

# THE INTERNATIONAL CRIMES TRIBUNAL OBSERVER

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Asian International Justice Initiative (AIJI), a project of East-West Center and UC Berkeley War Crimes Studies Center\*

## I. OVERVIEW

This week was dominated by the announcement of the verdict in *Chief Prosecutor vs. Delwar Hossain Sayedee* on 28 February 2013. Sayedee was tried on 20 Charges<sup>1</sup>: 4 counts of Genocide and 17 counts of Crimes against Humanity. Sayedee was found guilty of 8 Charges—specifically Charges 6, 7, 8, 10, 11, 14, 16 and 19. He was acquitted of the crimes alleged in Charges 1, 2, 3, 4, 5, 9, 12, 13, 15, 17 and 18. The Prosecution had previously dropped Charge 20. The Tribunal sentenced Sayedee to death, based on his convictions under Charges 8 and 10. For a detailed report on the Judgment against Sayedee please see our Special Issue Report, available on our blog at <http://bangladeshtribunalobserver.org/2013/03/25/special-issue-report-close-examination-of-the-sayedee-judgment/>.

### TRIBUNAL 1: CASES IN SESSION THIS WEEK

- *SAYEDEE*
- *GHOLAM AZAM*
- *MUBARAK HOSSAIN*

In addition to issuing the *Sayedee* Judgment, Tribunal 1 also continued to hear the Prosecution's Closing Arguments in the *Gholam Azam* case. The Prosecution additionally submitted the Formal Charges against Mubarak Hossain, signaling the completion of the investigation stage of the case. The Tribunal is expected to take cognizance of the charges, and issue a Charge Framing Order in the near future. A hartal was called on 24

February 2013, which prevented our researchers from attending proceedings.

### TRIBUNAL 2: CASES IN SESSION THIS WEEK

- *KAMARUZZAMAN*
- *ABDUL ALIM*
- *MUJAHID*
- *CONTEMPT PROCEEDINGS*

Tribunal 2 heard proceedings in the *Kamaruzzaman*, *Abdul Alim* and *Mujahid* cases. In *Kamaruzzaman*, the Tribunal granted a request from

the Tribunal disposed of Defense Applications for a recall of the Court's Order ending the cross-examination of Prosecution witness 18, and a request to submit additional Defense documents into evidence. In the *Alim* case the Defense submitted multiple applications for time extension due to the Defense counsel's inability to attend proceedings. The Tribunal ultimately expressed its frustration at the continued absences, and fined the Defense counsel for creating delay. In the *Mujahid* case, the Tribunal heard the cross-examination of Prosecution witness 13. Additionally, in response to ongoing contempt proceedings, Tribunal 2 accepted a written explanation of M.K. Anwar's comments from his lawyer, and granted the Prosecution time to respond. Three Jamaat party leaders were scheduled to appear in court for contempt proceedings as well, but they requested additional time once again. The Court granted time, but set the next hearing date for 3 March 2013, and demanded that the leaders be personally present.

## **II. TRIBUNAL 1: DETAILED WEEKLY CASE SUMMARIES**

### ***CHIEF PROSECUTOR VS. DELWAR HOSSAIN SAYEDEE***<sup>ii</sup>

On 28 February 2013 Tribunal 1 issued the ICT's third verdict. This was the first verdict from Tribunal 1. The Court found Sayedee guilty of 8 Charges, specifically Charges 6,7,8,10,11,14,16 and 19. He was acquitted of Charges 1, 2, 3, 4, 5, 9, 12, 13, 15, 17 and 18. The Prosecution had already previously dropped Charge 20.

The Tribunal sentenced Sayedee to death based on his convictions under Charges 8 and 10. Under Charge 8 he was found guilty of directly participating in abduction, murder and persecution as Crimes Against Humanity in conjunction with the 8 May 1971 attack on houses of Chitholia, an arson attack on the Hindu community at Parerhat Bandar, and the torture and murder of a civilian, Ibrahim. Under Charge 10 Sayedee was found guilty of direct participation in persecution and murder as Crimes Against Humanity in conjunction with the 2 June 1971 arson attack on the Hindu Para of Umedpur and the killing of an individual, Bisabali.

