

# THE BANGLADESH 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, hartals again interrupted our coverage of the ICT trials. Sunday, 17 March 2013, was a national holiday, and the Tribunal was in recess. Hartals (strikes) were called by the opposition party coalition on Monday and Tuesday, and due to security concerns our researchers were unable to attend. Therefore, our summaries for those days are drawn from media sources as well as conversations with the Defense and Prosecution. On Thursday, both Tribunal 1 and Tribunal 2 adjourned early, after it was announced that the President of Bangladesh had passed away on Wednesday.

In Tribunal 1, the Defense and the Prosecution in the *Gholam Azam* case presented in-depth arguments regarding the applicability of the doctrine of command responsibility to civilians. In the *Salauddin Qader Chowdhury* case, the Defense cross-examined Prosecution witness 21, who had begun providing testimony the previous week. The Tribunal also heard the examination of Prosecution witness 3 in the *Nizami* case. The Tribunal disposed of two Defense applications, and the Defense for *Sayedee* presented two additional applications: one for bail, and the other for certified copies of documents from two criminal cases in the district court system. Finally, citing the growing insecurity in Dhaka, Defense counsel for Salauddin Qader Chowdhury applied for police escort to the Tribunal on hartal days.

### TRIBUNAL 1: CASES IN SESSION THIS WEEK

- *GHOLAM AZAM*
- *SALAUDDIN QADER CHOWDHURY*
- *DELWAR HOSSAIN SAYEDEE*
- *MOTIUR RAHMAN NIZAMI*

### TRIBUNAL 2: CASES IN SESSION THIS WEEK

- *ABDUL ALIM*
- *KAMARUZZAMAN*
- *ATM AZHARUL ISLAM*
- *CONTEMPT PROCEEDINGS*

Tribunal 2 experienced significant delays due to the hartals, absence of counsel, and illness of witnesses. The court heard the Defense's cross-

examination of Prosecution witness 13 in the *Abdul Alim* case and granted an extension for the production of a Defense witness in the *Kamaruzzaman* case. Additionally, the Tribunal dealt with ongoing contempt proceedings against Jamaat leaders.

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

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

Last week, the Chairman of Tribunal 1 requested that the Prosecution and Defense present arguments about whether a civilian (here, Gholam Azam) could be held criminally liable under the doctrine of command responsibility. The Prosecution presented their arguments on March 18. However, on March 19th the senior Defense counsel was absent, and a junior counsel member requested adjournment for two days. The Tribunal adjourned the proceedings until 20 March, but imposed a fine of taka 5,000 for the delay. The Defense submitted their response on 20 March 2013.

#### **Prosecution Submissions on Civilian Superior Responsibility**

Prosecutor Tureen Afroz presented the argument that Gholam Azam could be held liable under the doctrine of superior or command responsibility even though he was a civilian at the time of the Liberation War. Prosecutor Afroz noted that the doctrine of superior responsibility grew out of the military doctrine of command responsibility, and allowed for liability where a superior failed to prevent or punish subordinates who committed crimes. She argued that there were two types of superiors covered by the doctrine: military superiors and civilian superiors. She outlined historical examples of the application of the doctrine, including the Leipzig Trial of Captain Muller (1921), Manila Trial of General Yamashita (1945), Tokyo Trial of General Matsui (1946-48), and the USA Military Tribunal Trial of Captain Medina (1970).

The Prosecution then outlined their view of the contemporary formulation of the doctrine, noting that the International Criminal Tribunal for the Former Yugoslavia (ICTY) codifies the doctrine under Article 7(3) of its Statute, while the doctrine appears under Article 6(3) in the Statute of the International Criminal Tribunal for Rwanda (ICTR). Ms. Afroz stated that both ICTY and ICTR have applied the doctrine to civilians, and that the standards of liability for military and non-military superiors are similar. She cited the Tokyo Tribunal and Nuremberg Tribunal as historical examples where civilians were held liable for superior responsibility. Additionally, she cited a number of ICTY and ICTR cases, which she argued stood in support of her argument, as examples of trials of civilian superiors.<sup>1</sup> The Prosecution also pointed to Article 28(b) of the International Criminal Court's Rome Statute to show explicit codification of civilian superior responsibility under law.

