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 Tribunal 1 dealt with the *Motiur Rahman Nizami, Salauddin Qader Chowdhury,* and *Gholam Azam* cases. In the case against Nizami the Defence cross-examined Prosecution witness 3, Rustom Ali Mollah. In the case against Salauddin Qader Chowdhury the Tribunal heard both the examination-in-chief and cross-examination of Prosecution witness 24, Babul Chakraborty.

TRIBUBAL 1: CASES IN SESSION THIS WEEK

- *MOTIUR RAHMAN NIZAMI*
- *SALAUDDIN QADER CHOWDHURY*
- *GHOLAM AZAM*

Gholam Azam's Defence counsel continued their Defence Closing Arguments, addressing the conspiracy allegations under Charge 1, as well as legal arguments on incitement. A hartal was called for 2 April 2013 and, though the Defence was scheduled to continue their arguments, the senior Defence counsel Abdur Razzaq did not attend proceedings. A junior Defence counsel filed an application for adjournment. The application was granted, but the Tribunal passed an order directing the Defence to complete their arguments on legal points by 4 April, and warning that failure to do so would effectively terminate the Defence's Closing Arguments. On 3 April the Defence filed an application requesting that the Tribunal's order be recalled "in the interest of justice." They requested an additional four days for arguments, and stated that compelling the Defence to conclude their Closing Arguments by the 4th would seriously prejudice the Accused. Abdur Razzaq also stated that he could not make himself available on hartal days. He noted that the other courts of the country, from the magistrate level to the Supreme Court, do not convene on hartal days. He argued that, although he is supporter of a political party, he appears before the Tribunal solely as an advocate, and has refrained from making any political statements over the last 3-4 years. The Tribunal did not give a formal reply to the request but allowed the Defence to continue its arguments on the 4th.

In Tribunal 2, the Court heard the Prosecution's Closing Arguments in the *Kamaruzzaman* case, during which they addressed evidentiary issues including hearsay, and legal arguments about the standard of complicity and under the doctrine of Superior Responsibility. Due to the hartal on 2 April, ICT 2 convened only briefly to allow the Prosecution to complete their examination-in-chief of the Investigation Officer in the *Mujahid* case. On 3rd April the Defence began its presentation of Closing Arguments in the *Kamaruzzaman* case, addressing factual issues in Charges 1-3 and responding to the legal issues raised by the Prosecution during their Closing Arguments.

TRIBUBAL 2: CASES IN SESSION THIS WEEK

- *KAMARUZZAMAN*
- *MUJAHID*

II. TRIBUNAL 1: DETAILED WEEKLY CASE SUMMARIES

CHIEF PROSECUTOR VS. NIZAMI

Cross-Examination of Prosecution Witness 3

The Defence cross-examined Prosecution witness 3, Rustom Ali Mollah. During the Prosecution's examination-in-chief the witness stated that he had seen Nizami at the Physical Institute, where many intellectuals, freedom fighters and women were allegedly tortured and killed. The Defence began with numerous questions about the witness' education, family and knowledge of politics during the Liberation War. Rustom Ali testified that he and his family formerly lived in a house inside the campus of the Physical Institute, where the Pakistani Army established a camp on the night of 25 March 1971. The witness told the Tribunal that they lived on the campus because his father was employed as a guard there. The rest of his family lived outside of the Institute in their village home.

The witness testified that people were detained inside the gymnasium, but that he did not know who controlled access to the gymnasium. When questioned, the witness was unable to name any of the intellectuals, artists, doctors or women who were allegedly brought to the camp.

The Defence asked about those occupying the Institute. Rustom testified that he first heard the term 'Razakar' 4 of 5 months after the beginning of the Liberation War when recruits began to receive training at the Institute. He said that he did not remember the name of the trainers but claimed they were Punjabis. He said that in every batch 2000-3000 people received training for 15 to 20 days. During the training courses the Razakars stayed in the hostel and in tents set up on the field of the Institute. The witness was unable to estimate how many batches of recruits received training, but said that training continued until the end of the war. He claimed that the main gate of the Institute was guarded by members of the Pakistani Army, Razakars and Al-Badr. The Defence asked him to name persons who had received training at the camp, but the witness was unable

to do so, and claimed he was not friends with any of them. When asked who was in charge of the Army, the witness replied that it was a Colonel.

The Defence also asked Rustom about his alleged meeting with the freedom fighter Zohir Uddin Jalal, who testified as Prosecution witness 2.[1] Rustom testified that he met Zohir Uddin Jalal when crossing the Bosila river by himself, on his way to Vayaspur and Rampur. Rustom said he did not meet any other freedom fighters before meeting Jalal, and claimed not to have met any others during the war. He testified that Jalal never entered the camp during the Liberation War.

When pressed to give details about the alleged victims held at the Physical Institute the witness claimed that he did not know and did not talk with the persons who were tortured there. When challenged on the consistency of his testimony, Rustom denied that he had previously given interviews in which he did not claim to have seen Motiur Rahman Nizami inside the Physical Institute. He also claimed not to know whether his father had ever alleged that he saw Motiur Rahman Nizami inside the Physical institute when he was interviewed.

The Defence drew the Tribunal's attention to contradictions in the witness' testimony. They stated that Rustom did not tell the Investigating Officer about women being raped inside the Physical Institute or about his meetings with Jalal, though he testified about this information when on the stand. The Defence implied that the witness' testimony was fabricated. They also suggested that Rustom might be a drug addict and that he was colluding with Jalal to give false testimony in return for obtaining certification of being a freedom fighter.

Courtroom Dynamics

At several points the Defence objected to comments from the Prosecutors interrupting the questioning process. At one point a Prosecutor interrupted and attempted to correct an answer from the witness. Prosecutor Altaf Uddin Ahmed called Mizanul Islam, "*beadob*" (insolent), resulting in a verbal altercation between the two Parties. After both apologized, The Chairman of the Tribunal cautioned the Prosecutors against using such insults before the Tribunal.

CHIEF PROSECUTOR VS. SALAUDDIN QADER CHOWDHURY

Prosecution Witness 24

Prosecution Examination-in-Chief

This week, the Prosecution conducted its examination-in-chief of Prosecution witness 24, Babul Chakraborty. The witness testified that in 1971 he was 20 years old. He claimed that from April to 14 December 1971 the Pakistani Army, with the help of Muslim League leader Fazlul Qader Chowdhury, his son Salauddin Qader Chowdhury and the Razakars, carried out Genocide against Hindus and others in his area. In total, the witness claimed about 300-350 people were killed in his area during the Liberation War. He

testified that there is a monument near the Shakpura Primary School where the names of 76 victims have been written.