A breakdown of the Court's verdict follows. It should be noted that, under the Charge Framing Order, one charge at times encompasses multiple crimes. For example, Charge 2 alleges Genocide and Persecution as Crimes Against Humanity. Where the Charge Framing Order included the alleged date of the incident, or where it is estimated in general terms, e.g. "during the time of liberation war", this report includes the date in parentheses.

#### **The Accused was Found Guilty of:**

Charge 6—Persecution as a Crime Against Humanity: for identifying the homes and businesses of Awami League supporters, Hindus, and supporters of independence, and for participating in the looting of those homes and businesses on 7 May 1971;

Charge 7—Persecution and Abetting Torture as Crimes Against Humanity: for leading a team of Peace Committee members and the Pakistani Army in an arson and looting attack on Awami League member Nurul Islam Khan's house and for identifying him as freedom fighter to the Pakistani Army who thereafter tortured him on 8 May 1971;

Charge 8—Abduction, Murder and Persecution as Crimes Against Humanity: for leading accomplices and the Pakistani Army on an arson attack on the Hindu houses in Chitholia and the nearby areas, and for instigating the shooting of one Ibrahim and the torture of one Mofiz on 8 May 1971.

Charge 10—Persecution and Murder as Crimes Against Humanity: for leading armed associates and the Pakistani Army on an arson attack on the Hindu Para of Umedpur, and by instigating the shooting of Bisabali by an accomplice, on 2 June 1971;

Charge 11—Torture and Persecution and Crimes Against Humanity: for leading a team of Peace Committee members and Pakistani forces in an arson and looting attack on the houses of freedom fighter Mahbubul Howlader, and for detaining and torturing his brother Abdul Mazid Howlader on 2 June 1971.

Charge 14—Persecution and Rape as Crimes Against Humanity: for leading the Razakar Bahini in an arson attack on Hindu Para of Hoglabunia, and allowing subordinates to rape Shefali Gharami (during the last part of the liberation war).

Charge 16—(Abetting) Abduction, Confinement and Rape as Crimes Against Humanity: for leading a group of Razakars and Peace Committee members in the abduction of Mohamaya, Anno Rani, and Komol Rani - the three sisters of Gowranga Saha, and delivering them to the Pakistani Army camp where they were confined and raped for three days ("during the time of liberation war in 1971"); It should be noted that the Charge framing order states that "You are directly involved in abetting the offence of abduction, confinement and rape as crimes against humanity. Thus, you have committed an offence of abduction, confinement and rape under section 3(2)(a) and 3(2)(g) of the Act," making it unclear whether the Prosecution is alleging principal or accomplice liability for this charge. We will clarify the conviction upon receiving the Judgment from the Tribunal.

Charge 19—Forced Conversion as a Crime Against Humanity: for exercising influence over the Hindu community of Pirozpur Subdivision and forcibly converting as many as 150 Hindus to Islam between 26 March and 16 December 1971;

**The Accused was Acquitted of:**

Charge 1—Murder as a Crime Against Humanity: for providing secret information to the Pakistani Army and in a planned way killing 20 unnamed civilians by shooting on 4 May 1971;

Charge 2—Genocide and Persecution as a Crime Against Humanity: for participating in a looting and arson attack on the Hindu Para of Pirojpur and for opening fire and killing 13 civilians on 4 May 1971;

Charge 3—Persecution as a Crime Against Humanity: for leading a team of the Pakistani Army in a looting and arson attack on the Masimpur Hindu Para and nearby villages on 4 May 1971;

Charge 4—Direct Participation in and Abetting of Abduction and Murder as Crimes against Humanity: for calling for the arrest of Saif Mizanur Rahman, identifying him to the Pakistani Army, and for being present during the killing of Rahman and two other civilian government officers on 5 May 1971;

Charge 5—Genocide: for accompanying the Pakistani Army in an attack on the Hindu Para of Dhopa Bari and opening fire and killing four individuals with the intent to destroy members of the Hindu Community on 4 May 1971.

