



THE INTERNATIONAL CRIMES TRIBUNAL OBSERVER

Special Issue No. 3 ■ Chief Prosecutor vs. Gholam Azam Case Summary ■ 20 June 2013

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

I. EXECUTIVE SUMMARY

THE GHOLAM AZAM CASE

This special report provides a detailed overview of the factual and legal arguments presented by the Prosecution and Defense in the case of *Chief Prosecutor vs. Professor Gholam Azam*. Arguments in the case were completed on 17 April 2013 and the case is currently awaiting verdict from Tribunal 1. We have reported on the documentary and witness evidence used to support each count within each distinct charge, as well as the general arguments made by both parties. Once the Tribunal issues its verdict, we will publish a supplementary report regarding the legal conclusions made in the Judgment.

PROCEDURAL HISTORY

The Prosecution submitted its Formal Charge against Gholam Azam on 12 December 2011. The Tribunal instructed the Prosecution to restructure the charges, and the Formal Charge was resubmitted on 5 January 2012. Gholam Azam was arrested that same day, and has been held in the prison facilities of Bangabandhu Sheikh Mujib Medical University to facilitate proper medical care for the now 90 year-old man. Hearings in support of the charges began on 15 February, and the court issued its Charge Framing Order on 13 May 2012. Opening Statements began on 5 June 2012. On 28 August 2012 Judge Zaheer Ahmed resigned and was replaced by Judge Jahangir. In October, responding to an application from the Prosecution, the Tribunal passed an order limiting the Defense to 12 Defense witnesses, and requested that the Defense submit its witness list by 14 October. On 12 November 2012 the Defense began its case-in-chief by calling its first witnesses. On 9 December 2012 Defense counsel was absent due to opposition hartals (strikes). The Tribunal issued an order requiring the Defense to produce its next witness by the 10th or be barred from producing further witnesses. Upon the failure of the Defense to produce its witness the next day, the Tribunal issued an order barring further Defense witnesses.

In early December, the trial was disrupted by controversy when the former Chairman of Tribunal 1 announced that his email and Skype conversations had allegedly been hacked. The Economist and other media outlets went on to publish excerpts of alleged conversations between Chairman Nizamul Hoq and foreign legal expert Ahmed Ziauddin. The Defense alleged that these conversations showed collusion between the Judges, outside activists advocating for the conviction of the alleged war criminals, and the Prosecution. The former Chairman resigned on 11 December 2012, and was replaced by ATM Fazle Kabir, who had previously sat as a Judge in Tribunal 1 before being moved to head Tribunal 2. The Defense filed an application for retrial based on allegations of bias, collusion, and fraud committed by the Judges and Prosecution. Under the reconstituted bench, the Tribunal rejected the Defense's application for retrial,¹ stating that the contents of the alleged Skype and email conversations were inadmissible as illegally obtained evidence, and that the independence of the Tribunal had in no way been compromised.

The Tribunal allowed Defense witness 1 to complete his testimony. However, the Tribunal rejected the Defense's application for more time to produce additional witnesses on 14 February 2013. The Defense had claimed that their original list of witnesses was afraid to appear, due to the ongoing protests at Shahbagh which called for the death penalty against all war criminals. The Prosecution completed their Closing Arguments on 4 March 2013. The Defense concluded their Closing Arguments on 15 April 2013 and the Prosecution submitted its reply on the 17th. The Tribunal then closed the case and took it under consideration for final verdict.

II. THE CHARGES:

- **Charge 1:** Six Counts of Conspiracy to Commit Crimes under Section 3(2) of the ICT Act.
- **Charge 2:** Three Counts of Planning to Commit Crimes under Section 3(2) of the ICT Act.
- **Charge 3:** Twenty-eight counts of Incitement to Commit Crimes under Section 3(2) of the ICT Act.
- **Charge 4:** Twenty-three counts of Complicity in Crimes under Section 3(2) of the ICT Act.
- **Charge 5:** Murder and Torture as Crimes against Humanity under Section 3(2)(a) of the ICT Act. The Charge alleges that Gholam Azam directed Peyara Miah, a member of the Peace Committee, to kill Siru Mia and his son because they were freedom fighters.

Charges 1-4 allege that Gholam Azam is liable either under Section 4(1), which provides for a form of constructive liability (where, when a crime is committed by several persons, each will be liable as if he was the sole perpetrator), and Section 4(2), which provides for liability under the doctrine of command responsibility. Charge 5 alleges direct individual

responsibility for murder and torture, and does not mention any of the forms of liability enumerated under Section 4 of the Act.

III. CASE OVERVIEW

THE PROSECUTION CASE

The Prosecution alleged that during the war in 1971, under Gholam Azam's leadership, all the leaders and workers of Jamaat-e-Islami and its student wing, Islami Chatra Sangha, opposed the liberation movement, and that in 1971 Jamaat-e-Islami became an auxiliary force under the Pakistani Army. The Prosecution alleged that Gholam Azam, as the Amir of Jamaat-e-Islami, controlled the organizational framework of Islami Chatra Sangha, and played the pivotal role in forming the Shanti (Peace) Committee, Razakars, Al-Badr, and Al-Shams, and is therefore liable for all of crimes committed by the members of those groups. They further alleged that Gholam Azam exercised Command Responsibility over the members of the Shanti (Peace) Committee, Razakars, Al-Badr, and Al-Shams, and that, even though he was a civilian, Gholam Azam had influence over the Pakistani Army.

PROSECUTION SUPPORTING DOCUMENTSⁱⁱ

The Prosecution relied on 77 exhibited documents in arguing their case. The vast majority of these documents are newspaper articles published in 1971 in the *Daily Shangram*, *Daily Azad*, *Daily Pakistan*, *Daily Ittefaq*, *Daily Purbodesh* and *Daily Paygam* newspapers. Additionally, the Prosecution submitted five "Fortnightly Reports" from the Police, as well as a Police Report Abstract. At times the Prosecution also referred to Defense exhibits and documents. For a full list of all documents exhibited by the Prosecution please refer to Annex A of this report.

THE DEFENSE CASE

The Defense contested the Prosecution's claim that under Gholam Azam's leadership all the leaders and workers of the Jamaat-e-Islami and its student wing, Islami Chatra Shangha, opposed the liberation movement. The Defense opposed the assertion that Jamaat-e-Islami was an auxiliary force under the Pakistani Army, and that, as Amir of Jamaat-e-Islami, Gholam Azam controlled the organizational framework of the Razakars, Al-Badr, and Al-Shams. The Defense acknowledged that Gholam Azam was the member of Central Peace (Shanti) Committee but claimed that he was not a member of any local Peace Committee.

Defense claimed that the Central Peace Committee was established on 9 April 1971 as a civilian organization with the purpose of restoring normalcy to the country and emphasizing the importance of upholding the sovereignty and integrity of a united Pakistan. Defense claimed that 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 (Prosecution Exhibits-34, 37, 40, 479, 481 etc and Defense Exhibits- BM-BQ and BS). Additionally, Defense argued that Gholam Azam did not

have effective control over members of local peace committees, and thus cannot be held responsible for offenses committed by them. The Defense claimed that the local Peace Committees were set up on the orders of the Governor (Defense Exhibits-BF-BL and BT).

The Defense claimed that Exhibit-FY, a memo dated 25 May 1971 issued by the office of the SDO at Netrokona, shows that the recruitment, training, and function of the Razakar forces were determined by the Pakistani government. The Defense argued that Razakar forces were formed by the then Government of East Pakistan in May 1971, and were administered via executive orders. Furthermore the Defense claimed that Exhibit H(1) shows that Jamaat-e-Islami was not in control of the Razakar forces, and that, according to Exhibit CA, the Razakars were placed under the control of the Pakistani Army on 7 September 1971.

DEFENSE SUPPORTING DOCUMENTSⁱⁱⁱ

The Defense submitted a number of documents and media excerpts with the primary purpose of showing that the local Peace Committees and auxiliary forces operated under the command of the Pakistani military, and further that the newspaper sources relied on by the Prosecution are untrustworthy because censorship was ubiquitous. A full list of the Defense's evidentiary submissions is provided in Annex A of this report.

IV. GENERAL LEGAL ARGUMENTS

ARGUMENTS ON COMMAND RESPONSIBILITY^{iv}

PROSECUTION

The Prosecution relied heavily on the doctrine of command responsibility in order to allege that Gholam Azam was responsible for atrocities committed by auxiliary forces during the war. The Prosecution applied this doctrine to Charges 1 through 4.

The Prosecution argued that the words 'superior officer' in section 4(2) of the ICT Act do not limit the applicability of the Section to military officers alone; the doctrine of Command Responsibility, they argued, may also be applied to civilian superiors such as Gholam Azam. They further submitted that, if the intention of Parliament was to limit liability to military officers, then the law would not have used the word 'subordinates.' The Tribunal has jurisdiction over civilians as shown by the words "individual or group of individuals" in Section 3(1).^v Given the inclusion of civilians in this context, the Prosecution argued that it is illogical to exclude civilian superiors from liability under the doctrine of Command Responsibility.

The Prosecution stated that, under Section 4(2) of the Act, a finding of liability under the Doctrine of Superior Responsibility requires the Prosecution to prove only: 1) whether

perpetrators have committed any crimes specified in section 3(2) of the Act and 2) whether the accused bears ‘superior responsibility’ for the commission of such crimes. The Prosecution submitted that the perpetrators must be identified and the commission of the alleged crimes by the perpetrators must be proved beyond reasonable doubt. To show superior responsibility, the existence of a superior-subordinate relationship between the accused and the perpetrators must be shown by establishing that the superior exercised effective control over the subordinates. Additionally the Prosecution must show that the Accused, as a superior, failed to prevent the commission of the alleged crime, or failed to punish the perpetrators after a crime was committed. While the Prosecution acknowledged that international law specifically discusses the requirement of knowledge on the part of the superior, they argued that Section 4(2) of the ICT Act 1973 does not require knowledge as an element of the crime.

The Prosecution argued that the word ‘Amir’ means military commander, and that, as Amir of Jamaat-e-Islami, Gholam Azam controlled the perpetrators of atrocities during the war.^{vi} They additionally argued that the commission of atrocities by Jamaat-e-Islami has been established beyond a reasonable doubt through judicial notice, and therefore further proof of specific atrocities or the identity of specific perpetrators is unnecessary. On this basis, they argued that the evidence shows that Gholam Azam failed to take proper and reasonable steps to prevent the commission of atrocities or to punish his subordinates after atrocities were committed. The Prosecution cited to the ICTR case of *Kamuhanda* (2004), and submitted that Gholam Azam could have informed the appropriate authorities or cancelled the membership of those perpetrating atrocities, but he failed to do so. By failing to do so, the Prosecution argued, Gholam Azam encouraged those who were supported by the Pakistani war criminals and those committing atrocities. The Prosecution argued that it was not necessary to show that Gholam Azam directed a specific member or person to commit a specific crime. By establishing that Gholam Azam was the chief policy maker and therefore in control of the auxiliary forces which committed atrocities, the Prosecution argued that they had adequately established liability under the doctrine of Command Responsibility.^{vii}

The Prosecution also referred to the case of *Prosecutor vs. Florencio Tacaqui*, from the Special Panels for Serious Crimes in East Timor, and noted that Tacaqui was not charged with Superior or Command Responsibility, but was nonetheless convicted under the doctrine. The court in the *Tacaqui* concluded that to neglect to recognize the Accused’s role or his status in the militia of Passabe would be a gross error, and that Mr. Tacaqui was responsible for the whole of his subordinates actions, not only for those which occurred when he was present.^{viii}

DEFENSE

The Defense first argued that the legislative intent behind the passage of the ICT Act of 1973 and its subsequent amendments showed that command responsibility under Section 4(2) should be limited to commanders and superior officers of military and auxiliary forces, and is not applicable to civilians such as Gholam Azam. They emphasized that the

use of the terms ‘commander or superior officer’ and ‘persons under his command or his subordinates’ in Section 4(2) clearly indicate a military or auxiliary force context, and thereby support the Defense’s position that the plain language of the Statute precludes the application of Section 4(2) to civilians.

