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# **APPENDIX A**

*In the name of Allah, Most Gracious, Most Merciful  
"And if you rule, do so with fairness."*

**Case n° 1/9 First/2005  
Al-Dujail Lawsuit  
(Case)**

**Introduction**

**Introduction to the Judgment Decision**

**The Legal Context**

**Final Outcome**

## Introduction

Prior to considering the great quantity of papers and documents submitted before the tribunal (in a disorderly manner), and since any penalty imposed on any of the defendants should be based on established and proven evidence, this tribunal shall take into consideration the appropriate extent of freedom of action and choice (open to the tribunal) that will allow it to make decisions (judgments), within the context of maintaining a balance between administrating justice and protecting basic human rights, which forms an important and complimentary aspect of the stages of this case.

The trial chamber has analyzed the range of legal penalties set out in the law in comparison with the eligibility (admissibility) of the evidence submitted before the tribunal.

There is no doubt that, according to paragraph one of article (24) of the Iraqi High Tribunal law number (10) for the year 2005 and the rules of procedure and of collecting evidence annexed to the said law; and according to the law of criminal procedure number (23) for the year 1971, that the penalties on the basis of which this tribunal shall make its judgments are the penalties stipulated in criminal law number (111) for the year 1969;

And whereas this court also takes into consideration the decision of the transitional coalition government number (7) for the year 2005, section three thereof, which stipulates suspending the death penalty in each instance where it is the only penalty stipulated for penalizing the perpetrator of a (certain) crime, then the court will have the right to substitute it with sentencing the defendant to life imprisonment or imposing another penalty based on the stipulations of the penal code;

And whereas the basis of the work of the transitional coalition government, in its capacity as an interim government in Iraq (set up) for the purpose of achieving full sovereignty according to article (43) of **The Hague** Laws of 1907, whereby regulatory bill n° (1) of the transitional coalition government shall be the regulatory basis for the period that will follow the previous interim government;

And according to the second part of the said regulatory bill, the laws that were applicable in Iraq as on April 16, 2003 shall remain effective and applicable after that date unless the transitional coalition government decides to suspend, substitute or cancel the said laws and promulgate new legislation to replace them via the democratic institutions of Iraq;

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The said laws shall remain in effect and applied because they do not prevent the Temporary Coalition Government from practicing its rights and fulfilling its obligations, or as long as they do not disagree with this regulatory list or with any other regulatory list issued by the Temporary Coalition Government.

On the other hand, and in reference to order number (7) issued by the Temporary Coalition Government, and section three of said order concerning the penal code, and in item (2) of said order it is "stated" that the execution penalty shall be suspended in those cases where the execution penalty stipulated for penalizing the perpetrator. The court may substitute it by penalizing the accused to life-in-prison or to force upon him another penalty according to the stipulations of the penal code.

And as been clarified to us, the Temporary Coalition Government is considered a transitional authority in Iraq until achieving full sovereignty according to article (43) of The Hague Laws of 1907- the orientation of the occupier is to respect the language, norms and traditions of the occupied country. And whereas the Coalition Government had the legal authority to amend the Iraqi Local Law according to the conditions determined in paragraph (64) of Geneva Convention for protecting the people, and according to the decision of the Security Council number (1483). And whereas the President of the Coalition Government suspended the execution penalty and did not cancel it, and that it is legally stipulated in the Iraqi penal code number 111 for the year 1969 i.e. suspending the execution penalty by the coalition government and not canceling it, and this penalty exists in the Iraqi penal code since the year 1919.

Therefore, the first criminal body in the Iraqi court sees unanimously that it can judge any of the accused in this case by the appropriate penalty due to the seriousness of the felony or the committed crime including the execution penalty in accordance with term (24) of the Iraqi High Court number (10) for the year 2005 and the amended Iraqi penal code number (111) for the year 1969.

According to article (1) second of the Iraqi High Court number (10) for the year 2005, the Court's authority shall be applied to every physical and legal person whether Iraqi or non-Iraqi, residing in Iraq and accused in committing one of the crimes stated in articles (11, 12, 13, 14) of said law committed as of 17/7/1968 until 1/5/2003 in the Republic of Iraq or in any other place, comprising the following crimes:

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- a. Extermination
- b. Crimes against humanity
- c. War crimes
- d. Violation of Iraqi laws stipulated in article 14 of this law.

And in accordance with article (12)

First: of the law effective in this case and according to the charges brought against the accused (Saddam Hussein Majeed, Barazan Ibrahim Hassan, Taha Yassin Ramadan, Awad Hamad El Bandar, Mezher Abdalah Kazem Roueid, Abdalah Kazem Roueid, Ali Dayeh Ali- Mohamad Azawi Ali El Marsoumi).

And according to the item *First* of the accusatory list brought against the accused includes:

- a. Intentional homicide
- b. Extermination.

- c. Slavery.
- d. Displacement and forcing people to move.
- e. Imprisonment and strict prohibition of any physical freedoms, which infringes on the basic regulations of the international law.
- f. Torture
- g. Rape, coercive pregnancy, forcing on prostitution, and any other types of sexual violence of similar seriousness.
- h. Persecution of any specified group of people for political or ethnical or national or cultural or religious reasons or related to the gender or any other reasons not permitted by the international law in connection with any of the above mentioned acts or type of sexual violence of similar seriousness.
- i. Coercive concealment of people
- j. Other non-human acts of similar seriousness, which may intentionally cause severe suffering or dangerous harm to the body or mental or physical health.

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Second: For the purpose of applying the item *First*, the above terms have the following meanings:

- a. Attack against any group of civilians means a way of behavior that includes frequently committing of the acts stated in item *First* of this article against any group of civilians pursuant to the policy of the government or organization that imposes such attack or supports such policy.
- b. Extermination means the willful imposing of deprivation from food or medicine intending to cause the death of some people.
- c. Slavery is the state of being under the control of another person including the practice of such control by trading in people as women and children.
- d. Displacement or coercively moving people means moving people coercively from the region where they legally reside, by repelling or any other coercive act without justifications permitted by the international law.
- e. Torturing means intending to cause severe pain or suffering whether physical or mental on the confined person or under the control of the accuser provided that torturing does not comprise pain or suffer resulting from legal penalties or other relevant thereto.
- f. Persecution means severe and intentional deprivation of the basic rights, which disagrees with the international law because of the identity of the group.
- g. Coercive concealment of people means to capture people or confine them or kidnap them by the government or a political organization or by it permitting or supporting this act then refusing to acknowledge the deprivation of the those people of their freedoms or giving information about their fate or their place in order to deprive them from the legal protection for a long period of time.

#### **Article (17)**

**First:** In the case where no legal text exists in this law or in the regulations constituting it the criminal justice code will apply indict and try those who are accused as per the following cods:

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The period from 17/7/1968 to 14/2/1969 Penal Code of Baghdad for the year 1919.

b. The period from 15/12/1969 till 1/5/2003 penal code number (111) for the year 1969 that took effect in 1985.

c. Military penal code number 13 for the year 1940 and Military procedure law number (44) for the year 1941.

**Second:** The court and the appeal commission may refer to the precedence in the international criminal courts for interpreting the provisions of articles (11, 12, 13) of the law.

**Third:** The provisions of the penal code shall be effective in conformity with the provisions of this code and the international legal obligations relating to the crimes included in the court's authority upon applying the special provisions of exemption from criminal responsibility.

**Fourth:** The crimes stipulated in articles (11, 12, 13, 14) of this law shall not be subject to the prescription that drops the criminal lawsuit and penalty.

And upon carefully examining the aforementioned acts as crimes against humanity in article (12) of the criminal court, the court sees that there are criminal acts identified within the amended penal code number (111) of 1969 that agrees with the fundamental acts of crimes against humanity which is stipulated to take place within a large scale regulatory attack against a group of civilians/civilian society. However, homicide is identified by virtue of articles (406, 405) of the penal code as: the intentional killing of another person. This description agrees with the description of the crimes against humanity stipulated in article (12) first of the High Court code. Also the Iraqi penal code and in articles (325,322,333,393,421) criminalize: displacement, imprisonment, torture, rape, coercive concealment described as crimes against humanity included in article (12) –first- paragraphs (c, e, f, h)

Also the Iraqi penal code includes criminal acts having characteristics of the crimes against humanity as stated in articles from (90) to (222) of the law that the criminal acts against the internal security of the government comprises the criminal acts referred to in article (12), referred to by article (194), which punishes by execution any person organizes or manages or hold command of an armed group that attacks

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any group of people or aims, as one of its goals, to prevent the application of the law; also articles (334,335,342) criminalize the seizure or the destruction of the properties of others and articles (412,439) that criminalize assaulting and stealing other's money.

### **The fundamental components of establishing the court**

The beginning of establishing the first penal body presided by judge Mr. Rezkar Mohamad Amine and the membership of four other judges. And after the resignation of the president and excluding one of the criminal body members, the first criminal body was re-established presided by judge Mr. (Raouf Rashid AbdulRahman) who commenced his judicial duties in the session on

23/1/2006 upon the administrative order issued by the presidency of the Iraqi High Court n° (13) dated 22/1/2006. On 17/February, the defense presented a request for the withdraw of the new president of the body (Raouf Rashid AbdulRahman) from a lawsuit for being sided with the accused Saddam Hussein for being born in Halabja city from one side and for participating in the establishing of Human Rights Organization in Kurdistan in 1992 which opposed the government of Iraq and for being previously condemned and Saddam Hussein has forgiven him on the other side.

These presentations of the truth have a basic purpose as to obstruct the acts of the court after the resignation of the former judge. As for the personality of the new judge and as been clarified to the accused Saddam Hussein in the court's hall being from Halabja, and this does not relate to his judicial work for he has taken an oath and if he felt embarrassed in this concern he would ask for withdrawal according to law. Also, he wasn't arrested under the ruling of Saddam Hussein where he was practicing legal profession and owned a legal office in Baghdad. He was arrested under the ruling of AbdulSalam Aref during 1963-1964, where Saddam Hussein and some members of Al Baath party were arrested during that period too. As for working in the Human Rights in Kurdistan, the relationship and contribution in the formation of this organization were by human motives away from the political view of issues. And the formation of the organization in 1991 was within the scope of Kurds Administrations out of the control of the central government.

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In this conclusion, the aspect of the judge's favor towards Saddam Hussein has in fact two directions: First: All Iraqi civilians had relatives and friends and country folks who suffered during the rule of Saddam Hussein and this statistical fact urges the judges in Iraq to relinquish any lawsuit against the previous regime staff. Concerning the procedures, this judge and other judges have customs of independency and impartiality judged to disregard any case brought before them towards which they feel embarrassed especially that they with judge (Raouf Rashid) have taken an oath that shouldn't be neglected for the trial of Saddam Hussein.

Therefore, the first criminal body refuses to appeal the capacity of Judge Raouf Rashid concerning his favoring Saddam Hussein or any of the others accused.

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## Introduction to the judgment decision

First: Each of the accused ( Saddam Hussein Majeed-Barazan Ibrahim Hassan-Taha Yassin Ramadan- known as Taha El Jerzawi-Awad HaNAD Badr Al Bandar El Saadoun-Ali Dayeh Ali El Zabidi- Abdallah Kazem Roueid El Mashayekhi- Mezher Abdallah Kazem Roueid El Mashayekhi) are referred to this court charged with committing crimes against humanity pursuant to the provisions of article 12 First paragraphs ( a, d ,e ,f) of the Iraqi Court of law n° (11) of 2005 and content of article (15) paragraphs First, Second of the Iraqi court of law article (406) of the penal code n° (11) of 1969; the crime attributed to them is murder, arrest of civilians and families of Al Dujail reached as a total (149) victim and devastating the properties as houses, furniture, autos, water pumps, and canals of water drawn from the Tigris river to irritate gardens and then issuing a presidential decision to sweep away gardens and seize arable lands of the town by virtue of the Revolution Command Council decision n°(1283) dated 14/10/1984 by means of an organized and planned general attack in response to the 10 to 12 gunshots ( Kalashnikov gunshots) from behind the fence of one of the gardens on the presidential procession in Al Dujail on 7/8/1982, whereas this safe town was rich in fruit gardens irritated from the Tigris river through canals and water pumps, and that its people – before the accident- were enjoying a well standard of living as for their incomes and many were enrolled in educational studies and others in organizational groups, Al Baath party was mixed between Shiites and Sunnites, and before year 1982, the town was related to a district pertaining to Tekrit province; the town of the accused Saddam Hussein Majeed, then it was turned into a district. The tribal connections were strong and tight and it was one of the most cultural towns for it is related to Tekrit province named as Salah Eddine and connected to Baghdad via a paved and modern road.

In addition to the administrative center and the police stations in the city, there are also several governmental departments, and the municipalities services were considered well if compared to other cultural places. The headquarter of the ruling Al Baath party that was managing organization issues and those responsible for managing the office of the said party were from Samara Sunni town and from Mousel.

The town was the concern of Al Baath party and officials visit the town continuously and the last was the visit of the accused Saddam Hussein president of the republic on 8/7/1982 during the month of Ramadan and since the town had religious and rural features, the families were self-restrained, and there were relationships by marriage between the two denominations in the

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town, and it was under the supervision of the head of security who searched for secret organized groups pertaining to the convocation party ( Al Daawa) that of Shiite religious feature and during the visit of the mentioned day the accident happened and stories varied about it. The stories told by high authority ranks according to official statements that the gunshots were an attempt to shoot the presidential procession when passing by one of the old streets of the town surrounded by gardens with high clay walls. Upon the gunshots, maximum alteration was announced in the town and military forces spread across the town and special presidential guard came from



Baghdad and the chief of the information system Barazan Ibrahim Hassan( brother of the accused Saddam Hussein president of the republic) was charged with the mission.

The town was surrounded with soldiers and special security and investigation squads and public army forces in addition to the party group in the town, and war planes and helicopters started gunfire and shelling the gardens and internal roads. Within minutes of planes bombardments, nine people inside the filed were killed, in addition to other persons inside the town.

The control of the judicial investigating system was raised from the investigation and during the same day, the accused Taha Yassin Ramadan came to the town. The latter was the public army commander and vice-president of the cabinet and the close reliable person to the accused Saddam Hussein who gathered with him in Baghdad before arriving to Al Dujail, meanwhile, he made a short visit to the Minister of the Interior Saadoun Shaker and then he returned without the interference of the Minister of Interior. From the early hours, the accused Barazan Ibrahim (chief of the investigation system) became the actual commander of the operations and specified presidential orders were issued in all sections and forces receiving orders therefrom.

The accused took the location of the party group of Al Baath party as his operation and control center.

Immediately, the investigations system commanders came from Baghdad; the investigation head office undertook the inspection and investigation mission and so he examined the accident's location and submitted his preparatory report which did not reach any result concerning the gunfire towards the procession of the accused Saddam Hussein. He also attested that the gunshots were found deep inside not outside the garden and since the clay wall (2 meters high) therefore it is difficult for the person/s to know what's going on the street

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behind the garden and nobody was hurt. However, the accused Saddam Hussein, and insisted on the revenge and harm as many people of this town as possible, he delegated his brother Barazan Ibrahim- chief of the Intelligence service to punish the people for the anonymous gunshots.

Second: The investigating file in this subject is very complicated and exhausting of the investigator because it is not limited to arresting people accused for the gunfire, instead, it went beyond that to individuals of families and others of the fifth and sixth degree, even individuals who reside in Al Dujail just for being relatives of any of the accused. The detention comprised arrest and execution of individuals of the armed forces who were in the battle front at the time of the accident although they do not know about the accident of Al Dujail or they were employed outside town in (Masfa Biji). These unfamiliar exempting procedures formed obstacles with the investigators and the court as revealed by the lawsuit papers and court's sessions.

Third: The case doesn't have a single file only. Its is a matter of several files and dossiers of papers, decisions and orders that are basically unorganized and unrelated in contents and subjects which forms obstacles before the investigators. Said obstacles affected the procedures at the court, this took some time and additional and exhausting effort, and that the public prosecution, despite its continuous and helpful effort, it was affected in one way or another by the said obstacles while presenting documents and CD's in addition to successive papers between sessions before the court which resulted in the accumulation of papers and documents not in hand to be verified and examined. This results from the prevailing drop of the regime and its systems at the beginning of the war, the thing that did not come to the war planners mind.

Fourth: The variety of security and intelligence forces under the rule of the former regime, the numerous piles of documents at any of these systems tool a long time for verification, examination and classification concerning the proper presentation of these papers before the court; it was even impossible to present some evidences and documents and so the court did not take them into consideration as an evidence and therefore didn't discuss them during the sessions

Fifth: The court noticed during the course of the trial sessions that the defense attempted several times to form a state of confusion and chaos inside the court hall, they even motivated the accused to rebel and disobey and they nominated  
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the accused by titles and presented themselves to them at the beginning of every session. These accused were in high authority positions and are not accused of committing serious crimes in the view of the local and international penal law, even the presentations of these attorneys were all the preface of the accused president Saddam Hussein, although the accused referred to doesn't have any considerable or mastery capacity within the course of this lawsuit on one hand, and on the other hand the Iraqi people have by free and direct voting, elected deputy council and chosen a president of mastery authority for presidency despite the presence of an illegal government recognized constitutionally by the elected parliament by means of free direct election. And whereas the accused Saddam Hussein doesn't have before this court but the capacity of the accused, therefore, the court decided to unsettle the requests submitted to it under this title and capacity, and even not to refer to it in the judgment decision for being unduly. Although, those attorneys should have complied with the provisions of the laws and the regulations and traditions that their profession- as attorneys- obligate them to comply with according to articles (39 and 50) of law n° (173) of 1965, additionally, some foreign attorneys have unduly and illegal powers of attorneys according to the stipulations of article third paragraph A, B of the legal profession law n° 173 of 1965.

Sixth: Unfortunately, the court noticed the false swearing by some of the defense testimonies and the probable collusion in this process which violates the law and procedural rules between some of the defense attorneys and those witnesses in the session of 31/5/2006 of the trial, as those witnesses testified later that they were pushed by the defense attorneys to give untrue attestations against the chief of public prosecution of Mr. Jaafar El Mousawi who met those witnesses in a funeral in Al Dujail during July 2004, moreover, they said that the public prosecutor offered them amounts of money to testify against Saddam Hussein and, in light of these sayings, the defense attorneys requested, by means of a speech protest and harsh accent, to display a special CD of the mentioned funeral in which a person appears and they claimed that he is the public prosecutor Mr. Jaafar El Mousawi.

This latter claimed that he had never visited Al Dujail before, and since it is a public trial displayed on TV, when the concerned person watched this fabrication, he contacted the court and the public prosecution department and expressed concern to appear before the court and reveal the truth.

And so the concerned person Mr. Abdul Aziz Mohamad Al Bandar appeared before the court beside the defendant to nullify this fabrication.

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In another attempt by the defense attorneys to falsify the facts, they forced a person to appear with an important testimony, saying that some of the persons' names mentioned in the official lists issued by the revolution court about those executed before the accused Awad Hamad Al Bandar in 1983 are still alive; the witness claimed that (23) individual are still alive and that he shared food with them. And when this witness was asked to nominate the victims whom he claims are still alive, he started reading some names written on a paper in his hand. But when the court asked him to spell the names without using the paper, he couldn't remember them. Worst of all, it appeared that the handwriting on the paper differs from the handwriting of the witness.

And when the court asked him about it, he confessed that the paper was given to him by an anonymous source.

In light of this, the court decided to refer the witness and the aforementioned other three to the investigation court charged with false testimony according to articles (251, 252) of the penal code n° 111 of 1969. Upon investigating those witnesses by one of judges delegated for this purpose by the court body on 1/6/2006.

Due to the public investigation in this subject and the presence of the attorneys of the defense office and a legal consultant from the court, it appeared the two of the witnesses do not originate from Al Dujail, they have even never visited the town; one from Baghdad and the other from the town named (Taji) close to Baghdad. And they openly attested that the defense attorneys ordered them to say that they are from Baghdad and to testify against the public prosecutor Mr. Jaafar El Mousawi and that the defense have offered them residence in Damsacus, Syria and job vacancies with a contractor from Takrit, and he paid individuals from the defense body kidnapped his son and threatened to kill his son if he didn't testify for the favor of Saddam Hussein and against the public prosecutor. And those ordered his transmission to Syria a former body guard of Saddam Hussein named Assaad Abou Oumar with the head of the defense attorneys board Mr. Khalil El Doulaimi and trained them on the subject of this testimony.

After closing the session, the court decided to establish a committee to investigate with the four witnesses. And after the completion of the investigations they were referred to the investigation court in El Karkh in Baghdad and the four witnesses were released on bail.

All these facts revealed that the defense attorneys are prepared to compromise their honesty by directing their efforts to defame the court instead of directing their efforts to defending their clients.

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**The legal course (in response to the gunfire towards the procession of Saddam Hussein on 8/7/1982 by the wide range systematic attack on the people of Al Dujail)**

The Iraqi penal code defines the word "attack" as a kind of behavior that results in committing several acts classified among the ten crimes stipulated in the first provisions of article 12 of the Iraqi High Court referred to( crimes against humanity) against any of the civilians pursuant to the government's policy and its systematic plan to commit such attack. Although the attack may not necessarily agree with the government organizational policy or plan, however, the existence of a

practical policy and consecutive acts form a relevant evidence that the attack was prepared and directed against civilians, although, and pursuant to the judicial course of similar trials, there are requirements that the policy that must be adopted officially is an official policy of the government, even the existence of a kind of plan or pre-programmed policy is enough.

Although the term "attack" differs in meaning by virtue of the laws of war, but concerning the crimes against humanity, there's no need for hostile military forces to be attacked.

The acts against any of the civilians including people of the attacked town gives the complete meaning for the definition, where the use of armed forces and violence does not necessarily predict an attack.

For any mistreatment of civilians, may form an attack as long as it is executed on a systematical, wide-ranged basis against a group of people and by such means crimes may take place as murder, rape, compulsory expatriation.

Suppose that the civilians are the main target of the attack and are not the just accidental victims, i.e. the intention of the accused about the purpose of the attack doesn't absolutely relate to his individual liability.

Although the term "civilians" doesn't mean all the people of the geographical scope or town as in Al Dujail, where many people were attacked, despite the small distanced town, it has some special features as the existence of the Shiite denomination, and this exposed the town to an attack without a procedural investigation, all were accused as "ravaging traitors", and as stated in the judgment decision issued by the revolution court in folder n° 944/J/984 the following:" they belong to the convocation party( Al Daawa) and participated in distributing hostile publications that incites religious conflicts and establishing a disordered regime similar to treason regime in Qum and Tehran; the execution of their criminal plan was directed by their Persian masters.

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Confirming the saying of the accused head of the revolutionary court (Awad Hamad Al Bandar) that in the town of Al Dujail resides Arab Iraqi citizens of a majority of Shiites and others of Sunnis and this is noticed among the names of the officials who gathered whole families outside Al Dujail.

Most of those officials of the party, security and government in management were surnamed as "Samurai" or "Machahidi" and those were Sunnites from the outside of Al Dujail, and just identifying the accused as ( the convocation party –the traitor) and traitors of their Persian masters and inciting religious conflicts indicates clearly to a " specified group of people in town".

There is a strong tendency to harm them even before the gunfire accident on the president's procession then, regardless of the intimate relation between the Shiites and Sunnites individuals in the town, and marriage relationships between them.

The important is the view of the authority and the officials of the small city, and the view of the authority party of those who were always accused and they also had to prove the contrary, even the organizers inside Al Baath party organizations under secret supervision, on the other hand the authorities act of taking the whole families including infants to Baghdad for investigation and taking military individuals of those families who were battle fronts or employed outside town by arresting them, and finally, executing 148 persons or killing them under torture according to documents indicating their names among the papers of this lawsuit.

The court noticed during the course of trials and the documents presented and the attestations of complainants and victims that the attack on those family was "systematical" as much as it was organized and planned for, indicated by the pre-planning to arrest families and bringing those living outside Al Dujail for military service or employment or living inside Baghdad in Al Kathimiya city, so the arrest of those individuals was organized and systematic, and it is definitely improbable that it happened randomly. This is from the procedural action side. As for the subjectivity, the command of the investigating with and arresting those individuals accused with gunfire towards the president's procession was undertaken by the head of the highest and most dangerous security system in the country " the investigation system" concerned in the country's foreign security, where the court during the course of complete

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verification of the cases documents didn't find anything indicating the interference of the party's individuals or judicial investigating board or even the interference in the suing order and arresting individuals of these families, instead, the command was of the head of the system personally. It is also noticeable that within an internal document for this system, a harsh criticism is addressed to the directorate general of security; the system specialized in the interior security of the court for this system did not take the necessary steps concerning the accused ( Bourhan Yakoub Majee)

Concerning the appeal (the party system in Al Dujail) whereas some partymen in town did not participate in personalizing those killed after the accident by airplanes bombs on gardens. And so, the arrest of the families or investigation even those arrested are under the control of the investigation system without the several other security systems. In light of the facts, revealed by the case's documents and in light of the comments of the accused (Saddam Hussein) and ( Barazan Ibrahim) during the investigation and during the trial sessions, the systematic wide range attack which resulted many victims was organized and planned for and it took the course of continuity since 8/7/1982. And of the systematic indications of this attack, that the attack and the procedures were an execution of a pre-organized policy and plan, and it didn't happen

randomly as for arresting family individuals as children and adults, then devastating their homes, plundering their properties, and issuing presidential decisions for seizing and devastating gardens as a claim to rebuild and redevelop the small town.