Charge 9—Persecution as a Crime against Humanity: for leading armed associates and the Pakistani Army in an arson and looting attack on the house of Abdul Halim Babul in Nalbunia, on 2 June 1971.

Charge 12—Genocide: for leading an armed group of accomplices in capturing 14 Hindus from the Hindu Para of Parerhat Bazar and delivering them to the Pakistani military who then killed them and threw their bodies in the river (date not specified in the Charge Framing Order),

Charge 13—Murder, Torture and Abduction as Crimes against Humanity: for leading members of the Peace Committee with the Pakistani Army on a raid of Azhar Ali's house, torturing Azhar Ali and his son Shaheb Ali, and for abducting and killing Shaheb Ali (2-3 months after the start of the Liberation War);

Charge 15—Genocide: for leading the Razakars in an attack on 10 Hindu civilians who were handed over to the Pakistani Army with the intent to destroy a religious group (during the last part of the liberation war);

Charge 17—Rape as a Crime against Humanity: for confining and raping Vanu Shaha at Bipod Shaha's house in Parerhat in collaboration with other armed Razakars ("during the time of liberation war");

Charge 18—Abetting Torture and Murder as Crimes against Humanity: for instigating the arrest, torture and murder of Bhagirothi; ("during the liberation war");

Charge 20—Abduction, Torture and Abetting Rape as Crimes against Humanity [NOT PRESSED BY PROSECUTION]: for leading an group of Razakar Bahini in an attack on Talukdar Bari in Indurkani, detaining 85 persons and looting their goods, torturing male detainees, and allowing the Pakistani Army to rape Dipali and Maya Rani at the end of November, 1971.

**Procedural History:**

Delwar Hossain Sayedee was first detained by order of the ICT on 2 November 2010. Tribunal 1 issued the Charge Framing order on 3 October 2011. Over the course of trial, the Prosecution deposed a total of 28 witnesses, including the Investigating Officer assigned to the case. The Tribunal also admitted into evidence the out-of-court statements of 16 other witnesses whom the Prosecution alleged were either dead or could not be produced without unreasonable delay or expenditure. This is allowed under Section 19(2) of the ICT Act. On 14 August 2011, after hearing an application from the Prosecution, the Tribunal limited the Defense to 20 witnesses, stating that their proposed list of 48 witnesses was excessive. The Defense ultimately deposed 17 witnesses before the Tribunal.

The Trial was marked by a number of public controversies. In particular, the Defense alleged that a number of witnesses who provided out-of-court statements under Section 19(2) had, in fact, been available to appear before the Tribunal, but were intentionally kept away from the Tribunal by the Prosecution. Additionally, on November 5th the Defense reported that its witness, Shukharanjan Bali, was abducted from outside the tribunal gates by plain-clothes police officers identifying themselves as members of the Detective Branch. Bali had originally been identified as a Prosecution witness, but later agreed to testify for the Defense. The Defense alleged that the Prosecution did not want him to appear and testify. The Tribunal claimed that it investigated the incident and found no evidence that any abduction took place. The Supreme Court of Bangladesh rejected an application filed by the Defense for a writ of habeas corpus. Bali had been scheduled to testify regarding Charge 10, on of the Charges for which Sayedee was sentenced to death. He never appeared before the tribunal, either for the Prosecution or the Defense.

Another controversy disrupted the tribunal in early December, when the former Chairman of Tribunal 1 announced that his email and Skype had allegedly been hacked. The Economist and other media outlets went on to publish excerpts of alleged conversations between Chairman Nizamul Hoq and foreign legal expert Ahmed Ziauddin. The Defense alleged that these conversations showed collusion between the Judges, outside activists advocating for the conviction of the alleged war criminals, and the Prosecution. The former Chairman resigned on 11 December 2012, and was replaced by ATM Fazle Kabir, who had previously sat as a Judge in Tribunal 1 before being moved to chair Tribunal 2 when the ICT had previously formed a second courtroom to handle the tribunal's caseload. Under the reconstituted ICT-1 bench, the Tribunal rejected the Defense's application for retrial, stating that the contents of the alleged Skype and email conversations were inadmissible because they amounted to illegally obtained evidence.