The Defense acknowledged that Gholam Azam was the Amir (chief) of East Pakistan Jamaat-e-Islami in 1971, and that he was a member of the Central Peace Committee. However they argued that he was a political leader, and cannot be termed a superior officer or commander of the Central Peace Committee or of Jamaat-e-Islami. The Defense added that the Prosecution had been unable to produce any documentary evidence or witnesses describing Gholam Azam as a “superior officer” or “commander” of the Central Peace Committee or Jamaat-e-Islami. They were additionally unable to provide any evidence of his authority over members of auxiliary forces.

The Defense argued there was no basis for reliance on the command responsibility jurisprudence of the ICTY, ICTR, or Special Court for Sierra Leone, because the Statutes of these international tribunals use only the term “superior,” whereas the ICT Act of 1973 specifically refers to “superior *officer*” and “*commander*” in defining who may be liable under the doctrine.^{ix}

The Defense additionally argued that Customary International Law, as it stood in 1971, did not encompass liability of civilians under the doctrine of Command Responsibility. There was no application of the doctrine to civilians in or before 1973. The Defense argued that, if the Tribunal were to depart from the standard of customary international law as it stood in 1971, it would be a violation of the principle 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. Therefore, the Defense submitted that Section 4(2) of the ICT Act should only be applied to military commanders and military superior officers.

In terms of the elements of a crime committed under the doctrine of Command Responsibility, the Defense argued that the Prosecution must prove: i) the existence of a superior-subordinate relationship between Gholam Azam and members of the Razakars, Al-Badr, and Al-Shams forces; ii) that the subordinates of Gholam Azam did in fact commit crimes under section 3(2); iii) that Gholam Azam knew or had reason to know that crimes would be or had been committed; iv) that Gholam Azam failed to fulfill his duty to control and supervise his subordinates and v) that Gholam Azam failed to take necessary and reasonable steps to prevent such crimes.^x

The Defense argued that the fact that Gholam Azam held a political position is not sufficient to show that he had effective control over the perpetrators of atrocities. They argued that the Prosecution must prove that Gholam Azam had the material ability to prevent and punish members of the Peace Committee, Razakars, Al-Badr, or Al-Shams for committing such crimes, that he had powers to issue orders or disciplinary action

against them, or to submit reports to competent authorities in order to take disciplinary measures.^{xi} By way of example, they stated that the head of the Razakar forces would be the individual with effective control over Razakar members. Gholam Azam was not the head of the Razakars, nor any other auxiliary force, so he therefore did not exercise effective control over such members, Defense maintained.

The Defense sought to distinguish the present case from that of *Prosecutor vs. Florencio Tacaqui* (East Timor), which was relied on by the Prosecution as an example of a civilian political leader being held responsible for the atrocities committed by paramilitary groups. The Defense argued that the *Tacaqui* case is not on par with that against Gholam Azam, because many witnesses described Tacaqui as a “militia leader.” In the Gholam Azam case, by comparison, Defense argued that the Prosecution has failed to present any documentary or testimonial evidence showing that Gholam Azam acted as the leader of any auxiliary force.

The Defense argued that no evidence, documentary or testimonial, has been presented showing that Gholam Azam had the authority or material ability to prevent and punish the commission of offences by members of the Peace Committees, Razakars, Al-Badr, or Al-Shams Forces. Furthermore, they claimed that there was no evidence to show that Gholam Azam had the authority to transmit reports to appropriate authorities to initiate disciplinary proceedings against members of the Peace Committees, Razakars, Al-Badr, or Al-Shams forces for the commission of offences. The Defense asserted that the Prosecution’s argument that the Accused was an influential person of high standing in society was insufficient to prove Command Responsibility.^{xii}

ARGUMENTS ON JUDICIAL NOTICE

PROSECUTION

The Prosecution argued that the Tribunal does not require proof of facts of common knowledge, and may take judicial notice of such facts under Section 19(3) of the ICT Act. They pointed out that the Tribunal had previously taken judicial notice in the *Abul Kalam Azad*, *Qader Molla*, and *Sayedee* Judgments of the fact that crimes specified in section 3(2) of the ICT Act 1973 were committed by members of the Pakistani army, Razakars, Al-Badr, Al-Shams, the Peace Committee, and Jamaat-e-Islami during 1971.^{xiii}

For additional support, the Prosecution cited to the decision of the ICTR Trial Chamber in *Prosecutor vs. Semanza*, (2000), in which common knowledge was defined as encompassing those facts which are not subject to reasonable dispute, including common or universally known facts such as general facts of history, generally known geographical facts, and the laws of nature. They also referred to the ICTR case of *Prosecutor vs. Karemera*^{xiv}, and noted that the ICTR took judicial notice in that case of the fact that Genocide occurred in Rwanda in 1994.

The Prosecution asserted that Prosecution witnesses 1, 2, 3, 11, 12, 13 and 14 had all testified before the Tribunal that atrocities were committed by the Pakistani army as well as by members of the Peace Committee, Razakars, Al-Badr, and Al-Shams in 1971. Prosecutors had further submitted documentary evidence in support of this claim. Finally, the Prosecution noted that witnesses 1, 2 and 3 had clearly testified that the Peace Committee, Razakars, Al-Badr, and Al-Shams were formed by the members of Jamaat-e-Islami and Islami Chhatra Shangho.

DEFENSE

The Defense argued that the Tribunal could not take judicial notice of a disputed matter. They cited to *Prosecutor v. Momir*^{xv} (ICTY) and *Prosecutor vs. Casimir Bizimungu*^{xvi} (ICTR) for the proposition that a Tribunal cannot take judicial notice of a fact that is central to the Prosecution's case, or a fact which would have a bearing upon the final finding of guilt or innocence on behalf of the Accused. Additionally, citing to *Prosecutor v. Jadranko* (ICTY), Defense asserted that the Tribunal could not take judicial notice of the conduct or mental state of the Accused.^{xvii} Judicial notice, Defense submitted, is only appropriate regarding facts that are "notorious, or clearly established or susceptible to determination by reference to readily obtainable and authoritative sources."^{xviii}

DEFECTS IN THE CHARGE FRAMING ORDER

PROSECUTION

The Prosecution argued that the Tribunal should not look to the charges of other international courts in determining whether the Charge Framing Order against Gholam Azam is adequately prepared, because the ICT Act of 1973 is explicit as to its requirements. The Prosecution asserted that the charges against Gholam Azam satisfy Section 16(1) of the ICT Act, and that the Act does not require that the Accused be informed of the mode of liability under which he is charged. Therefore, following Section 16(1) of the ICT Act, Gholam Azam was provided sufficient notice of the charges against him.

The Prosecution added that there is no requirement of perfection for the Charge Framing Order. Referring again to the *Tacaqui* case in East Timor, the Prosecution argued that the Charge Framing Order against Gholam Azam is comparatively superior, and therefore there can be no complaint about the Charge Framing Order in this case. The Prosecution claimed that the Tribunal had already issued an order regarding the sufficiency of the charges, so there is no scope for the Defense to claim that the charges are defective. Alternatively, Prosecution submitted that, if the Charge Framing Order is defective, it may be cured under Rule 46A of the Rules of Procedure without prejudicing the Defense.

DEFENSE

The Defense argued that, even if the ICT Act of 1973 were amended to allow for civilian liability under the doctrine of Command Responsibility, Gholam Azam should not be found guilty, because the Charge Framing Order fails to allege that he was responsible

for specific crimes under Section 3(2) of the Act being committed by his subordinates. They pointed out that Gholam Azam has only been charged with conspiracy, planning, incitement and complicity in crimes under Section 3(2) generally. The Defense asserted that a person may be liable for failing to take necessary measures to prevent the commission of crimes by his subordinates under Section 4(2) only if he himself has been charged for the commission of those specific crimes under Section 3(2). The Charge Framing Order does not allege that Gholam Azam is responsible for the commission of any crime by an auxiliary force under section 3(2) of the Act. The Defense submitted that the absence of such specific facts renders the Charge Framing Order defective. The Defense also asserted that the Charge Framing Order failed to specify the essential elements of the crime, and that the Prosecution failed to prove each element beyond a reasonable doubt.

EVIDENTIARY ISSUES:

PROSECUTION

The Prosecution's case relies heavily on documentary evidence from the Liberation War era, including newspaper articles and government reports written in 1971. The Prosecution asserted that the lapse in time does not devalue the probative nature or trustworthiness of the evidence presented. They cited the US Federal District Court case *Dallas County v. Commercial Union Assurance Co.*^{xix} in which the court admitted a newspaper publication into evidence because it was necessary and trustworthy, relevant and material. The Prosecution described the documents submitted by the Prosecution in this case as trustworthy because they are 40 years old, and because there was no motive to falsely report the events when they were published.

DEFENSE

The Defense argued that the Prosecution must prove beyond a reasonable doubt that the statements published in various newspaper articles, which now appear in evidence, were the actual statements of Gholam Azam. Defense asserted that the Prosecution had failed to prove this. During cross-examination, Prosecution witness 1 admitted that censorship was imposed in 1971 under martial law and was equally applied to all newspapers. The Defense additionally noted that the Investigating Officer, Prosecution witness 16, admitted during cross-examination that he had not investigated the possible impact of censorship on the contents of the documentary evidence submitted. The Investigator further admitted that he would not be able to identify how many of the news reports in evidence had been published subject to censorship regulations. The Defense concluded that the Prosecution had failed to prove beyond a reasonable doubt that Gholam Azam's alleged statements, as reported in the newspapers, had not been proven to be accurate or authentic. They further pointed out that the Prosecution had not produced witnesses to attest to the authenticity of the newspaper reports. Defense argued that the news reports could be false or partially false, given the ubiquity of censorship during the war.

Additionally, the Defense argued that inaccuracies and contradictions between the witness' statements, original statements made to the Investigating Officer, and allegations of the Prosecution as made in the Charge Framing Order undermined the credibility and probative value of the evidence submitted by the Prosecution.

V. CHARGE 1: CONSPIRACY TO COMMIT CRIMES UNDER SECTION 3(2)

Ghulam Azam is charged with the commission of 6 counts of conspiracy under Section 3(2)(g) of the ICT Act, read with sections 4(1) and 4(2) of the Act. The Prosecution alleged that, as a result of this conspiracy crimes under Section 3(2) of the Act were committed all over Bangladesh. The Charge Framing Order does not specify which crimes were committed or who ultimately committed those crimes.

LEGAL STANDARD FOR CONSPIRACY

Because the Charge Framing Order does not specify which crimes under section 3(2) Ghulam Azam conspired to commit, the Prosecution and the Defense submitted arguments on both conspiracy to commit Genocide and conspiracy to commit Crimes Against Humanity.^{xx}

ELEMENTS OF CONSPIRACY TO COMMIT GENOCIDE

The Defense argued that, in order to prove conspiracy to commit Genocide, the Prosecution is required to establish the following beyond reasonable doubt:

1. **Actus Reus:** The existence of an agreement between the Accused and one or more persons to commit the crime of Genocide.^{xxi}
2. **Mens Rea:** That the Accused had the *intent* to destroy in whole or in part a national, ethnic, racial, political or religious group, which is also known as the genocidal intent.^{xxii}

The Prosecution's oral arguments referred to a complete plan:

1. Between two or more persons
2. Made for a criminal purpose

In general, the Prosecution did not further elaborate on the required elements of the crime.