The Prosecution argued that, while the respective statutes of ICTY, ICTR and the ICC require the civilian superior to have knowledge of the commission of crime by a subordinate in order for liability to attach, under the ICT Act of 1973 there is *no mens rea*

or mental state requirement. Therefore, Ms. Afroz argued that the Prosecution does not need to prove knowledge, whether actual or constructive, in order to establish that Gholam Azam is liable under the superior responsibility doctrine. She argued that the ICT Act codifies superior responsibility as a “strict liability” crime, which would mean that a superior would always be liable for the criminal act of his subordinate, regardless of his knowledge or intent vis-a-vis the subordinate’s crime.

The Prosecution submitted that, under section 4(2) of the ICT Act of 1973, a superior will be directly liable for ordering, permitting, acquiescing or participating in the commission of a crime, or for being connected with plans and activities involved in the commission of a crime. A superior will bear vicarious liability where he or she fails or omits to discharge the duty to maintain discipline or to control or supervise actions of subordinates, or fails to prevent the commission of a crime. The Prosecution further stated that they must prove that perpetrators had committed a crime specified under Section 3 of the ICT Act. To do this, the Prosecution must first identify the perpetrator, and must prove the commission of the crime beyond a reasonable doubt. Secondly, the Prosecution must show that a superior-subordinate relationship actually existed between Gholam Azam and the perpetrators of crimes, either because of de jure or de facto authority as illustrated by the his effective control over their actions. Ms. Afroz cited ICTR cases,<sup>ii</sup> as well as ICTY cases<sup>iii</sup> as examples of cases dealing with questions of *de jure* and *de facto* authority in formal or informal hierarchical relationship within an organizational structure.

The Prosecution argued that superior responsibility may be found where the chain of command is direct or indirect. In support of this argument, they cited various ICTR and ICTY jurisprudence.<sup>iv</sup> Additionally, they relied on the ICTR’s *Baglishema* case for the proposition claimed that liability due to a failure to punish may arise where a superior fails to maintain discipline among his subordinates. The Prosecution acknowledged that “effective control” for civilian superiors could take a different format than that of military superiors, citing ICTR cases *Ntakirutimana* (2003) and *Nahimana* (2007)

Having established their position regarding the doctrine of superior responsibility, in general, the Prosecution then made arguments applying the doctrine to the facts of the case at hand. First they stated that they had established that crimes specified in Section 3 of the ICT Act of 1973 had in fact been committed, as proven by the testimony of Prosecution witnesses 1, 2, 3, 11, 12, 13 and 14; Defense witness 1; and Exhibits 117-59, 162-65, 170-204, and 206-494. The Prosecution identified the perpetrators as 1) members of Jamaat-e-Islami and 2) the Pakistani Occupation Army. Ms. Afroz argued that, by 9 April 1971, the political group Jamaat-e-Islami had become an “organized armed group,” because members had voluntarily taken up arms, and operated as a militia or paramilitary force. They then asserted that Gholam Azam had *de jure* superior responsibility over Jamaat-e-Islami. The Prosecution characterized the Peace Committee, Rajakars, Al-Badr and Al Shams as groups under his control, and argued that he had *de facto* authority over the Pakistani Army itself. The Prosecution further asserted that Gholam Azam was the “brain” behind the planning of the atrocities, and that he controlled his subordinates’

finances. Additionally, they alleged that Gholam Azam's intervention could have stopped attacks. They claimed that the Accused had policy control, operational control, financial control, information control and disciplinary control over his subordinates. According to one Prosecution characterization, Golan Azam "functioned as the Lighthouse of atrocities" in 1971.

### **Defense Submission of Superior Responsibility**

The Defense responded to the Prosecutionsubmissions by arguing that the doctrine of command responsibility as described under Section 4(2) of the ICT Act 1973 is not applicable to civilian superiors.

### **Interpretation of Law and Intent of Legislation**

The Defense first argued that the legislative intent behind the passage of the ICT Act of 1973 (and subsequent amendments) suggested that command responsibility was only to be applied to "superiors" in military or auxiliary forces. Counsel for the Defense submitted that when section 3(1) of the ICT Act was amended in 2009 to add "individual or a group of individuals" to the court's jurisdiction, Parliament neglected to amend section 4(2), which codifies the doctrine of superior responsibility (or command responsibility). Therefore, the Defense argued, the Prosecution could not rely on section 4(2) to claim that an "individual or group of individuals" were liable under command responsibility. Defense Counsel argued that the text of Section 4(2) clearly limits the doctrine's application to commanders and superior officers of military and auxiliary forces. He emphasized that the use of the terms 'commander or superior officer' and 'persons under his command or his subordinates' in Section 4(2) support the Defense's position. Additionally, the Defense cited to Section 134 and 135 of the Penal Code, the Army Act of 1952, Air Force Act of 1953, Navy Ordinance of 1961, Bangladesh Rifles Order of 1972, Battalion Ansar Act of 1995, and Armed Battalions Ordinance of 1976, noting that none of these Acts have used the term of "superior officer" or "commander" to describe the authority of a political party leader or a civilian.