Babul testified that, on 20th April 1971, Salauddin Qader Chowdhury, with the help of Pakistani Army, shot and killed 52 people who were trying to hide in the bushes and the paddy field near Shakpura Primary School. Babul testified that they (he did not specify who specifically from the group) also killed his father, Manmohan Chakrabarty, after dragging him out of their home. Bimu Chowdhury, Gorango Chowdhury, Dibesh Chowdhury, Dhinandra Lal Chowdhury, Monmohon Chakrabarty, Babu Sukendra Bikash Nath, Dr Modhushudon Chowdhury, Krishno Chowdhury, Nikunjo Chowdhury, Orbindo Roy, Dhononjoy Chowdhury and many more were also killed. The dead were allegedly buried in a mass grave. Babul identified Salauddin Qader Chowdhury in the dock.

Defence Cross-Examination
On cross-examination Babul said that he did not know whether he had specifically named Salauddin Qader Chowdhury or Fuzlul Qader Chowdhury in prior interviews with the Investigating Officer. Additionally, the witness stated that he did not remember filing a case (no 49) on 28 February 1972 for the killing of his father. He claimed that villagers in his area in fact filed the case. Babul also claimed not to remember previously alleging that his father had been killed on 16 May 1971, not 20 April.

The witness claimed not to know whether Salauddin Qader Chowdhury and Fazlul Qader Chowdhury were accused in the previous case. He admitted that he jointly filed a case alleging that Genocide was carried out in Shakpura during 1971. He said he did not know whether Salauddin Qader Chowdhury and Fazlul Qader Chowdhury were accused in that case. The Defence suggested that Babul was a member of the Hindu, Buddha, and Christian Oikho Parishad, and that they had pressured him into providing false testimony. He denied the accusation.

CHIEF PROSECUTOR VS. GHOLAM AZAM

The Defence began their Closing Arguments in the *Gholam Azam* case this week. They addressed Charges 1-3. Charge 1 alleges that Gholam Azam committed 6 counts of *conspiracy* to commit crimes under Section 3(2) of the ICT Act.[ii] Charge 2 alleges that he committed 3 counts of *planning* crimes under Section 3(2) of the ICT Act. Charge 3 alleges that he committed 28 counts of incitement of crimes under Section 3(2) of the ICT Act. The Charge Framing Order does not specify which crime under Section 3(2) Gholam Azam conspired to commit, planned, or incited.

Allegations of Defect in the Charge Framing Order

The Defence's began by arguing that the Charge Framing Order is Defective. The Charge reads that Gholam Azam "conspired to commit above-mentioned crimes," but the alleged crime is not specified. They asserted that merely meeting with General Tikka Khan or

other leaders does not constitute an offence. The Defence argued that the charge must detail the date of the alleged crimes, the occasion of the crimes, the identity of the victims and the nature of Gholam Azam's participation. The Order should specify what the criminal act was, and the number of victims killed, raped, or tortured. Razzaq submitted that the Charge Framing Order is just the English-translation of the Formal Charge submitted by the Prosecution. In support of his arguments about specificity of pleading, Razzaq referred to the indictments in the ICTR cases of *Nahimana, Barayagwiza and Ngeze*, and compared them to the Charge Framing Order against Gholam Azam, arguing that the vagueness of the Charge Framing Order prejudices the Accused.

The Defence also submitted that the format of the Charge violated section 16 of the ICT Act 1973, which requires the Charges to contain a sufficient level of detail so as to give the Accused notice of the matter with which he is charged. Razzaq directed the Tribunal's attention to Charge Framing Orders issued by Tribunal 2, when the current Chairman of Tribunal 1 was himself was a member of that bench, to illustrate the level of specificity required in the charges. The Chairman interjected that perhaps the Tribunal did not provide such specific details because Gholam Azam had been charged under the doctrine of superior and command responsibility. The Defence replied that even when charging these other modes of liability, the requirements of specificity do not change. The Defence submitted that, unless the defects in the Charge Framing Order are cured, the accused would be unjustly prejudiced.

Moving on from their general arguments about defect in the indictment, the Defence considered each charge of the indictment, in turn, and submitted arguments as to why the Prosecution had not sufficiently proven any of the charges against the Accused.

Charge 1: Conspiracy to Commit Crimes under Section 3(2) of the ICT Act

Under Charge 1 Gholam Azam is accused of 5 counts of conspiracy to commit crimes under Section 3(2). In particular, the Charge Framing Order alleges that Gholam Azam met with General Tikka Khan, the Chief Martial Law Administrator of occupied Bangladesh, and other pro-Pakistani affiliated leaders in furtherance of a conspiracy to commit crimes under the ICT Act. The Order does not specify which crimes under Section 3(2) the Accused is facing. However, arguments by both the Prosecution and the Defence have focused on Crimes Against Humanity and Genocide.

The Documentary Evidence Submitted Does Not Sufficiently Support the Charge

The Defence discussed the documentary evidence and exhibits submitted in support of Charge 1. They first argued that the documents are frequently second-hand reports of events, and therefore cannot be considered trustworthy. For example, Exhibit-33 is a news report, based on a news broadcast from Radio Pakistan. The Defence noted that the Investigating Officer had admitted that he failed to collect the actual transcript of the Radio Pakistan broadcast, which would have been a more reliable firsthand source of the information in the report.

Secondly, according to the Defence, the documentary evidence provided fails to detail the content of the meetings or the existence of any agreement to commit atrocities between Gholam Azam and any person within or outside of the Pakistani army. These reports merely state that meetings took place between the Accused and Tikka Khan. Additionally, none of the supporting Prosecution witnesses (witnesses 1, 2 and 3) testified about the existence of an agreement to commit atrocities or about the components of such an agreement.

Conspiracy to Commit Genocide

Given the lack of specificity in the Charge Framing Order, The Defence argued against Charge 1 as both conspiracy to commit Genocide and conspiracy to commit Crimes Against Humanity. Beginning with conspiracy to commit Genocide, Razzaq compared section 3(2) of the ICT Act of 1973 to the correlating article of International Criminal Tribunal for Rwanda's (ICTR) statute. He submitted that, under International Customary Law in 1971, political affiliation or identity was not recognized as a target for the crime of Genocide. Therefore, Counsel submitted, the Prosecution cannot allege that Genocide was committed against Awami League supporters or even against supporters of independence. The Defence cited to the ICTR case of *Nahimana.*[iii] The Defence stated that a person commits Genocide if he commits any one of the acts enumerated within the Statute, with the intent to destroy, in whole or in part, a *national, ethnic, racial or religious* group. Article 2 of the Genocide Convention does not consider political groups as a protected category. Razzaq noted that their argument on this issue was similar to that made in the *Qader Molla* case, in which they asserted that abduction was not considered a Crime Against Humanity under Customary International Law in 1971. Tribunal 2 agreed with this argument in their Judgment against Qader Molla. The Defence submitted that, similarly, accusations of Genocide based on political grouping should not be considered in this case.