The Defense allowed that the existence of a conspiratorial agreement might be proven by either direct or circumstantial evidence. Concerted or coordinated action on the part of the conspirators can constitute evidence of an agreement. However, Defense argued, where circumstantial evidence is relied on, "the existence of a conspiracy to commit genocide must be the only reasonable inference based on the totality of the evidence."^{xxiii} As conspiracy is an inchoate offence, the Defense acknowledged that it is not necessary to prove that Genocide actually occurred pursuant to the conspiracy.

The Defense noted that Genocidal intent is also usually proven through circumstantial evidence.^{xxiv} Again, however, the Defense argued that where circumstantial evidence is relied upon, “it is necessary that the finding that the accused had the genocidal intent be the only reasonable inference from the totality of the evidence.”^{xxv} Additionally, Genocidal intent presupposes that “victims are chosen by reason of the membership in the group” whose destruction is sought.^{xxvi}

ELEMENTS OF CONSPIRACY TO COMMIT CRIMES AGAINST HUMANITY

Both Parties argued that in order to prove conspiracy to commit Crimes Against Humanity, the following must be established beyond reasonable doubt:

1. **Actus Reus:** the existence of an agreement between the Accused and one or more persons to commit Crimes Against Humanity; and
2. **Mens Rea:** The specific intent to commit such crimes

PROSECUTION ARGUMENTS

Under Charge 1, the Prosecution alleged that Gholam Azam participated in six meetings that formed a criminal conspiracy for the commission of crimes under Section 3(2). During the first meeting, on 4 April 1971, Gholam Azam and 11 others met with Lt. General Tikka Khan, the Chief Martial Law Administrator of the ‘Kha’ Zone of occupied Bangladesh, and “discussed, planned and decided the means to enforce the evil designs of the occupying Pakistani Army.”^{xxvii} That meeting allegedly resulted in the formation of the Nagorik Committee, also known as the Shanti or Peace Committee, and decisions that led to the large-scale commission of atrocities.^{xxviii} The second meeting on 6 April^{xxix}, was between Gholam Azam, several other political leaders, and General Tikka Khan, who jointly discussed assistance for the Pakistani Army and the formation of auxiliary forces. Gholam Azam then allegedly took part in a meeting of the Peace and Welfare Steering Committee on 14 April, during which “various policies and plans were agreed upon for the organization of people.”^{xxx} The fourth meeting was on 19 June 1971, with the President of Pakistan, General Agha Mohammed Yahya Khan at Rawalpindi. A fifth meeting took place on 20 June 1971 between Gholam Azam, the then Amir of Jamaat-e-Islami for East Pakistan, and the general Chief of Jammat-e-Islami for Pakistan, Sayed Abul Ala Moududi. Finally, the Prosecution alleged that Gholam Azam participated in a 6th meeting with President Yahya Khan on 1 December 1971, during which Gholam Azam demanded an increase in the numbers of Razakar forces, and urged the Pakistani Government to supply arms to those supporting a unified Pakistan, in order to allow them to suppress the liberation movement.

In general, the Prosecution claimed that, during these meetings, Gholam Azam and others discussed strategy for supporting a unified Pakistan and suppressing the independence movement. They also claimed that Gholam Azam referred to civilians who supported liberation as “miscreants,” and that Gholam Azam was part of the decision to murder the intelligentsia of Bangladesh, as part of a final solution to the loss of influence over then

Eastern Pakistan. The Prosecution alleged that the ultimate killings were carried out by members of Jamaat-e-Islami, the Peace Committee, the Razakars, Al-Badr and Al-Shams.

DEFENSE COUNTER ARGUMENTS

The Defense argued that none of the documentary evidence or witness testimony presented proved the existence of a criminal agreement between Gholam Azam and General Tikka Khan, other politicians, or the officers of the Pakistani Army. Nor did the Prosecution provide evidence of coordinated and concerted action by the Accused from which one could infer the existence of such an agreement. The evidence presented failed to show that the purpose of the meetings was to plan or approve the commission of atrocities against members of the Hindu or Bengali civilian communities, Defense argued. There was no proof of the alleged discussion and decisions made in the meetings, Defense submitted, and meetings in and of themselves cannot be considered an offence under Section 3(2) of the Act. The Defense denied that Gholam Azam met with Tikka Khan separately on 6 April, and claimed that Exhibit 35 contained the same photograph of Gholam Azam and Nurul Amin meeting Tikka Khan on 4 April 1971. It therefore cannot be taken as evidence of a separate meeting.

Although they acknowledged that the Peace Committee was formed soon after the 4 April meeting, the Defense argued that there was no evidence that either the central or the local Peace Committees were placed under the control of the Armed forces. Likewise, the Defense maintained that the assertion that the auxiliary forces were formed during one of the meetings was baseless. Defense reiterated that the decision to form a Citizens Committee with the goal of “restoring normalcy and obtaining the confidence of the masses” is not a crime.

The Defense sought to discredit the Prosecution witnesses’ testimony. They argued that the Prosecution witnesses did not present any specific information regarding the meetings, that Prosecution witness 3 admitted the possibility that the other political leaders were not under the leadership of Gholam Azam when they met with General Tikka Khan, and that the Investigation Officer (PW-16) was unable to obtain any documents or resolutions made during the meetings, or any of the original press releases or radio broadcasts that formed the basis for the news reports in Exhibits 33 and 34.

The Defense further asserted that the Prosecution had failed to establish a nexus between the meetings and the ultimate commission of atrocities. They denied the Prosecution’s claim that the term ‘miscreants’ was used to refer to the civilian population that supported independence, asserting that it in fact referred only to armed freedom fighters. They further claimed that Gholam Azam’s request to provide additional arms to the Razakars in order to combat armed freedom fighters did not constitute an offence under section 3(2) of the Act, since the statement was not directed against any member of the Hindu or Bengali civilian population.

Additionally, the Defense relied on their general arguments regarding the deficiencies of the Charge Framing Order, stating that the Charges fail to specify which crimes Gholam Azam conspired to commit. They noted that the date and location of the crimes, as well as the identity of the victims and the nature of Gholam Azam’s participation were not specified in the Charge. (see more detailed arguments above).

The Defense further claimed that Gholam Azam’s support of a unified Pakistan could not be deemed a criminal goal, so the actions he took in support of that goal were not conspiratorial. Additionally they asserted that the Prosecution had failed to prove that he had either 1) Genocidal intent or 2) the intent to commit Crimes Against Humanity. Finally they argued that, in the case of alleged genocide, the Prosecution did not attempt to establish that the ultimate crimes were carried out against a group on the basis of their membership in a particular group.

SUPPORTING EVIDENCE^{xxxi}

Prosecution witnesses 1, 2, 3 and 16 gave general testimony applicable to charges 1 to 4.

Documentary Evidence ^{xxxii}	Witness Testimony
<p>In support of Charge 1 the Prosecution submitted four Exhibits of news paper reports published in 1971, showing that Gholam Azam met with General Tikka Khan, was present during the proposal of the formation of the Peace Committee, called for cooperation with Pakistan in order to restore normalcy in the country, and expressed his support for a unified Pakistan led by the ideology of Islam. He also allegedly called for the auxiliary groups to be better armed in order to resist the separatist movement.</p> <p><u>Exhibits 4, 33, 34, 35, 52, 53, 62, 97, 99, 100, 479</u></p>	<p><u>PW-1:</u> Mr. Muntaseer Mamun stated during his examination-in-chief that leaders of some political parties met with General Tikka Khan in the first week of April, and that Peace Committee was formed on the recommendations and inspiration of Nurul Amin and GA.</p> <p><u>PW- 2:</u> Mahbub Uddin Ahmed Bir Bikrom stated that he came to know through newspaper reports after the war that GA, Khwaja Khairuddin and Nurul Amin met Tikka Khan, supported Operation Searchlight, and planned to form Peace Committees throughout the country. Mahbub Uddin Bir Bikrom stated during his examination-in-chief that Gholam Azam met with General Tikka Khan. He did not specify the date of the meeting.</p> <p><u>PW-3:</u> Sultana Kamal stated in her examination-in-chief that she knew about the activities of the religious political parties in 1971 from reading various newspaper reports and that she heard that Gholam Azam used to meet General Tikka Khan to discuss how to maintain a unified Pakistan.</p> <p><u>PW-16:</u> During his examination-in-chief, the Investigation Officer stated that Gholam Azam and 12 other political leaders met Tikka Khan on 4th April 1971 at Governor’s</p>

	House, and decided to support the Pakistani Army.
--	---

DEFENSE EVIDENCE

The Defense did not produce any specific documentary or witness evidence to contradict the first Charge. See above for a general description of the Defense's evidentiary submissions.

VI. CHARGE 2: PLANNING

Ghulam Azam is charged under section 3(2)(f) with three counts of planning to commit crimes specified in section 3(2) of the ICT Act, read with sections 4(1) and 4(2) of the Act. As a result the Prosecution alleges that crimes under section 3(2) were in fact committed all over Bangladesh. The Charge Framing Order does not specify which crimes were committed or who ultimately committed those crimes. Both the Prosecution and the Defense focused their arguments on Genocide and Crimes Against Humanity.

LEGAL STANDARD

The Prosecution did not discuss the elements of the crime in detail. The Defense argued that Article 3 of the Genocide Convention does not include "planning" Genocide as punishable offense. However, they acknowledged that Article 7(1) and Article 6(1) of the ICTY and Statutes, respectively, describe planning Genocide or Crimes Against Humanity as punishable offenses. The Defense defined the elements of the crime as follows:

1. **Actus Reus:** The Defense argued that the crime of Planning requires that one or more persons contemplate the commission of a crime at both its preparatory and execution phases.^{xxxiii} Additionally the level of participation in planning must be a substantial factor in contributing to the end criminal conduct, such as actually formulating a plan or endorsing a plan proposed by another person.^{xxxiv}
2. **Mens Rea:** the 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.^{xxxv}

PROSECUTION ARGUMENTS

The Prosecution alleged that, on 4 April 1971, Ghulam Azam and others planned to form the 'Nagorik Committee' in order to support the occupying Pakistani forces. This plan was presented to General Tikka Khan. On 9 April 1971, Ghulam Azam and others allegedly formed the Peace (Shanti) Committee in various cities, unions and mohallas, and on 4 May 1971 they participated in a planning meeting for the purpose of forming units of the Peace (Shanti) Committee at the various unions of Dhaka city. These acts constituted the alleged *actus reus* of the crime.

The Prosecution argued that, as a student of Political Science, Gholam Azam knew the consequences of his conduct, so he therefore had the requisite intent to commit the crimes later perpetrated by the Peace Committee members.

DEFENSE COUNTER ARGUMENTS

The Defense countered the Prosecution’s allegations by stating that the Peace Committees were not set up as ‘criminal organizations’ to facilitate attacks on members of the Hindu or Bengali civilian population. The Peace Committee was established as a civilian organization with the purpose of restoring normalcy and upholding the sovereignty and integrity of a united Pakistan, Defense argued. 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. The Defense argued that Gholam Azam’s use of the term “miscreants” referred to armed freedom fighters, and that his demand that life and property be protected against such “miscreants” was not a criminal act of planning. Even if local Peace Committee members committed atrocities in various parts of the country, it cannot simply be inferred that Gholam Azam and other political leaders planned and designed those atrocities, Defense submitted.