The Defense noted that Gholam Azam was the Ameer (chief) of East Pakistan Jamaat-e-Islami in 1971, and was a member of the Central Peace Committee. As such, he was a political leader and cannot be classified as a "superior officer" or "commander" of the Central Peace Committee or of an armed branch of Jamaat-e-Islami, Defense Counsel argued. He added that Prosecution additionally had been unable produce any documentary evidence or any Prosecution witnesses describing Gholam Azam as a superior officer or commander of the Central Peace Committee or Jamaat-e-Islami. The Defense argued that the Prosecution was mistaken in relying on the word "supervise" in the ICT Act, as there is no evidence that the Act intended to expand the doctrine to civilian superior responsibility. He referred to numerous examples of "supervise" being used to refer to superior or command responsibility in military or para-military settings. In particular, he referenced several cases at the ICTY and the ICTR.<sup>v</sup>

The Defense acknowledged that the Prosecution had cited to cases in the ICTY, ICTR and the Special Court of Sierra Leone that showed that the doctrine of command responsibility can apply to political leaders and civilians.<sup>vi</sup> However, the Defense distinguished the current case from these cases, arguing that the articles defining command responsibility for the ICTY, ICTR and Special Court for Sierra Leone use only the term “superior,” unlike the ICT Act of 1973, which clearly uses the terms “superior officer” and “commander” in defining who may be liable under the doctrine. Therefore, the Defense argued, there is no scope to rely on the decisions of the cases decided by the ICTY, ICTR or Special Court of Sierra Leone. The Defense further submitted that customary international law in 1971 did not allow for liability of civilians under a doctrine of command responsibility. There was no application of the doctrine to civilians in 1973 or before. If the Tribunal were to depart from the standard of customary international law as it stood in 1971, Defense argued, it would be a violation of *nullum crimen sine lege* (the principle of legality) which provides that there can be no crime and no punishment where there is not first a law defining the crime.

#### Defective Charge Framing Order

The Defense secondly argued that, even if the ICT Act of 1973 was amended to allow for civilian liability under the doctrine of command responsibility, Gholam Azam could not be held liable for command responsibility, because he was not charged under section 4(2) of the Act. Gholam Azam has only been charged for conspiracy, planning, incitement and complicity in Crimes against Humanity and Genocide.

The Defense submitted that in order to make Gholam Azam responsible for the offences committed by Razakars, Al-Badr, and Al-Shams forces under section 4(2) of the ICT Act, the Charge Framing Order must have plead that Gholam Azam was the superior leader of those forces and held a superior-subordinate relationship. The Defense argued that the Charge Framing Order did not make any such charges under section 4(2). Additionally, Azam has not been charged with the commission of any crime by auxiliary forces. Therefore, Defense argued, the charges do not contain the necessary elements required to convict Gholam Azam for superior command and responsibility. In support of his arguments on specificity of pleading, Counsel referred to a number of ICTR and ICTY cases.<sup>vii</sup>

#### Elements of Liability for Superior Responsibility

Debate over the specific elements of command responsibility in light of the fact of the case continued after lunch. Defense counsel Imran Siddiq argued that even if the ICT Act were amended and there were no defects in the Charge Framing Order, the Prosecution would have to prove 1) the existence of a superior-subordinate relationship between Gholam Azam and members of the Razakars, Al-Badr, and Al-Shams forces; 2) that the subordinates of Gholam Azam did in fact commit crimes under section 3(2); 3) that Gholam Azam knew or had reason to know that crimes would be or had been committed; 4) that Gholam Azam failed to fulfil his duty to control and supervise his

subordinates and 5) that Gholam Azam failed to take the necessary and reasonable steps to prevent such crimes.<sup>viii</sup>

