

Statement of Former US Ambassador-at-Large
Stephen J. Rapp
5 May 2016

I served as Ambassador-at-Large leading the Office of Global Criminal Justice in the U.S. State Department for six years from September 2009 to August 2015. During my tenure, I was honored to be received in Bangladesh at the invitation of its government to provide advice regarding the process for holding trials of those alleged to be responsible for major atrocities committed during the 1971 Liberation War. I made five trips to Dhaka, in January 2011, May 2011, November 2011, May 2013, and August 2014, and also communicated with key participants between my visits.

Throughout my engagement, my first interest has been to achieve justice for the victims and survivors through trials and appeals that would establish the undisputable truth and hold the major surviving perpetrators to account. For such a process to stand the test of time, I urged that the judicial proceedings of the International Crimes Tribunal respect the highest legal standards.

It is with sadness therefore that I see the verdict in the case of Motiur Rahman Nizami where it is clear that these standards have not been respected. Quite simply, under the provisions of international law that Bangladesh is due to uphold, the imposition of the death sentence cannot be justified.

Bangladesh is a state party of the International Covenant on Civil and Political Rights (ICCPR), and is therefore duty bound to respect and uphold the due process rights of the defense. These protections are even higher in death penalty cases. Article 6 of ICCPR establishes additional safeguards prior to the imposition of a death sentence. The Human Rights Committee has held that these standards should be met even during a state of emergency since “article 6 of the Covenant is non-derogable in its entirety, any trial leading to the imposition of the death penalty [...] must conform to the provisions of the Covenant, including all the requirements of article 14” of the ICCPR.

Article 14 provides for “equality of arms” between the prosecution and defense and requires that a Court permit a defendant “to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.” The trial cannot be said to have respected such standards or provided these procedural protections when we consider

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that the Prosecution was afforded 22 months to prepare its case and the Defense allowed a mere 3 weeks. Nor is it appropriate to allow the prosecution to call some 26 witnesses, and the defense only 4.

The Prosecution exhibited 260 documents, but the defence were prevented from cross-examining the investigating officer regarding those documents and thus they were admitted without the opportunity to raise questions as to whether they met evidentiary standards.

I would call upon the Government of Bangladesh to commute the sentence of Nizami, and immediately place a moratorium on the imposition of the death penalty until there is full compliance with international law.