The Defense asserted that Gholam Azam did not exercise effective control over the local Peace Committee members, and that he therefore cannot be held responsible under the doctrine of Command Responsibility for any atrocities committed by them. They noted that Prosecution witness 2 admitted that he had no knowledge as to the decision making process of the Peace Committees. Even though the Defense admitted that Gholam Azam was one of the 140 members of the Central Peace Committee, they maintained that his membership and role in the formation of the Peace Committees does not constitute a crime under the ICT Act. The Defense cited Prosecution Exhibits-34, 37, 40, 479, 481 and Defense Exhibits- BM, BQ and BS.

The Defense pointed out that neither the Formal Charge nor the Charge Framing Order alleged that Gholam Azam was a ‘superior officer’ or ‘commander’ in 1971. Furthermore, no witness identified him as such. Therefore, they argued that Gholam Azam should not be held liable under the doctrine of Command Responsibility under Section 4(2) of the Act. The Defense claimed that local Peace Committees were under the control of the local administration, and that Gholam Azam did not exercise effective control over them. They argued that the Prosecution had failed to prove both the *actus reus* and the intent required for the commission of the crime.

SUPPORTING EVIDENCE

Prosecution witnesses 1, 2, 3 and 16 gave general testimony applicable to charges 1 to 4.

Documentary Evidence^{xxxvi}	Witness Testimony
The Prosecution relied specifically on seven Exhibits to support Charge 2. These exhibits were predominately newspaper articles reporting that	PW- 1: Muntaseer Mamun stated that the formation of the Peace Committees, Razakars, and Al Badr forces was planned by political parties including

<p>Ghulam Azam and other leaders met, discussed and planned the formation of the central and local Peace Committees with the purpose of restoring normalcy in the region.</p> <p>Exhibit 33, 34, 37, 101, 167, 481, 457</p>	<p>Jamaat-e-Islami.</p> <p>PW- 2: Mahbub Uddin Bir Bikrom stated that he read in newspaper reports published after the war that Ghulam Azam and others had met General Tikka Khan and planned to form Peace Committees.</p>
--	--

DEFENSE EVIDENCE

No documentary or witness evidence was used to specifically contradict Charge 2. See above for a description of the Defense’s general evidentiary submissions.

VII. CHARGE 3: INCITEMENT

Charge 3 alleges that Ghulam Azam committed 28 counts of “incitement” under section 3(2)(f) of the Act, which codifies “other crimes under international law.” The charge alleges liability under both Section 4(1), which provides equal liability for multiple perpetrators, and Section 4(2), which codifies Command Responsibility. The Prosecution asserted that, because of Ghulam Azam’s acts of incitement, crimes in Section 3(2) of the Act were committed all over Bangladesh.

LEGAL STANDARD

The Prosecution did not specify the legal elements of the crime of incitement. The Defense argued that there are two different legal standards for incitement to commit Genocide and incitement to commit Crimes Against Humanity.

INCITEMENT TO COMMIT GENOCIDE

The Defense asserted that, in order to prove the offence of ‘Direct and Public Incitement to commit Genocide’, the Prosecutor has to establish the following beyond reasonable doubt:

1. **Actus reus:** The ‘public’ element of the crime requires a call made to a number of individuals in a public place, or to members of the general public, to commit criminal action against members of any of the four protected groups under the Genocide Convention.^{xxxvii} The ‘direct’ element of the offence requires the Accused to specifically urge another individual to take immediate criminal action.^{xxxviii} More than mere vague or indirect suggestion is required.^{xxxix} Additionally, Defense argued, in determining whether the statement amounts to incitement, the Tribunal must establish whether, in light of the culture of the country and the specific circumstances of the case, the persons for whom the message was intended immediately understood its intent.^{xl}
2. **Mens rea:** The Accused must specifically intend to directly prompt or provoke another to commit Genocide.^{xli} The person inciting Genocide must have Genocidal intent, i.e., the specific intent to destroy in whole or in part, a national, ethnical, racial or religious group.^{xlii} While intent may be proved by

circumstantial evidence, the conclusion that the Accused had genocidal intent must be the only reasonable inference from the totality of the evidence.^{xliii}

INCITEMENT TO COMMIT CRIMES AGAINST HUMANITY

The Defense argued that Incitement to commit Crimes against Humanity has not been recognized as crime under international law, so it therefore cannot be charged or punished under Section 3(2)(f) of the Act. Section 3(2)(f) gives the Tribunal jurisdiction over “any other crimes under international law.” The Defense argued that, even if the Tribunal were to recognize incitement of any crime other than Genocide, the Prosecution must show the following:

1. Existence of a nexus between the inciting conduct of the Accused and the ultimate crimes committed.
2. That the incitement was a factor that substantially contributed to the commission of a crime by another person.^{xliv}

PROSECUTION ARGUMENTS^{xlv}

The Prosecution cited numerous specific press statements and speeches made by Gholam Azam that allegedly amounted to the incitement of crimes under Section 3(2) of the ICT Act. The majority of their arguments focused on Gholam Azam’s actions as being incitement to commit Genocide, though they did not specify that this was the only crime that he allegedly incited his followers to commit.

The allegations of 28 counts of incitement focus on terms used by Gholam Azam in his speeches, which the Prosecution claims targeted the Hindu population of then East Pakistan, supporters of the Awami League, and all civilians who supported the independence movement. They alleged that Gholam Azam’s calls for resistance to and destruction of ‘*Bharotiyo onuprobeshkari*’ (Indian infiltrators), ‘*Shoshosro onuprobeshkari*’ (armed intruders), ‘*rashtrobirodhi*’ (anti-state) personalities, and “miscreants” were in fact incitement of Genocide. The Prosecution showed that Gholam Azam repeatedly called for support of a unified Pakistan, and urged the true patriots of East-Pakistan to provide effective assistance and support the ruling Pakistani authorities in an effort to impose a state of normalcy. The Prosecution additionally alleged that Gholam Azam called for additional weapons to be provided to the auxiliary forces, and that he approved of the training of the Razakars and other forces. The Prosecution alleged that, as Amir of Jamaat-e-Islami and a founder of the Peace Committee, all auxiliary forces were in fact subordinate to Gholam Azam. Therefore, they claimed, Gholam Azam incited his subordinates to commit both Genocide and Crimes Against Humanity.

The Prosecution argued that incitement is an offence under Customary International Law. They noted that Section 3(2)(c) of the ICT Act of 1973 provides that destroying a *political group* in whole or in part constitutes Genocide, even though the Genocide Convention does not consider political groups a protected category. The Prosecution argued that the Genocide Convention previously considered “political group” to be a

protected category. They also referred to the penal codes of Colombia, Costa Rica, Ethiopia, France and Lithuania, in which political groups are considered a protected category for the crime of Genocide.

However, the Prosecution asserted that they were not alleging that Gholam Azam had targeted a political group, but rather that he had targeted a “national” group – those who identified as Bangladeshi nationals, rather than Pakistani. They argued that, by using terms such as ‘miscreants,’ Gholam Azam was not referring to armed freedom fighters, but to all nationals of Bangladesh. In support of this argument, the Prosecution referred to a book by Raw Forman Ali, which states that Pakistan engaged in war with Eastern Pakistan with the intent to make the Bengali people into a minority group. They argued that this proves that there was the intent to destroy Bengalis as a national group. The Prosecution also argued that Gholam Azam’s statements instigated or prompted members of the Razakars, Al-Badr, Al-Shams, Peace Committee, Islami Chhatra Shangha and Pakistani occupation forces to attack with the intent to destroy a national group.

Countering the Defense’s use of international jurisprudence to define the elements of the crime, the Prosecution argued that Article 25 of the Bangladeshi Constitution merely states that the nation will respect international law. They referred to the case of *H M Ershad vs. Bangladesh*, and submitted that international instruments will only be used to fill gaps in domestic law when there is no applicable domestic statute.^{xlvi} When there is a conflict between domestic law and international law, domestic law will be given primacy. The Prosecution asserted that the ICT Act of 1973 should therefore prevail over the Genocide Convention, where the two conflict.

DEFENSE COUNTER ARGUMENTS

Defense argued that none of the counts in the indictment specifies which crimes were ultimately committed as a result of the allegedly inciting statements of the Accused. The Defense further claimed that the charges were overly vague and lacked specificity, rendering the Charge Framing Order defective (see above arguments). Furthermore, they argued that incitement to commit Crimes Against Humanity has not been recognized as a crime under international law and therefore cannot be prosecuted under the ICT Act as a “crime under international law.”

The Defense did acknowledge that incitement to commit Genocide is a recognized crime under the Genocide Convention. However, they stated that use of terms such as ‘miscreants’, ‘rebels’, ‘separatists’, ‘enemies’, ‘anti-state elements’ and ‘infiltrators/intruders’ do not amount to incitement to commit Genocide as they are not terms directed against any protected group within the Genocide Convention. They argued that Gholam Azam advocated action against armed groups and foreign military elements who were involved in the violent independence movement. They asserted that his statements should not be misinterpreted as calling for the destruction of Hindus, supporters of the Awami League, or other civilians supporting the independence

movement. For these reasons, Defense maintained that the Prosecution had failed to prove the *actus reus* of incitement to commit Genocide.

SUPPORTING EVIDENCE^{xlvii}

Prosecution witnesses 1, 2, 3 and 16 gave general testimony applicable to charges 1 to 4.

Documentary Evidence ^{xlviii}	Witness Testimony
<p>The Prosecution submitted numerous exhibits, including copies of speeches, press releases, radio broadcasts, statements and news reports of statements made by Gholam Azam in which he called for action in support of a unified Pakistan. Additionally these documents show that he called for resistance to and action against “miscreants” and other anti-state elements. He made statements calling for action against India and against Indian “infiltrators.”</p> <p>Exhibits: 36, 38, 54, 105, 481, 2, 60, 169, 5, 6, 469, 9, 10, 487, 11, 64, 45, 46, 108, 65, 109, 66, 67, 14, 48, 112, 68, 19, 71, 16, 489, 18, 19, 22, 23, 28, 29, 97</p>	<p>PW-1: Muntaseer Mamun testified that Gholam Azam incited Peace Committee members to commit atrocities, including rape and attacks on members of the Hindu community and the Awami League.</p> <p>PW-16: The Investigation Officer stated that Gholam Azam made statements and speeches inciting commission of atrocities.</p>

DEFENSE EVIDENCE

No documentary or witness evidence was submitted to specifically contradict this Charge. See above for a description of the general Defense evidence.

VIII. CHARGE 4: COMPLICITY

Gholam Azam is charged under Section 3(2)(h) of the ICT Act with 23 counts of complicity in the commission of crimes under Section 3(2) of the Act.

LEGAL STANDARD

In order to prove complicity in the commission of crimes under section 3(2) of the Act, the parties agreed that the Prosecution is required to establish the following beyond reasonable doubt:

1. **Actus reus:** assistance or encouragement that substantially contributed to or had had a substantial effect on the completion of the crime.^{xlix}
2. **Men rea:** that the Accused acted intentionally with awareness that his actions were contributing to the crime of Genocide, including all its material elements.¹

PROSECUTION ARGUMENTS

As with Charge 3, the Prosecution alleged that Gholam Azam gave specific speeches, attended meetings, and made statements that amounted to complicity in the commission

of crimes under Section 3(2). In particular, they noted that Gholam Azam met with high ranking military and political figures from the Pakistani government, made statements pledging the his and Jamaat-e-Islami's allegiance to the cause of a unified Pakistan, urged Pakistan to provide auxiliary forces in East Pakistan with additional arms, and used terms such as "miscreants" and "anti-state elements" to call for criminal acts to be committed against Awami League supporters, Bengali Hindus and pro-independence civilians.