Regarding the first element, the Defense submitted that a superior is a person who has effective control over his subordinates.<sup>ix</sup> They argued that the superior-subordinate relationship indicates existence of a *de jure* or *de facto* hierarchical chain of authority where the accused has effective control over his subordinates.<sup>x</sup> Defense counsel argued that simply holding a position is not sufficient to show effective control. The Prosecution must prove that Gholam Azam had the material ability to prevent and/or punish members of the Razakars, al-Badr and Al-Shams for committing crimes, that he had powers to issue orders or disciplinary action against them, or had the power to submit reports to competent authorities in order to take disciplinary measures.<sup>xi</sup> The Defense argued that the head of the Razakar forces would be the individual with effective control over Razakar members. Imran Siddiq noted that Prosecution witness 2 testified that he could not say whether Gholam Azam had such power to punish or take disciplinary action. Additionally Prosecution witness 16, the Investigating Officer, testified that he did find the existence of such power during his investigation.

Justice Anwarul Haque interjected that Gholam Azam was a member of Central Peace Committee, and asked who would be liable for the crimes committed by the members of the Union level Peace Committee. Imran Siddiq replied that the relevant question is whether Gholam Azam had effective control over the union level Peace Committee. He submitted that the Union level Peace Committee was formed under the local administration, and that Gholam Azam had no effective control over them. Common political position does not prove effective control, Counsel argued. The Defense further submitted that a formal designation is not necessary to establish command responsibility.<sup>xii</sup>

The Defense submitted that no duty was imposed upon Gholam Azam. There was no hierarchical chain of authority showing his superior command status. The Prosecution has not produced any oral or documentary evidence showing that Gholam Azam was responsible for paying the salary or other costs of any members of the Peace Committee, Razakars, Al-Badr, or Al-Shams forces. The Prosecution could not even show that Gholam Azam had the power to issue orders, Defense argued. The Defense also submitted that Gholam Azam had no power over the Pakistani army. The Defense alleged that the Prosecution had failed to prove the required *mens rea* of knowledge—showing that Gholam Azam knew or had reason to know that the crimes were about to be committed or had been committed by his alleged subordinates.

#### ***CHIEF PROSECUTOR VS. SALAUDDIN QADER CHOWDHURY***

In the *Chowdhury* case, the cross-examination of Prosecution witness 21, Abul Bashor, was scheduled for 18 March. However, the senior Defense counsel was absent, so Salauddin Qader Chowdhury conducted the cross-examination himself. On 19 March, the

Prosecution conducted its examination-in-chief of Prosecution witness 22, Anil Baran Dhar, and Prosecution witness 23, Bano Gopal Das.

### **Defense Cross-Examination of Prosecution Witness 21**

Abul Bashor testified that he did not know where Salauddin Qader Chowdhury and his father Fazlul Qader Chowdhury were in 1964, and could not say who the MP (Member of Parliament) for his area was in 1964. He acknowledged that Fazlul Qader Chowdhury was the speaker of the National Council in 1964. Bashor said that he did not know whether at that time Fazlul Qader Chowdhury lived in Islamabad with his family members or not. Bashor testified that he had never gone to Goods Hill, but that he knew that Fazlul Qader Chowdhury resided there. The Defense sought to establish that Goods Hill was controlled by the Pakistani Army during the war. Responding to Defense questions, Bashor stated that he was unaware of whether Fazlul Qader had handed Goods Hill over to anyone in 1971. He also claimed not to know who controlled Ishpath Hill, Batali Hill, or CAOB hill at that time.

According to Bashor, during the Pakistan-India war he received training in use of the light machine gun at the Chittagong Collegiate School. He stated that he had been trained by the Pakistani Army for the purpose of protecting Pakistan. Bashor testified that he did not receive any remuneration from the Pakistani government during the training. On 25 March he claims to have joined along with others under the leadership of Mojid MNA (Member of National Assembly) to stand against Pakistani forces and to protect the Chittagong port area. The Pakistani Army reportedly fired at them, and some people died. However, Bashor admitted in his testimony that he does not remember the name of anyone in the attacking group. The witness denied that no one was killed in the Chittagong port area on the night of 25 March. He testified that the Bengalis of the army camp at Soloshor, EPR camp at Halisohor and Dampara Police Line took control of Chittagong city.

Bashor told the Court that he had gone to India in August and, after receiving training, returned with a group of 233 persons. Bashor claimed he was the commander of this group. He testified that the Gomdandi Razakar headquarters were located at the south side of Gomdandi rail station at the CO office. He stated that his group attacked the Razakar headquarters on 28 August of that year. However Bashor could not estimate how many Razakars or Pakistani troops were killed in the fight. He testified that 76 freedom fighters took part in the attack, and that it lasted half an hour. Bashor testified that he left 3 persons behind, and that among them two died and one was injured. Bashor said that they tried to take the injured persons with them, but they failed. He testified that he subsequently left for India on 31 August 1971.