This court sees that the former governing authority committed wide range crimes against civilians in Al Dujail as a response for the attempt of assassinating the president then accused (Saddam Hussein) on 8/7/1982, and charged the investigation system with the plan command and execution without other security systems.

The head of the investigation system by the command of the accuse ( Barazan) held a meeting with his assistants to coordinate the response to the attempt, where it was coordinated with the local security systems and the police and the party in response to the accident and under the supervision of the investigation system where the accused( Barazan) arrived to the town directly after the day of the accident and met the local security official as mentioned, then airplanes and helicopters and war planes were gathered to bombard gardens and public

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places in party individuals started attacking houses and arresting people and soon there was arrangements to transmit the arrested families by cars pertaining to the investigation system came from Baghdad. It is noticed that those orders issued by (Barazan Ibrahim) and an order issued by (Saddam Hussein) to sweep away gardens under the supervision of the accused (Taha Yassin Ramadan).

These continuous procedures and accidents within not more than (24) hours did not happen accidentally or randomly.

The attack, first of all, killed civilians who did not have any relations with any military or civil group, and upon calculating the number of people in the small town at the time of the accident and the families arrested, the number of arrested people post the accident reached more than one thousand person and after releasing others according to the official statistics there remained (399) person and the number of killed reached (143) person.

in light of the facts and the official documents under examination, the first criminal board sees in the Iraqi court that the attack against the inhabitants of Al Dujail was systematic and widely ranged for the town remained under the control of the forces (by the command of the first chief of investigation system) for days and for a limit of two or more months.

In light of the statistics available before the court and according to the official documents that a large sum of its people were arrested and that the expatriation punishment were executed against families and individuals by means of a systematic act that required the gathering of authorities.

Obviously, and according to the facts stated and the official evidence revealed by the archive of the former authority as the investigation system and the decisions of the revolution court, that the attack on Al Dujail killed civilians. Although most of the victims and individuals didn't have any connection with the gunfire attempt on the accused president's procession (Saddam Hussein). On the contrary, the accused claimed that the attack was aimed towards civilians who attacked the procession of (Saddam Hussein). At the end, about (543) person were imprisoned or killed or displaced as a result of the assassination. This large number of arrested people exceeds the limited number of those participated in the attempt from (7) to (8) persons, this was described by a former officer in the investigation system as (crime of the opportunity)

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### **The final outcome of the trial procedures**

In light of the facts and evidence revealed from the former authority documents issued by high ranking decision makers, the office of the presidency of the republic and the sovereign decisions signed by the president and the commander in chief of the armed forces, and in light of the confirmed official evidence issued by the head of the intelligence service, which is the most dangerous and strongest security system in the country, and evidence that is enhanced by the attestations of the victims' families and witnesses on the one hand, and the non-denial of the accused of the horrible facts revealed by the investigation and trial, on the other. Instead, they (the accused) didn't pay attention to these pieces of written evidence which are undoubtedly truthful and factual, as they carry the signatures of the authorities issuing it. And as the contents of the official evidence reinforce the testimonies of the complainants and witnesses, and as the State had dedicated the intelligence service of the country for the purpose of was called "punishing the people of Al Dujail and teaching then a lesson", so that they would be an example for others, and whereas the cost of some bullets shot by a group of young men towards the president's procession inside Al Dujail on 8/7/1982, although unverified by any written or heard evidence that these bullets were indeed directed towards his procession, but it was sheer accident that made it look to the accused Saddam Hussein as the supreme president of the country and the commander in chief of the armed forces and the one who was in control of the security systems in the country, to order such an attack under the command of his accused brother (Barazan Ibrahim Hassan) head of the intelligence service and popular army, which was the pillar of support for the Baath party in power under the leadership of (Taha Yassin). As a final outcome, the punishing of the people and the victims families by executing them, even for the dead and buried which happened as a result of the culture of the ruling authority, and whereas the evidence and proof mentioned and announced before the court in the form of official documents issued with the signature of the first accused Saddam Hussein indicates that the punishment of Al Dujail people was intended to instill terror and fear among the Iraqi people in general. This was a systematic, calculated plan implemented under the rule of (Saddam Hussein) against everybody who would even entertain the idea of doing something like this. And whereas the official count of the victims of the calamity reached (148) persons according to the verdict of the revolutionary court number 982/J/942 dated 14/6/1982 confirmed by presidential decrees issued with the signature of Saddam Hussein number 778, dated 16/6/1994.

This was in addition to the tens of people who died from hunger, fear and terror while either in detention at the intelligence detention center or at Abu Ghraib prison or the prison camp Lea in the desert far away from people's eyes, where these deaths haven't been accounted for. This was in addition to the to the mental and physical torture of hundreds of people, men, women and children, infants and the rape of women and girls in front of the eyes of their parents, which is more serious than murder. And as been verified by the investigation and trial, all of this in addition to plundering and destroying of properties and houses of the imprisoned and exiled families. These practices even went as far as getting to the breath taking nature, as these people destroyed gardens and agricultural lands, and devastated pumps. All these procedures which were in violation of the Iraqi constitution that was in force, in theory only, during the rule of Saddam Hussein, i.e. the systematic devastating process was named "the Urban and Cultural

development"!!! All this was the cost of ten to twelve bullets that were fired from inside the fields and nobody was hurt and no one knew the source or direction of the gunfire according to the view of the investigation directors of the investigation and security services in the town, and by the Minister of Interior and the high command member who was close to Saddam Hussein who carried out the inspection of the accident. He attested that "the gunfire was random and untargeted, it happened accidentally that the president's procession was passing in town at the time of shooting". And it was not proven before the court during the investigation and trial that any of the armored cars of the president's procession were shot. And whereas the international defense attorneys of the accused Saddam Hussein and the others did not present not even present a weak piece of evidence that the gunshots were directed towards the procession. And whereas the actual facts indicate the "misfortune of those victims" who shot the fire from inside the fields without knowing or thinking that there was a presidential procession passing behind the roughly 2 meters high clay walls, and so "the bad luck" had lead to this deliberate tragedy for the people of Al Dujail on 8/7/1982. What resulted thereafter in the form of disasters afflicting the farms and the people was a long term, systematic and calculated policy that was enforced against the stricken families, with all that they had of children, fields and homes. This went further by targeting the town and targeting its people for years by devastating its field and irrigation systems and arable lands.

This long term, continuous and systematic effort, as it was applied in the form of issuing presidential decisions having the signature of (Saddam Hussein) had the intent of re ensuring loyalty to the president and his authority by force, and it was an act of revenge even against the party members whom became suspect, as was related by some of the accused themselves in the case during the trial, including Ali Dayeh Ali, Abdalah Kazem Roueid and Mohamad Azawi Ali for having connections with some of families who were security suspect.

In light of all the facts and tragic situations after the gunfire accident on 8/7/1982, the court discussed in detail and objectivity the accusation addressed to (Saddam Hussein) and the others accused by virtue of the indictment read in the session on 15/5/2006 of the trial pursuant to the provision of article (twelve) first and on the basis of the provisions of of article (15) paragraph first, second, third, fourth of the Criminal Iraqi High Tribunal ribunal number 10 of 2005 which includes the issuance of direct orders by him as the president of the republic and the head of the revolutionary command council and the commander in chief of the armed forces to surround the town and directly attack according to a wide ranging, systematic plan, using various weapons including war planes, helicopters and putting the town under a strict security belt on its entrances and exits, that was beginning in mid of 8/7/1982 and the following days. These measure were aimed at collective punishment of the people of the town, some of whose inhabitants were considered "traitors for a foreign neighboring country" with which Iraq had been at a fierce war. The accused (Barazan Ibrahim) undertook this military wide ranging mission as a field and security commander to administer the seige and attack mission on the town. He placed under his command a brigade of Presidential Guard forces, together with the party forces, the popular army and the local police.

Military forces surrounded the town -- "attacking the town by closing the entrances and exits" -- all this for the purpose of revenge and punishment.

The accused (Barazan Ibrahim Hassan) commenced the attack on the instruction of his brother, the accused (Saddam Hussein), who directly arrived at the town and stayed there for three days for the actual supervision on the wide ranging, systematic and continuous attack against anyone he suspected of being disloyal to the government. He used local informers to tell on individuals and families, then arresting of all family members before transporting them directly to the intelligence center in Baghdad. The orders of (Barazan Ibrahim) were oral, and were directly executed without argument. The arrangements concerning the collective transport of arrestees were done directly by drivers from outside the town as an important part of the plan, and so, during his three days of staying in Al Dujail, the part related to the collective transport of arrestees was executed, in addition to pointing to the properties and assets of the said families. The number of people and families arrested was so huge that that they were even placed in schools until the gathering mission was completed and then transferring them by special cars and drivers from outside Al Dujail to Baghdad "Intelligence Building". The number of individuals and families kept in the investigation office reached 399 people among them were children and old people. During the investigation, there was severe torturing and insults against women and children, torturing by passing the electrical wire on sensitive parts of the body, swiping on the head, in addition to the atmosphere of psychological terror by placing the arrested families in red-light rooms which lead to excess psychological torture; each of the following died under torture: (Yakoub Youssef Hussein El Abidi), (Jasem Mohamad Latif El Salami), (Saleh Mohamad Jasem), (Kassem Ali Assaad El Haidari) and (Alwan Hassan Hussein El Salami).

Then the families were transported to Abu Ghraib prison- the section belonging to the intelligence service- and there they faced also the torture and the degrading treatment of women and girls, where a number of persons died in Abu Ghourab due to the degrading of human dignity. The following died in Abu Ghraib prison: (Majbal Hussein Aziz) (Yassin Hassan El Salami) (Noufa Hassan Agha El Zabidi), and the children (Hisham Fakhri Assaad El Haidari) and (Zeina Mohamad Hassan El Haidari) and (Ali Majeed Yakoub El Kharbatli). The rest were transmitted to a far away area in the dry desert called the Lea camp where the remaining families were detained for about four years where they suffered from hunger, severe hot weather and bitter water. Also the cruel treatment of the guards and the supervisors continued and the following died in the desert (Hamid Mehdi El Khazaali) (Abed El Wahab Jaafar Habib El Abidi) (Sabrieh Abbass Ahmad EL Abidi) (Sabri Assaad Abdala El Haidari) and the children (Mothana Majeed Yakoub) and (Thabet Assaad Ali El Haidari). The bodies of those victims were eaten by hyenas and the predatory animals of the desert. What was even worse was that the authorities and their agents kept visiting those families and requesting that members of these believed families to come forward to do military service, as they were of military service age; where they were used as firewood for the war with Iran. And sometimes they would come to collect contributions from those in order to support the Saddam Qadissiya war with Iran!!!

On 27/5/1984 under the secret letter number 762/6 issued by the secretariate of the presidency and having the signature of the accused (Saddam Hussein), the president of the republic, (148) persons were referred to the revolutionary court to try them on charges of "sabotage, and the destruction of the regime." This list of people begins with the name (Taleb Abdul Jawad) and ends with in the name (Ayad Rashid Kazem). The revolutionary court under the leadership of the accused (Awad Hamad AL Bandar) and after a period of only seventeen days, from the referral decision, issued his verdict of execution against all the accused during a single session. The

verdict of executing 148 person was issued without verifying their names before the court or the ages of the accused, as twenty two of them were under (18) starting from (Youssef Abed Ali) and ending with (Ahmad Jassem Abdul Mohsen). What is so peculiar to the course of trials and the judicial tradition in Iraq was to write the condemnation evidence with loanwords or expressions which contradict the judicial morals and lawmen of the country. It was said in the condemnation verdict "they have explicitly confessed to the charges attributed to them and attested that they belong to the traitor Dawa party, attended party meetings, paid monthly contributions, participated in distributing hostile publications against the revolution and party which arise denominational conflicts, and mental and financial aid to the elements who escaped and hid in the fields of Al Dujail to commit murder and destruction actions. They also admitted that they defied the commander president procession- May God keep him- in the area of Al Dujail as an attempt on the life of his Excellency- God forbid- intending to overthrow the national and revolutionary governing regime in the country an establishing an anarchist regime similar to the traitor regime in Qum and Tehran; their execution of this criminal scheme was directed by their Persian masters after having the weapons, explosions and aid via the Iranian regime agents."

With these strange sentences to the course of justice as if it was a delivery of a praise poem by an illiterate person before the authorities, the revolutionary court presided by the accused (Awad Hamad Al Bandar) justified the condemnation verdicts during one session against (148) individuals although (46) of them were already dead, for, according to the official documents issued by the higher system in the authority that they had been murdered during the investigation as proved by the case's papers.

This unfamiliar and abnormal condition is that the accused ( Awad Hamad Al Bandar) made himself a tool for collective killing of a group of people he had never met before or verified their identities, instead, by a criminal premeditated intention to kill these victims in a systematic and programmed plan for collective killing of a group of people, and for being the execution tool for the collective killing under the name of "judicial authority and law" and the main contributor in the collective killing process as the Arabic proverb says "the worst intentions" for the most serious type of collective killing which conforms with the concept of crimes against humanity. The accused was part of an organized and planned program for killing groups of civilians with a systematic, wide ranging course. Otherwise, how can we explain that the accused as a judge did not verify the names, identities and ages of those before him, and how did he disregard the number of accused presented before him?

And how much time did it take the court procedures, reading of attestations, attributing the accusations, presenting the findings of the defense attorneys, the personal rights and testimonies, and what is the preamble of the condemnation and judgment?!!! No doubt that the accused knew about the plan to kill those victims under the cover of the law and trial. He was psychologically prepared to disregard the rules of trials and procedures before trials and he knew previously about the destiny of those afflicted with disasters who were brought before him as he was part of the murder plan. And within a programmed, systematic course and on purpose, he acknowledged that the results of his act of issuing the judgment of collective execution against those victims without reference to the law and without the presence of any evidence of condemnation. And so, the intent of the accused (Awad Hamad Al Bandar) aimed at the collective murder as part of the

authority's plan to kill a group of people from Al Dujail, driven by the motives for revenge and collective punishment of a group of safe civilians residing in their small town.

**The case dossier:**

On 31/7/2005 the president of the investigation board of judges referred to the High Iraqi Tribunal the file of Al Dujail case number 1/J/ First/2005, composed of (1120) pages to carry out the trial of each of the accused:

Saddam Hussein Al Majeed	Born in 1937	Former president
Barazan Ibrahim Hassan	Born in 19951	Former head of the intelligence service
Taha Yassin Ramadan	Born in 1939	Former deputy prime minister and member of Al Baath party
Awad Hamad Badr Al Bandar	Born in 1944	Head of the revolutionary court (dissolved)
Abdallah Kazem Roueid	Born in 1925	Peasant-member in Al Baath party- Al Dujail
Mezher Abdal Kazem	Born in 1952	Employee-member in Al Baath party- Al Dujail
Ali Dayeh Ali	Born in 1940	Employee-member in Al Baath party- Al Dujail
Mohamad Azawi Ali	Born in 1923	Peasant-member in Al Baath party- Al Dujail

Those were tried for the charges of committing crimes against humanity pursuant to article 12-first-paragraphs (a, b, d, e, f) and article (15) paragraphs first, second of the High Iraqi Tribunal code, and article (406) of penal code number 111 of 1969 in force.

The case's papers were attached with a complete annex of confirming papers for the referral decision concerning challenge to what was described as "the malicious plot in Al Dujail" and practicing collective punishment against the folks of the town. The subject court requested, after examining the referral papers, the mediation to bring appeal for cassation in number 6/mediation request/2005, also the attorney (Khalil El Doulaimi) of the accused (Saddam Hussein) brought before the court of cassation the referral decision and registered the request under number 9/B/2005 and the attorney of the accused (Taha Yassin Ramadan) before the court of cassation the referral decision and registered the cassation under number 9/T/2005 on 9/10/2005. The cassation board in the High court presidency decided to reject the cassation requests concerning the referral decision. As for the cassation submitted by attorney (Khalil El Doulaimi), it decided to reject the cassation appeal for not submitting it during the legal period, also for the cassation submitted by the attorney of (Taha Yassin Ramadan) and a decision was issued to reject the

cassation mediation concerning the referral submitted by the subject court by the majority on 5/8/2005.

Upon the court's receipt of the case dossier and following the cassation decision number 6/T/2005, dated 4/8/2005, the court body distributed full copies of the papers to the respected judges for examination as an introduction to determine a date for the trial. And upon the returning of the case dossier, the defense attorney was provided with copies of said folder, but however, some defense attorneys, since they didn't live in Iraq and do not attend but during the trial sessions, failed to receive their copies on the specified date despite the announcement made by those attorneys "to delay the submittal of the file", in fact the file was delivered to their offices sixty days before the beginning of the trial dated 10/8/2005 and 15/8/2005.

At the beginning of the trial sessions, the attorneys of the accused presented a group of power of attorneys to the court, and after examining the content of these powers, it appeared that the majority of the attorneys are non-Iraqis and among them were Arab attorneys.

The court noticed the texts of the law profession number 173 of 1965 amended by article three of the law, organized on how to plead before courts in Iraq by Arab and Foreign attorneys, where article three F1 of the law permitted "for the attorneys affiliated with a bar association in Arab countries may plead in specific cases before courts in Iraq in a degree similar to his, after verifying from his continuity in practicing law profession as long as there is reciprocity and approval by head of the bar association" in the attorney's country. Paragraph (B) provided for the Iraqi attorney to take as partner in a specific case an attorney unaffiliated with any of the bar associations in Arab countries by the permit of the head of the bar association and the approval of the minister of justice after verifying his continuity in practicing law profession in his country and his competence. This court is facing an abnormal case concerning the sum of attorneys presented before the court from different countries without being given the opportunity to verify the legality of their presence, all this under the chaos of offensive speeches and unreasonable accusations not based on the law, and in light of tying all this chaos to a political publicity and national cases and lawsuits for "fighting occupation" and other sayings. This court faced difficulties by the behaviors of some Arab and foreign attorneys, like the Jordanian attorney Mr. (El Armouti) and the Lebanese (Boushra El Khalil) and the American attorneys (Ramzi Clark) and (Curtis Doubler). In the final sessions of the trial, the attorneys boycotted the sessions using false claims the sole purpose of which was nothing but publicity and advertisement. Nonetheless, the court asked for the assistance of a number of trained attorneys from the defense attorney office mandated, and so they performed their role and still did until the presence of those attorneys before the court and visa versa. The court continued applying the law relying on the mandated attorneys in accordance with the provision of article 144 paragraphs (A & B) of the penal code, number (23) of 1971. This court regrets the assassination of the attorney (Khamis El Oubeidi), and as soon as the news of his death was announced, the head of the court expressed the regret of the court and the members of the body about the accident and declared explicitly its condemnation of any accident that the attorneys or any of the members of the judicial authority may be exposed to.

However, and despite all these infringing behaviors that violate the rules and regulations of the procedures in courts, it doesn't affect neither the transparency of the court procedures nor its credibility in the course of the lawsuit according to the reasonable procedural rules.

And that the court disregards this "anarchist" behavior and as a final outcome, the case shall be judged based on the evidences available in the lawsuit papers only and for sure. And on the other hand, despite the claims of the defense attorneys and their press conferences in "Amman", this court and from the beginning allowed the attorneys of the accused to meet their clients during their travel to Baghdad for an unlimited time, the court also allowed visits face to face without the mediation of the judicial body. It also allowed visits during the "postponements periods". The court also gave the opportunity to the attorneys, at the direction of its president, to meet their clients at the end of every session without the interference of the guards and they used to exchange documents and papers. The court enclose with this decision a complete and complicated file for the various requests submitted to this court by the defense attorneys having the shape of detailed schedules, and another index of the consequent requests from the attorneys of each of them. It also is attaching another file at the requests of the personal right attorneys, while recognizing that among these requests there were phrase and expressions revealing an "organized offensive course" on the court and its body intending to "provoke" the court. These include "degrading statements of the character" of the court body and connecting the matter in all cases to the occupation as if the court with its president and members are propelled by others!!! This forms kind of "indecent attack" on the character of the judges.

Nonetheless, the president and body members of the court exhibited magnanimity, tolerance and an inner feeling of pain and sorrow, however, and pursuant to the independent Iraqi judicial tradition and for the purpose of serving the desired justice, the court disregarded all these fabrications and violations and is attaching all of the papers of the lawsuit file to be a part of the records.

The accused rebelled directly after the judge (Raouf Rashid) presided over the tribunal, as immediately after the new judge took over, the accused (Saddam Hussein) and (Brazan Ibrahim) tried to make problems and create chaos inside the court in a way that effected the discipline inside the court room, and the accused (Saddam Hussein) interrupted the course of the sessions many times with his comments and speeches which were not related to the subject of lawsuit. In the session dated 29/1/2006, he threatened the present witnesses and (Brazan Ibrahim) uttered improper words against the judicial body and compared the court to a "whore house"!! And he spat in the face of one of the people in the court room. His face and movements indicated "a maniac feeling".

To preserve order in the court, the court decided to expel him out of the court room pursuant to the provisions of article (158) of the penal regulations law n umber (23) of 1971 and rule (52) of the procedures rules and collection of evidences. It also decided to expel the Jordanian attorney (Saleh El Armouti) from the court room for the chaos and speeches and inciting yells he made against the court and the Iraqi people in general, pursuant to rule ( 52) of article (153) of the penal regulations law.

The court, and from the beginning, provided display screens for the proceedings of the court inside the lateral rooms dedicated for the accused where they can follow the events of the trial via these screens. They were also allowed contact with their attorneys via these screens, but still, in the following session, the court explained to them what happened during the session in which they were taken away from the main hall. And in other incidents, the accused (Saddam Hussein) uttered on 29/7/2006, and without any permission from the court and in a state of excitement and yelling, the phrase, "down with the Americans! Down with the traitors..." and then the defense attorneys started yelling with him which lead to him being taken away from the hall in accordance with the provision of article (158) of the penal regulations law.

### **The Security Condition of the Defense Attorneys**

The defense attorneys asked the accused on December 5 and subsequently requested to stop the trial procedures in light of the security condition. In the beginning of the suit procedures, the court body provided, with the coordination of the concerned, safe accommodation to all attorneys of defense, personal right and attorneys mandated by the court during the trial periods, and during postponement periods also, it also provided safe transport for attorneys attending trials via –Amman-road. However, the defense attorneys, despite their knowledge about the security condition and about their safe transport, they did not comply with the instructions and rules stated in this respect. And the security guards were always in a state of confusion, ready to provide the safe transport for those and housing them in the green region.

These attorneys present individually and several times without informing the security authority responsible about their transfer and safety; which lead the security guards into a state of confusion, and formation of many additional difficulties for waiting and individual transfer which required time, effort, energy and suffer, due to the intentional incompliance of those attorneys with the security rules. As for accommodation, the court administration offered those attorneys the same facilities offered to judges and defense attorneys' office and the public attendees, offered them a permanent residence in the green region.

But unfortunately, none of those attorneys accepted the offer despite the objection of the court's administration; they finally accepted a less intensive security system.

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The court indicates that the defense attorneys refused to comply with the security procedures in addition to their continuous appearing on TV despite the objection of the court on such act, and that they risked the lives of the attorneys delegated by the court through spreading their names and identities on the internet and addressing accusations to them, where during the trial period



three defense attorneys killed two of the attorneys delegated by the court, and the court expressed its regret and sorrow for the families of the three killed. The security departments in Iraq continued the investigation in the murder of each of those attorneys and made sure to bring the murderers before justice. Despite the continuous interruptions of those attorneys for the trials procedures, however, not at any stage of the trial of Al Dujail case there happened any accusations unrepresented by one or more defense attorneys delegated.

The defense attorneys continued their absence from the trial sessions and the final sessions; they have chosen the wrong timing for their clients when they didn't attend before the court to view their final findings.

So the court in applying the law and for preserving the rights of the accused asked the defense attorneys' office to submit comprehensive defense findings according to law. And the- defense attorneys- submitted requests and findings under the title of " his Excellency president of the republic" and " his Excellency chief of the revolution command council" and " Mr. chief of investigation" and " Mr. president of the revolution court" and others, although the legal and judicial fact " before the court there are accused persons" with their names without titles and privileges, and it was explained to the attorneys several times that if those accused had such titles they wouldn't have been brought before this court and there wouldn't have been a need to submit the mentioned findings and statements!!!