The Elements of Conspiracy to Commit Genocide Have Not Been Fulfilled

The Defence acknowledged that one could be guilty of conspiracy to commit Genocide even if the Genocide did not ultimately occur. However, they emphasized that the Prosecution must first show that there was agreement between two or more persons to commit the specific crime of Genocide. The agreement may be inferred from evidence, but the action of the conspirator must be concerted or coordinated. Secondly, the Prosecution must show that the conspirator had genocidal intent, meaning intent to destroy in whole or in part, a national, ethnic, racial or religious group. The mental state required is the same as that required to show direct commission of Genocide. The Defence also argued that this mental state must have formed prior to the commission of the crime, and the criminal acts must have been committed in furtherance of that intent. Citing to the ICTR case of *Seromba*[iv], the Defence noted that other Tribunals dealing with international crimes agree with the requirement of specific intent to destroy a protected group in whole or in part.

The Defence acknowledged that international jurisprudence accepts that genocidal intent may be proved by circumstantial evidence. However, citing again to *Nahimana*[v], the Defence asserted that it was necessary to establish the genocidal intent of the *Accused*, and that the finding of that intent must be the only reasonable inference from the totality of the evidence. According to the ICTR case of *Nchamihigo*[vi], systematic targeting of victims on account of their membership of a protected group can suffice to show such intent. Razzaq submitted that the Judges in the ICTR case of *Bagilishema* made their findings based on direct and circumstantial evidence, whereas in the present case no documentary or oral evidence had been presented showing such intent. The Defence stated that the Prosecution must prove that Gholam Azam intended to destroy in whole or in part a specific group, i.e. Bengalis or Hindus, on a specific date, time and place. The Defence claimed that the Prosecution case against Gholam Azam did not present these elements.

The Defence noted that the evidence relied upon by the Prosecution, specifically Exhibits 33, 34, 52, 53, 99 and 100 and Prosecution witnesses 1, 2, 3 and 16, failed to show that Gholam Azam had the specific intent to destroy, in whole or in part, the Hindu or Bengali community. There was no proof of what had been discussed or decided in the alleged meetings between Gholam Azam and Pakistani leaders. Additionally, while the Prosecution had emphasized Gholam Azam's role in forming the Peace Committee, the Defence pointed out that the committee's stated purpose was the restoration of normalcy, trust of the masses, and preservation of the unity of Pakistan. These goals are not criminal acts and certainly do not amount to Genocide, Counsel argued. Additionally, the Defence insisted that Gholam Azam's use of the words "miscreants" and "separatists" referred to armed freedom fighters, and the word "intruders" referred to Indian armed forces. Therefore, the call to resist such persons did not amount to a call for an attack against either Hindus or Bengalis.

Defence argued that, in addition to failing to prove that Gholam Azam had the requisite intent to commit Genocide, the Prosecution failed to show that the Accused's actions amounted to conspiracy to commit Genocide. The required act for the commission of conspiracy is the formation of an agreement between two or more persons with the purpose of committing Genocide.[vii] The Prosecution must prove that there was an agreement between Gholam Azam and Tikka Khan or others to commit Genocide. The existence of such an agreement may be inferred from the evidence, but no such inference should be drawn in this case, Defence argued, because the Prosecution only produced evidence showing that Gholam Azam met with Tikka Khan. Nothing about the agenda, discussion or decisions of the meetings had been proven at trial. In the absence of any direct evidence, the Defence argued that it is very difficult to prove the alleged agreement based on circumstantial evidence. Additionally, the Defence submitted that, where the Prosecution relies on circumstantial evidence to prove a particular fact, the finding of that fact must be the *only reasonable inference* based on the totality of the circumstances.[viii] In this case, the finding that there was an actual agreement between Gholam Azam and General Tikka Khan must be the only possible conclusion the Tribunal can make. The

Defence compared this case to the ICTR case of *Seromba*, and argued that the Prosecution had failed to show the formation of an agreement to commit Genocide.

The Defence further submitted that the action of the conspirators must be concerted or coordinated.[ix] The existence of an agreement to commit Genocide may be inferred from the concerted conduct of the conspirators, but the Defence argued that Gholam Azam denied meeting Tikka Khan separately on 6 April 1971. Additionally, they argued that the Prosecution did not discuss the actions of Tikka Khan after the alleged meetings, and produced no documentary evidence and no witness testimony about the conduct and actions of the alleged conspirators after such meetings. Therefore, the Defence concluded, the elements of conspiracy had not been proven beyond a reasonable doubt.

Conspiracy to Commit Crimes Against Humanity

The Defence noted that section 3(2)(a) of the ICT Act of 1973 does not describe the elements of the crime of conspiracy to commit Crimes Against Humanity. Therefore, Counsel argued that the Tribunal must rely on Customary International Law in order to assess whether the Prosecution had sufficiently proven its case.

Elements of Conspiracy to Commit Crimes Against Humanity Have Not Been Fulfilled

In order to convict Gholam Azam of conspiracy to commit Crimes Against Humanity, The Defence asserted that the Prosecution must prove that: 1) there was an attack; 2) the attack was widespread or systematic; 3) the attack was directed against a civilian population; 4) the attack was committed against a group based on national, political, ethical, racial or religious identity; and v) Gholam Azam acted with knowledge of the attack.[x] As stated in the ICTR case of *Akayesu*[xi], random acts of violence are not sufficient to prove Crimes Against Humanity. "Widespread" indicates the large-scale nature of the attack and "systematic" refers to the organized nature of acts of violence.[xii] The Defence submitted that "civilian population" is defined as people not taking any active part in hostilities.[xiii] Regarding the required mental state, or *mens rea*, of the Accused, the Defence submitted that he must have acted with knowledge of the broader context of the attack and knowledge that the act formed a part of the widespread or systematic attack against the civilian population.[xiv] The Defence noted that there is no parallel decision in international law regarding conspiracy to commit Crimes Against Humanity.

After reviewing the legal elements of the crime, the Defence then addressed each specific count within Charge 1.[xv] They argued that none of the supporting documents or witness testimony provided sufficient evidence to show that there was an agreement between Gholam Azam and any other person to commit atrocities. The Prosecution failed to link the alleged meetings between Gholam Azam and others with specific instances of either Genocide or Crimes Against Humanity. Indeed, the Defence alleged that there is no evidence showing what had been discussed or decided in the course of the meetings between the Accused and members of the Pakistani military leadership.

Charge 2: Planning to Commit Crimes under Section 3(2)

Under Charge 2, Gholam Azam is accused of planning to commit crimes under Section 3(2). As with Charge 1, the Charge Framing Order does not specify which crime Gholam Azam is accused of planning. However, both the Prosecution and the Defence have confined themselves generally to discussion of Genocide and Crimes Against Humanity.

