunals have relied on 'deterrence' as a sentencing principle in their verdicts.<sup>22</sup> Bangladesh has retained the death penalty, like many other common law countries throughout the world. The ICT-BD stated that the passing of death sentences acts as a warning to those who might try to commit crimes that are similar to the ones of 1971. The Tribunal has also reasoned that the crimes committed in the Liberation War were so heinous that the death penalty is, sometimes, the only way to provide justice to the victims and their families.<sup>23</sup> When faced with criticism on the issue of the death penalty, the Court has expressed its belief that, considering the judicial history and political and economic culture in Bangladesh, it is justified for crimes under the ICT Act 1973.<sup>24</sup> In the *Abdul Quader Molla* judgment, the Tribunal stated that one of its main sentencing considerations is the age and character of the suspect.<sup>25</sup> Age is considered by the Tribunal as a mitigating factor in sentencing, including with regards to convicted persons of old age. For instance, in the *Ghulam Azam* case, all three judges of the Tribunal unanimously decided that:

Facts remain that the accused is now an extremely old man of 91 years coupled with his long ailment. These two aforesaid factors are considered by this Tribunal as an extenuating circumstances for taking lenient view in the matter of awarding punishment to the accused. Having regards to the above facts

and circumstances, we are of agreed view that the ends of justice would be met if mitigating sentence is inflicted upon the accused.<sup>26</sup>

In the case of *Chief Prosecutor vs. Mohibur Rahman et al.*,<sup>27</sup> the defense put forward the argument that the accused Mohibur Rahman and Mujibur Rahman were both minors at the time of the alleged crimes. The judges carefully assessed these claims and, relying on the ocular testimony of the witnesses, decided that Mohibur Rahman was an adult at that time and Mujibur Rahman could not avoid liability because of his young age. During sentencing, the Tribunal awarded life imprisonment to Mujibur Rahman considering his accessory liability, without mitigating the sentence due to his young age in 1971.

The judges of the Tribunal have considered different aspects of the case in their determination of the death penalty. They have been of the view that loss of life, if possible, should be kept at a minimum when passing the sentences.<sup>28</sup> The application of international criminal justice in the Bangladeshi situation has been reflected through an 'indirect enforcement system' and this process of domestication of international criminal law has impacted the national practices of punishment, including the application of the death penalty.

#### 4. What We Can Learn from the *Khalilur Rahman* Case

In this recent judgment, the Tribunal decided unanimously to acquit one person, while three were sentenced to life imprisonment, and five to 20 years in prison for committing crimes against humanity during the Liberation War. Md. Abdul Latif was acquitted on the grounds that there was inadequate evidence to prove that he was involved in any of the crimes that were committed by the local auxiliary force, the Razakar Bahini, particularly if considered that he was only 12 years old in 1971. The Court concluded after the testimonies of the witnesses that "on cumulative evaluation of testimony presented by witnesses, participation and complicity of the accused Md. Abdul Latif could not be proved beyond reasonable doubt".<sup>29</sup> The Tribunal stated that there were many inconsistencies and contradictions in the testimonies,<sup>30</sup> and that it would not have been enough to prove that he was present at the scene of crime.<sup>31</sup> The defence had argued that the accused was a 12-year-old boy in 1971 and that this fact negated his alleged affiliation with the Razakar Bahini. Mere presence at the crime scene could not suffice to conclude that he accompanied the gang to further its policy and plan.<sup>32</sup> The Tribunal showed a more reform-minded approach in this case than in the above-mentioned *Mujibur Rahman* case. As

<sup>20</sup> *Ibid.*, p. 782.

<sup>21</sup> *Ibid.*, p. 781.

<sup>22</sup> ICTY, Appeals Chamber, *Prosecutor v. Zlatko Aleksovski*, Judgment, 24 March 2000, IT-95-14/1-A, para. 185 (<https://www.legal-tools.org/doc/176f05/>); ICTY, Trial Chamber, *Prosecutor v. Stevan Todorović*, Sentencing Judgment, 31 July 2001, IT-95-9/1-S (<https://www.legal-tools.org/doc/0cd4b3/>); see also Hosen, 2020, *supra* note 18.

<sup>23</sup> Hosen, 2020, p. 281, see *supra* note 18.

<sup>24</sup> *Ibid.*, p. 292.

<sup>25</sup> ICT-BD, *Chief Prosecutor vs. Abdul Quader Molla*, Judgment, 5 February 2013, ICT-BD (ICT-2) 02 of 2012, (<https://www.legal-tools.org/doc/42e4c8/>).

<sup>26</sup> ICT-BD, *Chief Prosecutor vs. Ghulam Azam*, Judgment, 15 July 2013, ICT-BD 06 of 2011, para. 394 (sic) (<https://www.legal-tools.org/doc/436ed9/>).

<sup>27</sup> ICT-BD, *Chief Prosecutor vs. Mohibur Rahman alias Boro Mia, Mujibur Rahman alias Angur Mia, and Md. Abdur Razzak*, Judgment, 1 June 2016, ICT-BD 03 of 2015 (<https://www.legal-tools.org/doc/9c8247/>).

<sup>28</sup> Hosen, 2020, p. 281, see *supra* note 18.

<sup>29</sup> *Khalilur Rahman*, para. 402, see *supra* note 4. The Tribunal also expressed serious doubts regarding the prosecution's choice to include among the accused a person who was a minor at the time of the commission of the crimes: "Prosecution should have paid due attention to it before recommending arraignment against him. We fail to understand why Md. Abdul Latif who was a minor boy at the relevant time has been chosen for being prosecuted for the alleged offences enumerated in the Act of 1973. [...] Seeking or having assistance and encouragement of a minor boy by a gang of notorious armed Razakars in committing crimes by launching systematic attack is simply incredible.", *ibid.*, paras. 383, 385.