On the morning of 29 August, Bashor was reportedly at Karuldanga Hill, and learned that Salauddin Qader Chowdhury and members of the Pakistani Army had taken Wazed to Goods Hill. Bashor testified that he did not know whether Salauddin Qader Chowdhury or his father had any job or career. He also claimed he did not know if Salauddin Qader

Chowdhury was politically involved or not. Bashor claimed that he had heard from others that Salauddin Qader Chowdhury had been involved with anti-Liberation War activities. He admitted that he had never previously filed a case against Salauddin Qader Chowdhury, but he denied that this was because his only evidence was hearsay. He also denied that the Prosecution had given him taka 20,000 in exchange for his testimony.

### **Examination-in-Chief of Prosecution Witness 22**

On 19 March, the Prosecution conducted its examination-in-chief of Prosecution witness 22, Anil Baran Dhar. The witness testified that five or six people, including Abdul Mabud and Golam Ali, came to his home on the morning of 13 April 1971, and told him and the others there that the Pakistani Army would be travelling through the village on the Rangamati road, but would not cause anyone any difficulties. Most of the inhabitants of the area did not believe these assurances, and hid out of fear. Dhar said that he and his father stayed in their house, but they helped his mother, brother, and sisters leave to hide elsewhere.

Dhar stated that, at about 1:00 or 1:30 pm, Fazlul Qader Chowdhury and his supporters, including Salauddin Qader Chowdhury, entered the village with chanting pro-Pakistan slogans. He said that he and his father, Upendra Lal Dhar, were told to come out from their house. His uncle, Manindra Lal Dhar, and another called Nepal Chandra Dhar were also present with them in the yard of the house. Dhar testified that the pro-Pakistan group that had entered the village told him, his father, and the others to stand in a line. The men complied, and the troops shot at them. Dhar claimed that he was shot and lost consciousness. When he regained consciousness he realized he had been shot in his left hand and in the back side of his chest. He testified that the other three were dead, including his father.

After regaining consciousness, Dhar left for his maternal uncle's house, located at Ishapur, Fatikhsori. Once there, he claimed he received assistance from Dr. Jafor, and was admitted into the Chittagong Medical College Hospital. He acknowledged that he provided a false identity in order to gain entry, claiming that he was Abdul Malek, son of Tajul Islam. While in the hospital, the doctors amputated his left arm from the elbow down, and removed the bullet from his back. Dhar showed the Tribunal his amputated hand and the scar of the bullet injury. He testified that the Muslim neighbors in his area buried the corpses of his father and other two victims in the yard of Tejendra Lal Biswash.

After his release from the hospital, Dhar heard that similar incidents also occurred on 13 April the villages of Gohira, Gohira Biswash Para, Kundeshori, Gogothmollo Para and Unosothur Para. He also heard that Umesh Chandra Biswash was also killed. Dhar stated that he filed a case at the Rauzan police station, accusing Saluddin Qader Chowdhury and others of involvement in the incident. He identified Salauddin Qader Chowdhury in the dock.



### **Prosecution Examination-in-Chief of Prosecution Witness 23**

The Prosecution also conducted their examination-in-chief of Prosecution witness 23, Bano Gopal Das, on 19 March 2013. He testified that during the Liberation War he was 18 or 19 years old, and that he joined to the fighting after 25 March 1971. He claimed that he went to India in mid-May to receive training. He estimated that he returned around the end of June and joined a group of Freedom Fighters under the command of Solaiman in Boalmari Upozilla. He said that several Freedom fighter groups in Boalmari decided to jointly attack the Razakar camp located at the CO office in Boalmari. Das testified that they attacked the Razakar camp at midnight on 28 August. They found out that a patrol train was coming from Kalurghat. He testified that during the fight EPR Habildar Fazlul and Rezaul Karim, alias Baby, died, and Wazed was shot and injured. He said that the freedom fighters fled because of the imminently arriving patrol train, and claimed they were unable to take the bodies of the victims or the injured with them. Das testified that his group returned to their camp at the house of Shen, in Josthopura, Boalmari.