And all these findings do not fulfill the judicial aspect in form and content because those attorneys presented before the court as attorneys of the accused , and so if those accused still had their previous titles they wouldn't have assigned those attorneys to defend them and therefore there was no need for their presence before the court. From the legal side, those attorneys as attorneys of defense should have submitted their final findings to the court at least fifteen days before the determined date for submitting findings and that those attorneys did not comply with the point stipulated in term third of rule n°41 of the rules procedures and collection of evidences pertaining to criminal court.

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### **Requests of Defense Attorneys**

The court noted that it received four preliminary petitions from the defense team during the course of trials. The first petition was submitted on December 5, 2005. In it they requested that the High Iraqi Tribunal take emergency procedures to protect the members of the defense board and their family members and legal assistants and defense witnesses or suspend the trial procedures until such protection is provided which is "a plea to suspend the trial"!!!

The second petition was submitted on December 21, 2005 relating to the legality of the High Iraqi Tribunal 'a plea to the legality of the court. The third petition was submitted on January 29,

2006 in which the High Iraqi Tribunal was requested to suspend all its sessions until it fulfils six conditions that is "pleading for emergency suspension of trial"

The fourth petition was submitted on February 17, 2006 asking that the criminal court judge Raouf Rashid is released from the presidency of the criminal court because of his favoritism regarding the petition objecting to the judge's capacity.

Moreover, board defending Saddam Hussein claimed as did Saddam himself "the immunity of Saddam Hussein as the president from being sued for any of the probable acts against the citizens of Al Dujail"

The court also noted the presentations of the attorney defending the accused Awad Hamad Al Bandar and so the attorney defending the accused Abdalah Kazem Roueid on June 7, 2006 where they discussed the crimes included in article 12 of the Iraqi criminal court of law that the crimes stipulated in this article were not included before in the Iraqi criminal law. And the Iraqi criminal court cannot accuse the accused with theses crimes because the crimes against humanity weren't considered a crime according to the local law upon committing the acts referred to "although the court had previously discussed these repeated presentations. However, it doesn't suspect the certainty, legality and validity of the High Iraqi criminal court for judging the accused and issuing the judicial judgment.

In light of the referral articles, it was revealed after the overthrown former authority due to the war between Saddam Hussein as a president of the authority and the coalition forces from a group of countries post the dramatic overthrow of the former authority and the management being undertaken by the ruling council during which the international security council issued several resolutions concerning the condition in Iraq as resolution n° 1483/2003 adopted in

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the session of May 22, 2003 under n° 4761 referred to which emphasized the right of the Iraqi people in determining its political future freely and encouraging the efforts exerted by the Iraqi people for a government to represent him pursuant to the principle of the prevalence of law which guarantees equality of rights and continuity of justice for all citizens without considering the racial or religious origin or gender and emphasized the determination that the U.N. shall perform a vital role in providing human aid, reconstructing Iraq, and re-establishing national establishments for the ruling represented by the people and emphasized the necessity to pay court for the crimes and scandals committed by the former Iraqi regime.

As concerning the authorities and responsibilities of the " occupying party" the council noted the letter dated May 8, 2003 addressed to the head of the security council by the permanent representatives for the United States of America and the United Kingdom-Great Britain and Northern Ireland S/2003/378 and while it acknowledges the responsibilities and obligations determined by virtue of the international law applied on the two countries as two occupying countries under the unified command of the " authority". And while it acts by virtue of chapter

seven of the U.N. treaty and appeals to the member countries and the concerned organizations to offer help to the Iraqi people in their efforts aiming to rehabilitate its establishments and rebuild its country and to contribute in preparing security and stability conditions in Iraq according to this decision.

It is also stated in paragraph (9) of the decision: " It is favored for the Iraqi people to help the authority by cooperating with the special representative in establishing a temporary Iraqi administration described as a transitional administration directed by Iraqis until the Iraqi people are able to form a government internationally recognized and is able to undertake the responsibilities of the authority."

It is also stated in article (22) of the resolution: " It is noticeable the importance of forming an Iraqi government internationally recognized and representing the people."

This court also noted the Security Council resolution ° 1546/2004 adopted in session 4987 held on June 8, 2004.

The security council: "while it welcomes the beginning of a new stage on the road of the transformation of Iraq to a democratically elected government, and while it looks forward for this purpose to put an end to the occupation and so an independent interim Iraqi government of complete sovereignty to undertake all the responsibility and authority as of June 30, 2004."

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It is also stated "since it welcomes the undertaking of the interim government of Iraq to work for establishing a democratic unified Iraq and respecting the political and human rights."

And In light of the two resolutions of the security council concerning re-establishing the country's establishments and the entity of rule in Iraq after the complete collapse of the authority's establishments.

The court points out to the regulatory list n° (1) of the Interim Coalition Authority formed by the Security Council resolution referred to. And in part (1) pertaining to the Interim Coalition Authority.

1- The Interim Coalition Authority exercises the powers of the government temporarily for effectively managing the affairs of Iraq during the transitional period for the purpose of regaining stability and security and forming the conditions that may enable the Iraqi people to determine its political future freely, also to assume the development and enhancement of the exerted efforts to rebuild and re-establish the national establishments to represent the denominations of the people and facilitating the exerted efforts to revive the economy, rebuild and secure continual development.

It is also stated in paragraph (9) of the decision: "It is favored for the Iraqi people to help the authority by cooperating with the special representative in establishing a temporary Iraqi

administration described as a transitional administration, and where the Interim Coalition Authority was a transitional authority for the purpose of having complete sovereignty and in light of the relevant decisions of the security council and the formation of an authority in coordination with Iraqi personalities dated December 10, 2003, it announced the establishing of a government council in Iraq comprising national Iraqi personalities and the acknowledgment of the security council for the government council according to decision n° 2031511 dated October 16, 2003. And in light of the U.N. resolution eferred to, the government council published on March 8, 2004 a temporary constitution and by virtue of this constitution to" establish a road plan for the establishment or formation of a permanent Iraqi government."

The terms confirmed the establishment of an Iraqi criminal court specialized in crimes against humanity committed during the former government according to the several complaints submitted to the governing council in this respect and upon the issuance of the law for establishing the Iraqi criminal court specialized in crimes against humanity n°1 of 2003 and the rules of the procedures issued in accordance with the provisions of article 16 thereof. In

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light of this law, the judicial and administrative personnel of this court were formed. And on June 28 the occupation of Iraq ended and a "sovereign Iraqi government" undertook the ruling of Iraq pursuant to the powers it was granted by virtue of the temporary constitution.

And on May 3, 2005 a new elected government replaced the temporary government in light of the Security Council relevant decisions referred to in the preamble of this decision. And on October 18, 2005 the law n°10 of 2005 published the law of the High Iraqi criminal court where it is stated that the obligatory reasons of the law" for the demonstrating the crimes committed in Iraq since July 7, 1968 until May 1, 2003 for the purpose of establishing the rules and penalties that condemn the perpetrators of these crimes in a fair court and for the purpose of forming a High National Criminal Iraqi tribunal consisting of competent Iraqi judges for the legislation of this law."

And pursuant to the provisions of article 16 of the law, the rules and procedures were issued and the evidences pertaining to the High Criminal Iraqi tribunal."

In light of the aforementioned, and disregarding any suspicions or further claims in this respect, the court wishes to clarify that on December 10, 2003, the government council acknowledged by the international security council decision n° 1511 that it" embodies the sovereignty of Iraq during the transitional period until a representative government is formed adopted internationally, to undertake the responsibilities of the authority" to publish the Special Iraqi court of law that preceded the High Iraqi Tribunal which owns the judicial power to judge any citizen whether Iraqi or residing in Iraq accused by committing extermination or war crimes or crimes against humanity or other crimes committed between June 17, 1968 till the first of May 2003, which was independent from the remaining courts in Iraq and any other governmental authority.

On March 8, 2004, the government council published a temporary constitution in Iraq nominated TAL. Said constitution formed – among other matters- a road map for the establishment of a permanent Iraqi government. It also emphasized the issuance of the Special Iraqi court of law. And on June 28, 2004, the occupation of Iraq ended and a "sovereign Iraqi government" undertook the ruling of Iraq pursuant to the powers it was granted by virtue of the temporary constitution and international security council resolutions n° 1483 and 1511 and 1546, where the temporary government remained in power until May 3, 2005 and during this period it financed, supported and permitted the Iraqi court to work, and for which it assigned judges and specialized a budget, and provided with resources to continue working.

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And on May 3, 2005 an Interim Government elected by more than 60% of the Iraqi people replaced the first temporary government and also, the powers of the Interim Government were determined. The Iraqi Interim Government was acknowledged as an independent sovereign government of Iraq according to the UN Security Council resolution n° 1546.

The Interim Government continued financing and supporting the special criminal court until a permanent Iraqi government elected on May 20, 2006 assumed power. And on October 18, 2005, it cancelled the special Iraqi court of law and law n° 10 of 2005 was published" High Iraqi criminal court" keeping all the personnel of the court including the judges and public prosecutors, and it was confirmed that every decision or order issued by the" Special Iraqi Court" pursuant to its law is a legal order of obligatory compliance and the High Iraqi Tribunal will put it into effect.

Therefore, in pleading the petition of the attorney of the accused (Awad Hamad Al Bandar) concerning the legality of this court and the law issued by its virtue, the court refuses the pleading legally and definitely for the law n° 10 of 2005 was issued by a legal government elected by 78% of the Iraqis and it ratified the Iraqi law by a national questionnaire three days before issuing this law n° 10 of 2005 by virtue of article 131 of this constitution:

The court "continues its activities as an independent judicial body and considers the crimes of the former regime and its main personalities." Accordingly, and in light of the apparent constitutional and legal facts, the plea of the attorney Badr Awad Al Bandar concerning the legality of the court is a false and refused pleading and is not conforming to the law.

As for the petitions and pleadings of the attorneys of the accused concerning the specialization of the court in considering crimes of international aspect, this Iraqi court by its law n° 10 of 2005, and the rules of procedures issued by virtue of this law and by its management and judges and the judicial procedures therein according to the penal rules n° 23 of 1968 and the judicial custom in Iraq to consider the crimes committed by the members of the former regime on June 7, 1968 until the first of May 2003.

This court takes into consideration: the instructional section titled- The international criminal law- described as a gradual transformation on the level of countries for rules and legal statements valid to carry out the national trials by virtue of " The Iraqi Crimes law" where it discuss the national courts" reasons of criminal behavior" including the laws comprised in the International custom law: where the concept of public courts as described by The international criminal court of law of Rome which clarifies: the national courts have the priority over international courts to judge in such crimes.

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The High Iraqi Tribunal was established on a self-evident truth in force that the countries keep the judicial authority over the crimes determined and adopted in the international criminal law as it is over the crimes published according to the national legislations."

And whereas the Iraqi government that undertook the management and power on May 20, 2006, have chosen to accept the decision of the government council to establish an Iraqi government having judicial power to judge Iraqi citizens and non-Iraqis residing in Iraq accused in committing war crimes or crimes against humanity or extermination or other crimes specified by virtue of the national Iraqi law.

As for pleading to the immunity of the former president the accused Saddam Hussein and the findings presented by each of the attorneys Khalil El Doulaimi and the American Curtis Doubler and the Qatari Najib El Naimi and the Jordanian Ziad Najdawi and the Egyptian Amine El Dib, for the referred to is a president of the country and head of the revolution command council and enjoys an immunity for any questioning about any act done because it is considered an act of sovereignty, although all those attorneys and others who stated the pleading during the oral interposition didn't provide the court body with any written" effective, persuasive and legal argument that fulfills the requirement of supporting the essence of this claim".

And in light of term 4 of the temporary Iraqi constitution of 1970- article 240 thereof, the head of the revolution command council and his deputy and the members of the council enjoy a complete immunity and it is not permitted to adopt any procedure against any of them before having the permission of the former council, i.e. " the revolution command council" and whereas this saying applies in the past when the person concerned was a man of power and nobody dared to ask him for lifting his immunity, and so this pleading is illogic in all standards and considerations, and the court body refuses this pleading for two reasons:

**First:** The crimes accused by in this lawsuit are crimes against humanity, and it is impossible for any one of them who committed such crimes to boast or ask for immunity.

**Second:** Suppose this claim of immunity exists, by the collapse of the regime the present Iraqi government cancelled it and referred the judicial authorities- the mentioned accused (Saddam Hussein) to this court accused with committing said crimes.

Regarding the legal side and the prevailing criminal judicial custom or in the international human law course: this court has precedents as Nuremberg trials where it was described that the "crimes against international law are committed

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by men and not legal bodies" and on the other hand the constitution of the "international military court" refuses to acknowledge the immunity enjoyed once by statesmen - the criminals."

And whereas this court notes the report of the U.N. secretary upon discussing article 7 of the former international criminal court of law of Yugoslavia, where the international organization secretary noted that" the right should not be given to any individual or rely on the immunity of the president of the country upon committing custom crimes or war crimes or crimes against humanity" where the secretary mentioned that" he believes that each of the individuals who participated in the planning or preparation, or execution of serious violations of the former international human law in Yugoslavia or participated in committing violations and among them officials of individual capacity."

The secretary general suggested that" therefore the law should include provisions determining that the immunity pleading of the president of the country or claim that the action committed by the accused who was in his official capacity would neither form pleadings nor commute the punishment."

These statements reflect the general consensus that the international standards are changed especially the immunities enjoyed by former presidents or main governmental officials.

Obviously, since world war II, the general immunities that protected former high rank officials from" the accusation list" upon committing international crimes including crimes against humanity are not applied spontaneously.

As for the High Iraqi criminal court of law n° 10 of 2005 it is stated in article 15

Third: the official capacity enjoyed by the accused is not considered an exemption from punishment or commutation of a punishment whether the accused was a president or an official or a member in the revolution command council or a member in Al Baath command. And it is not permissible to boast the immunity to dispose of the responsibility for the crimes mentioned in articles 11 and 12 and 13 and 14 of this law.

Fourth: The supreme leader is not exempted from the criminal liability for crimes committed by people working under his command if this president knew or had reasons clarifying that his officials committed and or were about to commit these acts and so the president didn't adopt the necessary and proper procedures to prevent the fall of these acts or refer the case to the competent authorities in order to investigate and trial.

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Fifth: In case any accused person committed an act in execution of an order from the government or his president, this will not exempt him from the criminal liability. And it is permissible to consider in this regard the commutation of the punishment if the court sees that the securing of justice requires so.

Sixth: The amnesty decisions issued before the validity of this law do not comprise any of the accused in committing one of the crimes stipulated therein.

And so the High Iraqi criminal is a national court that covered international crimes within the scope of its judicial powers in confirmation and application of a fixed base in the criminal law saying: "The crimes committed inside the country lands should be judged in that country in emphasizing the regional sovereignty of countries."

On the first hand there are stable judicial principles which are "the lands in which a crime was committed is generally the best place to find proofs." And on the other hand "the legal system in said land is known by the resident or citizen or accused because he uses a language to understand it, as for the psychological side and due to the seriousness of these crimes which might have serious results on the society in which it happened. Moreover, the trial and judgment procedures are considered under the view of the interior society and under its protection also. It also has the means to control it and that can play a preventive role for future or probable crimes.

As for the subsequent requests by the defense attorneys regarding the transfer of the trials to the outside of Iraq, there is a firm rule in law certifies that "crimes committed inside certain lands should be tried in those lands. This is based on the necessity of re-affirming the regional sovereignty.

And within the context of international criminal law, the former president of the international criminal court of Yugoslavia expresses this principle which is of important and practical characteristics, first: the land in which a crime is committed is generally the best place to find proofs and on the other hand the legal system that is known by the resident or citizen or accused because he uses a language to understand it. This also applies to the parties concerned in the lawsuit. As for the psychological side and due to the seriousness of these crimes which might have serious results on the society in which it happened. Moreover, the trial and judgment procedures are considered under the view of the interior society and under its protection and also has the means to control thereon. Therefore the trials or any penalty resulting from this trial in the country affected by the crime, shall have a psychological and administrative effect which may help the society to flexibly understand what happened in addition to the understanding of the response element of others and this may play a preventive role for future or probable crimes.

In light of the aforementioned, the court body affirms that article 15 paragraph 3 of the High Iraqi criminal tribunal is clear and conforms with the International customary rule which disclaim that the accused may keep in any way the immunity, whether it is an immunity included in the nature of the case or a capacity of the concerned person upon being accused by any of the war crimes or destruction of Iraq or crimes against humanity. Therefore, the claims of the accused Saddam Hussein that he has the immunity as the president of a country in this lawsuit"



Al Dujail case" is in fact rejected. Also, from the legal perspective, since the prevailing or sovereign Iraqi government removed all the immunities of the accused before the Iraqi High tribunal.

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### **The legality of Crimes and Penalties (Crimes and Penalties according to legal provisions)**

The defense attorneys of (Saddam Hussein and Barazan Ibrahim and Taha Yassin and Awad Al Bandar) raised pleadings that include an infringement of the Iraqi Higher Criminal court of law on the main principles that the criminal law relied on in most of the countries of the world as Iraq.

The arguments raised by the defense in this respect are based on the principle of the legality of crimes and penalties (Crimes and Penalties according to legal provisions) also on the principle of the non-retroactive law to the past which is in reality one of the results of considering the first principle.

And by virtue of the principle of legality of crimes and penalties, no person can be questioned about a criminal act unless it is stipulated in law as a crime. It is also impossible to impose a penalty on him unless such penalty is pre-determined for that crime.

As for the principle of the non-retroactive criminal law means that the criminal law does not have a retroactive effect, for its provisions are stipulated for the future. Therefore, it is impossible to punish a person for an act of which penalty or judgments were not stipulated upon committing such an act. It is also impermissible to punish him by a penalty more intensive than the punishment decided at the time of committing the act.

In fact the principle of the legality of Crimes and Penalties (No Crime or Penalty without a legal provision) or what is sometimes called the criminal legality or crime legality. Penalty is one of the most important principles prevailing in the criminal law of different countries and it is acknowledged by most of the legal regulations and included in its constitutions considering it as a guarantee for the freedom of individuals and a restriction on state powers, where we can say that the implementation of the principle of legality of Crimes and Penalties is affixed to the principle of the government's submission to law.

The subsequent Iraqi constitutions, and recently the temporary Iraqi constitution of 2005, stated this principle. It was also stated by the (Iraqi) penal law n° 111 of 1969.

According to this principle, the source of the criminal rule is legislation, i.e. the legislative authority determines actions and abstentions considered as crimes, also the penalties pertaining thereto.

As a result, the written provisions issued by the legislative authority are the source of conviction and penalty.

The defense started by the argument of the Iraqi High criminal court of law which infringes on this main principle (Crimes and Penalties according to legal provisions) also infringes on the principle of the non-retroactive criminal law, considering that the actions attributed to their clients in Al Dujail case mentioned in article 12 of the court of law were not stipulated as crimes

in the Iraqi law, and therefore it is impermissible to prosecute them for these actions and then question them about the crime because the law criminalizing it was issued in 2003 while the actions attributed to the accused who committed the crime refer to 1982, where the articles 11, 12, 13 of the court of law provided for Iraqi extermination and crimes against humanity and war crimes.

The same law stipulated the competence of the court to prosecute the persons accused of committing these crimes (Iraqis, and those residing in Iraq) for the period during July 17, 1968 until May 1, 2003, and so the law of this court has prosecuted and criminalized the actions that were not considered as crimes and preceded its validity, and this do not conform with the main principles of the criminal law.

These objections if true are considered very serious. It is true that maybe some of us, few or many, as individuals have heard and maybe saw who attributed to those accused their disrespect and disregard of the law during the time of their powers and influence. But if the judge was certain that what he saw or heard of actions attributed to those accused are true, then he cannot prosecute according to his personal information and until the condemnation of the innocent accused is confirmed in a legal trial. Moreover, we cannot follow the same method or manner followed by those accused whom we are prosecuting.

Then does the court of law actually include previously unpunished crimes? And does this law infringe on the principle of the non-retroactive law?

The answer to these questions requires from us the answer to another question, which is: Was the actions attributed to those civilians — torturing and imprisoning them without a right, seizing their lands, digging out their gardens and other acts as stipulated in the court of law — permissible before issuing this law?

The answer to this question, that these acts were always considered crimes by virtue of the laws of most, if not all, countries of the world as Iraq. The court of law from this side in particular didn't execute crimes of permissible actions when the murder crimes and torture attributed to the accused took place.

Nevertheless, the other questions remain without answers. Are these actions stipulated in law as international crimes (Iraqi extermination, crimes against humanity and war crimes) or as crimes in the Iraqi law and national regulations in various countries only?

Is the principle of criminal legality (Crimes and Penalties according to legal provisions) applied in the international criminal law as the fact is in the internal law of each country? Is it not permissible in the international law to punish only for actions given the nature of crime by the international law at the time those actions were committed?

The answer to these questions requires more efforts to reach the truth from the legal side. In 1948 and specifically on September 10 of the same year, the international ad of human rights was issued, adopted and published publicly by the U.N. general assembly resolution n° 217 thousand (D-3) stipulated in article February 11 therein that ( any person shall not be condemned by a

crime because of any action or refraining from action that was not in due time considered a crime by virtue of the national or international law, also no penalty is imposed thereon more intensive than the penalty in force at the time the criminal action was committed)

This international proclamation is very important in adopting and determining the concept of the principle of the legality of crimes and penalties and the principle of the non-retroactivity in the international criminal law. The concept of these principles by virtue of the proclamation is not limited to what is adopted by the internal laws of the different countries as a necessity that the action should be stipulated as a punishable crime when committed in the national laws of their countries, but instead the concept of this principle in the international criminal law extends to comprise the international crimes.

So the action or prevention should form an international crime punishable by virtue of the international law, also this action or refraining from action shall be considered ( an international crime) when committed, and the same if the origin of this crime and penalty exists in international customs or in international conventions and treaties.

Our court believes that what is stated in this international proclamation is at least obligatory for the member countries of the U.N. and Iraq is a constituent member in this international organization and therefore it is obligatory according to the principles stated in this proclamation without the need to stipulate it in the interior law.

This opinion endorses the provisions of article 15 (of the international treaty concerning political and civil rights) which was adopted and presented for signature and ratification and enrollment by the U.N. general assembly resolution (2200) dated December 16, 1966 effective as of March 23, 1976 ratified by Iraq in 1971.

The aforementioned article stipulated that: 1- any person shall not be condemned by a crime because of any action or refraining from action that at the time did not constitute a crime by virtue of the national or international law, also no penalty is imposed thereon more intensive than the penalty in force at the time the criminal action was committed, and if it happened after the committed crime, since the law stipulates a less commuted penalty, then the perpetrator of the crime shall benefit from the commutation.

2- Nothing in this article infringes on the trial and the punishment of any person for any action or refraining from action upon committing a crime according to the general principles of law adopted by the U.N.

It goes without saying, that the international proclamation ad of human rights and the special international treaty of civil and political rights have an international nature and Iraq is committed to the provisions stated therein for the aforementioned reasons.

However, we see in the international criminal law acts considered as international crimes having another aspect differing from what is stated in the interior law, this is because the nature of the international law being a customary law (unwritten), while the principle of the crimes and legal penalties and what results therefrom, did not develop except under the light of the written law.

And the outcome, is that the principle disagrees with the custom law, thus pursuant to this principle, the act may become subject to punishment if the said principle is stipulated in the legislation, for it is based on the written law, and therefore it is impossible to apply this principle on the customary regulations. But this does not mean that this principle cannot be absolutely applied in the international criminal law.

It is true that this law is originally a customary law (based on customs), but nonetheless, it can be applied in this law in a way that differs from the way it is applied in national laws. For it is difficult to imagine that the international law includes previous provisions by which the crimes and penalties are determined similarly as they are determined in the domestic law, i.e. it is difficult to find legal specimen outlined in specified formulas in the international criminal law because it differs from the interior law of the various countries from several aspects.

It is true that the international criminal law and the international human law have developed towards codification and significant efforts were exerted in this direction; especially post Geneva conventions and the convention of preventing genocide, and finally after sanctioning the basic system of the international criminal court (Rome system). However, the fact indicates till now, to a large extent, especially concerning the crimes against humanity, that bestowing the nature of crimes upon acts which are international crimes is done in the same way as the setting rules of the international law are generally formed.

Moreover, the definition of crimes in the international law is not precise as the definition of crimes in the national laws of different countries.

For to know which actions are considered crimes in the international criminal law, we should rely on the international custom which is the fundamental source of the international law, and so in light of this basis we can discover the nature of the action and criminalize it.