The Prosecution argued that Gholam Azam is liable for aiding and abetting in the commission of crimes under Section 3(2) of the Act. Regarding the actus reas the Prosecution submitted that Gholam Azam committed complicity and aiding and abetting by procurement and instigation. They reiterated that Gholam Azam was aware that he had superior status, and knew that the Pakistani army was carrying out widespread massacres of the civilian population. Additionally, they argued that, as a student of political science, Gholam Azam knew or should have known what would happen if he incited his followers to cooperate with Pakistan.

DEFENSE COUNTER ARGUMENTS

The Defense countered that no evidence was presented by the Prosecution to establish that Gholam Azam provided assistance or encouragement to the perpetrators of any crime, nor that he acted in a way that substantially contributed to or had a substantial impact on the commission of a crime under section 3(2) of the Act. They asserted that the Prosecution had failed to identify even one specific offence or incident committed pursuant to Gholam Azam's actions. The Defense argued that none of the witness' testimony or documentary evidence affirmatively identified members of the Pakistani Army or its auxiliary forces who had heard or read Gholam Azam's statements prior to committing crimes under section 3(2). Prosecution witnesses 1, 2 and 3 made only general statements regarding the commission of atrocities by the Pakistani Army, Peace Committees, Razakars and Al-Badr. However, none of these witnesses connected Gholam Azam's statements or actions to the offenses committed in the country. As such, Defense argued, the Prosecution failed to prove the *actus reus* of the offence of Complicity.

Defense additionally argued that the Prosecution failed to present sufficient facts and evidence to establish that Gholam Azam had the requisite mental state to be found guilty of complicity in Genocide, specifically that he acted with the knowledge and intent that Genocide ultimately be committed. They also alleged that the Prosecution had failed to produce evidence showing that Gholam Azam acted intentionally and with awareness that his conduct was contributing to the commission of Crimes Against Humanity.

SUPPORTING EVIDENCEⁱⁱ

Prosecution witnesses 1, 2, 3 and 16 gave general testimony applicable to charges 1 to 4.

Documentary Evidenceⁱⁱⁱ	Witness Testimony
---	--------------------------

<p>The Prosecution submitted news reports and authenticated copies of speeches, press releases, and statements by Gholam Azam expressing his dedication to the cause of a unified Pakistan, calling for the eradication of the “miscreants” who were carrying out a separatist movement, condemning Indian infiltrators, calling for additional arms to be provided to the auxiliary forces and calling on all true patriots to resist the independence movement.</p> <p>Exhibits 3, 4, 5/1, 6, 11, 13, 17, 20, 22, 25, 31, 34, 35, 37, 41, 42, 44, 47, 48, 49, 53, 57, 61, 63, 68, 69, 70, 72, 77, 83, 84, 85,100,106, 111, 112, 113, 114, 116, 169, 488, 489, 492</p>	<p>PW-1: Muntaseer Mamun provided general testimony alleging that Gholam Azam incited/instigated Peace Committee members in the commission of atrocities, including rape and attacks on the minority Hindu community and the Awami League, thereby indicating Gholam Azam’s complicity in the commission of offences under section 3(2) of the Act.</p> <p>PW-3: In her deposition, Sultana Kamal stated that Gholam Azam supported and assisted the Pakistani Army in the commission of atrocities. She stated that she learned of his support and assistance from news reports and radio speeches.</p> <p>PW-16: (IO) stated that Gholam Azam made statements and speeches that indicated that he was complicit in the commission of offences under section 3(2) of the Act.</p>
---	---

DEFENSE EVIDENCE

No documentary or witness evidence was submitted to specifically contradict this charge. See above for a description of the Defense’s evidence.

IX. CHARGE 5: MURDER AND TORTURE AS CRIMES AGAINST HUMANITY

Under Charge 5 Gholam Azam is accused of murder and torture as Crimes Against Humanity under section 3(2)(a) of the International Crimes (Tribunals) Act 1971.

LEGAL STANDARD

The parties agreed that The legal standard for murder as a Crime Against Humanity requires proof of the commission of the crime, and evidence that it constituted an attack on the civilian population, which includes an implied requirement of a “widespread or systematic attack.”

PROSECUTION ARGUMENTS

It was alleged that on 25 October 1971, the Razakars arrested Siru Miah, his son Anwar Kamal, and Nazrul, and took them to Dana Miah’s house, where they were physically abused by Jamaat-e-Islami leader and Shanti (Peace) Committee member, Peyara Miah.

Gholam Azam is accused of sending an official letter to the Peyara Miah instructing him to kill Siru Mia and his son, because they were freedom fighters. It was alleged that under his direct instruction, a total of 38 persons, including SI Siru Miah, Anwar Kamal, Nurul Islam, and Abdul Kashem were killed, and that Anwar Kamal was tortured and killed.

DEFENSE COUNTER ARGUMENTS

The Defense sought to cast doubt on the testimony of the witnesses by pointing out inconsistencies. They argued that the Prosecution alleged that the killing of Siru Mia occurred in Comilla, while the witnesses said that it occurred in Brahmanbaria.

The Defense submitted that Prosecution Witness 13 (Shiru Miah’s wife) had claimed during cross-examination that the letter she carried from Mohsin Ali to his brother, Fazlur Rahman, was a small letter containing two lines requesting that the Razakars free Shiru Mia and his son. The Defense submitted that she had heard about the contents of the letter from his brother Fazlul Rahman, who is now deceased.

Defense submitted that if the letter was from Gholam Azam and instructed the captors that they should not spare the life of Shiru Mia and his son, it proves first, that he did not call for the murder of the victims, and secondly, contradicts the Prosecution’s claim that Gholam Azam had superior and command responsibility over the Razakar forces. Alternately, the Defense claimed that PW-13 did not in fact read the letter, and did not learn of its contents from her brother Fazlur Rahman. Therefore, Defense argued, the contents of the letter could not be verified, and were not an appropriate basis for the court’s findings.

Defense also pointed out inconsistencies in PW-13’s testimony. For instance, she stated that her brother-in-law was the teacher of Motijheel Government High School in 1971, but in his written statement, Mohsin Ali stated that he joined Khilgaon Government High School on May 1, 1968 and worked there until 1989, entering retirement in 1995 from Motijheel Government Boys High School.

SUPPORTING EVIDENCE^{liii}

Documentary Evidence	Witness Testimony
<p>The Tribunal accepted the out-of-court written statement of Mursalin Ali Khan (brother-in-law of Anwara Begum who allegedly carried the letter from Gholam Azam to Peyara Miah) as evidence under section 19(2) of the ICT Act 1973.</p>	<p>PW-11 (Shafiuddin Ahmed), PW-12 (Sona Mia) and PW-13 (witness in camera) gave testimony regarding this charge.</p> <p>PW-11: stated that Siru Mia and his son Anwar Kamal (son of Siru Mia) along with four others left their camp for India on the night of 26 October. Siru Mia on the way wrote a letter to his wife. On October 27, as soon as they reached the street Razakars surrounded them, took away two revolvers and tied them up. They were taken to Dana Mia’s house and tortured there for 2 or 3 days. Thereafter the other detainees were taken to Brahmanbaria Jail. Prosecution Witness -11 said that Brigadier Sadullah separated him from 39 captives, and took the others away by army vehicle. The next morning he heard that the 39 persons who were taken away the night before had been killed. He released from jail after Brahmanbaria was liberated and heard that</p>

	<p>one of the 39 detainees survived. Prosecution Witness 11 said that he found out that Siru Miah, Anwar Kamal, Nazrul Islam and Abul Kashem were among 38 persons who had been killed. The witness also said that after Liberation War he heard that Siru Miah's wife had brought a second letter from Gholam Azam with the hope of saving her husband Siru Mia and son Anwar Kamal.</p> <p>PW 12: Sona Miah testified that on the night of Eid day he heard shooting and that the next morning he witness Razakars digging trenches to bury the dead. He testified that the Razakars buried 38 corpses there.</p>
--	--

DEFENSE EVIDENCE

No documentary or witness evidence was submitted to specifically contradict this charge. See above for a description of the Defense's general evidence.

X. CONCLUSION:

The Tribunal began its deliberations in the case of *Chief Prosecutor vs. Professor Gholam Azam* on 17 April 2013. At the date of publication of this report, the verdict has been pending for two months. This is markedly longer than the average turnaround time for the previous four verdicts issued by the ICT, all of which were issued about three or four weeks after the case was officially closed. The case against Gholam Azam is considered by many to have major significance for the remaining cases being prosecuted before the ICT, particularly because of the potential treatment of the doctrine of Command Responsibility and the factual findings of the role of local Peace Committees in the commission of atrocities. Once the verdict is issued, the Bangladesh Trial Observer will publish a summary of the key findings of the Tribunal.