The Defence began by arguing that Article 3 of the Genocide Convention does not include "planning" the commission of Genocide as punishable offence. However, the Defence acknowledged that Article 7(1) and Article 6(1) of the ICTY and ICTR Statutes, respectively, describe planning Genocide or Crimes Against Humanity as a punishable offences. Nonetheless, they stated that Section 3(2)(f) of the ICT Act of 1973 does not define the elements of the crime of "planning" but instead makes any crime under customary international law punishable under the Act. Therefore they asserted it is necessary to refer to customary international law to determine the elements and legal standard for the crime of "planning" such atrocities.

The Defence argued that, in order to prove the criminal act of planning, the Prosecution must show that the Accused had the required *mens rea* at the time that he took action. The required mental state for planning is intent to plan the commission of a crime, or at a minimum, the awareness of substantial likelihood that a crime will be committed in the execution of the acts or omissions planned.[xvi] The Defence additionally argued that the *actus reus*, or act, of "planning" requires the Prosecution to prove that the Accused designed the criminal conduct constituting one or more statutory crimes which were later perpetrated.[xvii] The crime of planning encompasses designing the commission of a crime at both the preparatory and execution phases.[xviii] Additionally, the act of planning must be a factor substantially contributing to the end criminal conduct.[xix]

The Defence then addressed each of the three counts of planning contained within Charge 2.[xx] They argued that, as with Charge 1, the documentary and testimonial evidence presented in support of the charge fails to show that Gholam Azam, alone or with anyone else, planned or designed the actions, procedures, or arrangements for the accomplishment of crimes against the Hindu or Bengali communities, or against unarmed civilians in general. While the exhibits presented show that Gholam Azam met with General Tikka Khan and other leaders, they do not reveal the purpose of the meeting or the contents of any decisions made during the meetings. Furthermore, the Defence argued that the Prosecution failed to prove that the alleged planning was a factor that substantially contributed to the ultimate criminal conduct.

The Prosecution has alleged that the Accused's role in the formation of the Peace Committee constitutes an act of planning crimes under Section 3(2) of the ICT Act. The Defence pointed out that the evidence submitted shows that the organization was formed with the purpose of "restoring normalcy in the region" and eliminating fear and anxiety from the minds of the people. Again, the Defence emphasized that such actions and goals do not constitute criminal acts. Additionally, none of the witnesses testified that Gholam

Azam made any statement indicating a plan or design to commit offences at both the preparatory and execution stage. As in Charge 1, the Defence asserted that Gholam Azam's use of the term "miscreants" referred to armed separatist forces and did not target the Hindu, Bengali or civilian population. Therefore, the Defence contended that the Prosecution had failed to prove Charge 2 beyond a reasonable doubt.

Charge 3: Incitement

The Defence moved on to address Charge 3,[xxi] which alleges that Gholam Azam incited the commission of crimes under section 3(2) of the ICT Act. They argued that incitement to commit Crimes Against Humanity has not been recognized as a crime under international law. Accordingly, the Defense focused their arguments on incitement to commit Genocide, which is a recognized crime under the Genocide Convention. In order to establish incitement to commit Genocide, the Defence asserted that the Prosecution must prove that the Accused had the intent to directly and publicly incite others to commit Genocide, as well as the intent to destroy a group in part or in whole on the basis of one of the protected grounds.[xxii] As previously noted, the 1948 Genocide Convention does not consider political affiliation to be a protected ground. While incitement to attack ethnic, racial or religious groups with genocidal intent is recognized as a crime under Customary International Law, incitement to attack a political group with the intent to destroy such a group is not punishable under international law.[xxiii]

The charge of incitement requires proof of direct and public incitement to provoke another to engage in a criminal act.[xxiv] In assessing the 'direct' element of incitement, the Defence asserted that the Prosecution must show that the persons receiving the inciting message immediately grasped the implication of the message.[xxv] In particular, Counsel argued, the purpose of the speech should be examined in order to determine whether there is direct and public incitement to commit Genocide.[xxvi] The Prosecution must also prove definite causation between the act of incitement and a specific offence.[xxvii] Finally, the Defence argued that the fact that Genocide occurred is not enough to prove that there was the intent to incite the commission of Genocide.[xxviii]

As under Charges 1 and 2, the Defence argued that the term "miscreants," a term used in the allegedly inciting speeches, was directed against separatists engaged in armed combat, and did not refer to any national, ethnic, religious or racial group. The Defence also argued that engaging in armed combat is only a crime as defined under section 3(2)(e) and 3(2)(b) of the ICT Act of 1973. They asserted that the Prosecution had failed to link the alleged inciting comments to a specific instance of Genocide.

Role of the Peace Committee

The Defence addressed the role of the Peace Committees and the charge that Gholam Azam had formed them with the intent to have them commit crimes. The Defence referred to documentary evidence in support of the argument that the Peace Committee was a civilian organization formed with the purpose of "restoring normalcy" and upholding the sovereignty and integrity of a united Pakistan. The primary function of the

Peace Committees was to make statements and speeches in favor of a united Pakistan and to condemn Indian aggression and interference. Regarding the alleged commission of offences by members of local Peace Committees, the Defence stated that Gholam Azam was not a member of any local Peace Committees. Most importantly, they asserted that Gholam Azam did not have effective control over members of local peace committees, and thus could not be held responsible for offences committed by them under the Doctrine of Superior Responsibility. The Defence referred to evidence exhibits showing that the local Peace Committees were set up on the orders of the Governor. Additionally, they argued that the Prosecution failed to produce any circular or directive showing that the central Peace Committee controlled or determined the actions of the local committees.

Auxiliary Forces

Following on submissions about the Peace Committee, the Defence then shifted their arguments to the role of auxiliary forces and whether they functioned under the directions of Gholam Azam or other Jamaat leaders. The Defence noted that Prosecution witness 1, 3 and 16 had testified that the Razakar forces were organized at the direction of a Jamaat leader. However, none of the witnesses could refer to a single document confirming such information. No news report has been exhibited by the Prosecution alleging the formation of Razakar forces under the leadership of a Jamaat leader. Prosecution witness 3 stated that Razakar forces were organized in May of 1971 in Khulna at the instance of Jamaat. The witness specified that the lead organizer was the Jamaat leader Yusuf, and that the information had been published in the Daily Purbodesh. However, the Defence argued there was not a single report from the Daily Purbodesh in May of 1971 which refered to Razakar forces being raised by Yusuf in Khulna. The Defence submitted that a memo in evidence, dated 25 May 1971, showed that the Government determined all matters of recruitment, training, and functionality of the Razakar. The Defence argued that Razakar forces were formed by the then Government of East Pakistan in May 1971, and administered via executive orders.