On the other hand, it may happen, especially in the recent decades, that the criminal property of the action in the international criminal law is revealed in writing, and this is the case of crimes stipulated in treaties, especially those named the obligatory legislative treaties even to countries which didn't sign or join said treaties, taking into consideration that the terms of these treaties are originally international customary regulations, for the conventions of the Hague and Geneva are but a group of customary regulations known before being finalized in written provisions.

The noticeable matter is that the conventional international law, in respect to the international crimes and others, doesn't decide the rules of the international law, for there are other international rules originating from the obligatory international law.

On the other hand the conventional international law decides only the legal regulations already found and decided by virtue of the international custom.

As a consequence, for the consideration of some actions punished by the international law, it's not enough to refer to international treaties and conventions, but we should rely at first on the international customary law.

For there are many actions deriving its properties directly from the international custom without the interference of the international conventional law, and therefore they are international crimes despite the fact that they are not stipulated in a treaty or convention. Although before year 1958 there didn't exist any treaty deciding its criminal property, the same goes to the violations committed against humanity are considered international crimes before the international conventional law decided this property in London convention of 1945.

Here we may ask if the principle of crime and penalty legality connects firmly to legislation (written law). Does this mean that it is not applied in the international law which is originally a custom law? and does this mean that the results of this principle as the non-retroactive criminal law, and adhering to the limited explanation, do not apply on the crimes of international nature?

This court believes that despite the fact that the international law is originally a customary law and despite the fact that the principle of the Crimes and Penalties according to legal provisions is related firmly to legislation, however, the requirements of justice and prevention of injustice and guarantee of individual freedom all require the applying of said principle in the scope of international crimes.

But can we apply this principle in the international criminal scope the same way as applied in the conviction and punishment scope in the interior criminal law (written)? No doubt that the answer is negative.

The concept and definition of international crime differ in many ways from the crime in the national law. This doesn't mean that they completely differ, but are different in many ways we referred to previously.

Also, there is no legislation side in the international society in the same concept in wish it exists inside the country. Additionally, the main source of the international law is the custom. Meanwhile the source of the single criminal law is legislation (written law), except for the Anglo-Saxon system which was and still, is based on the principle of judicial examples.

In other words, the concept of law is not identical in the international and national scopes. In the national scope, the law is action issued by a legislative authority. As for the international scope where there isn't a relevant legislative authority to set obligatory regulations, the general and public conventions between the countries form the legal rules, in addition to the international stable custom rules.

Thus, how can we apply this principle in the scope of international crimes? We can apply it through verifying that the action or prevention forms an international crime not necessarily originating from international conventions and treaties, whereas most of these crimes originate from the international custom. Therefore, we have to assure from the existence of an international legal custom regulation criminalizing this action or prevention as being considered an international crime, at the time of attributing the committing of a crime to a person, or its existence (legal regulation) in a general international convention (legislative) or a special international convention in which Iraq is a member.

Consequently, the principle of the crimes and penalties legality is also applied in the international criminal law. In the international law it is impermissible to punish but for actions given the nature of a crime by the international law at the time of committing it.

This matter started to become stable especially after the development and progress towards codification of international law, especially post world war II and till now, the remarkable example about this as mentioned is the stipulations of article February 11 of the international ad for human rights, and article 15 of the international convention of political and civil rights ratified in Iraq in 1971.

The larger explanation for the principle of crimes and penalties in the criminal international law permits to say that the one who commits international crimes may be questioned and then punished, even if those crimes are not stated in addition to not publishing them as international crimes in the internal law, which is an interpretation that may be valid for implementation concerning the war crimes and ethnic extermination crimes committed in Iraq, and the punishment for these crimes, especially the crimes against humanity, find its legal source in the international custom which promotes to the commanding rule level, and is applied in various countries of the world without the need to stipulate it in its national laws.

And whereas the accusations attributed to the accused in the case are aimed at their committing of crimes against humanity, thus our court assures that most if not all of the actions or preventions forming crimes against humanity are nothing but crimes from the general law which the law or criminal internal legislation stipulates its conviction and punishment in all countries as Iraq, and in this respect there wasn't any modification except transferring them from the internal scope to the international scope with the necessity of additional elements for establishing them, due to its generality and quality and the protected interest therein is not limited to the life of man or his safety or freedom or dignity or property...etc. in a specific country, however, this (protected) benefit comprises all the mentioned elements of each human individual in all countries forming the international society, also in all the world. These are crimes against human and humanity in every part of this universe.

It is true that before London convention in 1945 there wasn't any provisions discussing this sum of international crimes, there wasn't any convention punishing for the crimes committed against humanity, but the international custom convicted it, and the national laws of countries convicted it for being local crimes (internal) not international, then some of these countries started convicting it in its internal laws for being international crimes ( having the same specifications and elements and conditions existing in the international law) additionally, the tendency in the international law started to develop towards codification of these crimes.

The crimes against humanity attributed to the accused in AL Dujail case are crimes defined in the international criminal law, therefore stipulating them in the Iraqi Higher criminal court of law of 2005, and previously in the relevant criminal court of law of 2003, doesn't change the fact that these crimes were and still exist in the international custom, in addition to its existence in the Iraqi law as internal crimes. It existed in the penal code of Baghdad and still exists in the Iraqi penal code n°111 of 1969 and the military penal code n°13 of 1940.

Whoever is convicted with committing an international crime, whether it was an ethnic extermination or against humanity or war crime, as the crime of murder or torture or confinement without any reason or rape or theft or sabotage or ruining of real estates or committing a hostile act against the properties of prisoners, injured, and the dead, or disregarding these crimes and others based on the Iraqi criminal law, but instead, commits a crime stipulated in the Iraqi law, additionally, these acts are convicted according to the conventional or international customary law.

In fact, most of the international crimes are convicted at the same time as internal crimes in the national laws of most of the countries of the world if not all, thus there isn't any country in which the penal code doesn't convict the crime of murder or torture or kidnap or imprisonment of persons without right...etc.

The availability of the additional elements assists in the transformation of these crimes from the internal scope to the international scope and then acquiring the property of international crimes, other than the required by the internal law to be considered as internal crimes.

The actions attributed to the accused in Al Dujail case, if verified are considered international and internal crimes simultaneously, and the committing of such crimes is considered a violation of the international criminal law and international human law, at the same time considered a violation of the Iraqi law (penal code n° 111 of 1969, and military penal code n° 13 of 1940) also a violation of the Iraqi higher criminal court of law.

The trial of the perpetrators of murder and torture and imprisonment without right crimes....etc. being considered as examples of the international crimes, as crimes against humanity for the favor of those accused, for its formation requires additional elements other than those stipulated in the Iraqi penal code.

The peculiar specialization of this court by virtue of article 1/Second and article 14 of its law comprises in addition to its specialization in prosecuting the accused for committing international crimes stipulated in articles 11, 12, 13 of the court of law, its specialization in prosecuting the accused for committing crimes stipulated in the penal code of Baghdad and penal code n°111 of 1969, and the law of punishing conspirators against the safety of the nation and the violators of the government regime n°7 of 1958, and the military penal code n° 13 of 1940, and any other penal law in force at the time of committing the crimes attributed to the accused.

Accordingly, the argument of the defense attorneys defending the accused that the court of law infringes upon the principle of Crimes and Penalties according to legal provisions is not based on valid legal basis.

Our court, and despite the fact that it is national, and not international, has the right to consider the international crimes, not because the court of law, which is an internal law, stipulated so, but also either because Iraq ratified on international treaties included international crimes, as the condition in respect to war crimes stipulated in Geneva convention of 1949 and additional protocols annexed thereto, and the ethnic extermination stipulated in the convention of preventing genocides of 1948, or because the rules of the international criminal law are applied



not only in Iraq but in all countries of the world directly., without the need to be stipulated in the national laws of those countries, as it is with respect to crimes against humanity, even with respect to war crimes and ethnic extermination which are already forbidden by virtue of international rules before being convicted by international treaties.

The criminal international law may be applied by either way; via international courts, as it happened in Nuremberg court and Tokyo court , and the previous international criminal court pertaining to Yugoslavia, and the international criminal court pertaining to Rwanda, or via national courts as it is happening now in Iraq and happened before in England, Australia, France, Italy, Canada, also in Belgium when it prosecuted persons accused in committing ethnic extermination in Rwanda.

On the other hand, when we apply the principle of the crimes and penalties legality, we should not think as the specialized in the criminal law on the national level only, but also in conformity with the international criminal rules which are originally international customary rules. These international crimes are included in the international law and that the criminal questionnaire about them became an obligatory international custom i.e. an international law.

This court believes that several crimes against humanity were considered so even before London convention in 1945. For the international custom since the Hague convention in 1907 and perhaps before considered some committed actions during the war as crimes against humanity. Then the nomination of these crimes against humanity started to develop increasingly since the formation of the international military court in Nuremberg, (article 6/J the court covenant) and the formation of the international military court in Tokyo (article 5/J of the court covenant)

The trials, especially the trials of the Nazi German commanders for the atrocities they committed during world war II left a significant and important influence in the legal thought and the international criminal law where the U.N. secretary general requested in his report submitted to the U.N. general assembly in October 1946 the necessity to introduce the principles founded by the trials of the German war criminals and punish them pursuant to the international law. The United States also submitted in November of the same year a project to the U.N. general assembly requesting the adoption of the international organization to the principles of Nuremberg and formulating them by codification defining and punishing for the crimes committed against peace and the safety of humans. This project was endorsed unanimously.

In 1948, a convention for preventing and punishing for genocide was concluded, despite the fact that genocide was included in the definition of crimes against humanity before. The conviction of Genocide in this convention of the year 1948 means that this crime became a part of the international law written since then.

And in 1950, the report of the U.N. international law committee stated that the crimes against humanity are crimes according to the international law whether during war or peace, despite the important points of this report, we agree with who believes that it wasn't sufficient to establish an international custom rule to settle the conviction of these crimes which forms crimes against humanity during peace.

This court believes that the crimes against humanity during the time peace became a part of the international custom law post the in effect of the non-prescription convention of war crimes and crimes committed against humanity on November 11, 1970 (see provision of article two of this convention) also the principles of the international law in following, arresting, and punishing guilty persons in committing war crimes and crimes against humanity in 1973.

The convention of non-prescription of war crimes against humanity, also what is stated in the international cooperation principles concerning the following, arresting, and punishing guilty persons in committing war crimes and crimes against humanity, preceded by repetition and emulation of attitudes by arresting, and punishing guilty persons in committing war crimes and crimes against humanity and internal sources, the frequent referring to these rules which indicates compliance thereto and accepting them as obligatory legal rules, and the implicit agreement of the countries in general, but also the explicit agreement of a large number of countries and international organizations embodied as treaties and conventions and adopted legal principles, and the action of the countries which was confronted by the action and accepted it without arguing thereon, and this supports the stability of the government based on the custom rule which in turn is based on implicit and compulsory content...all this leads this court to a state of tranquility to the international custom which stabilized on considering the crimes against humanity during peace became international obligatory custom rules before the seventies of the past decade.

The formation of the international custom for convicting actions resulting in crimes against humanity during peace before 1973 can be noticed through the availability of the physical and mental element of the international custom. The physical element was available from the recurrence of examples representing the repeated attitudes of countries and international jurisprudence and the organization (U.N. board) which was embodied in the trials of Nuremburg and Tokyo and the efforts of the U.N. and the report of the international legal committee in this concern, and the convention of non-prescription of war crimes and crimes against humanity then adopting the principle of international cooperation to follow, arrest, punish persons guilty in committing war crimes and crimes against humanity by the U.N. general assembly.

On the first hand this indicates the recurrence and repetition of international attitudes and therefore the availability of the physical element of the custom. And on the other hand this indicates that countries and international jurisprudence and international organization international law jurists have now the sufficient satisfaction during those three decades that these rules became obligatory and form obligatory international legal rules in convicting the acts of crimes against humanity; and the evidence for that countries and international courts and organizations, and at each time during that period of time, notices that it is obliged to comply with these rules that convict such acts during peace and the necessity to comply with these rules became stable due to the subsequent examples and facts during these years.

This court also believes that the international custom with respect to crimes against humanity during peace is verified later during the issue of the previous special criminal court of law of Yugoslavia in 1993 and the special international criminal court of law in Rwanda in 1994, and the basic system of the international criminal court (Rome basic system) in 1998 and finally the

issue of the Iraqi criminal court of law specialized in crimes against humanity in 2003 then the Iraqi Higher criminal court of law in 2005.

We can say now contently that the crimes against humanity became a part of the international law whether during peace or war. The question arising now is: "Was there an international custom in 1982 that prescribed the conviction of actions and preventions considered as crimes against humanity during peace? The answer in the court's belief is in the affirmative. This international custom existed during that time. However, Article One of the conventions of non-prescription of war crimes and crimes against humanity in 1968 settled this matter as follows:

#### IHT Part 2 Translation

*(...continued from IHT Part 1)*

No prescription (time limitation) shall apply to the following crimes regardless of the time of their perpetration", for it is stated in article 2/b of the same convention what follows:

"Crimes committed against humanity whether in peace or war, and as defined in the basic regulations of the Nuremburg Military Tribunal issued on 8/August/1945 etc."

A dispute was raised regarding the extent to which the prescription of the previous crime can be considered as part of international customary law. However, most of the jurisprudence says that these crimes have become related to the codes of commanding international law and therefore they shall not be liable to time limitations, but any country is permitted to have recourse to the global concept of international specialization to prosecute the perpetrators of these crimes, regardless of the time and date of committing them and the law of the Iraqi criminal court has affirmed this point of view, for article 17/ First, stated the invalidity of the prescription that drops a penal lawsuit on crimes included the court specialization as stipulated in articles 11, 12 and 13 therein.

Despite our admission that Iraq has not ratified any non-prescription convention of war crimes and crimes against humanity before or after 1982, and that the provisions of article 17/First legalized first the issue of the Specialized Iraqi Court law in 2003 and then the Iraqi High Tribunal law in 2005, however, as long as we believe that most of international conventions, especially those legalized (general international agreements) were in fact codifications of obligatory previous international custom, therefore we see that Iraq is obliged by it if it wasn't considered a general international convention ( legal) then at least it includes obligatory customary codes.

And article one of the aforementioned convention is clear and explicit without any need for jurisprudence regarding the invalidity of prescription of international crimes, such as crimes against humanity, regardless of the time of committing them. In other words, crimes against humanity during peace were included in international customary law prior to 1982; they also existed as a written provision in the mentioned convention of 1968 where these provisions are in fact a codification of international custom preceding it.

Accordingly we conclude they, the war crime stipulated in the Hague convention of 1907, and that the legal codes that render it criminal are originally international customary code, and the war crimes stipulated in Geneva Conventions of 1949 which Iraq ratified on February 15, 1956.

As for the crime of extermination it has become part of international conventional law (written) by virtue of the convention of preventing extermination penalized in 1948 which Iraq ratified on January 20, 1959. As for the crimes against humanity these have become established and became part of international customary law, whether in war or peace, and Iraq has ratified the international covenant in 1971 related to political and civil rights of the year 1966 effective on March 23, 1976. Article 15/2 of the said covenant stipulates that " nothing in this article shall infringe on the prosecution or punishment of any person for committing any act, or abstention from committing an act, which at the time of its perpetration was considered a crime according to the general principles of law recognized by the Community of Nations and the general principles of the law. Also, as is clear pursuant to article 38 of the basic system of the International Tribunal of Justice it is a supplementary source and derived from the sources of international law.

### **Legality of the Punishment Principle**

Regarding the pleadings aiming to reject the law of this tribunal concerning the principle of legality of punishment on the grounds that it is impermissible to sign a penalty unless stipulated in the law, the same rejection concerning the legality of crimes applies to the legality of punishments. International crimes and therefore the actions that form crimes against humanity are mostly originally punishable by Iraqi penal code No 111 of 1969 and other penal codes, and anyone, by reviewing these provisions can see that crimes such as murder and torture...are punishable in the same provisions that implicate said acts.

The provisions stipulated in article 24 of the Iraqi High Tribunal law, and in referral to articles of criminal law, which allow selection of the penalties that suit each crime stipulated in the this tribunal's law, is an affirmation of the legality of the crime principle on the one hand, since most, if not all, of these crimes are originally acts implicated in Iraqi national law, in the penal law of 1969, and the reference to the penalty of these crimes in the said law and other penal laws are an implementation of the principle of the legality of penalties where there is no law that legally prevents imposition of penalties stipulated, even with regard national penal laws.

Also, the reference of this article 24/Fifth of the tribunal law to judicial guidance and precedence and the penalties of the provisions of international courts concerning the penalties imposed on those implicated with committing crimes stipulated in the tribunal law affirms also the non-violation of this law (tribunal law) to the principle of penalty legality, for imposing of punishment on international crimes by international tribunals, if elements of international customary law, which can in turn form an obligatory international custom applicable to national courts examining international crimes

The non-stipulation in international treaties and conventions and the codes of international criminal tribunals of penalties that are imposed on the perpetrators of international crimes, does not mean that there is no obligatory international custom for international criminal tribunals to

impose penalties on those who commit the said crimes; otherwise what is the use of the provision for implicating these actions and considering them international crimes unless they are punishable?

The implementation of the legality of the penalty does not necessarily mean that the stipulation of the penalty is correlatory to the stipulation of the crime in the same provision, for even in national law we may find some laws in which there is a stipulation implicating an act, while we find the punishment for such a crime in another provision, either in the same law or in another law.

It seems logical that the penalties stated in the national penal code are applicable to international crimes perpetrators especially since these, or most of these, crimes are stipulated in national law in addition to being implicating in international law.

This has been adopted by several international criminal tribunals, and stipulated in article 24 of the Iraqi High Tribunal law.

Most of the crimes for which the German leaders in Nuremburg had stipulations for their prosecution, and their punishments stipulated in the criminal law of every civilized nation, and were punishable under international criminal law according to the established norms of international treaties and conventions, in addition to international custom.

The imposition of penalties stipulated in national criminal laws by international criminal tribunals on perpetrators of international crimes, if said courts are notified and feel the necessity to comply with can be considered an obligatory international criminal custom. Additionally, often international criminal tribunals stipulate in their establishment laws and covenants for the application of those penalties which are stipulated in national laws to international crimes perpetrators.

The evolution of international criminal law bestows legality on the law of the Iraqi High Tribunal, considering that this forms the latest that has been achieved in the required status of international criminal legislation and its implementation, not only by international criminal tribunals but also by national international criminal courts that examine international crimes also.

This issue has been established in face of those convicted of committing international crimes who wish to get absolved of criminal liability pursuant to the argument that law of the tribunal infringes on the principle of the legality of penalty.

The plea that the tribunal law on infringes on the principle of the legality of penalty pursuant to the method and concept stated in national criminal laws for applying this principle that aims to result in not punishing the perpetrators of international crimes means infringing on the spirit and stipulations of tribunal law equally.

As was mentioned previously, we should not think in the mentality of specialists in criminal law at the national level only. Our tribunal applies first a law that includes international crimes as well some (domestic) crimes as stipulated in Iraqi criminal law prior to establishing this tribunal.

## The Principle of Non-Retroactivity of Criminal Law

The defense also took exception to the Iraqi High Tribunal laws of 2003, and later the law of 2005, which comprise stipulations that incriminate and penalize crimes of extermination, crimes against humanity and war crimes, claiming that they violate the principle of non-retroactivity of criminal law, since the said laws were issued after the events of Al Dujail in 1982.

This defense is not based on sound ground since incrimination of these actions had existed prior to the tribunal law of 2003 and existed in accordance with international customary law and also in accordance with international treaties signed by Iraq. And further, it existed in accordance with the Baghdad penal law, penal law No. 111 of 1969, military penal law No. 13 of 1940 and other penal laws of Iraq. Therefore, it can be said that the tribunal law did not stipulate itself the criminal nature of these acts and it is not their originator, rather it merely transferred these crimes from the international domain where they already existed and still exist, to the national domain. In another sense, the tribunal law took over what was included in international penal law which incriminates the acts that form international crimes and transferred them to domestic law, based on the theory of reception which is well known in the field of international law.

The principle of non-retroactivity of criminal law is respected for the purpose preventing injustice and protecting the innocent. However, objecting or taking exception to it without a sound legal basis for the purpose of absolving individuals accused of committing international crimes from criminal responsibility means that justice is denied and injustice is dedicated.

What the tribunal law stipulated concerning incrimination of acts that form extermination, crimes against humanity and war crimes does not mean that tribunal law violates the concept of non-retroactivity of criminal law since these actions besides being considered incriminatory by Iraqi penal law No. 111 of 1969, military criminal law No. 13 of 1940 and all other penal laws such as domestic laws, international customary law and all international treaties promulgated (and not promulgated) by Iraq, hold these actions to be international crimes that are penalized by international law since they existed in international law before the crimes ascribed to the defendants in Al Dujail were committed in 1982. And what was stated in article 2/11 of the international declaration of human rights in 1948 and article 2/15 of the international convention related to civil and political rights of 1966 reinforces this opinion. Iraq is bound, by virtue of international customary law, international conventional law and international penal law, as a branch of international law, in addition to international humanistic law, and also the tribunal law, to prosecute individuals accused of committing crimes against humanity in the Al Dujail case and penalizing them in case proven guilty of committing them. Furthermore, prosecuting those accused according to articles 11, 12, 13 of the tribunal law does not contravene the principle of non-retroactivity of criminal law since the crimes ascribed to them had existed in international criminal law before 1982.

With regard to the organization of the Iraqi High Tribunal and its procedures and since it is based on the law issued first in 2003 and then in 2005, whereas committing the crimes

ascribed to the accused date back to 1982, this issue relates to procedural or formal aspects which are not related to the principle of non-retroactivity of penal law, since penal stipulations become effective on the day of their issue but apply to both previous and future procedures, unless amended or invalidated to be replaced by new procedural stipulations. Penal procedure codes are the laws that set the formal rules for organizing the stages of investigation and trial, thus leading, in the end, to a substantive decision which punishes the offender, discharges the accused or declares his acquittal. Punishment, discharge and acquittal are considered substantive decisions, whereas the means and procedures leading to the decision are considered rules of formalities.

The principle of non-retroactivity of penal law relates to the substantive aspect of penal law, that is, it is related to incrimination and punishment and does not relate to the formal or procedural aspect. The establishment of courts including the Iraq High Tribunal and the procedures followed in it relate to this procedural aspect, whereby legislators can, at any time, establish any courts deemed necessary for administering justice and enforcing governmental authority and its right for punishing those who commit crimes, whether stipulated in national laws or set forth in international law. Legislators also possess the right, at any time, to amend the establishment of courts or the procedures followed during investigations and trials in such a way that provides the defendants with their rights and safeguards, in addition, the rights of other parties in the case. This includes setting up courts and amending their organization, in addition to amending their qualitative, spatial and temporal jurisdictions. All of these procedural stipulations become effective on the day of their issue and are applicable to all previous and future procedures unless amended or invalidated.

## **Summary**

The final conclusion is that, together with the necessity of admitting the principle of non-retroactivity of penal (substantive) law, and as long as we also believe that punishment based on international penal law is only applicable to those whose actions, or abstention from action, is considered to be a crime at the time of its commitment, it is no longer important whether this stipulation becomes established according to international treaties and conventions or international customary law. What is important in international penal law is that the act was incriminated by that law at the time of its commitment, and beyond that it does not matter whether the international crime is decided by virtue of a legal rule stipulated for in international conventional law or decided by virtue of an international customary legal code.

Accordingly, in case international conventional law stipulates for incrimination of an action after its incidence, then the incriminating stipulation in this case reveals the formulation of international law related to what was mentioned in that text long ago, and thus this international customary law would be applicable to the actions which the mentioned stipulation focused on. And this does not in any way contravene the principle of non-retroactivity of penal law since in this case the action is considered criminal in international law at the moment of its commitment, and this is what was the case when the tribunal law was issued, whereby the criminal acts included in it were already considered criminal in international law when they were committed in 1982, and for a very long time before that time. These were considered criminal acts in 1907, 1945, 1948 and 1949 with respect to war crimes and extermination; and since the mid 1970s, if

not earlier, with respect to crimes against humanity during peacetime; and surely it was prior to that time with respect to crimes against humanity during wartime. According to all that has preceded, application of the tribunal law to the principle of legitimacy of the crimes and sanctions and the principle of the non-retroactivity of the penal law is no more than an objection not based on sound legal foundations. Therefore, the court absolutely and completely rejects it.



Arguing the evidence of the case made available by the defendants and the tribunal's decisions.

To begin with, it should be pointed out that the members of the trial chamber are agreed to incriminate those already incriminated amongst the defendants. Nonetheless, certain members of the trial chamber had opinions that differed from others' concerning the causality of the convictions and findings, even though the result leads to the same direction. Therefore, due to the absence of any legal impediment, the tribunal shall set down the various opinions related to the causality of the decision.