The Bench concluded that the independence of the Tribunal had in no way been compromised. [For more detail see prior report posts here.] The Tribunal ordered the parties to resubmit their closing arguments so that all three presiding judges could hear the summation of the case. The resubmission of Closing Arguments was concluded on 29 January 2012, and has been awaiting judgment for the past month.

**General Allegations of the Case:**

The Prosecution's case focused on the allegation that Sayedee formerly had the name Delu Shikdar. The Prosecution claimed that he rose from being a store vendor in Parerhat, before the Liberation War, to becoming a leader of the local Razakar unit, which is accused of conducting raids and committing atrocities against the local population. The Prosecution alleged that Shikdar/Sayedee became a member of the local Peace Committee, and was valued for his fluency in Urdu. They claimed that Shikdar went into hiding after the war, and emerged much later under the name Sayedee.

The Defense claimed that Sayedee is not the same person as Delwar Hossain Shikdar, and that the latter was, in fact, apprehended and executed by freedom fighters after the war. They claim that Sayedee lived in Jessore during and before 1971, and has always been engaged in religious study and teaching. The Defense presented a version of events in which Sayedee fled his village home with his family around the time of the alleged crimes, and therefore could not have been present during their commission.

For a detailed summary of the legal and factual conclusions of the Judgment see our Special Issue Report on the verdict.<sup>iii</sup>

***CHIEF PROSECUTOR VS. GHOLAM AZAM***

**Prosecution Closing Arguments**

In the *Gholam Azam* case, the Tribunal heard the Prosecution's Closing Arguments, focusing on Charges 3, 4 and 5.

**Charge No 3:**

Under the third charge, Gholam Azam is accused of the crime of incitement under Section 3(2)(f) of the ICT Act. Charge 3 alleges 28 separate incidents of incitement.

The Prosecution alleges that, as the Amir (chief) of Jamaat-e-Islami, Gholam Azam issued statements and gave speeches inciting the activists of Jamaat-e-Islami and the Peace (Shanti) Committee to destroy Hindus, supporters of the Awami League, and, in essence, all Bengalis who supported independence. Through these statements and speeches, he is also accused of inciting such activists to assist the Pakistani Army in all possible ways, and of urging the Pakistani Government to take severe measures against supporters of independence. The Prosecution asserted Jamaat was the only political party who had control over the Pakistani government that at the time of independence. It was alleged that Gholam Azam invited Pakistan to attack after India entered East Pakistan.

The Prosecution also accused Gholam Azam of having meetings with key political figures of the Pakistani government, including President Eahiya Khan.

The Prosecution submitted that as the Chief of East Pakistan Jamaat-e-Islami, a member of the Peace Committee and a student of political science, Gholam Azam's leadership role gave him knowledge of what would happen as a result of his incitement.

Charge 4:

Under Charge 4 Gholam Azam is accused of 23 incidents of complicity in the commission of Crimes Against Humanity, under section 3(2)(h) of the ICT Act 1973. In the Charge Framing Order, the Prosecution alleges that Gholam Azam met with Lt. General Tikka Khan (the Chief Martial Law Administrator of the 'Kha' zone of occupied Bangladesh) on 4 April 1971, as a part of a 12 member team, at Governor House of Dhaka. The meeting took place just after 'Operation Searchlight,' on March 25, 1971, and during it Gholam Azam assured Tikka Khan of his full co-operation. On 9 April 1971, Gholam Azam allegedly held the third highest position in the Peace (Shanti) Committee. The Prosecution alleged that goal of the Peace Committee was to assist the Pakistani Army in conducting attacks on civilians of Bangladesh. The Prosecution stated that as a leader of Jamaat-e-Islami, Gholam Azam gave several speeches where he praised Pakistani Army, promised to give them full assistance, and stated that Pakistani Army had served the country at a moment of crisis. It was alleged that Gholam Azam justified the conduct of the Pakistani Army by saying that there was no way, other than intervention of the Pakistani Army, to save the country from separating.