Justice Anwarul Haque interjected to note that Gholam Azam had previously stated that the reason for sending his party members to the Pakistan Cabinet, and the reason for the formation of Razakar forces were one and the same. The Defence responded that the Prosecution must establish a link between Gholam Azam and Razakar forces in order to hold him liable for Razakar actions. Before the enactment of the Razakar Ordinance in August of 1971, Razakar forces had been organized and operating as part of the government machinery, Counsel argued. The Razakars were empowered by Martial Law Ordinance 159 to arrest individuals. He further submitted that Exhibit BV shows that the Razakar Ordinance was enacted on 2 August 1971, giving a legal framework for the operation of the Razakar forces. Additionally, Exhibit CA shows that Razakars were placed under the control of the Pakistani Army on 7 September 1971. The Defence stated that it is apparent from an examination of Exhibits CB-CZ that the Razakars were under the command and control of the Pakistani army, and therefore there was no scope for Gholam Azam to exercise effective control over members.

Censorship

The Defence emphasized that, in general, the newspaper reports that the Prosecution had heavily relied upon at trial were likely to be untrustworthy and inaccurate, due to the level of censorship in 1971. They argued that a conviction could not be solely based on newspaper reports, where the newspaper reports had not been corroborated. In 1971 The Chief Martial Law Administrator imposed restrictions on newspapers through the Martial Law Regulation no 77, prohibiting printing or publishing any news calculated to prejudicially affect the integrity or solidarity of Pakistan. The Defence argued that Prosecution Exhibit 3, a news report published in the daily Shangram on 19 June 1971, shows that Gholam Azam called for the withdrawal of censorship restrictions. Additionally, Defence witness 1 testified that, in 1971, the Martial Law Authority had imposed censorship on mass media by official notification. Such censorship meant that news received from East Pakistan was very limited and unreliable.

The Defence referred to the exhibit of an interview published in the daily Shangram on 15 December 2011, showing that Gholam Azam stated that his speeches against the Martial Law Authority had not been published in the newspapers, due to censorship. For example, in an interview with the daily Shangram dated 19 November 2000, Gholam Azam stated that he demanded the transfer of power to Sheikh Mujibur Rahman several times after 25 March 1971, but that newspapers did not publish those statements due to censorship at the time. The Defence concluded that the Prosecution had failed to prove beyond a reasonable doubt that the allegedly incriminating statements attributed to Gholam Azam were an accurate reflection of his position in 1971, or were in fact his statements and speeches.

III. TRIBUNAL 2: DETAILED WEEKLY CASE SUMMARIES

CHIEF PROSECUTOR VS. KAMARUZZAMAN

Prosecution Closing Arguments

The Prosecution continued their Closing Arguments[xxix] before Tribunal 2, focusing on legal and evidentiary matters relevant to the case against Kamaruzzaman.

Hearsay

The Prosecution acknowledged that Charge 1 against Kamaruzzaman, which pertains to the killing of Badiuzzaman, is supported only by the testimony of Prosecution witnesses 4 and 6, both of whom are hearsay witnesses. Charge 7, which pertains to the killing of six unarmed civilians, is similarly dependent solely upon hearsay statements given by Prosecution witnesses 1 and 15. The Prosecution acknowledged that they had submitted hearsay statements to prove the guilt of the Accused on other charges as well.

Prosecutor Afroz argued that, despite the general concern over the reliability of hearsay evidence and the limitations on such evidence under Bangladeshi law, the Bangladeshi Evidence Act of 1872 does not apply to proceedings of the International Crimes Tribunal Bangladesh. Therefore the admissibility and probative value of hearsay is undefined for the Tribunal. The Prosecution argued that hearsay evidence may be admissible under international jurisprudence, even in situations when the source of the evidence cannot be examined and/or the evidence is not corroborated by direct evidence.[xxx] Additionally they argued that the Court has broad discretion in determining hearsay evidence to be admissible.[xxxi] Given Tribunal 2's prior allowance of hearsay evidence in the *Abdul Qader Molla* case, the Prosecution argued that they should follow that precedent in the *Kamaruzzaman* case as well as the precedent in Bangladeshi domestic law.[xxxii]

Pointing to international jurisprudence for validation of its submissions, the Prosecution argued that once hearsay evidence is deemed admissible, it may be sufficient on its own to prove the guilt of the Accused, and does not require corroboration by direct evidence.[xxxiii] The Prosecution referred to a recent case before the International Criminal Court (ICC) in which the Court concluded that anonymous hearsay alone may be sufficient evidence to prove a material fact.[xxxiv] Prosecutors further asserted that the ICC and the European Court of Human Rights agreed that anonymous hearsay evidence could be used to corroborate other evidence.[xxxv] Therefore, the Prosecution argued, no corroboration by direct evidence should be required to prove Charges 1 and 7. While the Prosecution is relying on the hearsay statements of Prosecution witnesses 1, 4, 6 and 15, these are not anonymous hearsay statements. In each case, the witnesses specifically identified the original declarant/witness.

The Prosecutor referred to cases before ICTR and ICTY support of his argument that the credibility and relevance of the hearsay evidence are the two most crucial criteria to be evaluated in determining the evidence's admissibility.[xxxvi] They claimed that the hearsay evidence from witnesses 1, 4, 6 and 15 was both credible and relevant, and therefore proved Charges 1 and 7 beyond a reasonable doubt.

The "Old Evidence Rule"

The Prosecution admitted that many discrepancies had arisen in the oral testimony given by witnesses. However, the Prosecution argued that the Tribunal should overlook testimonial discrepancies and follow the "Old Evidence Rule." Discrepancies included inconsistency about dates, circumstances surrounding an incident, the number of victims and other miscellaneous facts.[xxxvii] The Prosecution argued that the recollection of the witnesses may have been adversely affected by stress-related disorders caused by the incident, many of which have been previously recognized by the ICTR.[xxxviii] Additionally, Counsel argued, discrepancies may arise because of the lapse of forty years between the incident and the time of testimony. and the possible distortion of a witness' individual recollection due to the impact of collective memory and other associated cultural factors (an issue dealt with by the Special Panels for Serious Crimes in East Timor).[xxxix]

Evidence of Single Eye-Witness

The Prosecution argued that a conviction could justly be reached even when relying on a single eye-witness. According to Counsel for the Prosecution, corroborating evidence is not required under Customary International Law, and should not be required by the ICT. The Prosecution referred to the decision of ICTY Trial Chamber in *Musema* (2000), which held that the Court could rule on the basis of a single witness' testimony if it had been decided that the testimony was both relevant and credible.