Prior to discussing the degree of exists evidence that point to the committing of any one of the defendants of the crime ascribed to him in this case, it should be pointed that we will follow a unified context with respect to all the defendants as related to the terms required for looking into the available evidence against each of them, and in the following way:

- 1- Statement of the type of charges brought by the tribunal against each defendant, in addition to stating the elements of the crime or crimes ascribed to him.
- 2- Summary of the statements of the complainants and witnesses who testified against the defendant during the investigation and trial.
- 3- Summary of the pleas by the defendant during the investigation and trial.
- 4- Summary of the statements of the witnesses that testified for the defendant.
- 5- The questions brought up by the above paragraphs which require responses from the tribunal.
- 6- Verifying whether evidence against the defendant exists and revealing same in case these are available.
- 7- Specifying the legal description of the action/actions on the basis of which the defendant shall be incriminated in case sufficient evidence exists, and the reasons that call for discharging the defendant in case there is no sufficient evidence to convict the defendant, or there is adequate reason to declare his innocence, in case the defendant could not be proven guilty of committing a certain crime that falls within the jurisdiction of the tribunal, or in case no evidence or inference is established to prove his guilt in committing a crime.

Now we move to discuss the available evidence (whether the evidence of the prosecution or defense), for each one of the defendants in this case, as follows:

**First: The Defendant Awad Hamad Al-Bandar**

**The charge directed against the defendant Awad Hamad al-Bandar:**

On May 15, 2006 this Tribunal charged the defendant Awad Hamad Al-Bandar with committing murder being one of the crimes against humanity which falls under the provisions of item (a) in the first clause of article 12 of the law of the Iraqi High Tribunal No. (10) of 2005, and with the provisions of article 15, First, Second and Third, and article 24 of the same law.

**Legal requirements for “murder” to occur as a crime against humanity:**

Murder that forms a crime against humanity requires the existence of the following elements:

- 1- The perpetrator kills or causes the death of one person or more.
- 2- Commits the deed as part of a widespread or systematic attack against a civilian population.
- 3- The perpetrator should know that the deed is part of a widespread or systematic attack against a civilian population or intends to make this action part of that attack.

For the first element to exist (the perpetrator kills one person or more or causes such a killing), the elements of murder (aggravated murder) should exist as related to the circumstance of premeditation, or the circumstance of multiplicity of victims, or both. Therefore, there should be a criminal deed committed by the perpetrator or accomplice. This deed is represented by committing the act of murder or causing it, and there should be a criminal result represented by the death of the victim(s), in addition to the existence of a causal relationship between the criminal result that took place and the criminal behavior, as represented by the act of killing or of causing it. Also, through the existence of these elements, the material basis of murder is created. Nonetheless, this is not sufficient for the existence of the crime of murder, since there should also be the moral element of murder represented by the criminal intent (*mens rea*) on the part of the perpetrator, which requires the existence of the two elements of knowledge and intent on the part of the perpetrator considering that “*mens rea*” is the intent to commit the criminal act while knowing of all its component elements.

Generally, the circumstance of premeditation is proven in international crimes through the joint prior preparation and planning in advance of perpetration of the crime (planning, agreement and prior time period) and through the existence of the element of peace of mind that could be felt through several aspects, including the length of the time between preparation, planning and perpetration of the crime.

As for the second element of murder as a crime against humanity, it is represented by committing the deed as part of a widespread and systematic attack against civilian population, and this requires the deed of the perpetrator (the act of murder) to be either part of a widespread or of a systematic attack, or part of both. There are multiple elements that prove that the attack was either widespread or systematic, including, the accumulation of violent acts that differ, according to nature and magnitude, or the direct involvement of the authorities in committing multiple crimes, or the presence of a known policy aimed against a certain community, and the

involvement of the higher commands, political or military commands, etc.. What is also meant by against any group of the civilian population, according to article 12, Second/a, a behavioral method that involves repeated perpetration of actions stated in provision (First) of the said article and it means here the act of murdering any group of a civilian population pursuant to a policy of a state or organization that requires the perpetration of such an attack or the furtherance of such a policy.

Whereas the third element of committing murder as a crime against humanity requires the existence of the element of knowledge on the part of the perpetrator of the crime (murder), he should know that his behavior is part of a widespread or systematic attack against a civilian population, or the perpetrator intends this behavior to be part of such an attack. Intent here means the existence of an intention on the part of the perpetrator that his behavior of perpetrating murder would be part of the said attack. In this case, the existence of intent on the part of the perpetrator assumes, first, the existence of the element of knowledge, since the element of intent follows the element of knowledge.

Anyway, this knowledge or intent on the part of the perpetrator of his behavior as being part of a widespread or systematic attack against a group of civilian population should exist and be proven in addition to the existence and proof of "mens rea" on the part of the perpetrator which requires the presence of the two elements of knowledge and intent in carrying out the murder.

In this respect, the present tribunal adopts the criteria and concepts adopted by the International tribunal for prosecuting individuals responsible for committing serious violations against international humanistic (human rights) law in the former territories of Yugoslavia (International Criminal Tribunal for the former Yugoslavia), in the case of (Melorad Kernojack) in which the verdict was pronounced on March 15, 2005. According to the said verdict (decision), the following elements from the general conditions which should exist for any act to form a crime against humanity:

- 1- There should be an attack.
- 2- The acts of the defendant should be part of the attack.
- 3- The attack should be against civilian population
- 4- The attack should be widespread (wide scaled) or organized (systematic).
- 5- The main perpetrator should be aware (knows) of the general context in which the acts take place and should be aware (knows) that his actions are part of the attack.

The International tribunal also defined the attack as a type of behavior the includes committing violent acts and that the concept of the attack should be different and independent of the concept of armed conflict, and the attack may in practice continue after or precede the armed conflict and not necessarily be a part of it.

The defendant's acts should also be substantively a part of the attack against the civilian community even though the acts may not have been committed when that attack was at its highest point, and these acts should not be isolated but should part of the attack. However, when a crime is committed after many months, or many kilometers away from the main attack against a civilian population, it should be considered part of that attack in case a close relationship exists between the two attacks.

The victims of the defendant's actions should also be civilians and the attack should be directed against a civilian population. The population may be considered civilian even if it includes non-civilians, but simply the majority of the population should be of a civilian nature. The definition of "civilian" is wide since it includes individuals who may have at some time committed acts of resistance, in addition to individuals who had already withdrawn from a conflict, at the time that the crime was committed.

In addition, the actions that form part of the attack should either be widespread or organized (systematic), and the attribute "widespread" should have the nature of a widespread attack and a (high) number of victims, while "organized" (systematic) refers to the premeditated nature of the acts of violence, and the absence of any possibility of having occurred spontaneously.

Also, this court agrees with what was set out in the decision of International criminal tribunal decision for the Former Yugoslavia issued on March 15, 2005, which stated that there is no provision in international customary law which indicates that the defendant's action and (the actions of those people he is criminally responsible for it) should be pursuant to a policy or a plan; nonetheless this plan or policy may be pursuant to the condition which says that it is essential for the attack to be widespread or organized (systematic), in addition to the necessity of the defendant's actions to be part of that attack. This is what was stated in article/12 Second/a of the law of the Iraqi High Tribunal No. 10 of 2005, where the term "attack against group of civilian population" means a behavioral approach that includes the repeated perpetration of the act, stated in the provision (First) of this article against any group of civilian population pursuant to the policy of a state or organization that requires the perpetration of such an attack or furthers such a policy.

Moreover, this court is convinced what was set forth in the International tribunal's decision mentioned above, which says that in addition to the presence of "mens rea" for perpetration of the crime, the defendant should be aware that the attack is directed against a civilian community, and should also know that his actions are part of that attack, or at least he carries responsibility for his actions for being part of the attack; and that this does not mean in any way his awareness of the attack's details, since it is sufficient that through the acts or obligations which he willfully agreed to do he becomes aware of carrying responsibility for participating in the perpetration of that attack.

Naturally, establishing to what extent of existence of these aspects and elements which are based on the said concepts and criteria requires finding out whether they existed or not for the defendant to whom the crime is ascribed. This leads to finding out to what extent does the evidence exist that proves committing murder as a crime against humanity on the part of the

defendant to whom that crime is ascribed. In other words, we should establish whether adequate evidence and indications is available to prove or deny the defendant's perpetration of the crime(s) ascribed to him? In case evidence exists that prove this, then such evidence is not adequate to prove the defendant's guilt of the crime he is accused of, would be sufficient to incriminate him of another crime?

**Summary of testimonies of the prosecution witnesses against Awad Hamad al-Bandar.**

One of the testimonies of one of the (protected) complainants before the court during the sixth session on December 21, 2005 related that he was not prosecuted by the Revolutionary Court(disbanded) and that he was not tried by any court, even though his name was amongst the names of those who were sentenced to death by the (disbanded) Revolutionary Court on June 14, 1984, and that on that date he was detained in "Leya Desert Prison Complex".

The same complainant had also given similar statements in his testimony set down by the investigation authority on February 3, 2005.

Also, another (protected) complainant said before the investigation authority on May 26, 2005 that not has never seen the (disbanded) Revolutionary Tribunal, and did not stand before it, and was not prosecuted by it, yet his name was included also among the individuals who were condemned to death by that tribunal, at the time when he was still detained at the "Leya Desert Prison Complex" when case No. 944/C/1984 was referred and sentence was issued on May 14, 1984.

Furthermore, another (protected) complainant said in his testimony set down by the investigation magistrate in the Iraqi High Tribunal on February 6, 2005 that: "My son (---) was with me in 1986 and was not executed then, while the decision of execution issued in case No. 944/C/1984 said that my son was among the names of those executed, but he was not executed and was with me, and in 1987 he joined military service and he died in the war in 1988.

**Summary of defenses of the defendant Awad Hamad al-Bandar and his attorneys during prosecution and trial.**

The defendant Awad Al-Bandar denied the charges against him by this tribunal, claiming that he only did what any judger would have done in a court of law established under the law, when evidence against defendants is demonstrated; and that in his capacity as president of the (disbanded) Revolutionary Court he followed all legal procedures when that court prosecuted (148) defendants, referred to his tribunal by the Department of National Security in the Office of the President (of the republic), for the attempt to assassinate the accused former president Saddam Hussein in 1982 during the Iran-Iraq war; and that he delegated an attorney to defend them, and that after a trial which lasted two weeks the court decided to execute them all after proving their involvement in attempting to assassinate the former president, and established their membership in Al-Da'awa party under case No. 944/C/1984. And that the decisions of their conviction and adjudication were issued on May 14, 1984 and that he returned the papers of the case to the Office the President (Department of National Security) which submitted the sentence to the former president (the defendant Saddam Hussein) who approved that decision and a

presidential decree was issued to that effect on May 16, 1984, upon which the convicts were executed, which is what the defendant Awad al Bandar revealed in his statements before the investigation authority on January 25, 2005, and also on February 28, 2005 and before this court on March 13, 14, 2006. He claimed that he conducted the trial of all the defendants comprised of (148) citizens from Al Dujail together inside the defendants' cage and outside it (in the courtroom). The defendant Awad Al-Bandar and his attorney denied issuing the death penalty sentence against minors amongst the defendants he had prosecuted and insisted that the trial dealt with adult defendants as was demonstrated by their outer appearance. He also insisted that he tried all of the defendants (148) and not (96) defendants. He also challenged (contested) the documents submitted before the tribunal which confirmed that nearly 50 individuals were liquidated (murdered) at the Intelligence (Moukhabarat) Headquarters and that their names were referred to the court in the referral decision and were repeated also in the two decisions of conviction and adjudication.

The defendant Awad Al- Bandar did not deny that he was the president of the (disbanded) Revolutionary Court in 1984 and that his court tried case No. 944/C/1984 that sentenced all the defendants who numbered (148) citizens from Al Dujail to death by hanging, and he admitted that the two signatures inscribed on the original copies of the two decisions of conviction and adjudication are his own.

Then the defendant Awad Al- Bandar claimed during the last sessions of the trial, as did his attorneys in a written petition submitted to the tribunal as well as orally before it that a number of those claimed to have been sentenced to death are still alive, and that this affects the proceedings of the case materially. Furthermore, the defendant and his attorneys insisted on the necessity of making available the file of case No. 944/C/1984 comprised of 361 pages.

The defendant Awad Al- Bandar demanded through his statements before the investigation authority and before this tribunal that the tribunal should take into consideration his circumstances at the time that the (disbanded) Revolutionary Court passed the verdict and especially that the incident (attempt to assassinate the former president) took place in the heat of battle during the Iraq –Iran war.

#### **Summary of the testimonies of the defense witnesses for the defendant Awad Al-Bandar.**

The defendant Hamad Al-Bandar put forward 5 defense witnesses and the tribunal heard their testimonies, and they are the following: (----), whose testimony the tribunal heard during the session dated on May 22, 2006; and (---) whose testimonies were heard during the twenty ninth (29<sup>th</sup>) session dated May 29, 2006, while the fifth witnesses on behalf of Awad Al-Bandar (---) whose testimony the tribunal heard during the thirty third (33<sup>rd</sup>) session dated May 12, 2006.

All these witnesses were not eye witnesses, neither of the Al Dujail incident nor of the Al Dujail case No. 944/C/1984. Most of the statements of these witnesses focused on general information about the (disbanded) Revolutionary Tribunal, the conduct of its procedures and the behavior and conduct of the defendant Awad Hamad Al-Bandar when he was its president. The testimony of the witnesses (---) was false when he said that he saw the defendant Awad Al Bandar when he was president of the Revolutionary Court in March, 1982, when he prosecuted

him in a case he was accused of, and that he used to call him (my son), since Al-Bandar insisted more than once during the investigation and before this tribunal that he became the president of the Revolutionary Court in 1983, which demonstrates that the said witnesses was not present in the (disbanded) Revolutionary Court and did not see the defendant Al- Bandar when the latter was a president of the said court. As to the witness (---), he responded to a question posed by the court considering that he used to attend the Revolutionary Tribunal's courtroom daily. The question was: "What is the area of that courtroom?" The said witness answered: "The courtroom has the shape of a square and its area is nearly similar to the area of this courtroom up to the end of this door". He meant by that our present courtroom.

### **A real or illusionary prosecution?**

For the court to form a solid conviction without any reasonable doubt regarding the allegations against the defendant Awad Al Bandar, it needs to discuss and debate many issues that arose during the investigation and trial. This matter requires shedding light on those questions regarding which the court may be able to secure convincing answers related to whether the evidence is sufficient or insufficient for implication.

This tribunal believes that the main or cardinal question with respect to the accusation against the defendant Awad Al-Bandar is: Was the trial of (148) citizens from Al Dujail in the (disbanded) Revolutionary Court during the first half of June, 1984 real or illusionary? The answer to this main or central question requires first answering many secondary questions pertaining to or surrounding the developments that occurred in the (disbanded) Revolutionary Court when the case was referred to it, at the end of May 1984, and through the responses these secondary questions, we shall find the "big" answer to the main question we have posed. Nevertheless, despite the importance of answering these questions, which we described as secondary questions, for allowing us to arrive at the definite convincing and definite answer to the main question. The answer to these questions will also prove, on the other hand, other aspects pertaining to the extent of existing of evidence, or lack of it, against the defendant Awad Al-Bandar.

The questions are:

- 1- When did the decision to refer the defendants (victims) of Al Dujayl citizens reach the (disbanded) Revolutionary Court? When did the alleged trial begin? How long did it last? When was the implication decision issued?
- 2- What was the number of individuals referred to the said tribunal by virtue of the referral decision? What is the number of those who were sentenced in the two decisions of conviction and adjudication?
- 3- Were some individuals of the Al- Dujayl citizens whose names were included in the referral order, already dead due to being liquidated (killed) at the Intelligence Headquarters (Moukhabarat)?

- 4- What is the area of the courtroom of Revolutionary Tribunal? Did the said tribunal have adequate space for putting on trial all the defendants of Al Dujail citizens referred to the said Tribunal all at once?
- 5- Were there any attorneys delegated to defend the accused (victims) of Al Dujail citizens? Were they paid their fees? In case the question is answered positively, why wasn't this mentioned in the decision of conviction and adjudication?
- 6- Were there any criminal grounds attached to the documents of case No. 944/C/1984 or not? If the answer is yes, why wasn't this mentioned in the decisions of convictions and adjudication?
- 7- Were any of the defendants (victims) of Al Dujail citizens sent by the tribunal to the forensic center to determine their age?
- 8- Did the tribunal prosecute minors (under 18 years old) or youths under 20 years old? Did the tribunal sentence minors (under the age of 18) or under 20 years old of hanging?
- 9- Are there any official documents that prove the ages of those sentenced to death?
- 10- Were the names of certain individuals from Al Dujail set forth in the referral order and the decision of conviction and adjudication, while these were somewhere else during their alleged trial, and if so, who were they?
- 11- What was the sentence issued against the victims (defendants) of Al Dujail citizens?
- 12- Was the death sentence indeed carried out against (148) citizens from Al Dujail and when did that happen?
- 13- Where there any documents or minutes (records) covering execution of the death sentence or death documents or death certificates or copies of registrations that prove their death?
- 14- Are there any individuals who were sentenced to death but are still alive, and if yes, who carries the responsibility to prove that?
- 15- Are there actually other papers that relate to case No. 944/C/1984.
- 16- Were there any orders or pressures from the defendant (Saddam Hussein) or any other high official directed at the defendant (Awad Hamad Al-Bandar) to issue death sentences against (148) citizens from Al Dujail whose names were set forth in the referral order?



- 17- Who signed the decisions of conviction and adjudication? Were the decisions taken unanimously or by a majority?

The answers to these questions and the fact that the arrival of the tribunal at definite convictions without any reasonable doubt will determine whether the trial of Al Dujail citizens was real or illusory, and accordingly the tribunal will specify the extent of existing evidence that will either implicate the defendant Awad A-Bandar for committing murder with a crime against humanity or not. Also, the answers to these questions will even have other ramifications that will not be less important with respect to the other defendants in this case.

Answers to the former questions:

- 1- The order committed by the Department of National Security at the Office of the Presidency to the (disband) Revolutionary Court was issued on May 27, 1984. The defendant Awad Al-Bandar claimed during the trial that he received that order the next day, and also claimed that the trial began right after that and lasted for two weeks. The decisions of conviction and adjudication were then issued on June 14, 1984.
- 2- The number of individuals referred to the (disband) Revolutionary Court by virtue of the referral order mentioned above, were (148) citizens from Al Dujail. Whereas the conviction decision by the said tribunal under No. 944/C/1984 issued on May 14, 1984 included (145) names, while the judgment issued by the same tribunal under the same number and date included (147) names in which the name of (Ali Kabson Mohammad) was not included. Later, the name of that person was added through a secret and personal note of the (disbanded) Revolutionary Court number (6231), dated November 17, 1984 addressed to the Office of the Presidency, Department of Legal Affairs, which included the order to add the above mentioned name to the presidential decree issued against the rest of the convicts in the above mentioned case No. 944/C/1984.
- 3- Several documents (official documents and decisions by commissions formed for the Al Dujail case) attached to the papers of this case and submitted before this tribunal, point out that about 50 citizens from Al Dujail whose names were included in the referral order and the decisions of conviction and adjudication, were indeed liquidated (killed) at the Intelligence Headquarters (Mouhabarat) before issue of the referral decision, and that only 96 of them were still alive upon issue of that decision, and that even with respect to the rest, these 96 individuals, they were not tried but were sentenced along with those who were executed by hanging to death without any trial and on paper only. Thus was set forth in the memorandum filed by the Department of Legal Affairs to the defendant Saddam Hussein when he was president, dated on April 4, 1987, and particularly in the first clause (1) of that memo: "After convicting 148 individuals who were sentenced to death by the Revolutionary Tribunal, the rest of the convicts were executed, since some of them had died during the investigation". In addition, it was pointed out in the second and third clauses of the decision taken by the

commission formed by the Intelligence Service, under number 560 on February 3, 1987, comprising four members of the Intelligence Service. The second clause of this decision says: "It has been decided to refer (148) individuals to the Revolutionary Court and sentence them to death". The third clause of the same decision says: "Among the convicts and the ones sentenced to death, 46 were liquidated or died during the course of the investigation". Also, it has been mentioned in the top secret and personal note of the Intelligence Service No. 1282 dated March 31, 1987, in which the third clause stated: "The rest of the convicts were executed since some of them had died during the investigation". In addition, it was mentioned in the decision of conviction issued on September 23, 1987 by the Intelligence Tribunal attached to the Intelligence Service, related to trial of one of its associates (Hikmat Abed el Wahab) for not carrying out the death sentence against two individuals whose names were set forth in the judgment decision of the Revolutionary Tribunal. These were, Habeeb Jaafar and Jasim Mohammad Al-Hatto. The judgment literally stated: "Regarding the time limitation and the fact that the rest of the overall number of the convicted is (96) due the liquidation of the others in the course of the investigation". These documents and files whose authenticity this tribunal has verified and arrived at a conviction regarding them, proves that the trial was illusionary, in the sense that there was no trial for the rest of the (148) individuals of Al Dujail citizens who were alive at the time of issuing the referral order, since it has been proven in these documents that there were (46) individuals from among those whose names were set forth in the decision were liquidated (killed) during the investigation and their names were sent with the names of the others to be tried, or more accurately to be sentenced to death by hanging at a time when they were already dead, but actually they were sentenced to death along with others by hanging until dead!?.

- 4- The area of the (disbanded) Revolutionary Court according the estimation of the defense witnesses of Awad Al-Bandar whose name is (---), and whose testimony was heard by this tribunal in its thirty third (33<sup>rd</sup>) session dated June 12, 2006, and who was working in the (disbanded) Revolutionary Court as a personal bodyguard of the tribunal president at the time, the defendant Awad Al-Bandar, from 1983 and up to June 1, 1996: "The courtroom of the Revolutionary Court had the shape of a square and its area is similar to the area of this courtroom up the end of the door". He was referring to the Iraqi High Tribunal courtroom. This courtroom is estimated to be 10 meters long x 10 meters wide, so that its area does not exceed 100 m<sup>2</sup>. In other words, the area of the Revolutionary Court also did not exceed 100m<sup>2</sup>. When answering a question posed to Awad Al-Bandar during his trial, he said that he put some of the defendants (victims) of Al Dujail citizens inside the defendants' cage and put the others outside it (in the courtroom). This tribunal believes that it is impossible to prosecute 148 individuals at the same time inside a courtroom with an area that does not exceed 100 m<sup>2</sup>, especially since the platform of the tribunal panel and the prosecution platform as well as the lawyers' platform occupy a large proportion of the courtroom, so that the remaining area which is estimated to be half the area of the

courtroom would never have as well as capacity to house 148 individuals, neither sitting down nor standing up, and it is not even big enough for 96 individuals.

- 5- Despite the insistence of the defendant Al-Bandar during the periods of investigation and trial claiming that he delegated an attorney to defend the accused in case No. 944/C/1984, he did not mention the name of the said attorney. In addition, the decisions of conviction and adjudication issued on June 14, 1984 do not show any indication of delegating an attorney to defend the accused of Al Dujail citizens. They also do not show any sign of paying the fees of any delegated attorney. In addition, these two judgments do not include submitting a defense brief from any attorney whether authentic or delegated.
- 6- The decisions of conviction and adjudication do not establish the presence of any criminal grounds, despite the allegation of the defendant Awad Al-Bandar along, with a number of defense witnesses regarding, about seizing armaments in Al Dujail at the time the incident.
- 7- It has not been proven through the investigation and trial that the (disbanded) Revolutionary Court took any decision to send any of the referred Al Dujail citizens to forensic centers to estimate their age, since the decision of conviction came devoid of any such information; whereas this procedure should have been carried out by the tribunal in case official documents are absent to establish the age of defendants; especially when it was apparent that their ages did not exceed 12 or 15 years.
- 8- By virtue of the referral decision to the court which included (148) names, and the decision of conviction which included (145) names and the judgment decision which included (147) names, where the name of (Ali Kabsoon Mohammad) was later added to it; also by virtue of the letter of the Al Dujail office of civil status and citizenship number 365, dated April 3, 2006, addressed to the prosecutor general of this tribunal, it has been verified that (39) individuals were under 18 years old and (15) had completed 18 years but were under the age of 20.
- 9- The documents of this case included identity cards covering some of the Al Dujail citizens referred to the Revolutionary Tribunal, and by virtue of these official documents (identity cards) which verify the date of birth of the victims of Al Dujail citizens that own these identity cards and who were referred to the (disbanded) Revolutionary Tribunal, it has been verified that a (large) numbers of those sentenced to death were under 18 years old at the time of the incident, while another lesser number of those sentenced to death had completed 18 years of age but were less than 20 years at the time of the incident on July 8, 1982.
- 10- According to what one of the (protected) complainants stated, whose testimony was set down by the investigation authority on February 3, 2005, and whose testimony the tribunal also heard in its sixth (6<sup>th</sup>) session, dated December 21, 2005, where he verified that he did not appear before the (disbanded)

Revolutionary Court and that he had no knowledge of his death sentence. Also, in accordance with what another (protected) complainant testified and whose testimony was set down by the investigation magistrate on May 26, 2005, he maintained that he did not appear before any tribunal or stand before any judge, but that he was investigated at Abu Ghreib prison and then transferred to Leya Prison in the Samawa Desert until discharged in April 1986. According to the testimony of another (protected) complainant, whose testimony was set down by the investigation magistrate on February 6, 2005, he said my son (---) whose name was amongst those executed was with me in 1986 and was not executed whereas the death sentence issued in case No. 955/C/1984 says that my son (---) was among the names of those executed, but in 1987 he joined military service and he was killed in the war in 1988. All these testimonies assert that all the people condemned by the (disbanded) Revolutionary Tribunal, their names were included in the referral decisions and the decisions of conviction and adjudication. It was said they were tried in person, whereas to on the contrary they were not present in the said court, neither in May nor in June of 1984, because they were confined at that time in the Leya Desert Prison in Samawa district.