The Prosecution cited to the *Akayesu* case from the International Crimes Tribunal for Rwanda as a precedent for liability where a person with command responsibility fails to prevent the commission of a crime.<sup>iv</sup> In addition to a command responsibility argument, the Prosecution argued that Gholam Azam is liable for aiding and abetting in the commission of war crimes. The Prosecution referred to the reports published in different newspapers such as the *Daily Azad* of 5 April 1971(Exhibit-33); the *Daily Azad* dated 6 April 1971(Exhibit-34); the *Daily Pubrbo Desh* dated 6 April 71(Exhibit-99); and a photo published in the *Daily Pakistan* dated 6 April 1971(Exhibit-52).

The Prosecution claimed that Gholam Azam had urged the Pakistani government to supply arms to the supporters of a unified Pakistan so that they could resist the pro-independence forces. He referred to Exhibit-4, the *Daily Shangram* dated 20 June 1971; Exhibit-62, the *Daily Pakistan* dated 21-06-1971; Exhibit-83, the *Daily Ittefaq* dated 22 August 1971; and Exhibit-43, the *Daily Azad* dated 21 June 1971. The Prosecution submitted that Gholam Azam praised and justified the action taken by Pakistan government against the independence movement by saying that there was no alternative other than the intervention of the Pakistani Army. They cited to Exhibit-51, the *Daily Shangram* dated 22 June 1971; Exhibit-63, the *Daily Pakistan* dated 22 June 1971; Exhibit-44, the *Daily Azad* dated 22 June 1971.

The Prosecution reiterated that Gholam Azam was aware that he had command responsibility, and knew of the massacre committed by the Pakistani army. Additionally Counsel argued that the Accused was a student of political science, and therefore knew what would happen if he incited his followers to cooperate with Pakistan.

#### Charge 5

Under Charge 5 Gholam Azam is accused of murder and torture as Crimes Against Humanity under section 3(2)(a) of the International Crimes (Tribunals) Act 1971. The Prosecution summarized its case, alleging that, on 25 October 1971, Siru Miah, his son Anwar Kamal, and Nazrul were arrested by Razakars and taken to Dana Miah's house, where they were physically abused by Jamaat-e-Islami leader and Shanti (Peace) Committee member, Peyara Miah. Gholam Azam is accused of sending an official letter to Peyara Miah, instructing him to kill Siru Mia and his son, as they were freedom fighters. It is alleged that, under his direct instruction, a total of 38 persons, including Siru Miah, Anwar Kamal, Nurul Islam and Abdul Kashem, were killed, and that Anwar Kamal was tortured and killed. The Prosecution stated that Prosecution witnesses 11 (Shafiuddin Ahmed), 12 (Sona Mia), and 13 gave testimony regarding this charge.

Prosecution witness 11 testified that Siru Mia and his son Anwar Kamal (son of Siru Mia) started out from their camp, bound for India on the night of October 26, along with four others. Siru Mia wrote a letter to his wife on the way. On October 27, as soon as they reached the street, Razakars surrounded them, took away two revolvers, and tied them up. They were taken to Dana Mia's house, and tortured there for 2 or 3 days. Thereafter, excluding the witness, the others were taken to Brahmanbaria Jail. Prosecution witness 11 said that Brigadier Sadullah separated him from the other 39 captives, and took the others away by army vehicle. The next morning, he found out that those taken away had been murdered. He was released from jail after Brahmanbaria was liberated, and found out that only one of the 39 detainees (an individual named Chinu) had survived. Prosecution witness 11 stated that he found out that Siru Miah, Anwar Kamal, Nazrul Islam and Abul Kashem were among the 38 persons who had been killed. He also stated that, after the Liberation War, he found out that Siru Miah's wife had brought a second letter from Gholam Azam, hoping to save her husband Siru Mia and son Anwar Kamal. However, the Prosecution acknowledged that witness 11 did not originally tell the Investigation Officer that he had found out from Siru Miah's wife that she had brought a letter from Gholam Azam in order to save his husband and son, but asserted that he told the truth during his testimony. The witness additionally testified that he did not know the contents of the second letter from Gholam Azam.