ANNEX A: DOCUMENTARY EVIDENCE

Prosecution Supporting Documents	Defense Supporting Documents
Exhibit 2: <i>Daily Shangram</i> , 18 May 1971	Exhibit I: A video clip of a talk show ‘Shoja Kotha’ aired by Desh TV on 14 May 2012
Exhibit 3: <i>Daily Shangram</i> , 19 June 1971,	Exhibit 2: A video clip of a program ‘Ronagoner Dinguli’ aired by BTV on 20 April 2012
Exhibit 4: <i>Daily Shangram</i> , 20 June 1971	Exhibit H: ‘Gibone Ja Dekhlam’ Vol-1, written by Gholam Azam
Exhibit 5/1: <i>Daily Shangram</i> , 22. June 1971,	Exhibit H1: ‘Gibone Ja Dekhlam’ Vol-3, written by Gholam Azam
Exhibit 6: <i>Daily Shangram</i> , 23 June 1971,	Exhibit DE: Excerpts of the ‘Deliberate Debacle’ by Safdar Mahmood
Exhibit 9: <i>Daily Shangram</i> , 19 July 1971,	Exhibit CY: An interview with the Daily Shangram on 19 November 2000
Exhibit 10: <i>Daily Shangram</i> , 03 August 1971,	Exhibit AH: An interview published in the Daily Shangram on 15 December 2011
Exhibit 11: <i>Daily Shangram</i> , 08 August 1971,	Exhibit BF: A telegram from ADC General of Moymonshingho dated 15 May 1971
Exhibit 13: <i>Daily Shangram</i> , 27 August 1971,	Exhibit BG: A direction given by SDO to the Circle Officer of the Police Station of Netrokona dated 15 May 1971
Exhibit 14: <i>Daily Shangram</i> , 28 August 1971,	Exhibit BH: A telegram sent by SDO to the Circle Officer of the Police Station of Netrokona dated 15 May 1971
Exhibit 16: <i>Daily Shangram</i> , 08 September 1971	Exhibit BI: A letter sent by Circle Officer of Mohonganj to the SDO of Netrokona dated 19 May 1971
Exhibit 17: <i>Daily Shangram</i> , 11 September 1971	Exhibit BJ: A letter sent by Circle Officer of Durgapur to the SDO of Netrokona dated 21 May 1971
Exhibit 18: <i>Daily Shangram</i> , 12 September 1971	Exhibit BK: A letter sent by Circle Officer of Barhatta to the SDO of Netrokona dated 23 May 1971
Exhibit 19: <i>Daily Shangram</i> , 18 September 1971	Exhibit BT: A letter of a DC of Moymenshingho sent to the Administrator of Netrokona dated 19 August 1971
Exhibit 20: <i>Daily Shangram</i> , 19 September 1971	Exhibit BM: Daily schedule of Koilati Union Peace Committee meeting held on 05-07-1971
Exhibit 22: <i>Daily Shangram</i> , 26 September 1971	Exhibit BN: Daily schedule of Medoni Union Peace Committee meeting held on 07-07-1971
Exhibit 23: <i>Daily Shangram</i> , 04 October 1971	Exhibit BO: Daily schedule of Lakhiganj Union Peace Committee meeting held on 08-07-1971
Exhibit 25: <i>Daily Shangram</i> , 17 October 1971	Exhibit BP: Daily schedule of Chollisha Union Peace Committee meeting held on 09-07-1971
Exhibit 28: <i>Daily Shangram</i> , 24 November 1971	Exhibit BQ: Daily schedule of Rawha Union Peace Committee meeting held on 12-07-1971
Exhibit 29: <i>Daily Shangram</i> , 26 November 1971	Exhibit BS: Daily schedule of Amtola Union Peace Committee meeting held on 13-07-1971
Exhibit 31: <i>Daily Shangram</i> , 29 November 1971	Exhibit CA: Gazette of Razakar Ordinance 1971, dated 07-09-1972
Exhibit 33: <i>Daily Azad</i> , 05 April 1971	Exhibit CB: Documents on Razakars, their training,
Exhibit 34: <i>Daily Azad</i> , 06 April 1971,	
Exhibit 35: <i>Daily Azad</i> , 07 April 1971	
Exhibit 36: <i>Daily Azad</i> , 08 April 1971	
Exhibit 37: <i>Daily Azad</i> , 11 April 1971	
Exhibit 38: <i>Daily Azad</i> , 11 April 1971	
Exhibit 41: <i>Daily Azad</i> , 17 April 1971	
Exhibit 42: <i>Daily Azad</i> , 19 June 1971	
Exhibit 43: <i>Daily Azad</i> , 21 June 1971	
Exhibit 44: <i>Daily Azad</i> , 22 June 1971	
Exhibit 45: <i>Daily Azad</i> , 09 August 1971	
Exhibit 47: <i>Daily Azad</i> , 27 August 1971	
Exhibit 48: <i>Daily Azad</i> , 28 August 1971	
Exhibit 49: <i>Daily Azad</i> , 17 October 1971	
Exhibit 52: <i>Daily Pakistan</i> , 06 April 1971	
Exhibit 53: <i>Daily Pakistan</i> , 07 April 1971	
Exhibit 54: <i>Daily Pakistan</i> , 11 April 1971	
Exhibit 57: <i>Daily Pakistan</i> , 16 April 1971	
Exhibit 60: <i>Daily Pakistan</i> , 18 May 1971	
Exhibit 61: <i>Daily Pakistan</i> , 19 June 1971	
Exhibit 62: <i>Daily Pakistan</i> , 21 June 1971	
Exhibit 63: <i>Daily Pakistan</i> , 22 June 1971	
Exhibit 64: <i>Daily Pakistan</i> , 08 August 1971	
Exhibit 65: <i>Daily Pakistan</i> , 16 August 1971	
Exhibit 66: <i>Daily Pakistan</i> , 18 August 1971	
Exhibit 67: <i>Daily Pakistan</i> , 24 August 1971	
Exhibit 68: <i>Daily Pakistan</i> , 29 August 1971	
Exhibit 69: <i>Daily Pakistan</i> , 01 September 1971	

<p>Exhibit 70: <i>Daily Pakistan</i>, 02 September 1971 Exhibit 71: <i>Daily Pakistan</i>, 06 September 1971 Exhibit 72: <i>Daily Pakistan</i>, 21 September 1971 Exhibit 77: <i>Daily Ittefaq</i>, 19 June 1971 Exhibit 83: <i>Daily Ittefaq</i>, 22 August 1971 Exhibit 84: <i>Daily Ittefaq</i>, 27 August 1971 Exhibit 85: <i>Daily Ittefaq</i>, 01 September 1971 Exhibit 97: <i>Daily Ittefaq</i>, 02 December 1971 Exhibit 99: <i>Daily Purbodesh</i>, 06 April 1971 Exhibit 100: <i>Daily Purbodesh</i>, 07 April 1971 Exhibit 101: <i>Daily Purbodesh</i>, 11 April 1971 Exhibit 103: <i>Daily Purbodesh</i>, 14 April 1971 Exhibit 105: <i>Daily Purbodesh</i>, 23 April 1971 Exhibit 106: <i>Daily Purbodesh</i>, 19 June 1971 Exhibit 108: <i>Daily Purbodesh</i>, 16 August 1971 Exhibit 111: <i>Daily Purbodesh</i>, 27 August 1971 Exhibit 112: <i>Daily Purbodesh</i>, 29 August 1971 Exhibit 113: <i>Daily Purbodesh</i>, 11 September 1971 Exhibit 114: <i>Daily Purbodesh</i>, 17 October 1971 Exhibit 116: <i>Daily Purbodesh</i>, 27 November 1971 Exhibit 167: <i>Daily Azad</i>, 12 April 1971 Exhibit 169: <i>Daily Paygam</i>, dated 22 May 1971 Exhibit 469: Police Abstract Report Exhibit 481: Fortnightly Report dated 1st half of May 1971 Exhibit 487: Fortnightly Report dated 1st half of August 1971 Exhibit 488: Fortnightly Report dated 2nd half of August 1971 Exhibit 489: Fortnightly Report dated 1st half of September 1971, Exhibit 492: Fortnightly Report dated 2nd half of October 1971</p>	<p>organizations, syllabus and general directions Exhibit CH: Direction from GSO-2 regarding verification of Razakars dated 08-09-1971 Exhibit CM- CM72: List of armed Razakars, daily and weekly reports Exhibit FY: A memo dated 25 May 1971 issued by the office of the SDO of Netrokona</p>
---	--

APPENDIX B: Chart of Evidence Supporting Charge 1

* Prosecution witnesses 1, 2, 3 and 16 gave general testimony applicable to charges 1 - 4

Count	Supporting Evidence
1	<p>PW-1: Mr. Muntaseer Mamun stated during his examination-in-chief that leaders of some political parties met with General Tikka Khan in the first week of April and that Peace Committee was formed on the recommendations and inspiration of Nurul Amin and GA.</p> <p>PW-2: Mahbub Uddin Ahmed Bir Bikrom stated that he came to know through newspaper reports after the war that GA, Khwaja Khairuddin and Nurul Amin met Tikka Khan and supported Operation Searchlight and planned to form Peace Committees throughout the country.</p> <p>PW-3: Sultana Kamal in her examination-in-chief stated that she knew about the activities of the religious political parties in 1971 from reading various newspaper reports and that she heard that Gholam Azam used to meet General Tikka Khan to discuss how to maintain a unified Pakistan.</p> <p>PW-16: The Investigation Officer, during his examination-in-chief stated that on 4th April 1971, Gholam Azam together with 12 other political leaders met Tikka Khan at Governor's House and decided to support the Pakistani Army.</p> <p>Exhibit 33: a news report published in the <i>Daily Azad</i>, dated 5 April 1971, based on a news broadcast in Radio Pakistan. This Exhibit reports that Gholam Azam and various other political leaders met with General Tikka Khan.</p> <p>Exhibit 34: a news report published in the <i>Daily Azad</i>, dated 6 April 1971, based on a press release issued by the Martial Law Authority. The report states that various political leaders, including Gholam Azam, met with General Tikka Khan and proposed to form a Citizens Committee with the goal of restoring normalcy and obtaining the confidence of the masses.</p> <p>Exhibit 52: a photo showing a meeting between Gholam Azam and General Tikka Khan, published in the <i>Daily Pakistan</i>, dated 6th April 1971.</p> <p>Exhibit 99: a news report regarding a speech by Mr. Nurul Amin which was broadcast by Radio Pakistan; and a photo of a meeting between Gholam Azam and General Tikka Khan, published in the <i>Daily Purbodesh</i>, dated 6th April 1971.</p>
2	<p>PW-2: Mahbub Uddin Bir Bikrom stated during his examination-in-chief that Gholam Azam met with General Tikka Khan. He did not specify the date of the meeting.</p> <p>Exhibit 35: a news report published in the <i>Daily Azad</i>, on 7 April 1971, based on a "Government Hand-Out".</p> <p>Exhibits 35, 53 and 100: news reports stating that Gholam Azam and other political leaders assured Pakistan of their full cooperation in the restoration of normalcy in the region. They also expressed their concerns regarding Indian aggression and assured the Pakistani Army of assistance in destroying the Indian conspiracy.</p>
3	<p>Exhibit 479: Fortnightly Report dated 1st half of April 1971. According to paragraph 12 of Exhibit 479, a meeting of East Pakistan Peace and Welfare steering committee was held in Dhaka in which members took an oath dedicating themselves to the cause of promoting Islam and preserving the integrity and sovereignty of Pakistan. The meeting outlined policies and programs to regain confidence of the people and to restore normalcy in the region and to organize people to fight against Indian aggression.</p>
4	<p>Exhibit 4: a news report published in the <i>Daily Sangram</i>, dated 20 June 1971, showing that Gholam Azam met with President Yahya Khan and thereafter, at a press conference, stated that power could not be transferred to the people in East Pakistan until there was a restoration of normalcy.^{liv} He also stated that the two wings of Pakistan must be united on the basis of the ideology underpinning the creation of Pakistan, the shared religious identity of Islam.</p>
5	<p>Exhibit 62: a news report published in the <i>Daily Pakistan</i>, dated 21 June 1971, shows that Gholam Azam addressed a press conference and stated that due to the undemocratic regime of</p>

	Ayub Khan the people of East Pakistan had departed from the ideology of Pakistan, leading to a growing separatist attitude in East Pakistan. According to the last paragraph of the Exhibit, Gholam Azam met President Yahya Khan at Rawalpindi and Syed Abul Ala Maududi in Lahore during his visit.
6	Exhibit 97: a news report published in the <i>Daily Ittefaq</i> , dated 2 December 1971, which states that after the 70 minute meeting with president Yahya Khan, Gholam Azam gave a press statement that he had advised the President to eliminate all injustices and to restore the confidence of the people of East Pakistan. He also demanded an increase in the number of Razakars to combat the armed freedom fighters.

APPENDIX C: Chart of Evidence Supporting Charge 2 – Planning

* Prosecution witnesses 1, 2, 3 and 16 gave general testimony applicable to charges 1 - 4

Count	Supporting Evidence
1	<p>PW- 1: Muntaseer Mamun stated that the formation of the Peace Committees, Razakars, and Al Badr forces was planned by political parties including Jamaat-e-Islami.</p> <p>PW- 2: Mahbub Uddin Bir Bikrom stated that he read in newspaper reports published after the war that Gholam Azam and others had met General Tikka Khan and planned to form Peace Committees.</p> <p>Exhibit 33: a report from the <i>Daily Azad</i>, 5 April 1971, stating that Gholam Azam and other political party leaders met General Tikka Khan on 4 April, 1971.</p> <p>Exhibit 34: a report from the <i>Daily Azad</i>, 6 April 1971, based on a press release issued by the Martial Law Authority. States that Gholam Azam and other political leaders proposed the formation of Peace Committees with the goal of restoring normalcy in the region and eliminating fear and anxiety from the minds of the people.</p>
2	<p>Exhibit 37: a report in the <i>Daily Azad</i>, 11 April 1971, stating that Peace Committees would be formed in various unions and villages with the purpose of restoring normalcy in the province.</p> <p>Exhibits 101 and 167: news reports in the <i>Daily Purbodesh</i>, 11 April 1971, and the <i>Daily Paygam</i>, 12 April 1971, stating that a Peace Committee of 140 members had been formed with the purpose of restoring normalcy in the country.</p>
3	<p>Exhibit 481: a Fortnightly Report on the political situation published by the government in the first half of April 1971, showing that a meeting was held at the residence of Mr. A.Q.M Shafiqul Islam during which resolutions were adopted demanding the protection of life and property for the general public against the “miscreants.”</p> <p>Exhibit 457: East Pakistan Police Abstract of Intelligence, Dhaka, for the week ending 8 May 1971, showing that a meeting was held at the residence of A.Q.M Shafiqul Islam where the participants discussed the formation of Peace Committees in different Unions of Dhaka City for the restoration of complete normalcy and the proposed observance of Eid-i-Milad-un-Nabi</p>

APPENDIX D: Chart of Evidence Supporting Charge 3, Incitement

* Prosecution witnesses 1, 2, 3 and 16 gave general testimony applicable to charges 1 – 4.