Das testified that the following day he heard from an informer that Salauddin Qader Chowdhury had come to the scene of the fight along with the Pakistani army, and had abducted Wazed after spitting in his face. He claimed he heard that Salauddin took Wazed to Goods Hill, and that Wazed was never heard from again. The witness also stated that after 16 December 1971 the freedom fighters had captured some Razakars, including Zakir and Siraj. He said that when the two Razakars were interrogated they confirmed the information provided by the informant.

The witness alleged that Salauddin Qader Chowdhury helped Muslim League supporters and the Pakistani army kill 300 to 350 persons in Shakpura and Kadurkhil. He said that a monument was built at Shakpura on the site of the mass grave, and that work on a monument at Kadurkhil is ongoing. Das said that, after the incident, most of the people of this area fled to India. He identified Salauddin Qader Chowdhury in the dock.

### **Defense Application**

On 19 March 2013 Salauddin Quader Chowdhury filed a petition seeking protection from defamatory harassment while in custody. Chowdhury has been charged with committing sodomy against another inmate of the Kashimpur-1 jail where Chowdhury is being held. The alleged victim is evidently serving a 31-year sentence, and was apparently delegated to serve Chowdhury, who has special accommodations in jail. The charges were not brought by the alleged victim himself, but by the victim's father. Chowdhury contests the charges, and has stated that he believes them to be backed by parties with vested interests who seek to destroy him politically. In addition to protection from defamatory statements, Chowdhury requested that the Tribunal order an investigation into the allegations. The Tribunal disposed off the petition, stating that the matter was not related to the case, and was a matter for the jail authorities. However, the Tribunal directed the jail authorities to take steps so that Salauddin Quader Chowdhury could assign the power of attorney to a representative for filing a suit in this regard.

*CHIEF PROSECUTOR VS. DELWAR HOSSAIN SAYEDEE*

**Defense Applications**

On 20 March 2013 Defense counsel for Delwar Hossain Sayedee submitted two applications. The first was a request for bail in regard to two cases filed against Sayedee: Case No 9(8)09 in the Pirojpur Sadar Police Station, and Case No 4(9)09 in the Zianagar Police Station. The second application requested certified or authenticated copies of the FIR, Charge Sheet, Statement of witnesses and other relevant documents related to these cases in Pirojpur Sadar Police Station and Zianogor Police Station. The Tribunal heard arguments on the applications on 20 March 2013. The Defense submitted that the two cases had been transferred to the Investigation Agency of the ICT, and that the cases were still under investigation. They stated that there was no forum in which Sayedee could seek a legal remedy other than ICT. Therefore the Defense requested bail before this Tribunal. The Prosecution opposed the applications, stating that none of the documents related to these cases were exhibited in the ICT case against Sayedee. He further argued that there was no connection between the ICT case and the outside. The Tribunal rejected both the Defense applications, stating that Tribunal had no authority to grant bail or demand production of documents relating to these two cases.

*CHIEF PROSECUTOR VS. MOTIUR RAHMAN NIZAMI*

**Examination-in-Chief of Prosecution Witness 3**

Prosecution witness 3, Rustom Ali Mollah, testified that he heard firing begin around midnight on 25 March 1971. According to him, the Panjabi Army set up their camp at the Physical Training College on 26 March 1971, and held more than 150 EPR members from Pilkhana captive in the camp. Rustom testified that the Pakistan army brought some intellectuals, artists, doctors and others to the camp in the evening of the same day, and that those individuals were tortured and killed. Two or three months later, the Pakistani army reportedly began to rape married and unmarried Bengali women into the camp. Women who resisted were tortured before being killed, according to Rustom.

The witness testified that, 4 or 5 months after the camp was established, groups of Razakars and Al-Badr began using the camp as a training center. During that time he saw Motiur Rahman Nizami, Ghulam Azam and Mujahid come to the training center. Rustom claimed that the Razakars guarding the gate told him that these men were their leaders. He only saw Nizami, Gholam Azam and Mujahid that once, but he claimed that he heard from others who came to the training centre at other times as well. On the day that he saw them enter the training center, they reportedly went to the office of Colonel, and stayed there one and a half hours.