After hearing from witness 11, Counsel for the Prosecution summarized the testimony of Prosecution witness 12. He said that he heard sounds of bullets being fired on the night of Eid (in 1971?). He testified that he saw Razakars digging trenches the next morning, and there were many corpses going into the trenches. The witness had given a statement saying that he saw the Razakars bury 38 persons there.



The Prosecution also read out the testimony of Prosecution witness 13, Anwara Begum, who gave testimony in camera. The Prosecution additionally referred to the written witness statement of Mursalin (brother-in-law of Anwara Begum, who allegedly carried the letter from Gholam Azam to Peyara Miah). The statement was accepted as evidence under section 19(2) of the ICT Act 1973, regarding this charge.

#### ***INVESTIGATION OF MUBARAK HOSSAIN***

The Prosecution filed the Formal Charges against Mubarak Hossain, but the matter was not argued or presented in open court.

### **III. TRIBUNAL 2: DETAILED WEEKLY CASE SUMMARIES**

#### ***CHIEF PROSECUTOR VS. MUHAMMAD KAMARUZZAMAN***

The Tribunal heard two Defense applications in the *Kamaruzzaman* case.

#### **Application for Recall of Order Concluding Cross-Examination of PW 18**

The Defense submitted an application requesting recall the court's order ending the cross-examination of Prosecution witness 18, the Investigation Officer. The order was issued after Defense counsel Kafil Uddin Chowdhury failed to complete the cross-examination by the end of the morning session on 24 February. The Defense was absent on Sunday due to the ongoing hartal (strike). The Tribunal passed an order announcing that the cross-examination was complete. The Defense argued that they should be allowed to continue the cross-examination in the interest of justice. They stated that the Defense had only been allowed to show the contradictions between two or three prosecution witnesses out of the fifteen who gave evidence against the accused. The Defense said they should not be limited in examining the Investigation Officer, whose role is at the core of the case. The Defense claimed that there have been many contradictions in the investigation findings, in addition to numerous inconsistencies between statements of witnesses given to the Investigating Officer and testimony given before the court. Such inconsistencies are highly significant, Counsel argued, and the value of revealing such inconsistencies outweighs the inconvenience of extending the allotted time.

The Court rejected the Defense's arguments, stating that there had been undue delay, and the proceedings could not be extended any longer. The Judges stated that the detailed nature of the Defense's cross-examination is either an improper fashion of questioning, or is intentionally aimed to delay the proceeding. The Tribunal concluded that the Defense had been given ample time to wrap up the cross-examination, and that it had failed to effectively use the time and resources provided. Moreover, the Tribunal noted that counsel had been absent not only on hartal days, but also on normal days where news of

unrest was spread. Additionally, counsel chose not to appear, even after the unrest in the streets improved, thereby wasting the Tribunal's time.

#### **Application for Permission to Submit Additional Defense Documents**

The Defense submitted an application under Rule 46A of the Rules of Procedure requesting permission for the Defense to admit additional documents into evidence. Rule 46A gives the Tribunal unlimited power to pass any order necessary to meet the ends of justice or prevent abuse of the judicial process. The Judges initially said that there was only a provision in the Act to allow the prosecution to submit additional documents, and that the bench could not entertain the Defense's application. The Defense then argued that similar applications had been accepted by both by Tribunal 1 and Tribunal 2 in the past. The Chairman of the Tribunal 2 asked the Defense to produce similar applications and orders. He promised that the Tribunal would consider them in making its decision.