Count	Supporting Evidence
1	<p><u>PW 1:</u> also stated that Gholam Azam incited Peace Committee members in the commission of atrocities, including raping and attacking members of the Hindu community and the Awami League.</p> <p><u>PW 16:</u> in his deposition stated that Gholam Azam used to make statements and speeches inciting commission of atrocities.</p> <p><u>Exhibit 36:</u> a joint statement in which Gholam Azam expressed his belief that the patriotic citizens of East Pakistan would ‘destroy’ the Indian infiltrators wherever they see them and that the people of East Pakistan would never allow Indian infiltrators to interfere with the sovereignty of Pakistan</p>
2	<u>Exhibit 38 and 54</u>
3	<u>Exhibit 105:</u> a press release of the Central Peace Committee issued by Khwaja Khaeruddin dated 22 April 1971, where the patriotic people of the then East Pakistan were called upon to assist the Pakistan Army, so that the country may be freed of ‘anti-state elements’ and ‘miscreants’.
4	<u>Exhibit 481:</u> shows that Gholam Azam was present at a meeting of Jamaat-e-Islami on 2 May 1971 where he addressed the party workers stressing on the need of Islamic education and social justice and also opined that the two wings of Pakistan could be kept untied only through Islamic ideology.
5	<u>Exhibits 2 and 60:</u> news reports that Gholam Azam attended a meeting on 17 May 1971 where a resolution was adopted praising the Pakistan Army for the crisis created by the anti-state activities of the banned Awami League. At the meeting, the view was expressed that the Islamic parties should be united in assisting the Pakistan Army to take actions against the ‘traitors of Pakistan’. It was also urged that every patriotic person should trace out ‘miscreants’ and seek to restore normalcy in the province.
6	<u>Exhibit 169</u>
7	<u>Exhibit 5</u>
8	<u>Exhibit 6:</u> newspaper article including a statement by Gholam Azam where he called upon all to resist the ‘miscreants’ and ‘anti-state elements’ and praised the Pakistan Army for saving Pakistan from destruction invited all to cooperate with the authorities for the restoration of normalcy.
9	<u>Exhibit- 469</u>
10	<u>Exhibit 9</u>
11	<p><u>Exhibits 10:</u> statement from Gholam Azam giving an account of the ‘war situation’ and stating that the war was not only one of arms but also of ideals and that victory was essential to protect Islam and preserve the unity of the country.</p> <p><u>Exhibit 487:</u>(Fortnightly Reports on Political situation), Report of comments by Gholam Azam and others discussing the importance of Islamic education and the need for framing a Constitution based on Islamic ideology.</p>
12	<u>Exhibit 487:</u> including statements from Gholam Azam exhorting the audience to unite under the banner of Jamaat-e-Islami and to rout the miscreants and secessionists and pleaded for the establishment of Islamic rule in the country on the basis of the Quran and Sunnah.
13	<p><u>Exhibits 11:</u> statement from Gholam Azam calling upon the ordinary people to maintain constant communications with the Peace Committees and the establishment in order to remain vigilant against ‘miscreants’ and to resist ‘anti-state elements’.</p> <p><u>Exhibit 64 and 45</u></p>

14	<u>Exhibit 12</u>
15	<u>Exhibit 46</u> <u>Exhibit 65:</u> statement by Gholam Azam emphasizing the importance of identifying the rebels. <u>Exhibit 108:</u> statement from Gholam Azam that those misguided Bengalis who fail to understand that the demands of the Bengali Muslims must be fulfilled within the framework of united Pakistan have no right to remain in the country and should leave for India.
16	<u>Exhibit 109 and 66:</u> containing statement by Gholam Azam that India was supplying arms and ammunitions to miscreants in East Pakistan and were sending armed insurgents to divide Pakistan necessitating an armed attack by Pakistan upon India
17	<u>Exhibit 67:</u> statement by Gholam Azam made a statement that Jamaat members have lost their lives at the hands of the miscreants because they opposed the separatist movement. Gholam Azam stated that only Jamaat members have been able to hold meetings in the face of threat and ‘gundami’ of Awami League.
18	<u>Exhibits 14, 48, 112 and 68:</u> containing statements by Gholam Azam that the damage caused by a group of separatists could not be undone by mere slogans.
19	<u>Exhibits 19 and 71:</u> showing a statement by Gholam Azam inviting the people to remain committed to the ideals of Pakistan and to engage in a war against international enemies. Gholam Azam refers to the Indo-Pak war in 1965 and the sacrifices made in protecting the sovereignty of Pakistan against Indian attacks.
20	<u>Exhibit 16:</u> an interview with Gholam Azam in which he stated that Jamaat members were joining the Razakar forces to defend the integrity of Pakistan as they knew that there is no place for Islam and Muslims in Bangladesh. He also stated that the country has to be freed from ultra nationalists.
21	<u>Exhibit 489 (Fortnightly report):</u> statements by Gholam Azam and others, praising the sacrifice of Maulana Al Madani for the cause of Islam. Resolutions were also adopted during a meeting condemning the killing of the Maulana and branding the supporters of rebels as enemies of Islam.
22	<u>Exhibit 18:</u> including a statement in which Gholam Azam, addressing members of the Islami Chattro Shangho stated that the activists of the organization would be able to protect the integrity of Pakistan.
23	<u>Exhibit 19:</u> article stating that Gholam Azam visited the Razakar camp in Mohammadpur, Physical Education Center, and stated that the attack on Madrasa students and religious scholars had forced them to join Razakar, Mujahid and police forces to defend themselves.
24	<u>Exhibit 22:</u> including a statement Gholam Azam that many members of Jamaat have died as a result of the destructive activities of the miscreants and that Jamaat members were putting their lives at risk to uphold the existence and unity of Pakistan and to establish peace and security across the country.
25	<u>Exhibit 23:</u> including a statement by Gholam Azam that if they failed to defend the country, they would fail to protect their ideology. He also invited all to prepare themselves for all kinds of sacrifices to protect their homeland created on the basis of an ideology to which they subscribed.
26	<u>Exhibit 28:</u> including a statement by Gholam Azam that in order for Pakistan to survive, it would have to adopt an aggressive position and that this would be the best mode of self defense for Pakistan. He also demanded that all peace loving citizens, Peace Committee members, Razakars should be equipped with modern arms and ammunition.
27	<u>Exhibit 29:</u> showing that Gholam Azam called on President Yahya to attack India in response to the all out attack of India on the then East Pakistan.
28	<u>Exhibit 97:</u> including a statement by Gholam Azam that the freedom fighters were enemy forces and the Razakars were sufficient to resist them and he also demanded an increase in the number of Razakar members.

APPENDIX C: Chart of Evidence Supporting Charge 4 – Complicity

* Prosecution witnesses 1, 2, 3 and 16 gave general testimony applicable to charges 1 – 4.

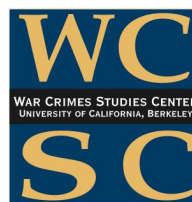
Count	Supporting Evidence
1	<p><u>PW-1:</u> stated that Gholam Azam incited/instigated Peace Committee members in the commission of atrocities, including raping and attacking members of the Hindu community and the Awami League, thereby indicating GA’s complicity in the commission of offences under section 3(2) of the Act.</p> <p><u>PW-3:</u> in her Deposition stated that Gholam Azam used to support and assist the Pakistan Army in the commission of atrocities. PW-3 then goes on to say that she has come to know of such support and assistance from news reports and radio speeches.</p> <p><u>PW-16:</u> in his deposition stated that Gholam Azam used to make statements and speeches inciting and instigating commission of atrocities, thereby indicating GA’s complicity in the commission of offences under section 3(2) of the Act.</p> <p><u>Exhibit 34:</u> reporting that Gholam Azam met with General Tika Khan as part of a twelve member delegation that proposed the constitution of a citizen’s committee to restore normalcy and eliminate fear and anxiety from the minds of the people.</p>
2	<p><u>Exhibits 35, 53 and 100:</u> referring to a government press release issued by the Martial Law Administration and reporting that Gholam Azam and several other leaders met General Tikka Khan separately on 6 April 1971 where a proposal was made for cooperating with the administration to restore normalcy. In the press release, it has also been stated that the leaders expressed concern regarding Indian aggression in the internal affairs of Pakistan and the activities of armed infiltrators in the territory of Pakistan. According to the press release, the leaders also stated that the patriotic people of the Province would assist the armed forces in destroying the Indian conspiracy.</p>
3	<p><u>Exhibit 37:</u> reporting that a 140 member Citizen’s Peace Committee has been constituted with Khwaja Khaeruddin as its Convener. It was also stated that Peace committees will be formed at union and mahalla levels in Greater Dhaka under the aegis of the Citizens Peace Committee. Gholam Azam’s name is mentioned as one of the members of the Citizens Peace Committee.</p>
4	<p><u>Exhibits 57 and 41:</u> reporting that the Citizens Peace Committee was renamed as Central Peace Committee which was tasked with restoration of normalcy in the region so that people from all walks of life could return to their respective professions. It was also decided at the meeting that Peace Committees would be constituted at the district and mahakuma levels. A 21 member Working Committee was also formed of which Gholam Azam was a member.</p>
5	<p><u>Exhibit 169:</u> reporting that the meeting was addressed by Choudhury Rahmat Ali and Major General (Retd.) Umrao Khan.</p>
6	<p><u>Exhibit 3, 42, 106, 61 and 77:</u> reporting that Gholam Azam did not support the transfer of power to the National Assembly elected in East Pakistan as the National Assembly was not in existence any more. Gholam Azam also stated that he would make several demands to the President for the development of the then East Pakistan. Gholam Azam then stated that miscreants were still carrying out their destructive activities, that their task is to create anarchy and to attack those who were in favor of united Pakistan and that they were a threat to such pro-Pakistan citizens. He also stated that the situation can be controlled only by apprehending the true criminals.</p>
7	<p><u>Exhibit 4:</u> reporting that Gholam Azam made a demand for supplying arms and ammunition to patriotic citizens of Pakistan so as to resist the ‘miscreants’. He also stated that miscreants were small in number but they were armed and were carrying out their destructive activities.</p>
8	<p><u>Exhibit 6:</u> reporting that Gholam Azam stated that the miscreants were involved in their destructive activities and that the patriotic citizens should be armed in self-defense.</p>