- 11- The sentence rendered against 147 people of Al Dujail, to which another name was added (as previously mentioned) by the (disbanded) Revolutionary Court under case No. 944/C/1984 on June 14, 1984, was execution by hanging until dead of all those mentioned in the decision of conviction, and they were all those mentioned in the referral order who numbered (148). In addition, these individuals were condemned of seizing their movable and immovable assets.
- 12- The death sentence of 148 citizens form Al Dujail was not carried out, as was stated in the decision of conviction issued against them by the Revolutionary Court and which the defendant Saddam Hussein affirmed in his capacity as president at the time, two days after the issue of the conviction decision, which was issued on June 14, 1984 and ratified on June 16, 1984.

Despite the fact that the minutes of execution of the death penalty which was prepared by the section of long lasting verdicts in Abu Ghreib prison on March 23, 1985. It was signed by the following: The vice-director of the said section, a member of the Revolutionary Tribunal, Colonel Tarek Hadi Shoks, the prosecutor general of the tribunal Major Hashem Taha Hamad, the officer of the social reform police department, the representative of the Ministry of Internal Affairs captain Ali Saleh Mahal, and Dr. Maher Damen, a doctor at the Republican Nour Hospital. All of these upheld the fact that the (convicts) mentioned above and numbering (148) names in the minutes of the execution of the death sentence, and which are the same names included in the referral order and decision of adjudication, had already died on March 23, 1985. Despite this fact, it is evident through the investigation and trial that many individuals whose names were included in the report of the minutes death penalty execution and which were considered to have been executed and died on March 23, 1985, were not in fact executed because some of them were actually in the Leya Desert Prison at that time.

These were (Jasim Mohammad Rida al-Hitto, Ali Ja'afar Habeeb and Nabil Bakir Jasim), in addition to (Ali Hussein Ahmad) who has been proven to be still alive up to now according to the letter of the administrative district of Al Dujail No. 1010 dated June 11, 2006 addressed to the Iraqi High Tribunal/ general prosecution, as well as the minutes of the death penalty executions dated on January 16, 1989 and signed by the execution commission and its president Radi Saad Ahmad Faleh upheld the execution of the death penalty by hanging till death on January 16, 1986, at the Adult Reformation section of Abu Ghreib prison, against 10 individuals whose names were mentioned in the minutes of the death penalty execution (previously mentioned). These were the following: (Faleh Mohammad Abbas, Abboud Najem Abboud, Boushan Yaakoob, Tamer Hasson, Kathem Ahmad Mohammad, Hamza Mohammad Hadi, Ma'an Abbas Hassoon, Hameed Abbas Hassoon, Mohammad Jasim Abed Al-Hasan and Kasim Mohammad Jasim). It is noted from the minutes of the minutes of death penalty executions that Kasim Mohammad Jasim who was 12 years and 4 months old, on the day of Al Dujail incident on July 8, 1982, was later executed on January 16, 1989 when he was over 19 years old, while the rest of the minors were executed in 1985 or they might not even have been alive in 1984 at the time of the alleged trial.

- 13- In addition to the minutes of the death penalty executions, mentioned in the former paragraph, there are identity card registration copies (of the victims) of Al Dujail citizens whose names were included in the minutes of the death penalty execution dated March 23/1985. These identity registration copies pointed to the death of the victims mentioned therein, and there were attached to the case papers death certificates of the Al Dujail victims whose names were included in the minutes of the death penalty executions, in addition to attaching death certificates of those whose names were mentioned in the judgment dated June 14, 1984, or of others.
- 14- It becomes clear, based on the above what has preceded, that after carrying out the death penalty in 1985, at least between 4 and 14 individuals who were sentenced to death were still alive, including Nabil Bakir Jassim, who was verified to the court to be alive through the testimonies of (---) previously mentioned, in addition to his death certificate issued on April, 1988 that proves his death in 1988 at the end of the Iran-Iraq war. Even after the second execution of the death penalty of ten of Al Dujail citizens based on the minutes of the second death penalty executions dated January 16, 1989, there remained between 3 and 4 individuals alive. They are, (Jassim Mohammad Rida al Hitto, Ali Habeeb Ja'afar and Ali Hussein Ahmad). The attorneys defending the defendant Awad Al-Bandar insisted during the last sessions of the trial and in petitions submitted to the tribunal on June 19, 2006, in addition to the claims of the defendant Al-Bandar himself at that time (during those last sessions) that there were 26 individuals, mentioned in his petitions, whose names were among the names that were included in the referral order, including the four above mentioned individuals who are still alive at this moment and most of whom live outside Iraq, while some of them were dead either before or after the Al Dujail incident in 1982. The tribunal was requested to check this matter which forms according to them a substantive plea although the burden of proof in this case is falls on the shoulders of the

defense which alleged this claim contrary to what was mentioned in respected official documents.

Proving that the mentioned individuals are still alive and residing outside Iraq, or may have died before or after the Al Dujail incident for reasons not related to Al Dujail incident, contrary to what was set forth in the minutes of the death penalty executions, death certificates, death documents and identity registration copies issued by official bodies cannot be contested unless by proving (claiming) forgery. "The burden of proof lies with the one who alleges the contrary of authenticity", especially that the defendant Awad Al-Bandar testified more than once during trial sessions and during the investigation that he prosecuted 148 citizens from Al Dujail and issued death sentences against them, and there are minutes of the death sentence executions. Nonetheless, the general prosecution authority addressed the administrative district of Al Dujail concerning this issue, which responded in turn in a letter under No. 1020 dated June 11, 2006 that the information regarding the 17 individuals reveals that 15 of them were dead, while no information exists concerning one of them (Abed El -Latif Abed El-Amir), and only one of those 17 is still alive and he is (Ali Hussein Ahmad).

In fact, the defendant Awad Al-Bandar and his attorneys committed a flagrant contradiction when they admitted in more than one session, and more than one petition submitted by the said attorneys of the defendant, that after prosecuting (148) citizens from Al Dujail in the (disbanded) Revolutionary Cour the issued a decision signed by the defendant and the rest of the tribunal members stipulating inflicting the death sentence on all those people referred to the referred to the tribunal on June 14, 1984. In addition, Awad Al-Bandar did not deny during the investigation and trial and during the verbal process of testimony what took place on April 5, 2006, that he signed the decisions of conviction and adjudication and asserted their truthfulness claiming that the tribunal held many trial sessions before arriving in the end at the above mentioned decision. But then the defendant Awad Al-Bandar and his attorneys came back to claim that more than 20 individuals of those (148) convicted are still alive and most of them are outside Iraq, without submitting any evidence or document that upholds this allegation except what was stated in the testimonies (of the 4 witnesses). However, the tribunal concluded, after it opened an independent investigation regarding these witnesses, and after checking them, out that their testimonies were false, since they admitted themselves that the testimonies were dictated by some defense lawyers. What the defendant Al-Bandar and his attorneys said contradicts what the defendant had already admitted, and is no more than an allegation that is contrary to the findings confirmed by this tribunal and supported by documents proving the execution of the death penalties against those individuals and their actual death, except for the four individuals already mentioned. Even assuming that what the defendant and his attorneys said were true, then this upholds and proves the truth which says that no trial session was ever held for those 148 individuals, and this means that those people were never tried, and that the decision of conviction signed by the defendant (Awad Al-Bandar) and which he confessed more than once to be his own, is in fact an order for murder and not a judicial decision. the defendant Awad even during the process of dictating the testimonies of the defendants on April 5, 2006 for the purpose of matching the handwriting and the signatures on the documents with his handwriting and signature, refused to give samples of his signatures, which confirms once more that the signatures shown on the decision of conviction and adjudication are his own. This tribunal considers this matter to be additional evidence which proves that the prosecution wasn't real and no trial sessions were actually held to prosecute those

who were referred to it in the Al Dujail case No. 944/C/1984, and therefore the prosecution was illusory and never existed.

- 15- The defendant Awad Al-Bandar and his attorneys demanded several times during the trial sessions, especially in the 19<sup>th</sup> session dated April 6, 2006 and in petitions submitted by the defendant's attorneys to the tribunal a request to bring in the rest of the case papers (case No. 944/C/1984), considering that the number of pages of this case was 361 pages. The burden of proving the existence of a deficiency in the mentioned case papers, of which the general prosecution has already delivered copies to the defense attorneys and to the tribunal lies with the defense, since whoever claims the existence of evidence in his favor should submit it before the tribunal and should seek himself to secure it. That doesn't mean that the tribunal on its part would not offer any possible help to secure any available evidence, whether positive or negative. When this tribunal says that the one who claims the existence of evidence holds the burden of probing for it, it refers in this way to a legal principle known in all the countries of the world. Nevertheless, this does not mean that the tribunal places all responsibility of proving innocence on the shoulders defendant himself and on his attorneys. Basically, a person is innocent until the contrary is proven, since the defendant is innocent until proven guilty in a legal trial. In any case, the tribunal spent enormous efforts in this regard and secured all the papers of case No. 944/C/1984 comprised, of 361 pages and gave all the lawyers of the defense, including the lawyer of the defendant Awad al-Bandar copies of all of those papers, as demonstrated by receipt attached to the case papers dated June 19, 2006. The tribunal notes that all of these 361 pages did not contain any of the procedures of the alleged trial, including the absence of any of the victims (defendants') testimonies before the (disbanded) Revolutionary Court in this case.
- 16- The defendant Awad Al-Bandar asserted during the investigation and trial that he did not take any order from, and was not put under pressure, either by the defendant Saddam Hussein when he was president, nor by any other officials of the country to issue the mentioned decisions which comprise the death sentence inflicted on all of those who were referred to the (disbanded) Revolutionary Court through a referral decision received at the said tribunal on May 18, 1984, as the defendant asserted. But he in turn asserted more than once that during that investigation and trial he passed through hard circumstances and requested the tribunal to take this into consideration especially that the Al Dujail incident occurred during the Iran-Iraq war.
- 17- The people who signed the decisions of conviction and adjudication are: the defendant Awad Hamad Al-Bandar who was president of the Revolutionary Tribunal, the legal captain Dawood Salman Shihab, and the legal captain Tarek Hadi Shokr, in their capacity as the two other members of the said tribunal. These two decisions were issued unanimously on June 14, 1984.

**Existing evidence and inferences in the case against the defendant Awad Hamad Al-Bandar**

The answers to the above questions in the way we have seen, together with all other evidence and indicators confirm that no trial was held for those citizens of Al Dujail whose names were included in the referral decision or in the decisions of conviction and adjudication, and that the trial was illusory and not real. And the issue of the two decisions of conviction and adjudication were only designed to fulfill certain legal formalities. Evidence and inferences concerning this matter are numerous, and include:

- 1- The report of the investigation commission formed under the presidency of Hussein Kamel with the membership of judge Abed El Aziz Dawood representing the Legal Affairs Department in the (disbanded) Office of the Presidency, and Ibrahim Jawad representing the Special Security apparatus, dated July 5, 1987 which said: "The testimonies of those two individuals were taken down", referring to Ali Ja'afar Habeeb and Jasim Mohammad Rida Al-Hitto "together with a number of others who were "fictitiously" (nominally) convicted, and those in a similar status were similarly convicted with the rest of the defendants in the case, and were sentenced to death by hanging by the revolutionary tribunal, as shown in the case papers, and without trial". This is affirmed by the case of the two detainees Ali Habeeb Ja'afar and Jasim Mohammad al-Hitto whose names were included in the referral decision and the decisions of adjudication and the minutes of death sentence executions, at the time they were detained in Leya prison in the Samawa desert before and after the date of referral and adjudication. The same commission mentioned above, stated: "It has been decided to detain those in Mouthanna province (Mohafazat) and they were dispatched in three consecutive lists of different dates, where the second list dated on October 7, 1983 contained the names of the two detainees that were sent which are the subject of this investigation, Ali Habeeb Ja'afar and Jasim Mohammad Al-Hitto. The testimonies of those two detainees along with another number of nominally convicted individuals were taken and set down".
- 2- The assertion of the plaintiff (---) before this tribunal, and previously during the investigation, that he did not stand before the Revolutionary Court and did not know anything about the issue of the death sentence against him. In addition, the assertion of (---) during the investigation of a similar testimonies. Also, this was confirmed by the testimonies of the complainant (---) during the investigation that his son (---) whose name was also included in the referral order and decision of adjudication and conviction, and in the minutes of the death sentence executions, that he was and detained with him in Leya desert prison from 1983 up to April 1987, whence he was taken to military service in 1987, when he had completed 18 years of age, as was killed during the Iraq-Iran war in 1988.
- 3- The decision of conviction and adjudication issued by the Revolutionary Court on June 14, 1984 which were devoid of any indication of delegating an attorney to defend the detainees. No fees were paid to any delegated attorney,



- and there is no indication of submission of any defense plea by any authentic or delegated attorney.
- 4- What has been stated in the memorandum submitted by the Department of Legal Affairs to the defendant Saddam Hussein in March 1987 mentioned previously.
  - 5- What has been stated in the decision of the commission formed by the Intelligence Service, No. 560, dated February 3, 1987 comprised of the five members mentioned above.
  - 6- The decision of conviction issued from the Tribunal of Intelligence related to the secret service on September 23, 1987 regarding the trial of its associate (Hikmat Abed al-Wahab) which stated: "In view of the time limitation and the fact that those remaining of the overall number of convicts is (96) as a result of liquidating (killing) the others in the course of the investigation, and based on the people responsible for checking the names of the convicts who were at a place specified for those convicts sentenced to death only, and for the purpose of camouflaging the facts so that members of the execution commission would not know the overall number of individuals who are going to be executed so as not to find out that some of them were liquidated previously; therefore checking the names of the convicts before execution was overlooked which led to the execution of other individuals who weren't in the lists. This means that the death sentence was not carried out against four other individuals, two of whom are the subject of this case while the destiny of the other two remains unknown."
  - 7- The decision issued by the (disbanded) Revolutionary Court does not include anything that indicates sending any of the individuals referred to it to the forensic medical committee to establish their ages, despite the presence of a large number of minors, some of whom were 12 or 13 or 14 years old.
  - 8- The issue of the death sentence against a group of minors who were below the legal age at the time of the incident, whereby the number of these minors amounted to (39) and their ages ranged between 12 and 17 years at the time of the incident in 1982. Also, the issue of death sentences against individuals whose ages ranged between 18 and 20 years at the time of Al Dujail incident in 1982. While this matter forms a clear contravention of constitutions and international conventions including the International Covenant of Political and Civil Rights signed by Iraq at the beginning of 1970s, and also a contravention of article 79 of the Iraqi penal law 111 of 1969; and the law of minors No. 76 of 1983, these are considered additional evidence that indicate that the trial was illusory and not real.
  - 9- What the defendant Awad Al-Bandar and his attorneys said and what some of the defense witnesses testified, where it was revealed that the testimonies of

four of them were untrue. The tribunal decided, in accordance with this, to reject their testimonies regarding the existence of a number of individuals whose names were mentioned in the referral order of the decision of conviction and adjudication who are still alive up to now and that ten of them are outside Iraq at this time. The tribunal has had it confirmed and verified to it, and has been convinced of the false nature of these allegations through the confessions of those four individuals whose names are mentioned above, who were brought in as defense witnesses, and who testified that that their testimonies before the tribunal on May 30, 2006 were untrue and that those confessions were written by them besides being set down by a judge delegated by the tribunal in the presence of a general prosecutor from the tribunal, who was other than the General Prosecutor Ja'afar al Mousawi. This was done in the presence of a lawyer delegated by the defense office in this tribunal to defend them. These allegations were also proven to be false through what was mentioned in the letter of Al Dujail administrative district No. 1020 dated June 11, 2006 which asserted that the names mentioned in the claims and arguments of the defendant Awad Al Bandar and his attorneys and through the testimonies of the defense witnesses (mentioned above) are for dead people, except for the so-called (Ali Hussein Ahmad). This proves and enforces the evidence and documents which show that the trial of those were referred to the revolution any tribunal by virtue of an order of referral was illusory, since not one of those victims stood before the said tribunal and the decision of conviction was issued on June 14, 1984 in the case papers only without any trial.

- 10- The area of the courtroom of the Revolutionary Court which did not exceed at any rate 100 m2 and the impossibility of conducting a trial for 148 individuals at the same time in it.
- 11- There is no indication in the referral order or the court decision of any reasonable criminal grounds discovered in the case. This contradicts what was mentioned on the testimonies of some defense witnesses before in tribunal about seizing various kinds of armaments in Al Dujail on the day of the incident and the days that followed.
- 12- The referral order was issued on May 27, 1984, and the decision of conviction and adjudication No. 944/C/1984 were issued on June 14, 1984, while the defendant Saddam Hussein who was president at the time affirmed the decisions in presentational decree No. 778 issued to that effect on June 16, 1984.

This fact proves the implicit agreement, if not an explicit one between the defendant Awad Al-Bandar and members of the Revolutionary Court and between the office of the presidency which was under the power of the defendant Saddam Hussein to issue death sentences against all the victims without trying them. This further reinforces the evidence and proofs that affirm that the trial was illusory. Moreover this proves that no checking was ever conducted of the case papers

and the decision issued on June 14, 1984 which was affirmed and issued by presidential decree to that effect after only two days and specifically on June 16, 1984.

- 13- The inclusion in the decision of conviction of (145) names of the Al Dujail citizens and the inclusion in the decision of adjudication of (147) names, and then adding another name to it after several months is considered another evidence added to the other evidences and proofs which confirm that the trial was illusory.
- 14- Despite the fact that of this tribunal received all the papers of case no. 944/C/1984 (consisting of 361 pages), it did not find in it any testimonies of the victims before the (Disbanded) Revolutionary Tribunal. In addition, the said papers did not include any of the legal proceedings of the alleged trial.
- 15- The time during which the defendant Awad Al-Bandar alleges that he conducted the prosecution of (148) individuals, which he estimated to be two weeks which also includes official holidays is not sufficient at all for conducting a trial for such a large number of people. What the defendant Al-Bandar testified on his statement before the investigation authority and also before this tribunal that the Revolutionary Court was permitted by virtue of the article 181/D of the code of penal procedures to decide the case in one day might be true or justified in minor cases and unimportant cases where the number of defendants is very limited and not in a critical case like Al Dujail where the number of defendants reached (148).
- 16- If we accepted that what happened on July 8, 1982 was an attempt to assassinate the former president, then the number of those who participated in that attempt should have been very limited and does not exceed the one digit. This upholds what was mentioned in the testimony of the defendant Saddam Hussein himself before the investigation authority on June 12, 2005 when he literally stated: "During my visit to Al Dujail my car escort was subjected to gunshots, I believe from around two guns, but I am not sure because of the passage of time, and afterwards, that is, after the gunshots, I walked out of the car". But then "I walked out during the shootings. I walked out of my car and started walking on foot in the city where I reached a platform, ... the roof of one of the population' homes... etc.". The number of gunshots fired at the car escort of the defendant Saddam Hussein was limited and small and they came from around two guns according to what Saddam Hussein himself says.

In addition, the witness Waddah Al-Sheikh who was president of the Department of Investigation and Inquiry and who reached the place of the incident at the noon on July 8, 1982 has estimated through his written testimony to this tribunal on October 23, 2005, a few days before his death, that the number of those who fired the shots according to the traces of the gunshots found on the wall of the orchard from which the gunshots were fired, and according to the empty shot cases found on the land of the orchard, the number of those who fired the shots ranged between 7 and 12 individuals. These established findings do not justify at all sentencing

148 citizens from Al Dujail to death by hanging, nor does it justify arresting, detaining and torturing women, children and old people for four years in detention camps and prisons including Leya Desert Prison.

## Conclusions and convictions of the Tribunal

We conclude from what has preceded that the (disbanded) Revolutionary Court did not conduct any trial for the victims of Al Dujail citizens, while all the evidence and inferences this tribunal has arrived at through the responses to the questions and issues raised during the case by all sides prove without any doubt that the trial was illusionary. The confession of the defendant Awad Al-Bandar that he was the president of the (disbanded) Revolutionary Court which issued the death sentence against 148 citizens from Al Dujail on June 14, 1984, and his admitting that the signatures appearing on the decision of conviction and adjudication No. 944/C/1984 are his own, and all the evidence and proofs we have reported above demonstrate that the defendant Awad Al-Bandar issued an order to murder the victims of Al Dujail citizens numbering 96 individuals, and that this issue represents the criminal conduct that form one of the concrete elements of a crime, and that the execution of that order which was actually performed by virtue of the two minutes covering the death sentence executions dated March 23, 1985, and also January 16, 1989 where the rest of the individuals whose names were included in the referral decision and in the decisions of conviction but which were still alive, have been murdered (except for four of them). And this represents the criminal result achieved by the death of the victims, where the execution of the death penalty (inflicting death) took place according to that order issued by Awad Al-Bandar and affirmed by the former president, the defendant Saddam Hussein, so that the causal relationship between the criminal result and the criminal conduct of Awad Al-Bandar does exist. Additionally, the evidence of the existence of the circumstance of premeditation emanates from both the psychological and temporal elements and from the joint preparation and planning for committing that act before and after issuing the said order. Moreover, the multiplicity of victims demonstrates the existence of a multiplicity of circumstances. The "mens rea" on the part of the defendant Al-Bandar was also available through the existence of the elements of knowledge and intent, the knowledge of the defendant Al-Bandar of all the elements of the criminal incident and the intent for carrying it out. The fact that the trial was illusionary and not real indicates the existence of mens rea on the part of the defendant Awad Al-Bandar and on the part of who signed the issue of the order which was named a legal decision of adjudication, and on the part of those who contributed to the commitment of that act(s) of murdering those who remained alive from among the victims. Article 47 of penal law No. 111 of 1969 states that a person considered the perpetrator of a crime if:

- 1- He committed it alone or with others;
- 2- He contributed to perpetrating it in case it is constituted of several acts, by deliberately fulfilling one of the tasks of which it is constituted.

The conduct perpetrated by the defendant Al-Bandar was part of the widespread and systematic attack against Al Dujail citizens on July 8, 1982 and this conduct was in fact one of the parts of this successive, systematic and widespread attack which accumulated and took several dimensions and shapes regarding its nature and big magnitude. The civil attributes of the victims proves that most of those who were arrested, tortured and murdered were orchard owners, farmers and their children and women of Al Dujail citizens.

The tribunal panel is convinced that there was a widespread and systematic attack perpetrated first by the military forces and the armed forces of the intelligence service, security service and popular's army. This widespread and organized (systematic) attack by these forces and organizations against and the civilian population of Al Dujail, and later on other governmental bodies participated in the attack. These organizations belonged to the Iraqi state which was lead at the time by the Ba'ath party, presided over and directed by a number of individuals on top of whom stood the defendant Saddam Hussein. Amongst those governmental organizations was the (disbanded) Revolutionary Tribunal, which was presided over by the defendant Awad Al-Bandar, and which took part in the attacks against the civilian population of Al Dujail in pursuance of the policy of the state and Ba'ath party which called for conducting that attack or furthered such a policy. This tribunal is also convinced that this widespread attack included organized detention and imprisonment of civilians from Al Dujail, as well as torturing, abusing and murdering them.