#### ***CHIEF PROSECUTOR VS. ABDUL ALIM***

#### **Applications for Adjournment, Fine for Delay**

The Defense submitted two applications requesting adjournment of the *Alim* case. The first came on 25 February, and the second was submitted on the 27<sup>th</sup>. They sought a continuance, because no senior counsel for the Accused could appear before the Tribunal due to personal difficulties. One lawyer was hospitalised, and another was in Chittagong for family reasons. The Prosecution objected, arguing that the two lawyers had been regularly absent, and accusing them of using their absence as a delay tactic. The Judges allowed the requests. However, after the second request, the Tribunal Chairman commented that such absences should not continue, and ruled that the delay should be compensated. The Tribunal fined the Defense counsel a total of Taka 2,000. The Court specified that this shall be paid from the counsel's own pocket, not from the client.

#### ***CHIEF PROSECUTOR VS. ALI AHSAN MUHAMMAD MUJAHID***

#### **Cross-examination of Prosecution Witness 13**

This week in the *Mujahid* case, the Defense continued the cross-examination of Prosecution Witness 13, Shakti Shaha. The Defense attacked the reliability and credibility of the witness's testimony, suggesting that his story was fabricated and based on coaching by the Prosecution. It was suggested that the witness actually lives and works in India permanently. The Defense alleged that the witness never saw the accused, and in reality came to Bangladesh on an Indian passport to give false evidence.

Under questioning, the witness stated he could not remember his date of birth or the year when he collected his National ID Card. However, he asserted that he has been a voter of Goalchomot-Western Para consistently since the election in 1970. The Defense questioned him about the years of his schooling, and challenged how he had been old enough to witness the alleged crimes if he was only in Class 7 after the War. Additionally, when asked about the 29<sup>th</sup> of Boishakh (Bengali calendar month), which the

witness mentioned in his testimony, he replied that he did not remember which Bengali calendar year it was, nor the precise English date. He stated he does not remember the date or year when his sister got married in Bakchor, as he was only 5 or 6 years old.

The witness admitted that he does not hold a Bangladesh passport, but he asserted that he holds a Voter ID Card as proof of his Bangladeshi nationality. When asked why he had been in India, he stated that his wife died in India, and he had been there for six months while she was being treated for cancer. He also stated that, prior to his last visit, he had also been in India for six months after being subjected to torture by Mujahid's men when Mujahid became a Minister. However, the witness admitted that after coming back to Bangladesh he did not file any complaint with the police, nor with any other law enforcement agency, about the alleged incident. He also admitted that he went to India at an early age with his family. Thus, he claimed to have visited India a total of three times.

The witness admitted that he never complained about his father's killing to any Police Station or investigation agency, and he did not know whether his brother, Mr. Gopinath Shaha, who resides in Faridpur, had ever filed any such complaint. The witness said that the reason he didn't know was because he was "not interested." He said that he did not see Razakars in Faridpur city, but heard of and saw Razakar and Al-Badr forces in Bakchor. He said that Alauddin Kha and Jalil Moulavi were senior citizens of the locality in 1971, and claimed that they were involved in the formation of Razakar and Al-Badr. He also said he knows the name of another Razakar from Faridpur, Ohab Matkar.

The Defense questioned the witness about the place of occurrence, characteristics of the location, and the communication arrangements in the region during 1971. The witness described the area from which he allegedly witnessed the crimes. He claimed that he witnessed the killing of his father and others from the top of a fruit tree, behind the house where the killing took place. He claimed that he climbed to the peak of the fruit tree, which was 20/25 hands (approximately 35 feet) high, and saw through the branches and leaves that his father was being killed. He also saw and heard his mother and sister requesting that the Accused spare the father.

At the end of the cross-examination, the witness began to cry again (he had previously cried during direct examination). He asked the judges to do justice. One of the three Judges responded that the tribunal is under an obligation to give justice both to the victims of war crimes as well as the accused by ensuring a fair trial.