Relationship between Section 19 and Section 8(9) of the ICT Act of 1973

The Prosecution conceded that, although newspapers are not admissible in regular domestic proceedings, they are admissible in the proceedings of the ICT because Section 19(1) states that the Tribunal "shall not be bound by technical rules of evidence," and that it "may admit any evidence, including reports and photographs published in newspapers, periodicals and magazines, films and tape-recordings and other materials". Counsel for the Prosecution asserted that there is a nexus between Section 8(9) and Section 19 in that any evidence presented before the court must be deemed to have been submitted in accordance with the 1973 Act, and therefore is to be considered fit and proper. Section 8(9) states that, "any investigation done into the crimes specified in Section 3 shall be deemed to have been done under the provision of this Act."

Definition of "Other Inhumane Acts" Constituting Crimes Against Humanity

Charge 2 against Kamaruzzaman concerns allegations of inhumane acts and torture against Mr. Syed Abdul Hannan, the then principal of Sherpur College. Even though Section 3(2)(a) of the ICT Act refers to "other inhumane acts" as a Crime Against Humanity, the term is undefined. The Prosecution presented the definition of "other inhumane acts" under international jurisprudence, noting that the Rome Statute defines "other inhumane acts" as being " inhumane acts of a similar character [to other Crimes Against Humanity] intentionally causing great suffering, or serious injury to body or to mental or physical health."[xl] The Prosecution argued that this definition gives the Tribunal broad discretion to determine whether a particular act falls within its scope. Citing to cases before the ICTR, ICTY, Special Court for Sierra Leone, and the Iraqi High Tribunal, the Prosecution noted that certain types of sexual violence[xli], forcible transfer of people[xlii], desecration of corpses[xliii], attempted murder[xliv], extensive destruction of property[xlv], and forced marriage[xlvi] have been found to fit the definition of "other inhumane acts."

The Prosecution argued that the acts committed against Syed Abdul Hannan violated Article 5 and Article 12 of the Universal Declaration on Human Rights of 1948 (UDHR). Article 5 states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment," and Article 12 states that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

Prosecutor Afroz argued that the act committed against Syed Abdul Hannan constitutes a serious attack on his "human dignity," as derived from the decision in *Vasiljevic*.[xlvii] Additionally, the act of shaving the teacher's beard was offensive to members of Hannan's community as a whole, thereby constituting "Third Party Mental Suffering" which has been recognized by ICTR.[xlviii] The Prosecution cited verses from the Quran and the Bible, and referred to Hindu and Buddhist Scriptures to illustrate the respect accorded to education in Bangladeshi society. Given this context, the Prosecution argued that attacking and shaving the hair of a principal was truly an inhumane act within the socio-religious culture of Bangladesh.

Superior Responsibility of the Accused

The Prosecution addressed the concept of Superior Responsibility, which they argued was derived from the military doctrine of Command Responsibility. Under Superior Responsibility, the Prosecution argued that Kamaruzzaman could be held liable if it is proven that he failed as a leader to control his subordinates or to prevent the commission of crimes or punish perpetrators under his command. The Prosecution asserts that Kamaruzzaman, failed to discipline and control his subordinates as the leader of Al-Badr in his region, and failed to prevent them from committing crimes.

The Prosecution argued that the Doctrine has now been expressly incorporated to international legal instruments, including Article 86 and 87(1) of the Additional Protocol I of the Geneva Conventions of 1949, Article 7(3) of ICTY Statute, Article 6(3) of ICTR Statute, and Article 28 of Rome Statute. The Prosecution stated that Section 4(2) of the ICT Act imposes a standard of strict liability on commanders and superior officers for the actions of their subordinates, and does not require that the superior have knowledge of the subordinates actions. Accordingly, Counsel for the Prosecution argued that the Tribunal only needed to determine whether perpetrators committed crimes under Section 3 of the 1973 Act, and if so, whether Kamaruzzaman bore "superior responsibility" for the commission of such crimes. Prosecutor Afroz argued that the Tribunal should answer both questions affirmatively, asserting that a superior-subordinate relationship existed between Kamaruzzaman and members of Mymensingh and Sherpur area Al-Badr group during 1971.

The Prosecution argued that Kamaruzzaman received the Pakistani Army upon their arrival in Mymensingh, and was a front tier leader of Al-Badr. In outlining his position as a leader, and noting the extent of his participation, Prosecutor Haider Ali claimed that all local operations of the Pakistan Army in that area were conducted in consultation with the Accused. The Prosecution cited to provisions from the Rules of Procedure for Tribunal 1, and submitted that even though the accused had not been charged under Section 4(2) in a number of the charges against him, the Tribunal could still find him liable under Section 4(2) (for Superior/Command Responsibility) in addition to finding the Accused directly liable.

The Prosecution concluded their Closing Arguments by stating that Kamaruzzaman's guilt on all counts had been proven beyond the slightest doubt and requested that he face the highest penalty, the death sentence, under Section 20(2) of the ICT Act.

Defence Closing Arguments

Defense closing arguments reviewed the evidence relevant to each of the charges in turn, followed by more general legal submissions about hearsay evidence and complicity as a mode of liability.

Charge 1

The first Charge against Kamaruzzaman pertains to the killing of Badiuzzaman. The Defence pointed out that the charge is supported only by the testimony of Prosecution witnesses 4, Fakir Abdul Mannan, and 6, Dr. Md Hasanuzzaman, both of whom offered hearsay evidence. The Defence argued that there were fundamental discrepancies between the two witnesses' testimonies and the findings of the Investigation Officer. These discrepancies and inconsistencies go to the very root of the Prosecution's case, Defence submitted. The testimony has been used to establish the Prosecution's allegations about the purpose of Badiuzzaman's visit to Ahammed Member's House at Badiu where he was abducted, the presence of Pakistan Army at the time of abduction, Ahammed Member's position during the Liberation War, the mode of Badiuzzaman's arrest, and the identification of Kamaruzzaman.

The Defence highlighted numerous contradictions in the Prosecution's case, including variations on the alleged date of the crime, the political affiliations of key individuals, descriptions of the place where the crime occurred, the way in which the victim was allegedly detained, etc.[xlix]

Charge 2

Charge 2 concerns the alleged inhuman treatment of pro-liberation intellectual Syed Abdul Hannan. Prosecution witnesses 2, 3 and 14 testified in support of the charge. Two of the witnesses claim to be eye-witnesses, while the other provided hearsay evidence. As with Charge 1, the Defence pointed out contradictions between the witnesses' testimony and the initial report by the Investigating Officer. In particular, there were inconsistencies about the date of the alleged crime, the location, and the sequence of events. Given that two of the witnesses claim to be eye-witnesses, the contradictions between their testimony give rise to major doubts about their truthfulness, Counsel argued, since both cannot be simultaneously accurate.[1]

Charge 3

Under Charge 3 Kamaruzaman is accused of complicity in the massacre and rape of civilians in Shohagpur. Apart from Prosecution witness 13, Korfuly Bewa, all other witnesses provided hearsay evidence. The Defence argued that Bewa's testimony that Kamaruzzaman was present during the killing of her husband Rahimuddin was

contradictory to her original statement to the Investigating Officer, when she claimed only to have heard about the incident. The Defence also submitted that contradictions in the testimony of the witnesses cast significant doubt on the Prosecution's case. The Defence highlighted inconsistencies regarding the transportation used by the accused, the date of the events, the presence of other persons during the crime of rape, and conflicting versions of the crimes from the witnesses.