In addition to what has preceded, this tribunal has to verify the existence, or absence, of the third element of murder as being a crime against humanity; that is, the extent of knowledge or intent of the defendant Al-Bandar which would render his conduct as a part of that widespread and systematic attack against civilians in Al Dujail. The fact that he knew that those he sentenced to death were civilians has been proven and demonstrated, but did the defendant Al-Bandar know or intend that his conduct a part of that widespread or systematic attack? This tribunal believes that this knowledge or intent cannot be known except from extraneous appearances (circumstances) whereby one cannot dive into the depth of the human psyche, in case the defendant denies his knowledge or intent, to be able to know whether a person knew something or intended to do something in pursuance of some order, except through external appearances and indicators. And thus this tribunal sees that the evidence of knowledge and intent on the part of the defendant Al-Bandar of rendering his conduct as part of a widespread or systematic attack against civilian population appeared from the joint preparations for committing the crime, where the defendant Awad Al-Bandar made a significant contribution to that criminal project. The defendant Al-Bandar contributed through his act of issuing the order of killing which forms one of the constituent components of this crime. Moreover, if we consider that all the Al Dujail victims who were killed, whether those killed on the day of the incident or at the Intelligence Headquarters, or at Abu Ghrieb prison, or in Leya desert prison, or after the issue of the killing order by the Revolutionary Court form together a single crime against humanity, the contribution of the defendant Al-Bandar in committing that action formed part of that widespread or systematic attack against civilian citizens through the murdering, torturing, and detaining those citizens without any justification.

The evidence concerning the existence of knowledge and intent of the defendant Al-Bandar in connection with his conduct that forms part of the widespread and systematic attack arises too from the position he used to occupy as president of the Revolutionary Court at the time he issued that order. This position enabled him to know and provided the grounds for him to be able to intend and indeed issue an order of murder under legal cover so that order would come out as a decision issued by a tribunal. This order of killing is considered by itself as evidence of the intent to contribute to committing part of or one of the acts constituting the crime taking the viewpoint mentioned earlier.

The defendant Awad Al-Bandar was a judge and president of the Revolutionary Court in 1984, and he was a graduate of one of the law schools which indicates that he enjoys certain skills that might not be available to other simpler people who may contribute to the commitment of a certain crime. In addition, due to his position, he held in his hands the authority that others lack. The other evidence regarding the existence of knowledge and intent on the part of the defendant Al-Bandar, relates to the fact that his conduct of issuing the order of killing forms part of a widespread or systematic attack, arises also from the affirmation that the Revolutionary Court was illusory and from the lack of any legal procedure for the prosecution of the victims according to the law.

Moreover, that knowledge and that intent can be inferred from the statements of the defendant Al-Bandar during the investigation and trial and especially what the defendant Al-Bandar said in his testimony before the investigation authority: "I issued and the sentence because the case has certain particularities, and I request the tribunal to take into consideration my circumstances during that period and the circumstances of the Revolutionary Court too. "He also added: "I ask the tribunal to appreciate my situation, since that was a special case surrounded by special circumstances".

Amongst other element of proof of the knowledge of Al-Bandar that his behavior of committing the crime was part of a wide range or systematic attack directed against a civilian population, comes from the great magnitude of the committed acts and the systematic (organized) nature of those actions, prior to the referral of the papers to the Revolutionary Court and the widespread knowledge as well as the private knowledge, especially with respect to someone who occupied the position of the defendant as president of the Revolutionary Tribunal. This knowledge was verified through what was mentioned in the referral decision about referring 148 names all of who were convicted during an illusory trial and they were all sentenced to death by hanging. We can also infer that the defendant Al-Bandar knew that the number of those that tried to assassinate Saddam Hussein was very limited, whereas the number of individuals referred to the court presided by the defendant, even theoretically, reached (148) names. Therefore, the accused assertion that was in conformity with the law and that issue of a death sentence by hanging against such a large number of citizens is admissible is totally rejected since what he did was an illegitimate act by all measures and the mens rea is clear in it.

This court is convinced that the accused Al-Bandar was aware (knew) of the presence of a wide range attack against the civilian community in Al Dujail, and his position as an president of the Revolutionary Court at that time, and the necessity of being member in the (disbanded) Ba'ath party and his constant communications with the superior leaders of the party and the country including the accused Saddam Hussein, all lead to the conclusion that the defendant Al-Bandar in fact knew that there was an organized targeting of the civilian community in Al Dujail which was maltreated by multiple means one of which was murder. The defendant admitted that the Al Dujail incident was known and its news were broadcast on foreign TV stations and moreover, that he knew that those individuals whose names were referred to his court had been arrested and imprisoned and then referred to him.

Types of the criminal contributions of the accused Awad Hamad Al-Bandar and his responsibilities for them.

Article/15 Second/ of the Iraqi High Tribunal states that:

A person is considered responsible according to the provisions of this law and the provisions of the penal law if he commits the following:

- a) If he commits a crime personally or by means of another person regardless whether this person is criminally responsible for it or not.
- b) Orders the commitment of a crime which actually takes place, or attempts to start a crime, or induces or instigates its commitment
- c) Offers aid or provocation or any other form of assistance for the purpose of facilitating the commitment of a crime or attempting to commit it, including procuring the means for its commitment.
- d) Contributing in any other way to a group of individuals by having joint criminal intention (*mens rea*) to commit a crime or attempting to commit it on condition that this contribution is deliberate and is offered:
  - 1) Either for the purpose of furthering the criminal activity or the criminal purpose of the group, if this activity or purpose implies the commitment of a crime which is within the jurisdiction of the court.
  - 2) With the knowledge of the groups intentions of committing the crime.

This court believes that the two paragraphs (b and d) of Second part of the article mentioned above apply to the act perpetrated by the defendant Al-Bandar, since on the one hand he ordered committing a murder that actually took place when he issued the death sentence in the way we have demonstrated, and since this crime actually took place when that order was carried out through execution (killing) of the victims. In addition, he contributed to a joint criminal act with a group of people inside and outside the Revolutionary Court and with a joint “*mens rea*” for committing a joint criminal act. The deliberate participation of the accused Al-Bandar had the purpose of furthering the criminal activity and the criminal purpose for number of organizations of the state and Ba’ath party, including the intelligence service which was presided over by the defendant Barazan Ibrahim during the incident of 1982, and the Office of the Presidency which was under the command of the defendant Saddam Hussein who also used to lead the Ba’ath party and who in turn used to command all the country’s apparatus (organizations). The criminal activity to which the accused Al-Bandar contributed by furthering the criminal purpose of these organizations which were led by the some of the defendants in this case included committing a crime under the jurisdiction of this court which is murder as a crime against humanity.

The knowledge of the accused Al-Bandar of the intent of the leaders of these organizations to perpetrate the crime arises from many of its aspects including the fact that he



was president of one of these organizations which is the (disbanded) Revolutionary Tribunal, and which through its name one can deduce that it was not only under the state but also under the authority of the Ba'ath party whose leaders always used to say that the party leads the revolution. This knowledge also arises from the fact that the nature of the joint criminal action supposes that the participants in this act should have known the intention of the group for perpetrating the crime by the group of which he is was member.

This does not mean that the knowledge of the defendant Al-Bandar is assumed since the nature of the position of the defendant used to occupy as a president of the Revolutionary Court and the issue of the death sentence against all the victims pursuant to the findings pointed out, indicates that he actually knew about the intention of those organizations to perpetrate the crime, those organization which were commanded by a number of the defendants in this case.

The defendant confirmed having the criminal intention (*mens rea*) when he said in one of the prosecution sessions: "Is it so strange that some one dies during investigation?"

According to 1<sup>st</sup> paragraph of article 15 of this tribunals law which states that the person who commits a crime under the jurisdiction of the tribunal is considered personally responsible for it and is punishable under the provision of this law. Therefore, the defendant Al-Bandar who ordered and contributed together with a group of individuals with joint criminal intent to commit a crime against humanity is considered personally responsible for it. Despite the fact that the Defendant did not commit the criminal act or conduct it in his own hands (which in this case the act of murder), he did commit this crime when he signed in his own hand that decision ordering the perpetration of the crime which is a contribution as important and serious as the contributions of others in executing this action. In fact, it does not differ from the contributions of the executors of these acts. Both are the authentic perpetrators of the crime.

The decision issued by the defendant A-Bandar and with the members of the so-called Revolutionary Court on June 14, 1984 is in fact an order of murder and not a judgment issued by virtue of the law and in conformity with it. This order was indeed fulfilled and more than 90 citizens of Al Dujail were killed on the pretext of the death penalty against them which was issued by the court and carried out by hanging.

The affirmation of the former president the defendant Saddam Hussein of the judgment decision to execute victims of Al Dujail citizens to death and the issue of presidential decree No. 778 two days after this decision on June 16, 1984 does not change the fact that this order was issued by the defendant Awad Al-Bandar and the rest of his court members, and that the defendant Saddam Hussein contributed to the joint criminal act by that decree (of killing) for the purpose of carrying it out by others which was for the purpose giving an explicit legal formality to the judgment which was in fact an order for murder and nothing more.

The International Criminal Tribunal for former Yugoslavia considered in its judgment, (mentioned previously) in the case of (Melorad Karnoglak) that: "The indictment of any defendant for contributing to the commitment of a joint criminal act can be deduced through his membership in such criminal organizations. And in reference to the same decision in the (Tadek) case and the appeal decision which was issued in the case, the criminal responsibility of a joint

criminal act in accordance to what that appeal decision has specified in the (Tadek) case applies to the situation where all the participants share in a joint intent to perpetrate criminal acts in which the authentic perpetrator acts outside the range of joint criminal action but despite that leads to the natural and likely result of the effect of the joint criminal act agreed upon”.

And it was reported in the same decision mentioned above that a joint crime would occur when there is an agreement or understanding that reaches the degree of, or equals, an agreement between two or more individuals to commit a crime. There is no condition that the agreement should be public, rather one can deduce the presence of this agreement through all the surrounding circumstances, and our court agrees with that opinion and adds that the agreement may or may not be publicized and can be deduced out of extraneous circumstances. In addition, this agreement may be explicit or implicit. Thus, the agreement may be publicized and clear or publicized and implicit or not publicized but clear or not publicized and implicit. Meanwhile, the agreement is not supposed to occur at a specified time prior to the perpetration of the crime since the circumstances in which two individuals participate may prove the perpetration of a particular crime. The implicit agreement is equivalent to an agreement between them at the time of committing the crime.

This matter seems clear in the case of the defendant Awad Al Bandar through many aspects including the referral decision of (148) names of Al Dujail citizens to the Revolutionary Court which took place on May 27, 1984, and then the decisions of conviction and adjudication which were issued to the effect of execution by hanging till death after nearly two weeks from the issue of the referral decision (the two decisions of conviction and adjudication were issued on June 14, 1984), and then this order was sent to the Office of the Presidency at once and a presidential decree was issued affirming the death sentence against the victims only two days after the issue of the decision of conviction, that is, on June 16 1984. This extraordinary speed in which the process of issuing the order of killing the victims of Al Dujail citizen for providing formal legal coverage means the existence of harmony, understanding and implicit agreement, if not an explicit one to carry out that joint criminal act.

Returning to the agreement of the International Criminal Tribunal of the former Yugoslavia in the case of Milorad Kranojlak issued on 15 March, 2005. Paragraph (81) defines the situations in which the person would be contributing to a joint crime, which would be either through direct contribution by committing the crime agreed upon as an authentic perpetrator or by being present at the time of the perpetration of the crime, knowing that the crime was committed or is going to be committed, whereby the said person offers deliberate aid or instigates another contributor in the joint criminal act to perpetrate that act, or through an act whereby he supports a special regime where the crime was committed, and that would be through the defendant’s position of authority or through his job, knowing the nature of that regime and his intention to support it.

It is clear that at least the third case applies to what the defendant Al-Bandar did when he issued a death sentence against (148) citizens from Al Dujail in a trial proven to be illusory, and this through the position of the defendant in authority and also through his position as president of the (disbanded) Revolutionary Tribunal, while knowing the nature of that regime and his intention of supporting it and in consideration of his membership in the disbanded Ba’ath party

and as president of one of the states' organizations (the so-called the Revolutionary Tribunal) in that state which was lead by the Ba'ath party (disbanded). The fact that Awad Al-Bandar was as leading member in the Ba'ath party at that time is certain, since it would not have been possible whatsoever for anyone to occupy the position that Awad Al-Bandar used to occupy as president of the Revolutionary Court unless he was leading member in that party. If the crime agreed upon (whatever was the type of this agreement, explicit or implicit) was pretreated by one or more of the contributors to this joint crime, then all the contributors to that act are criminally responsible for that crime regardless of the role each one of them played in committing it.

#### Legal description of the action ascribed to the accused Awad Hamad Al-Bandar

This firmly fully believes that the evidence and proof existing against the accused Awad Al-Bandar are sufficient to implicate him according the article 12/First/a the law of the Iraqi High Tribunal No. 10 of the year 2005, by considering him, both as an authentic perpetrator and as a contributor with others in a joint criminal act which forms a crime of murder as one of the crimes against humanity, since the tribunal is satisfied that the defendant Al-Bandar upon issuing the decision of adjudication against a large number of Al Dujail citizens to be sentenced to death by hanging, he thus issued an order for murdering those people, and that this order was later carried out by virtue of what was mentioned in the minutes of the death penalty executions and death certificates and death documents attached to the papers of this case, and that all the elements of murder and the general conditions of the crimes against humanity exist for the said defendant. Accordingly, he is considered criminally responsible for it and carries its legal consequences. It has been proven to this tribunal without any reasonable doubt that the (disbanded) Revolutionary Court whose president was the defendant Al-Bandar did not hold any trial session for the prosecution of the victims of Al Dujail citizen whose names were included in the decision of referral, and that the conduct of the mentioned defendant was part of a widespread and systematic attack directed against a civilians population, and that he knew that his conduct forms part of that attack, and intended to carry out the criminal result that took place through the death of the victims when he committed along with others that joint criminal conduct.

Since it been proven without any reasonable doubt that the Revolutionary Court did not conduct any session for trying the victims of Al Dujail citizens in case no. 944/C/1984, but despite that it issued a death sentence against all of them by hanging to death on June 14, 1984; therefore, the only logical and possible conclusion that could be inferred based on that and on all the other evidence and inferences existing against the accused Awad Al-Bandar is that he committed, with participation of others, a joint criminal act that applies to the provisions of article 12/Frist/a of the law of the Iraqi High Tribunal.

#### **The Decision of Conviction**

The tribunal has decided to convict the defendant Awad Hamad Al-Bandar for committing murder as a crime against humanity according to the article 12/Frist/a and by reference of the article 15/Second/b & d of this tribunal's law and in accordance to article 182/a of the code of criminal procedures No. 23 of the year 1971; a decision taken in the presence of the defendant issued unanimously and stated publicly on November 5, 2006.

Member

Member

Member

**Signature**

**Signature**

**Signature**

## Decision of Conviction Against Awad Hamad Al-Bandar

In light of the proceedings and documents submitted and demonstrated by the investigation and prosecution and in the light of the statements of the defendant Awad Hamad Al-Bandar during the trial and his repeated petitions and defenses where he stated before the court and in the trial session dated March 13, 2006 that: When he became president of the Revolutionary Court the papers of the 168 accused individuals in Al Dujail case were referred by virtue of a referral decision of the Office of the Presidency, Department of National Safety Affairs, No. 762, dated May 27, 1984 to be prosecuted according to the articles 159 and 157 of the penal code and in reference to articles 49, 50, 53 of the same law, and they were referred to the Revolutionary Court in accordance with the first paragraph of the order of the Revolutionary Leadership Council No. 565, dated April 30, 1979, and the 3<sup>rd</sup> paragraph of article 8 of the code of penalizing conspirators against the safety of the state and the corrupters of the governance system No. 7 of the year 1958.

He stated that the organization which prepared the papers of the defendants was the Bureau of General Intelligence, and he openly declared before the court: "I did not have the papers of the investigation and I did not check them". That is, the defendants were referred to the court by virtue of the mentioned referral letter devoid of any papers or testimonies or any material evidence and even without attaching to the decision of referrals the papers covering the testimonies taken by the intelligence service bureau because no such statements or testimonies were taken in the first place. Whereas, and according to his testimony "the Revolutionary Court was not required to issue a decision because the "the circumstances were unusual". He added that the circumstances were unusual and I did not possess any choice to act freely because the circumstances were abnormal.

It should be noted that the defendant repeated a group of statements in this context during the investigation where he stated in one of the investigation sessions: "Please appreciate my circumstances. I did not have any other choice": And he said at another time "I was obliged".

Upon observing the decision of adjudication issued by the Revolutionary Court regarding the individuals referred to it, we find that the court "did not check either the names or the numbers of the referred individuals, but only depended on the letter of referral and without any checking or examining and without the existence of any investigation papers or testimonies taken and authenticated by a judicially entrusted party or the members of the judicial supervision according to the provisions of the code of penal procedures "article 51 and the articles that follow", to refer the case to the Revolutionary Court through an "integrated and causal" decision, and according to articles 130 and 131 of the same law. But the defendant and according to his statement did not check himself the referral papers, not even checking the names of those sent immediately to the investigation center in the Revolutionary Court due to the "reason" of "the abnormal circumstances", and "I did not have any choice for acting freely", as he stated.

And this took place without checking or examining and without any "priorities of accusation and testimony", and without clarifying the evidence by the investigation and prosecution and even without bringing the defendants to stand before it "In what was called a

trial session conducted on June 15, 1984". No lawyer was present as a defense attorney, not even "nominally", as demonstrated by absence any name of either an authentic or delegated attorney as required by law. The defendant justified the absence of the defense lawyer as due to "the inattentiveness by the typist" !!! And he justified also the matter of the fees of the attorney by claiming that they were going to be "paid later on". And thus the defendant Awad Hamad Al Bandar and in the name of justice, law and the judicial system issued a sentence to kill one hundred forty eight people, as victims of the leader's wrath, of the citizens of Al Dujail and through what was called "a single trial session", and without any fear and without taking into consideration the procedures of litigation and prosecution!! And in contravention of all legal and judicial norms and customs, old and new, and where it has been absolutely determined that defendant was driven in advance" to prejudice the accused individuals even without knowing them or their names, so that there were 46 betrayed individuals accused according the case papers that never stood before the court since" they were already dead and intelligence buried", or as the operation was called by the employees of the intelligence service they "were liquidated during the investigation".

And strangely enough the accused said during the investigation session with him with regard to this case by responding to a question posed by the prosecutor general about those deceased: "It is normal and usual that some people die in the course of the investigation".

This tribunal notes that the department of National Safety Affairs under to the (disbanded) Office of the Presidency referred (148) names of the accused individuals to the Revolutionary Court on May 27, 1984 including people who had died as a result of torture by the intelligence officers in the department of investigation and inquiry, under the presidency of the accused Barazan Ibrahim, and in Abu Ghreib prison. The individuals who had passed away previously under torture are: (Ya'akoob Yusuf Hasan Al Obeidi, Jasim Mohammad Latif Alsalami, Saleh Mohammad Jasim, Kasim Ali Asad Al-Haydari, Alwan Hasan Hussein Al-Salami).

In addition, there were minors under 18 years of age that were subjected to the death sentence against to the effective and mandatory laws within the context of the legislation and judicial system. These are according to the sequence of the decision of adjudication (Mohamoud Hassan Mohammad al-Haydari, the name sequence in the decision of adjudication is No. 118 and his age according to the day, month and year 7/6/14 years old; Abbas Habeeb Kathem Al Mousawi (65) 7/ 7/ 12 years old, Mahdi Hussein Ali al-Marsoomi (107) age 7/ 4/ 14 years old; Habeeb Jawad sequence No. (116), age 12/ 6/ 17 years; Hashem Ali Lafta Al-Zobiadi, sequence No. (12) age (12) years; Ahamad Abed Jawad Alzobaydi sequence no. (2); Mohammad Abed Jawad Al-Zobaydi; Mohammad Hassan Mahdi Al-Aswadi (108) age 8/ 1/ 15 years old; Fouad Hasan Mahdi Al-Aswadi (12) age 15/ 7/ 12 years old; Khamees Kathem Ja'afar Al-Obeydi age 19/ 6/ 15 years; (48) Hussein Ali Habeeb al-Obeydi age (117) 19/ 3/ 15 years old; Hadi Abed El wahab Ja'afar al-Obeydi age 7/ 6/ 16 years old; (24) Maytham Mahdi Abbas Al-Salami; (88) Mouayad Salim MaJeed Al-Haydari, sequence No. (106) Naser Abed El-Aziz Jawad Al-Zoubaydi; sequence No. (133) Hussein Salman Mouslim al Khazragi; sequence (134) Hasan Dahhma Soutan Al-Salami; sequence No. (23) Yussuf Abed Ali Hasan Al-Abdeen; sequence No0. (27) Hafeth Mohammad Hadi Al-Khalabi, sequence No. (14) Ibrahim Saleh Kathem. Al Mousawi, sequence No. (87) Mousim Abed Ali Hasan Al-Obeydi; Sequence No. (17) Hashem

Mhommad Najem Al-Salami; sequence No. (124) Ali Najem Abboud Al-Salami; sequence No. (99) Ahamad Jasim Abed El-Hassan; sequence No. (105) Mahdi Saeed Abboud; sequence No. (109) Kassim Mohammad Jasim Al-Zanada; sequence No. (142) Salem Abed Abbas Ali; sequence No. (31) Hyadar Jasim Hussein Al-Salami).

It is noted that the decision of adjudication issued was effective, imperative and not liable to appeal. The defendant Saddam Hussein signed the decision of adjudication at the moment of its issuance by presidential decree No. 778 on June 16, 1984; that is, after two days of declaring the decision to execute those victims. The sentence was carried out against those who were still alive according to the minutes of the death penalty executions dated March 23, 1985, at the department of long lasting verdicts in Abu Ghrieb prison.

The issue of the death sentence and the execution of this sentence is a direct violation of article 79 of the Iraqi penal law No. 111 of the year 1969 where “anyone who has completed 18 years of age and not 20 years at the time of committing the crime shall not be sentenced to death but should be extenuated to life imprisonment in this case”. While 22 of those victims were under 18 years of age, that is, they were minors according to the provisions of the laws issued by the authority of Saddam Hussein and under his own name, which contradicts the decision of the Revolutionary Leadership Council No. 1203 dated on September 20, 1988, whereby the Revolutionary Court basically did not possess the jurisdiction of procedure in this case and the issue of the instance, since according to the above mentioned decision, “crimes committed by minors are excluded from the jurisdiction of the Revolutionary Court as stated in the decision of the Revolutionary Leadership Council No. 1016 on August 1, 1987.

The issue of the decision and in its form creates a violation of the stipulation of article 6, paragraph 5 of the first covenant of political and civil rights of the year 1968, which became effective on March 23, 1976 and had been promulgated by the Iraqi government on February 18, 1969.

Whereas this trial in this quick manner and in this form contradicted effective Iraqi laws and the international norms recognized by the Iraqi authorities at the time, is considered “a complementary part of the widespread and systematic attack launched against the civilian population of in Al Dujail town which aimed at killing as many as possible of its citizens and then destroying their properties”.

On the other hand, and according to the individuals whose names were included in the death sentence, the names of those who died under investigation were added and later they are 22 individuals who were killed before the decision of referral to the revolutionary tribunal. There were two other individuals, one of whom (Kasim Mohammad Jasim Zanda) had a death certificate issued in his name after execution of the death penalty through a decision of the Revolutionary Leadership on 23/ 3/ 1985 but he didn't stand before the Revolutionary Court since he was detained in Leya desert and was then under 14 years of age. But upon learning of this fact, the death sentence was executed against him later on December 18, 1989.

Among the other evidence of confusion, and of non-abiding even by legal procedures, and without knowing “the name and personality of the accused standing before the court”, and in

the decision of adjudication of two individuals who were at the time of issue of the decision against them among the other names detained in Leya Desert in Samawa. And according to the official documents of the authorities and in light of the report of Hussein Kamel who was delegated by the defendant Saddam Hussein to find out the circumstances of the erroneous execution of four individuals at the intelligence prison in place of four other individuals, and according to a report of a committee formed of four members, including a judge, submitted to Saddam Hussein on July 5, 1987 in which it was stated regarding each of Jassim Mohammad Rida al-Hitto and Ali Habeeb Ja'afar (and the two others whose names were issued in the decision of adjudication at the Revolutionary Court issued by the president of the court Awad Hamad al Bandar) that two of them are alive now, and there are no negative indications against them". And it was stated in a report dated July 5, 1985 that there are four individuals who were wrongfully executed while two other convicts were released erroneously also. In response to this report, a secret directive, was issued from the Office of the Presidency under No. 35023 on July 13, 1987 addressed to the intelligence service under the title of: "A directive: It is considered that Hasan Abed El Amir al-Hammoudy, and Mahdi Abed-El-Amir Al-Hammoudy, and Faleh Mahdi Abed-El-Amir, and Salah Mahdi Abed El Amir as having died during detention".