### ***CONTEMPT PROCEEDINGS***

#### **Contempt Proceedings Against MK Anwar<sup>y</sup>**

Counsel representing M K Anwar filed a written explanation, as requested by the Tribunal, on behalf of the veteran BNP policymaker. In it, he stated that his client has the highest regard for the court, and that his client's statements had been misplaced and misinterpreted by the newspaper report. MK Anwar had allegedly made comments that

the government is staging the ongoing trials of the alleged war criminals as a mechanism of vengeance against the leaders of its opposition parties. Prosecuting attorney, Mr. Rana Das Gupta, sought time for further hearing of the matter, stating that the Prosecution would place its submissions after evaluating the written explanation filed on behalf of the opposite party.

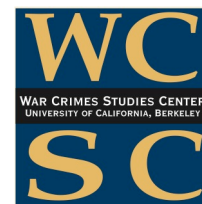
### **Contempt Proceedings Against Dhaka City Unit Jamaat Leaders**<sup>vi</sup>

Counsel for three Jamaat leaders—Mr. Selim Uddin, Mr Hamidur Rahman Azad MP, and Mr. Rafiqul Islam—sought adjournment in a separate contempt matter for another week. He claimed that “unavoidable circumstances” prevented them from being able to appear in Court. The three leaders had been ordered to personally appear before Tribunal 2 after contempt proceedings commenced against for comments they made about the tribunal during a public engagement on 4 February 2013 (one day prior to Qader Molla’s Judgment). The prosecution strongly objected to their absence, and stated that an arrest warrant should be issued against each. The Judges stated that the absent politicians must be personally present before the court on Sunday 3 March 2013, or face severe consequences.

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\* AIJI is a collaborative project between the East-West Center, in Honolulu, and the War Crimes Studies Center, at the University of California, Berkeley. Since 2003, the two Centers have been collaborating on projects relating to the establishment of justice initiatives and capacity-building programs in the human rights sector in South-East Asia. The Program is funded through the East-West Center, thanks to generous grants from the Open Society Foundation and private donors.

This issue of **ICT TRIAL OBSERVER** was authored by Cole Taylor, with contributions from Nuzhat Hossain, Suhan Khan, and Penelope Van Tuyl, as a product of AIJI’s Trial Observation Program in Bangladesh. A complete archive of daily summaries and weekly digests covering the progress of all cases pending before the ICT are available at [www.bangladeshtrialobserver.org](http://www.bangladeshtrialobserver.org), and are cross-posted on the East-West Center’s AIJI portal (<http://www.eastwestcenter.org/research/asian-international-justice-initiative/>) as well as the War Crimes Studies Center homepage (<http://wcsc.berkeley.edu>).



<sup>i</sup> See the Charge Framing Order here: <http://bangladeshtrialobserver.files.wordpress.com/2012/12/sayedee-indictment.pdf>; Note that the format of the Charge Framing Order alleges multiple crimes under one charge. For example, under Charge 2 Sayedee was accused of both Genocide and Persecution as a Crime against Humanity. This format allows the total number of alleged crimes to be greater than the 20 Charges.

<sup>ii</sup> For a detailed examination of the Sayedee Judgment please view our Special Edition Report, available at:

<sup>iii</sup> Our Special Issue Report on the Sayedee verdict is available at:

<sup>iv</sup> The Prosecution did not specify whether they were citing the Trial or Appeals Judgment, or some other Decision of the Court in that case. Presumably they were referencing the 1998 *Akayesu* Trial Judgment, in which the ICTR held that civilians may be held liable for war crimes on the basis of command responsibility.

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<sup>v</sup> See initial coverage of contempt proceedings against MK Anwar in our 24 January post:  
<http://bangladeshtribunalobserver.org/2013/01/25/24-jan-2013-ict-2-daily-summary-contempt-proceedings-mk-anwar/>

<sup>vi</sup> See discussion of contempt proceedings against these Jamaat leaders in Weekly Digest Issue 5:  
<http://bangladeshtribunalobserver.org/2013/03/01/weekly-digest-issue-5-february-17-21/>