The Defence further outlined inconsistencies between the testimony of the prosecution witnesses, and their original statements to the Investigation Officer, as well as certain investigation findings that contradicted the accounts of the witnesses. Prosecution witness 10 testified that Kamaruzzaman had been the head of the Al-Badar and Rajakars, but did not originally make this statement to the Investigation Officer. Although the witness implicated Kamaruzzaman during his examination-in-chief, he made no mention of the Accused's name during cross-examination. Prosecution witnesses 2 and 10 also did not mention the name of the Accused in their original statements to the Investigating Officer. Similarly, at the beginning of her testimony, Prosecution witness 12 directly implicated the Accused, saying that Kamaruzzaman killed her husband. Immediately afterwards however, she said that she had *heard* about the involvement of Kamaruzzaman.

The Defence also claimed that all the Prosecution witnesses had been housed together during the trial, so their testimony was contaminated and rehearsed. Counsel argued that the testimony of the three widows from Shohadpur Bidhoba Polli had been so strikingly similar as to render them suspect and possibly fabricated by the Prosecution.[li]

Hearsay Evidence

Moving beyond specific charged, as a general matter the Defence noted that many of the Prosecution witnesses had provided hearsay evidence. Although they acknowledged that hearsay evidence has been admitted in the proceedings of the ICT, the Defence cited to international jurisprudence finding that its probative value depends on whether it can be corroborated.[lii] Furthermore, Counsel argued, unattributed hearsay cannot be used to corroborate other evidence. The Defence rebutted the Prosecution's submission that no corroboration is required for hearsay evidence. They also argued that the cases cited by the Prosecution, including the ICTY Trial Chamber's decision in *Simic, Tadic and Zaric* (2003), do not actually support the Prosecution's assertions. Instead, the Defence claimed that these cases demonstrate that corroboration is required, but that it does not always have to come from direct evidence. Circumstantial evidence may also suffice as effective corroboration. Additionally, the Defence argued that one hearsay statement cannot be used to corroborate another hearsay statement.[liii]

In the case at hand, Defense argued that the testimony of Prosecution witnesses 4 and 6, being based on hearsay, cannot be used to corroborate one another, and therefore do not have any probative value in the absence of other corroborating evidence. The Defence also referred to two Bangladeshi cases to show that failure to mention material facts to

the Investigating Officer at the time of investigation (as the Defence alleges occurred in this case) may be fatal for the Prosecution's case.[liv]

Complicity in Commission of Crimes Against Humanity

The Defence cited the ICTY Trial Chamber case of *Tadic* and asserted that the crime of complicity requires *intent*, defined as awareness of the act coupled with a conscious decision to participate by planning, instigating, ordering, committing, or otherwise aiding and abetting in the commission of a crime. Therefore the Prosecution must prove that the Accused *participated* in a way that contributed to the commission of the illegal act. The counsel further referred to the I.L.C. Draft Code's legal findings in the Nuremberg cases, whereby it concluded that an Accused may be found culpable if it is proved that he "*intentionally commits such a crime"* or, if he "*knowingly aids, abets or otherwise assists, directly and substantially, in the commission of such a crime."*

The Defence argued no evidence had been given to show that Kamaruzzaman knowingly acted in a way that substantially and directly contributed to the commission of a crime. Nor had the Prosecution shown that Kamaruzzaman had the requisite intent of awareness or knowledge that crimes would be committed or were planned. Defence concluded that nothing had been presented to prove beyond a reasonable doubt that he assisted, instigated, facilitated, or aided and abetted the commission of the alleged offences.

CHIEF PROSECUTOR VS. ALI AHSAN MUHAMMAD MUJAHID

Examination in Chief of Investigating Officer

In the *Mujahid* case, the Prosecution conducted its examination-in-chief of the Investigation Officer, who affirmed his prior testimony regarding his investigation findings that the accused acted as the President of Faridpur District Islami Chatra Shangha (ICS) during the pre-liberation and Liberation War periods. The witness also stated that the Accused later became the President of Islami Chatra Shangha's Dhaka Unit, and later Secretary and President of East Pakistan ICS. In addition to testimonial evidence, the witness provided documentary evidence to the Tribunal. The witness is scheduled to be cross-examined by the Defence on 7 April 2013.

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[i] For coverage of Prosecution witness 2's testimony please see the Daily Summary for 3 February 2013: http://bangladeshtrialobserver.org/2013/02/04/3-feb-2013-ict-1-daily-summary-contempt-proceedings-witness-testimony-in-gholam-azam-and-nizami/

[ii] For details regarding the Charges against Gholam Azam please refer to the Charge Framing Order: http://bangladeshtrialobserver.files.wordpress.com/2012/12/ga-charge-framing-order-no-25-part-1.pdf

[iii] *The Prosecutor vs. Nahimana*, *Barayagwiza and Ngeze,* ICTR, Appeals Chamber, (28 November 2007), para 492.

[iv] *The Prosecutor vs. Seromba,* ICTR, Appeals Chamber, (12 March 2008), para 175.

[v] *Nahimana,* para 492.

[vi] *The Prosecutor vs. Nchamihigo,* ICTR, Trial Chamber, (12 November 2008), para. 331.

[vii] *Nahimana*, para 894, 896.

[viii] *Seromba*, para 221; *Nahimana.*

[ix] *Nahimana,* para 896-97.

[x] *The Prosecutor vs. Ntagerura*, Trial Chamber, (25 February 2004), para 698.

[xi] *The Prosecutor vs. Akayesu*, ICTR Trial Chamber, (2 September 1998), para. 578-79.

[xii] *Nahimana*, para 920.

[xiii] *Akaysesu*, para 582.

[xiv] *The Prosecutor vs. Gacumbitsi*, ICTR, Appeals Chamber, 7 July 2006, para 86.

[xv] For complete coverage of the Defense's arguments on Charge 1 please refer to Daily Summary for 1 April 2013: http://bangladeshtrialobserver.org/2013/04/11/1-april-2013-ict-1-daily-summary/ and 3 April 2013: http://bangladeshtrialobserver.org/2013/04/15/3-april-2013-ict-3-daily-summary-gholam-azam-defense-closing-arguments/#more-1038

[xvi] *Nahimana,* para 479.)

[xvii] *Nahimana,* para 479.)