9	Exhibit 5/1, 44 and 63: reporting that Gholam Azam praised the Pakistan Army for destroying the separatist movement in East Pakistan and further stated that the disintegration of Pakistan could not have been avoided without the intervention of the Pakistan Army.
10	Exhibit 6: reporting that Gholam Azam called for banning of the political parties which had initiated and instigated the separatist movement. Gholam Azam also called upon all to resist the miscreants and the anti-state elements so that normalcy could be restored in the country. He also praised the Pakistan Army for saving the country from destruction and invited all to cooperate with the military authorities.
11	Exhibits 488 (Fortnightly Reports) and 11: reporting that Gholam Azam made a statement calling upon the ordinary people to maintain constant communications with the Peace Committees and the establishment in order to remain vigilant against ‘miscreants’ and to resist ‘anti-state elements.’
12	Exhibit 83: refers to a resolution of the Central Council of Jamaat-e-Islami supporting the steps taken by the Pakistan government in quelling the armed rebellion of the Awami League acting as agents of the Indians.
13	Exhibits 13, 47, 111 and 84: reporting that Gholam Azam at a press briefing stated that the Pakistan Army had saved Pakistan from the ‘Mir Zafar’ rebels of Pakistan and the evil motives of India. Gholam Azam also stated that the people of East Pakistan will provide full support to the armed forces to destroy the ‘miscreants’ and the ‘infiltrators’. He also referred to the leaders and members of the Awami League as ‘fascists’ stating that the Awami League members had resorted to violence to compel the people of East Pakistan to vote in their favor. Gholam Azam also stated that the people of East Pakistan had not rebelled. Rather, according to him, it was the members of Awami League who had rebelled and that they had sought to ‘break-up’ Pakistan with the help of India.
14	Exhibits 48, 112 and 68: reporting that Gholam Azam stated that the damage caused by the party of separatists cannot be remedied merely by chanting slogans. Gholam Azam also praised the Pakistan Army for the role played by them in preserving the unity of Pakistan. He also stated that those who had been in the leadership of the Pakistan Movement cannot ever demand separation. Gholam Azam also stated that a vested quarter in collusion with India was involved in arson, looting and violence in the country and it is they who want East Pakistan to be separated. Gholam Azam also stated that in order to assist the separatists of the banned Awami League, India was smuggling in infiltrators and arms and explosives into the country through Akhaura, Chuadanga and Brahmanbaria. He further stated that once the Pakistan Army commenced operations, the infiltrators and the miscreants had fled.
15	Exhibit 85 and 69: reporting that Gholam Azam demanded that the patriotic citizens of Pakistan should be strengthened as they are not only helping to control the situation in Pakistan but also assisting the Army and the administration in resisting the anti-state activities of miscreants and rebels. Gholam Azam also praised the Pakistan Army for preserving the unity of Pakistan. In Exhibit 85, it is seen that Gholam Azam stated that the Jamiat-e-Tolaba Arabiya and Islami Jamiat-e-Talaba were playing an important role in resisting the destructive activities of the miscreants and the infiltrators. He also praised the Army for saving the country from the hands of the separatists.
16	Exhibit 70: reporting that Gholam Azam expressed gratitude towards the Pakistan Army for preserving the unity of Pakistan and providing security to its people. He also stated that a good Muslim cannot support the Bangladesh Movement. He also stated that in order to eliminate the separatists, dedicated and patriotic people were working together. He also praised the Razakar forces.
17	Exhibit 489 (Fortnightly Reports): reporting that Gholam Azam attended a meeting where participants stressed on the necessity of strict Government measures for restoration of normalcy by

	eliminating the rebels and anti-social elements.
18	Exhibits 17, 113 and 489: reporting that Gholam Azam demanded inclusion of competent persons in the Pakistan delegation to the General Assembly of the United Nations so that they can adequately address the concerns of other countries.
19	Exhibits 20 and 72: reporting that Gholam Azam congratulated the freshly constituted Cabinet stating that the newly appointed Ministers would have to work towards bringing back a sense of normalcy to the country. He also expressed the hope that the Cabinet would play an important role in the restoration of normalcy and the re-establishment of democracy.
20	Exhibit 22: reporting that Gholam Azam stated that many members of Jamaat-e-Islami had lost their lives as a result of the destructive activities of ‘miscreants’. He also said that just as the Peace Committees were working towards restoration of normalcy, the newly inducted Ministers in the Cabinet would also work towards achieving the same goal.
21	Exhibits 25, 49, 114 and 492: reporting that Gholam Azam stated that it was essential to preserve the unity of Pakistan in order to protect the rights of Bengali Muslims. He gave an account of how the rights of Bengali Muslims have been exploited in the past and demanded the framing of a federal Constitution based on Islamic social order and maximum regional autonomy within the framework of united Pakistan. He also criticized Sheikh Mujb for his lack of foresight and control of his followers, particularly, the extremists who raised the slogan of ‘Bangladesh’.
22	Exhibit 116: reporting that Gholam Azam demanded that Razakars should be equipped with modern ammunition so that they can eliminate the miscreants.
23	Exhibit 31: reporting that Gholam Azam stated that the United Coalition Party (UCP) was dedicated towards preserving the ideology and sovereignty of Pakistan. He also demanded that the President visit the then East Pakistan so as to make more effective use of the support of the patriotic citizens of the then East Pakistan. He also stated that members of the UCP and the Razakar forces were sacrificing their lives to save the country.

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

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



- ⁱ See our coverage of the rejection of the Defense Application for Retrial here: <http://bangladeshtribunalobserver.org/2013/01/04/3-january-2012-tribunal-1-daily-summary-rejects-application-for-retrial-in-sayedee-golam-azam-and-nizami-cases/>
- ⁱⁱ A full list of the Prosecution and Defense Exhibits is included at the end of this report as Annex A.
- ⁱⁱⁱ A full list of the Prosecution and Defense Exhibits is included at the end of this report as Annex A.
- ^{iv} more detail regarding superior responsibility on the daily summary dated 20 March 2013, 15 April 2013 and 17 April 2013]
- ^v The words “individual or group of individuals” were added to the ICT Act by amendment in 2009.
- ^{vi} The Prosecution did not specify over which groups Gholam Azam exercised superior control, though it appears that they sought to hold him responsible for the actions of the Razakars, Al-Badr, Al-Shams, Jamaat-e-Islami, and even the Pakistani Army.
- ^{vii} The Prosecution referred generally to ICTR cases *Kajelijeli* (2005) and *Nahimana* (2007); and ICTY cases *Blaskic* (2004), *Halilovic* (2005) in support of their arguments on Command Responsibility.
- ^{viii} (*Tacaqui Judgment*, at p 20, para 3 and 7)
- ^{ix} Emphasis added.
- ^x (See *Blaskic* (Trial Chamber), 3rd March 2000, para 294 for application of Article 7(3) of ICTY Statutes. See also *Karera* (Trial Chamber), December 7, 2007, para 563 for application of Article 6(3) of ICTR Statutes).
- ^{xi} (*Blaskic* (Trial Chamber), March 3, 2000).
- ^{xii} In support of their arguments the Defense referred to a number of cases including 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), 3rd March 2000, para 294 for application of Article 7(3) of ICTY Statutes
- ^{xiii} The ICT has stated that “during the period of War of Liberation in 1971 parallel forces e.g [sic] Rzakar Bahini, Al-Shams, Al-Badar Bahini, , [sic] Peace Committee were formed as auxiliary forces of the Pakistani armed force who provided moral supports, assistance and substantially contributed and aso physically participated to the commission of horrendous atrocities in the territory of Bangladesh. (*Chief Prosecutor vs. Abul Kalam Azad*, Tribunal 2, para 35; *Chief Prosecutor vs. Delowar Hossain Sayedee*, Tribunal 1, para 40). Very similar language is also found in *Chief Prosecutor vs. Qader Molla*, Tribunal 2, para 75.
- ^{xiv} , Appeals Chamber of the ICTR, 16 June 2006, paras 33-35
- ^{xv} case no. IT-02-60/1-A, para 10
- ^{xvi} ICTR-99-50-T, TRIAL CHAMBER II, para 21.
- ^{xvii} *Prosecutor v. Jadranko* PRLIC, case no. IT-04-74-T, para 25
- ^{xviii} *Prosecutor v. Semanza*, ICTR-97-20-I para 25.
- ^{xix} , 286 F.2d 388 (5th Cir. 1961) at p. 397
- ^{xx} No Defendant currently being tried before the ICT has been charged with a crime other than Crimes Against Humanity or Genocide though the ICT Act does provide jurisdiction over War Crimes and Crimes Against Peace.
- ^{xxi} Para 894, *Nahimana* (Appeals Chamber)).
- ^{xxii} Para 894, *Nahimana* (Appeals Chamber)).
- ^{xxiii} Paras 896, 897, *Nahimana* (Appeals Chamber)).
- ^{xxiv} (Para 93, *Kayishema* (Trial Chamber)).
- ^{xxv} (Para 524, *Nahimana* (Appeals Chamber))
- ^{xxvi} (Para 561, *Radislav Krstic* (Trial Chamber)).
- ^{xxvii} *Chief Prosecutor vs. Professor Gholam Azam*, Charge Framing Order, Charge 1, para 1, pg 17.
- ^{xxviii} The Charge Framing Order does not specify a particular event or atrocity which was planned in the course of the meeting.
- ^{xxix} Charge 1, Count 2
- ^{xxx} *Chief Prosecutor vs. Professor Gholam Azam*, Charge Framing Order, Charge 1, Count 3, pg. 18.
- ^{xxxi} For a full chart showing the evidence used to support each individual count in Charge 1 please refer to Annex B.
- ^{xxxii} A full list of the Prosecution and Defense Exhibits is included at the end of this report as Annex A.
- ^{xxxiii} *Gacumbitsi* (ICTR Trial Chamber), June 17, 2004, para 271; *Kajelijeli* (ICTR Trial Chamber), December 1, 2003, para 761; *Akayesu* (Trial Chamber), September 2, 1998, para 480.
- ^{xxxiv} Para 761, *Kajelijeli* (Trial Chamber), *Nahimana, Barayagwiza and Ngeze* (ICTR Appeals Chamber) 28 November 2007, para 479
- ^{xxxv} *Nahimana, Barayagwiza and Ngeze* (ICTR Appeals Chamber) 28 November 2007, para 479.)
- ^{xxxvi} A full list of the Prosecution and Defense Exhibits is included at the end of this report as Annex A.
- ^{xxxvii} Para 851, *Kajelijeli* (Trial Chamber)

-
- xxxviii Para 852, Kajelijeli (Trial Chamber
xxxix Para 557, Akayesu (Trial Chamber))
- xi Para 558, Akayesu (Trial Chamber
xli Para 560, Akayesu (Trial Chamber)).
- xlii Para 560, Akayesu (Trial Chamber
xliii Para 524, Nahimana (Appeals Chamber
xliv The Prosecutor vs Kordic and Cerkez (ICTY IT-95-14/2-A), para 27
For a detailed chart enumerating the factual allegations of each count in Charge 3 please refer to Appendix A.
- xlvi *H M Ershad vs Bangladesh*, 2001 BLD (AD) 69
- xlvii Because the Prosecution has alleged 28 counts of incitement, it is impractical to chart the evidence submitted for each count. Therefore this is a general list. For a detailed breakdown of the evidence provided for each count please see Appendix B.
- xlviii A full list of the Prosecution and Defense Exhibits is included at the end of this report as Annex A.
- xlix Para 395, Semanza (Trial Chamber)
- ¹ Para 395, Semanza (Trial Chamber).
- li As with Charge 3, the number of counts contained within Charge 4 prohibit a detailed chart showing precisely which documents and witness statements were submitted to support which counts. For such a detailed account please refer to Appendix C.
- lii A full list of the Prosecution and Defense Exhibits is included at the end of this report as Annex A.
- liii *Ibid.*
- liv This transfer of power refers to the demand that the results of the 1970 election, in which East Pakistan won a majority of seats in the parliament, be honored and power transferred from West Pakistan.