<sup>30</sup> *Ibid.*, para. 363.

<sup>31</sup> *Ibid.*, para. 493.

<sup>32</sup> *Ibid.*, para. 70.

before the Special Court for Sierra Leone,<sup>33</sup> the factor of *mens rea* was centre stage before the ICT-BD as the suspect was not necessarily aware of the crimes that he was alleged to be a part of, and that even if he did join the Razakar Bahini, he did so without the *mens rea* to commit the alleged crimes.

As mentioned above, in the case at hand it was argued and accepted by the Tribunal that the accused was a mere 12-year-old boy at the time of the Liberation War, and the juvenile age of the accused was taken into account consistently in the Tribunal's reasoning for the acquittal of Md. Abdul Latif.<sup>34</sup> The issue of protecting children during prosecution has been brought up in almost every tribunal around the world. The Rome Statute of the International Criminal Court states that "the Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime",<sup>35</sup> while the Statutes of neither the ICTY nor the ICTR mention a specific age for prosecution.<sup>36</sup> The Statute of the Special Court for Sierra Leone states a minimum age for prosecution and punishment of 15, not 18.<sup>37</sup>

By analysing the sentencing trend of the ICT-BD, it has been observed that the Court has relied on retribution and deterrence as sentencing philosophies. However, in the case of Abdul Latif, the Court has set down a precedent that these philosophies should not be enacted to the extent of prosecuting a minor, who, in most probability, was unaware of the consequences or intensity of the crimes that he may or may not have been a part of.<sup>38</sup> With the passing of this verdict, the ICT-BD has shed some clarity on the issue of prosecution of minors for war crimes, not in the form of a statute, but rather a precedent, the first of 42 cases to do so.

As mentioned, under the Children Act of 2013, criminal liability of children from 9 to 12 is subject to judicial assessment of their capacity to understand the nature and consequence of their actions. Absent a provision on minors in the International Crimes Tribunal Act and in any of the precedents of the Tribunal, the *Khalilur Rahman* case follows the age criteria that exist under the domestic law of Bangladesh, while upholding principles of both national and international law. The Tribunal considered throughout its judgment the age of the suspect and his inability to understand the sever-

<sup>33</sup> Joshua A. Romero, "The Special Court for Sierra Leone and the Juvenile Soldier Dilemma", in *Northwestern Journal of Human Rights*, 2004, vol. 2, no. 1, p. 20.

<sup>34</sup> "It is hard to believe that a minor boy of 12 years of age allegedly provided assistance or encouragement to the perpetrators [...] At best it may be inferred that [...] Md. Abdul Latif was just spotted around the scene. But it is not enough to prosecute and try him who was admittedly a juvenile at the relevant time", *Khalilur Rahman*, paras. 383-384, see *supra* note 4.

<sup>35</sup> Rome Statute of the International Criminal Court, 17 July 1998, Article 26 (<https://www.legal-tools.org/doc/7b9af9/>).

<sup>36</sup> Statute of the International Criminal Tribunal for the former Yugoslavia, 25 May 1993 (<https://www.legal-tools.org/doc/b4f63b/>); Statute of the International Criminal Tribunal for Rwanda, 8 November 1994 (<https://www.legal-tools.org/doc/8732d6/>).

<sup>37</sup> Statute of the Special Court for Sierra Leone, 14 August 2000, Article 7(1) (<https://www.legal-tools.org/doc/aa0e20/>).

<sup>38</sup> *Khalilur Rahman*, paras. 492-493, see *supra* note 4.

ity of his alleged acts. This judgment confirms that, even in cases involving international crimes, the court should judiciously assess the involvement of a child. Due to the high rank and profile of the ICT-BD in Bangladesh, it is likely that its decision will reverberate among other courts in the country, including children's courts, encouraging them to respect the Children Act of 2013 and the Convention on the Rights of the Child. This judgment may thus contribute towards the internationalization of the domestic legal system. It also underlines the Tribunal's contribution to the rule of law within Bangladesh.

The minimum age of 9 years in Bangladesh is still very low. *Khalilur Rahman* should guide subordinate courts to consider the young age of an accused as a major factor in *de facto* mitigation when dealing with children in conflict with the law. In Bangladesh, children's rights and protection have been, and continue to be, major social and legal issues. Keeping that in mind, the *Khalilur Rahman* judgment may serve as an example of the supreme importance of protecting children against the consequences of crimes.

## 5. Conclusion

Absent consistent regulation of the minimum age for criminal responsibility for international crimes in international jurisdictions, domestic tribunals for such crimes are responsible to ensure that children are not made to face the consequences of such acts. Without the presence of alternative justice mechanisms, such suspects are under the threat of being prosecuted unjustly.<sup>39</sup>

The *Khalilur Rahman* judgment holds significance amongst the 42 cases adjudicated by the ICT-BD so far, not only because it is the first verdict of acquittal passed by the Tribunal, but also because it is its first precedent on the issue of prosecution of minors for war crimes. In the majority of its cases, the Tribunal has employed retributive and deterrence principles while passing verdicts, but this recent judgment shows that the ICT-BD is also willing to consider different approaches for the sake of protecting persons who were minors at the time of the alleged conduct from facing penal consequences.

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<sup>39</sup> Noëlle Quéniwet, "Does and Should International Law Prohibit the Prosecution of Children for War Crimes?", in *European Journal of International Law*, 2017, vol. 28, no. 2, pp. 455.



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