[xviii] *Gacumbitsi*, para 271; *The Prosecutor vs. Kajelijeli*, ICTR , Trial Chamber, (1 December 2003), para 761; *Akayesu*, para 480.

[xix] *Nahimana*, para 479.

[xx] For complete coverage of the Defense's arguments on Charge 2 please refer to the Daily Summary for 3 April 2013: http://bangladeshtrialobserver.org/2013/04/15/3-april-2013-ict-3-daily-summary-gholam-azam-defense-closing-arguments/#more-1038

[xxi] For complete coverage of the Defense's arguments on Charge 3 please refer to the Daily Summary for 3 April 2013: http://bangladeshtrialobserver.org/2013/04/15/3-april-2013-ict-3-daily-summary-gholam-azam-defense-closing-arguments/#more-1038 and Daily Summary for 4 April 2013: http://bangladeshtrialobserver.org/2013/04/17/4-april-2013-ict-1-daily-summary-gholam-azam-defense-closing-arguments/

[xxii] *Nahimana,* para 677.

[xxiii] *Akayesu*, para. 511-515.

[xxiv] *Ibid*., para 557.

[xxv] *Ibid*., para 557-558; *Nahimana*, para 1011-1022.

[xxvi] *Nahimana,* para 706.

[xxvii] *Kajelijeli*, para 852.

[xxviii] *Nahimana*, para 709.

[xxix] For previous coverage of the Prosecution's beginning Closing Arguments please refer to Weekly Digest Issue 10: http://bangladeshtrialobserver.org/2013/04/25/weekly-digest-10-march-24-28/

[xxx] *Prosecutor vs. Tadic*, ICTY, Appeals Chamber, (1996); *Prosecutor vs. Blaskic*, ICTY, Trial Chamber, *(*1998); *Prosecutor vs. Simic, Tadic & Zaric*, ICTY, Trial Chamber, (2003); *Kajelijeli*; *Prosecutor vs. Kamuhanda*, ICTR,

Trial Chamber, (2004); *Prosecutor vs Rwamakuba*, ICTR, Trial Chamber, (2006); and *Prosecutor vs. Muvunyi*, ICTR, Trial Chamber, (2006). Specific paragraph references were not given.

[xxxi] *Ibid*.

[xxxii] The Prosecution also cited precedents of domestic cases of Bangladesh in which the High Court Division admitted hearsay evidence. These include the decisions in *Abul Kashem vs. State*, 42 DLR 378; *S M Qamruzzaman vs. State*, 33 DLR 156; and *Shafiullah vs. State*, 1985 BLD (HC) 129(a).

[xxxiii] *Simic, Tadic & Zaric*.

[xxxiv] *The Prosecutor vs. Ruto, Kosgey and Sang*, ICC, Pre-Trial Chamber II, (2012).

[xxxv] *Prosecutor vs. Lubanga*, ICC, Pre-Trial Chamber I, (2007); *Prosecutor vs. Katanga*, ICC, Pre-Trial Chamber I, (2008) [note it is unclear which pre-trial *Katanga* decision is being referenced.]; and *Doorson vs. The Netherlands,* European Court of Human Rights, (1996).

[xxxvi] *Kajelijeli; Prosecutor vs. Halilovic*, ICTY, Trial Chamber, (2005); *Prosecutor vs. Blagojovic & Jokic*, ICTY, Trial Chamber, (2005).

[xxxvii] *Prosecutor vs. Nyiramasuhuko,* ICTR, Trial Chamber, (2011), para 179; *Prosecutor vs. Kupreskic*, ICTY, Appeals Chamber, (2001), para 35.

[xxxviii] *Kamuhanda*, para. 34

[xxxix] *Prosecutor vs. Tacaqui,* Special Panels for Serious Crimes in East Timor, (2004), para-42.

[xl] Article 7(1)(k) of the Rome Statute of the International Criminal Court, (1998).

[xli] *Akayesu*, para 688; *Prosecutor vs. Furundzija,* ICTY, Trial Chamber, (1998), para 209.

[xlii] *Prosecutor vs. Kupreskic*, ICTY, Trial Chamber, (2000), para 565-566; *Prosecutor vs. Krstic*, ICTY, Trial Chamber, (2001), para 523; *Prosecutor vs. Brdjanin*, ICTY, Trial Chamber, (2004), para 544, 620-30.

[xliii] *Prosecutor vs. Niyitigeka*, ICTR, Trial Chamber, (2003), para 462-63.

[xliv] *Prosecutor vs. Vasiljevic*, ICTY Trial Chamber, (2002), para 239.

[xlv] *Prosecutor vs. Saddam Hossain*, Iraqi High Tribunal, referred to in *Terhi Jyrkkio*, "Other Inhumane Acts as Crimes Against Humanity," 1 Helsinki Law Review 183, (2011), p. 202-203.

[xlvi] *Prosecutor vs. Brima, Kamara and Kanu (AFRC Case)*, Special Court for Sierra Leone, Trial Chamber, (2008), para. 186, 195.

[xlvii] *Vasiljevic*, para 239.

[xlviii] *Proseuctor vs. Kayishema,* ICTR, Trial Chamber, (1999), para 153; *Niyitigeka*, para 462-63, 465; *Kamuhanda*, para 718; and *Kajelijeli*, para 933.

[xlix] For detailed coverage of the Defence's arguments regarding inconsistencies in the Prosecution's case for Charge 1 please see the Daily Summary for 3 April 2013: http://bangladeshtrialobserver.org/2013/04/16/3-april-2013-ict-2-daily-summary-kamaruzzaman-Defence-closing-arguments/

[l] For detailed coverage of the Defence's arguments regarding inconsistencies in the Prosecution's case for Charge 2, please see the Daily Summary for 4 April 2013: http://bangladeshtrialobserver.org/2013/04/17/4-april-2013-ict-2-daily-summary-kamaruzzaman-Defence-closing-arguments/

[li] *Ibid*.

[lii] *Prosecutor v. Limaj,* ICTY, Oral Ruling of 18 November, (2004), pages. 447-449*; Prosecutor v. Kajelijeli,* ICTR, Trial Chamber Judgment, 1 December, 2003, para 45, 401*; Prosecutor v. Akayesu*, ICTR, Trial Chamber Judgment, 2 September, 1998, Para. 136, 266; *Prosecutor v. Lubanga,* ICC-01/04-01/06-803-tEN, para 106; *Prosecutor v. Katanga & Ngudjolo*, ICC-01/04-01/07-717, para 118-120, 138, 140.

[liii] *Archbold: International Criminal Courts Practice, Procedure and Evidence,"* and cited the ICC's recent decision in *Prosecutor v Ruto and Sang* (2012),

[liv] *7 BLC 742*; *7 BLC 342*. Full citation not currently available.