The witness claimed that he crossed the Basila river almost six months after the beginning of the Liberation War to look for the freedom fighter camp located at Bakutta. On his way there, he met with freedom fighter Bichchu Jalal, and expressed his willingness to join the freedom fighters. However, he said that Jalal advised him not to

join, and told him to work as an informer to help obtain information about the Razakar training centre. After that, he claimed to have provided information about the camp to the freedom fighters. Between 2-10 days after beginning work as an informer, he again met with Buchhu Jalal, who informed him that the freedom fighters were planning to attack the camp. Jalal asked Rustom to show him the different sides of this camp. Two days later the freedom fighters attempted to attack, but failed because of the large numbers of Razakars and Al-Badr.

The witness also testified that about the 10 days before Bangladesh declared independence, when he witnessed the Panjabi army, Razakars, and Al-Badr's members bring some captive Bengali girls, members of the Bengali army, and freedom fighters to the camp to be tortured. Among the captured individuals were 200-250 persons from the freedom fighter group. Rustom testified that these captives were tortured by being hung up-side-down and having bones broken. They were later killed in the dining hall, and their bodies were dumped in the Rayerbazar mass graveyard. He identified Motiur Rahman Nizami in the dock.

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

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

#### **Testimony of Prosecution Witness 13**

##### Examination-in-Chief of Prosecution Witness 13

Tribunal 2 heard testimony from Prosecution witness 13, Kazi Ezaz Ahmed, the grandson of victim Abul Kashem. He testified that Abdul Alim did not respond to Ahmed's family's plea during the war to release Kashem. Prosecution witness 12, Laily Begum, is the aunt of Ahmed, and the daughter of Kashem. Ahmed's testimony closely followed hers. He claimed that the Pakistani Army and Razakars came to their house on 24 July 1971, and took Kashem, as well as Ahmed's father, Kazi Nazrul Islam, to the army camp at Teghar Bridge. Ahmed testified that he heard his father, aunt and others discuss going to the Peace Committee office in order to ask Abdul Alim to release Kashem. They submitted their plea, but did not receive a response. Then on 25 July, a non-Bengali by the name of Atikulla came to their house and assured them that if they paid taka 5,000 to Major Afzal, Kashem would be released. However Ahmed said that Atikulla later returned with the money, and said that Alim had already ordered the killing of Kashem.

##### Cross-Examination of Prosecution Witness 13

During cross-examination, the witness acknowledged that many people who lived in Kazipara during the 1971 war are still alive. He acknowledged that many of his friends and family, including his father and grandfather, were supporters of Awami League in 1971. In response to the Defense counsel's suggestion that the witness's father had a good relationship with Mr. Alim as the Chairman, the witness replied that his father had

the kind of relation that one would expect between a chairman and local president. He stated that his grandfather was not Awami League president or secretary during 1971, but acknowledged that he did belong to the Awami League Party.

The Defense suggested that Alim was not a Rajakar, and that the witness' grandfather had never been abducted by Alim. Rather, the Defense claimed that the witness' grandfather and five or six other men had died during an encounter with the Pakistani army in Teghor Bridge towards the end of July. The witness denied these suggestions.

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

#### **Request for Adjournment**

In the *Kamaruzzaman* case, the Defense senior counsel failed to appear on the hartal days. Junior counsel sought additional time, and claimed that they could not produce the scheduled witness, because travel into Dhaka from Sherpur was not possible due to the hartals. On 20 March, the Tribunal adjourned the case for one day. They ordered that the witness be produced on 21 March 2013.

The Tribunal expressed its dissatisfaction over the repeated requests from the Defense for additional time, particularly with regard to the timely production of Defense witnesses. The Defense argued that the Tribunal often granted the Prosecution similar adjournments, and had even given 24 days of additional time for the production of PW-12. Thus they argued that there was an imbalance between the court's attitudes toward the two parties, and that the Defense were being prejudiced. The Tribunal rejected this argument, and stated that because the onus to establish an independent case lies with the Prosecution and not the Defense, the Tribunal had granted the Prosecution additional time. They said the Defense could not be allowed to delay the proceeding by referring to such examples. On March 21, the Defense again requested additional time to produce their witness. The Tribunal scheduled the case for 24 March 2013, but warned that if the Defense again failed to produce the witness the Tribunal would end testimony and move to Closing Arguments.

### ***INVESTIGATION OF ATM AZHARUL ISLAM***

The Tribunal fixed 8 May for the Prosecution's submission of their progress report on the ongoing investigation against ATM Azharul Islam. The Prosecution originally requested three months additional time. The Jamaat leader was arrested in August of last year.

### ***CONTEMPT PROCEEDINGS***

#### **Contempt Proceedings against Jamaat Leaders**

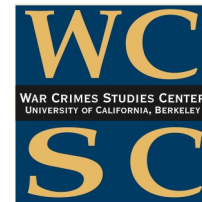
Defense counsel for the three Jamaat politicians facing contempt charges filed applications on behalf of Selim Uddin, Hamidur Rahman Azad MP, and Rafiqul Islam, requesting the court to dispense of the requirement that they appear in person. The

counsel submitted that all of them have highest regards for the court, and are unable to comply with the court's order solely because of security concerns. The court rejected the applications, stating that the two Jamaat leaders who have not yet appeared are now fugitives. The court made clear that the Defense submissions could not dispense with the requirement of personal appearance. The Tribunal fixed the next hearing for 10 April 2013.

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<sup>i</sup> These included the *Celebici* (1998), *Aleksovski* (1999), *Kordic & Cerkez* (2001), *Boskoski* (2008) and *Miliutinovic* (2009) cases at the ICTY, as well as the *Akayesu* (1998), *Kambanda* (1998), *Serushago* (1999), *Musema* (2000), *Bagilishema* (2001), *Kayishema* (2001), *Kajelijeli* (2005) and *Nahimana* (2007) cases at the ICTR

<sup>ii</sup> *Semanza* (2003), *Kamuhanda* (2004), *Kajelijeli* (2005), *Ntagerura* (2006), and *Nahimana* (2007).

<sup>iii</sup> *Stakic* (2003), *Brdjanin* (2004), and *Blagojovic* (2005)

<sup>iv</sup> See *Kamuhanda* (2004) and *Kajelijeli* (2005), and ICTY cases *Blaskic* (2004), and *Halilovic* (2005)

<sup>v</sup> Cases cited included the ICTY's *Celebici* Trial Judgment at paragraphs 611, 612, 622 and 1250; *Kordic and Cerkez* Trial Judgment at paragraphs 369 and 410; *Kvočka* Trial Judgment at paragraphs 361 and 367; *Krnjelac* Trial Judgment at paragraph 530; and the ICTR's *Bagosora* Trial Judgment at paragraphs 593, 907 and 971.

<sup>vi</sup> ICTY cases: *Delalic* Judgment (Appeals Chamber, 20 February 2001, para 195-6), *Aleksovski* (Appeal Chamber, 24 March 2000, para 76), *Bagilishema* (Appeals Judgement, 3<sup>rd</sup> July 2002, para 51), *Kajelijeli* (Appeals Chamber, 23<sup>rd</sup> May 2005, para 85), *Kordic and Cerkez* (Trial Chamber, 26 February 2001, para 415-6), *Mucic* (Trial Chamber, November 16, 1998, para 377-78); ICTR cases: *Kayishema and Ruzindana* (Trial Chamber), 21 May 1999, para 213-215, *Musema* (Trial Chamber, 27 January 2000, para 148) and *Nahimana, Barayagwiza and Ngeze* (Trial Chamber), December 3, 2003, para 976; and The Special Court of Sierra Leone: *Brima* (Case no. SCSL-04-16-T, 20 June 2007, para 790).

<sup>vii</sup> ICTR Cases: *Ntagerura, Bagambiki and Imanishimwe* (Appeals Chamber), July 7, 2006, para 158; *Muvunyi* (Appeals Chamber), August 29, 2009, para 19; *Nahimana, Barayagwiza and Ngeze* (Appeals Chamber), November 28, 2007, para 323; *Karera* (Trial Chamber), December 7, 2007, para 563 for application of Article 6(3) of ICTR Statutes; ICTY cases: *Blaskic* (Trial Chamber), 3<sup>rd</sup> March 2000, para 294 for application of Article 7(3) of ICTY Statutes.

<sup>viii</sup> In support of this argument, the Defense cited ICTY case *Kunarac, Kovac and Vukovic* (Trial Chamber) February 22, 2001, para 395-6.

<sup>ix</sup> Counsel referenced ICTY case *Blaskic* (Trial Chamber), March 3, 2000, para 335.

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<sup>x</sup> Counsel referenced ICTR case *Kamuhanda* (Trial Chamber), January 22, 2004, para 604.

<sup>xi</sup> Counsel referenced the ICTY case *Blaskic* (Trial Chamber), March 3, 2000.

<sup>xii</sup> For this proposition, Defense referenced *Celebici* (Appeal Judgment), Para 197 and para 306; *Aleksovski* (Trial Judgment) June 25, 1999, para 76.