In the light of the definite evidences and proofs issued by the highest ranks of decision making authorities regarding the method of prosecuting those betrayed by the Revolutionary Court under the presidency of the defendant Awad Hamad Al-Bandar and the way of executing the death penalty against innocent people without trial, and since the Revolutionary Court is has been disbanded but is represented by its president the defendant in this case Awad Al-Bandar who was driven forcefully, whereby he considered himself a governmental employee and not a judge!! by following the whims and moods of those that out rank him in power. And since Bandar issued death sentences without supporting evidence, and without checking the papers of accusations and deliberation of the evidence and without providing the defendants with the right of defense that is ordained by the laws which were in force and which apply to this case. And without paying attention, even partially, to the norms of justice and the mission of the judicial system, and since he rules in the name of justice, the defendant is considered by virtue of the rules of Shari'a "the Custodia of Allah in his Realm".

Therefore, and since the accused has not into taken consideration all legal and realistic norms when issuing the harsh judgment against (148) citizens of Al Dujail and without regard to the judicial procedures and mandatory legal regulations and the procedures enacted in the code of criminal procedures No. 23 of the year 1972 and penal code No. 11 of the year 1969. Accordingly, and since the tribunal is faced with a unique situation with respect to an individual who is accused as a judge and assuming that the other defendants, including Saddam Hussein and the chief of intelligence referred to the court, and in consideration that all the defendants are referred to this court, except that this the defendant has abided to begin with by the need to check the number of individuals referred and the cause of the referral in respect to each one of them, at least, and without separating (classifying) each one of the accused individuals even though the case was "urgent and quick" with a "certain particularity or privacy" as he testified before the court.



Moreover, the accused individuals were not given the time or opportunity to prepare their defense even by themselves and were denied the simplest rules of procedure in any authentic court and according to the provisions of the effective Iraqi procedural laws in this respect.

In addition to not checking the number of individuals and names of those referred to the tribunal, not even through a quick look to ascertain that 46 names of the referred individuals weren't even present amongst the defendants, which affirms the lack of "keeping a judicial register or administrative record" with of names of the individuals referred to tribunal.

The lack of delegating a clerk of the court to enumerate the names and individuals present and ascertain the number of those accused and whether they are legally and judicially qualified to stand before the court, and before issuing accusations against them by law. In the same context, two other individuals were sentenced without ever standing before the court at all. In a serious precedent, the accused defendants were not given the right of appointing a lawyer to defend them. And thus the legal and practical right of those defendants for the sacred right of self defense was denied which is basic requirement of any judicial or legal body. Since the names weren't checked this caused a "judicial disaster" by executing four individuals who had originally no relation at all to the Al Dujail incident, and had been detained on other changes not related to the case at all. Since two individuals were not present before the court but were sentenced to death, this can only be described under "the misery of justice and the judicial system". As for the defense of this defendant before the court by repeating that he "was obliged to do this", his defense would have been easier to believe had he been an ordinary administrative employee. But as a judge and president of the tribunal this is inadmissible and unacceptable in essence.

In the final outcome, since the defendant was "driven" and psychologically prepared to kill a group of victims in the context of an organized work program coordinated within a plan for a widespread and systematic attack from the beginning of the arrests, and as confirmed in the context of the statements set down in the decision conviction and adjudication issued by the tribunal against the reconvicted individuals mentioned in the text of the decision.

Therefore, due to the existence of adequate evidence against the defendant Awad Hamad Al-Bandar, and since he was motivated (driven) and psychological prepared to kill a group of people of Al Dujail citizens by systematic work plan and in the context of a widespread attack against the citizens of Al Dujail and carrying it out quickly.

Therefore, according to what has proceeded and due to the existence of adequate evidence for conviction of the defendant Awad Hamad Al Bandar, the court has decided unanimously to find him guilty by virtue of Article 12, First, paragraph 2, and Second/a and in reference to article 15 First, Third, Fifth and Sixth of the law of the Iraqi High Tribunal no. 1 of the year 2005 and in reference to article 406 of the penal code No. 11 of the year 1982, which was issued publicly on November 5, 2005.

Signatures

## **The Defendant Saddam Hussein Al-Majeed**

### **The charges against the defendant Saddam Hussein**

On May 5, 2006, this tribunal charged the defendant Saddam Hussein with of committing a number of crimes against humanity applicable under the provisions of article 12/First/a, d, g, f, i, j of the law of the Iraqi High Tribunal, No. 10 of 2005, which states:

**First:** Crimes against humanity mean for the purposes of this law any of the acts listed here below, whenever committed in the context of a widespread or systematic attack against a group of civilian population and with knowledge of such an attack.

- a- Murder
- b- Removal of the population or the compulsory transfer of the population.
- c- Imprisonment or the strict denial of any type of physical freedoms in a way that contradicts the basic principles of international law.
- d- Torture
- e- Compulsory concealment of people.
- f- Other inhumane acts of a similar nature which deliberately cause great suffering or serious harm to the body or mental or physical health.

These charges were directed in reference to article 15/First, Second, Third and Fourth of the Iraqi High tribunal's law in which it is stated:

**First:** The person who commits a crime within the jurisdiction of the tribunal is personally responsible for it and liable to punishment by virtue of the provisions of this law.

**Second:** A person is considered responsible by virtue of the provisions of this law and the provisions of the penal code in case he commits the following:

- a- If he perpetrates a crime in his personal capacity or in conjunction with, or through another person, regardless whether that person is criminally responsible or not.
- b- Orders the commitment of a crime that actually occurs or is attempted, or induces or incites its commitment.

- c- Offer aid or provocation or any other form of assistance for the purpose of facilitating the commitment of a crime, or attempting to commit it, including the procurement of the means for committing it.
- d- Contributing in any other way with a group of people in a joint criminal intent (mens rea) to commit a crime or attempting to commit a crime, on condition that this contribution is deliberate and is offered:
  - 1- For the purpose of furthering the criminal activity or criminal purpose of the group in case this activity or purpose includes the commitment of a crime covered within the jurisdiction of this tribunal.
  - 2- With knowledge of the intent of committing the crime on the part of the said group.
- e- Direct or public incitement for committing a crime including the crime of extermination.
- f- Attempting to commit a crime by starting to carry out an intentional act, although in case the perpetrator acted to obstruct the commitment of the crime or its execution, this is then considered an absolving excuse, and he will be absolved of punishment for attempting the crime, under this law, in case he gave up completely and willingly his criminal project.

**Third:** The official attribute that the defendant holds is not considered an absolving excuse for extenuating the punishment whether the defendant was the president of the state, or a head or member of the revolutionary council, or a prime minister or member of the cabinet, or a member in the leadership of Ba'ath party. It is **not** permissible to allege immunity to be absolved of responsibility for the crimes set forth in article 11, 12, 13, 14 of this law.

**Fourth:** The highest president is not exempt from criminal responsibility for the crimes committed by people who work under his command, in case the president knew or had reasons to know that his subordinates committed these acts or were on the verge of committing them, and if the president did not take the necessary and appropriate acts to prevent these actions from happening or to raise the matter to the appropriate authorities for the purpose of conducting an investigation and prosecution.

**Fifth:** When any defendant commits an act as a fulfillment of an order issued by the government or by his superior, this shall not exempt him from criminal responsibility, but it shall be permissible to take this into consideration for extenuating the punishment if the tribunal considers that administering justice requires it.

**Sixth:** The decisions of pardon issued before the effectiveness of this law do not cover any of the defendants committing one of the crimes stipulated here.

Summary of the testimonies of the complainants and prosecution witnesses against the defendant Saddam Hussein.

Most of the complainants whose testimonies were heard and taken down during the two stages of investigation and trial and who requested to complain against the defendant Saddam Hussein have not seen Saddam Hussein ordering the arrest, imprisonment, torture, or killing of any of Al Dujail citizens. In addition, they did not see the defendant Saddam Hussein acting in this way himself.

Nevertheless, some complainants and witnesses stated that they saw, or heard, or heard others saying that Saddam ordered his subordinates and subjects to do such acts, and even that he did some of them himself, in addition to encouraging their implementation, or disregarded them, or did not take the necessary procedures to prevent them when he knew that it impending, or he did not take the proper procedure to call those who committed them into account.

Also, most of the complainants justified their request of filing complaints against the defendant Saddam Hussein by saying that he was:

“The shepherd and he is the one responsible for his herd and he the president of the country and handles everything (testimonies of the protected complainant (----) before the tribunal on December 7, 2006). “Because Saddam was the president of the state and the government and was responsible”. (Statement of (----) before the tribunal on December 21, 2005). “Because they are the commanders, since the president of the country is the first and last commander, and the chief of the intelligence service Barazan is the one who carries out his command”. (Statement of (---) before the tribunal on December 22, 2005). “The party members arrested my family according to orders issued by Saddam Hussein, and Saddam knows of the acts done by the perpetrators”. (Statement of Hadiyya (---) on February 1, 2006). “Saddam is the one who ordered the death penalty and Barazan, the head of the intelligence service, was the one responsible in Al Dujail, and he was the president of the state at that time and everything that happened then was through his orders”. (The statement of (----) before the tribunal on December 6, 2005).

The protected complainant (----) testified before the tribunal on February 1, 2006, and he was in 1982 at the time of the incident 23 years old and was one of the members of the popular army at the time: “We heard gunshots, about 15 shots, Saddam then returned to the city and climbed up to the roof of the infirmary and said there are five or six bad people and we are going to teach them discipline”. He added, “Barazan is the one who used to supervise the arrests by the members of the intelligence service and the army and Barazan was the one who used to give the orders and supervise the intelligence service”.

The witness Waddah El Sheikh stated in his testimony set down by the tribunal on October 23, 2005, that a number of intelligence officers were rewarded by the president of the republic at the time (the defendant Saddam Hussein). The witness Waddah was one of those rewarded, and this was by raising their ranks for a full year for the effort they exerted in the investigations of Al Dujail case. He also mentioned that the defendant Barazan is the one who used to issue orders directly in the investigation and inquiry of the intelligence service. The

witness Waddah Al Sheikh also made clear that he heard judge Abed el-Aziz who used to work in the Presidential Palace saying that Saddam Hussein ordered referring anyone capable of arms amongst the Al Dujail citizens to the tribunal. Waddah also mentioned that the number of those who shot at the car escort did not exceed 12 individuals. This was affirmed in his report submitted to the defendant (Barazan) and does not know why these large numbers of citizens were arrested. He added also that most of the individuals who were referred to the (disbanded) Revolutionary Court denied the incident of shooting or any relationship to it and he does not know why they were referred to the tribunal despite this fact.

The complainant Ahmad Hasan Mohammad Adjeili testified before the tribunal on December 5, 2005, that when he was detained in the building of the department of investigation and inquiry (Intelligence Headquarters) he saw Khamis Kathem Ja'afar (who is the brother of Karim Kathem who was killed on the day of the incident) who told him that he was arrested on Thursday July 8, 1982 (a day before the arrest of the complainant), and that when they brought him to the Ba'ath party squad he saw Saddam Hussein sitting there. Elements of the security had told Saddam that (Khamis) comes from a family opposing the regime. Saddam asked him: Do you know me? He said that he answered him by saying "you are Saddam", so he repeated the question three times, and I answered "you are Saddam" "Because he was a child at that time and did not know the manners of conversation, so Saddam got up and hit him on the head with the ashtray, and this is what he (Khamis Kathem Ja'afar) told me".

The (protected) complainant (---) whose statements were taken down by the investigation magistrate on July 13, 2004 testified: "During the investigation the man called Jasim Mohammad Latofi who was detained with me died, his four limbs (hands and legs) had been fractured during the investigation and he died because of that, I saw the defendant Saddam supervising those operations".

The witness Ahmad Hussein Khdeir Al-Samaraii, in his capacity for a long period as chief of the Office of the Presidency (from 1984 till 1991, and from 1995 till 2003) asserted that the handwriting and the signature appearing on the documents, memos and letters which are ascribed to Saddam, were really his own. (Testimony of the witness Ahmad Hussein before the tribunal on February 13, 2006.)

It is clear from what has preceded that these were not adequate eye-witnesses to prove that the defendant Saddam committed those crimes himself or even issued the orders for their commitment. However, does that mean that there are no other evidences and inferences of his responsibility for those crimes taking into consideration the kinds of personal criminal responsibilities enacted in article 15 of the tribunal law, and the articles of criminal participation enacted in the articles 47 to 45 of penal code No. 111 of the year 1969. Does that mean that Saddam Hussein did not issue those orders whether directly or indirectly? Does that mean that he is not criminally responsible considering that he was the President of the Republic at the time, for those acts that form crimes against humanity that were committed by others?

This is what we shall discuss in the following paragraphs of this decision.

Summary of the statements of the defendant Saddam Hussein during the investigation and trial.

The defendant Saddam Hussein stated in his testimony as set down by the panel of investigation magistrates at the Iraqi High Tribunal on June 12, 2005, that in his capacity as President of the Republic, at the time of the incident of Al Dujail, he used to visit different cities and villages in Iraq and that during his visit to Al Dujail city, his car escort, one of which he was riding, was subjected to gunfire from about two guns but he is not sure about that because of the passage of time, and that during the firing he walked out of his car and walked on foot in the city and then climbed a platform, which was the roof of one of the houses, and talked to the citizens one more time, then he rode in one of the cars of the escort and returned to Baghdad. He also added that as far as he knows no one sustained any injuries due to the incident and that no one knew of the time of his visit in advance.

When the defendant Saddam was asked about the party that was delegated to investigate the Al Dujail incident, he answered: "We had different organizations like the intelligence service, security, military intelligence which have their own references and who perform their work according to established contexts, but I didn't ask them to open any investigation in this matter". But when he was confronted with the defendant Barazan Ibrahim, who used to occupy the position of chief of the intelligence service at the time, and who said in his testimony during the investigation that he visited you (Saddam) right after the incident in the Radwanieh site and you asked him to go to Al Dujail for the purpose of investigating in the incident, then Saddam answered: "I cannot remember what Barazan said exactly but if Barazan said that I asked him to go to Al Dujail after the incident and carry out an investigation or inquiry then he is right". When the defendant Saddam was asked about the decision of the (disbanded) Council of Revolutionary Leadership No. 982 of July 31, 1982 which comprised granting members of the intelligence service an advance of one year in rank for their effective contribution in arresting the convicts in Al Dujail incident, and about the signature appearing on this decision ascribed to him, he answered by saying that he does not recall, "but if the signature and the handwriting were mine and it is known to be mine then I hold full responsibility for my handwriting and signature which is well known". Then he added that if the matching of any signature "proved to be mine, then it is mine". The defendant Saddam used so many times to answer the questions of the judges of investigation by saying that he does not recall, and when he was asked about the reasons for his weak memory and not being able to recollect during the investigation, he answered: "I remember when I want to remember and I don't remember when I don't want to remember".

And upon answering a question about the testimony of the defendant Taha Yassin Ramadan during the investigation, "that you called him by phone and asked to see him and to meet with the security forces responsible for the investigation on the day following the incident and check the progress of the work and offer advice and counsel and make the forces there understand the issues involved in the investigation in the city", the defendant Saddam Hussein said that if the (comrade) Taha Yassin Ramadan said so then he's right.

The defendant Saddam denied knowing the party that ordered the detention and arrest of complete families comprised of women, children, old people and youths and detaining them in Leya prison in Samawa desert, and he responded that he does not know who released these families detained in Leya prison on April 21, 1986. And when he was reminded of the report submitted to him by the investigation commission on July 2, 1987 about what happened in Al Dujail and "that the mentioned families were released from detention (by a noble deed from

you), which meant that you were fully aware of this case and the proceedings of the investigation as attested by your issue of the order to release the detained people in 1986, he answered: "I honored the detained people and let them out, and I don't recall pursuing the matter at the time, but I think that we charged a certain party with the matter, maybe, but I don't recall it".

Moreover, the defendant Saddam responded when he was asked that the 5<sup>th</sup> paragraph of the above mentioned report which states that there were large numbers of Al Dujail citizens who were arrested and some of them died during the investigation, and that the investigations were fictitious, and that the sentences of the Revolutionary Court were issued against some of them appear in papers of the case without any trial, since this was mentioned in the said report by the phrase "without any defense", and no action was taken in that regard, where the margin ascribed to you which was added at the end of the report doesn't indicate taking any action against the people who caused the death of citizens during the investigation, or against the tribunal members who held fictitious trials on paper without any legal trial, the defendant Saddam answered that the presence of some comments on the report which indicate that no action was taken against the perpetrators does not mean that he did not take care of the matter that he checked the report, but that he might have taken action without mentioning it in the report.

When the defendant was asked whether he gave orders to the defendant Barazan to investigate and arrest the citizens of Al Dujail, and whether he gave orders to the armed forces to shoot the civilians in Al Dujail he answered that, "I did not and I shall not give an order to kill civilians". Also, he denied ordering the defendant Taha Yassin Ramadan regarding bulldozing orchards and farmlands in Al Dujail saying that he does not remember.

The defendant Saddam denied organizing and planning all what was committed in Al Dujail of arresting its citizens, detaining their families, bulldozing the lands and oppressing the citizens, saying that he has no response to this question.

Concerning the decision of the (disbanded) Revolutionary Court to execute a large number of Al Dujail citizens and that this decision did not take into consideration the legal safeguards of the defendants, and Saddam's own affirmation of the decision in spite of that, the defendant said that the decision was issued and the constitution of Iraq does not specify that the president shall hold responsibility for ascertaining the legal procedures of the courts in their legal work and obligations prior to acceding to any death sentence.

Upon asking him about the extent of his knowledge of the movements of the military, party and intelligence forces to a location near Baghdad and taking security procedures for three days, he answered that in regard to the movement of the forces, "considering that I'm the high commander of the armed forces, the armed forces do not move from one location to another unless I generally order that, but in rare cases they could move from one place to another within the context of operations for security reason".

These statements were set down by an investigation panel comprised of three judges and in the presence of one of the general prosecutors of the tribunal and also the presence of the attorney of the defendant Saddam (lawyer Khalil al-Dlemi) and they all signed the minutes of the testimony.

As to the statements of Saddam Hussein before the tribunal for which a special court session was allocated on March 15, 2006, most of it was a sort of political speech with a few aspects relating to the Al Dujail case. Generally, these aspects focused on the right of the President of the Republic by virtue of the constitution to arrest those who tried to assassinate him and investigate them and refer them to the tribunal and assert the judgments. The defendant Saddam justified the bulldozing of the orchards of Al Dujail by saying that Al Dujail citizens could not enjoy proper security and reduction in crimes unless these orchards were removed, and that this made it possible to discover arms depots in the orchards and arm training halls, since a special training place belonging the banned party was found, (by which he meant the D'awa party), and also armories containing various weapons. The defendant Saddam repeated that he insists on the immunity granted to him by virtue of the constitution and contested the legitimacy of the tribunal.

The defendant Saddam was given another chance to defend himself and testify regarding the case of Al Dujail in a session on April 5, 2006 where he contested his testimony as set down by the investigation magistrates, and stated also that the prosecution witnesses who testified against him were "false witnesses". The defendant Saddam also claimed the illegitimacy of this tribunal and amongst what he said was that after the incident, helicopters went to Al Dujail and carried military forces to search the orchards because they are overlapping and could not be controlled without military force.

When he was reminded as to what he testified before the investigation panel on June 12, 2006, that the gunshots directed at the car escort in which he was riding came from approximately two guns, the defendant Saddam answered that the said testimony was inaccurate and there was a deliberate interpolation of some sentences into it for a certain purpose. The defendant Saddam asserted that there was an attempt to assassinate him and gave examples about that regarding what he himself had done together with others when trying to assassinate the former Iraqi prime Minister Abed El Halim Kasim in 1959, and in general he said that his former testimony was not accurate and that he asks the tribunal not to depend on that, except for what he says during the present session. And upon asking him that during writing down your testimony in the presence of your attorneys did they check it? And have you read it or not?

He answered: "I did not check it and I do not know if the attorneys checked it or not". The defendant also revealed that a number of his special security guards were killed or injured at the time of the incident and that he does not know their exact number.

The defendant Saddam stated that in case any written comment or signature is proven to be Saddam's, "then I take full responsibility for it, including the notes issued in the name of the Revolutionary Council Leadership for which I take responsibility, I alone hold full responsibility and not the members of the Revolutionary Council Leadership".



And regarding the removal of orchards, the defendant Saddam claimed that had these orchards not been in the state they were in the first place, it may have not been possible to subject the president to gunshots, since the perpetrators thought that they could get away with it. And that there was another side to the matter related to reorganizing the city. When the defendant was asked about what he has already testified in the former session that in Al Dujail orchards there were armories containing various weapons including anti-aircraft machine guns, and that a special place for training and weapons depots was found, and how did he know about that? The defendant answered, "I knew about it". He also answered that the planes were attacked in Al Dujail which were helicopters and that there was resistance at Al Dujail. And upon asking him whether any military unit can move without an order from him he answered: "Yes and no, yes during operations when they occur, for when operations threatening security take place, yes the nearest unit can initiate action and that's its legal duty, and from a legal point of view the president can prevent anyone from doing anything without by his orders, that is, if I had any objections regarding the searching of orchards in Al Dujail and searching for the criminals I could have picked the phone and called the Ministry of Defense or the supervisor of presidential security and told them not to go, similarly the Ministry of Internal Affairs or the Director of Public Security".

In addition, the defendant Saddam's answer regarding the role of the defendant Taha Yassin Ramdan and what was said in his testimony during the investigation that the defendant Saddam called him and told him that he sustained an attack in Al Dujail district and asked him to go to the National Council headquarters, and that the defendant Saddam ordered the officials of security to be present at the National Council. So what were the directives given to the defendant Taha Yassin and to the officials of security? The defendant Saddam answered that "if (the comrade) Taha said so then he's right and to disregard anything I say if it contradicts what he had said".

The defendant Saddam doubted the documents and letters addressed to him by the intelligence service and those issued by the departments related to it, saying: "If Barazan directed this letter and that I honored those people (meaning the intelligence service members) then this is not shameful nor an accusation". Then he re-asserted once again that upon comparing his signatures in the presidential decrees and other signatures, "in case the signatures are proven to be mine then I take full responsibility".

Regarding his affirmation of the judgment of the (disbanded) Revolutionary Court that sentenced 148 of Al Dujail citizens to death, he answered that this matter is not under the presidency's jurisdictions and "I'm not the one who issues sentences but the law and the courts are the ones that issue sentences and my role is to say that the sentence is extenuated or the convict is pardoned, partially or totally. With respect to me, it seemed that I was convinced that the evidence that was presented was enough to give my accreditation", and he added that according to my constitutional obligations anything in the constitution that binds the president to check before approving or refusing, I abide by it.

When the defendant Saddam was asked whether he reads the mail addressed to the presidency himself as well as that of the Revolutionary Council Leadership or whether there is a certain party that informs him about its contents, the defendant Saddam answered: "I read my

mail". And when asked: Why did not you take action when you knew in 1987 that citizens from Al Dujail were liquidated (killed) during the investigation before being referred to the tribunal and that their names were mentioned in the decision of referral he responded that, when the president of the state receives news that a death has resulted from torturing and in case he is convinced that the party which told him is honest, then he must act, but regarding the kind of action, each state has its own circumstances.

The defendant Saddam confirmed that he decided to pardon two of those defendants convicted of shooting at him from execution. In general, the defendant Saddam did not answer the question regarding whether he took any action when he knew about liquidating citizens from Al Dujail during the investigation and when did he know that families from Al Dujail were detained in Leya Desert. And when he was asked whether he considers that those who were executed in error (4 individuals) should be considered to have died a circumstances contrary to what really happened and in contravention of the law, the defendant answered that "these were considered martyrs", and that there is another letter that says that it is not permissible to commit a wrongdoing to cover another wrongdoing, and that the one who committed the wrong act was investigated for the negligence and has been referred and sentenced to two year imprisonment.

The defendant Saddam answered that he does not recall his order of releasing Al Dujail families who numbered 399 individuals saying that "when this incident was submitted to me I remembered it as an incident but as for the number and the date, this is difficult to remember because there were so many transactions and when the incident was presented to me I remembered it and I don't ask for anyone's mercy and I don't fear anyone, but I felt sorry that they should stay all this time in detention and I felt pain for detaining them to begin with so I ordered their release immediately so that they can get back to their normal lives. "Generally, the defendant Saddam denied his previous knowledge regarding the detention of these families and he admitted that he knew about that later on without taking any action to for call for to account the people who detained these families.

Upon answering the question concerning the reason for not handing over the bodies of the (148) victims who were executed, the defendant said "the bodies weren't presented to me, and I'm not a cemetery manager". And when asked about the letter issued by the department of legal affairs in the office of the presidency, dated on December 17, 1983, and on which was inserted a comment stating:

"Sir Mr. President the Leader, May God protect him, the Mr. President, the leader, has been informed and decided that it is not necessary to provide any party with the decrees of accreditation of the sentences and that it suffices to notify the security by phone concerning cases of a special nature". Why no concerned parties except the security, and by phone, should be provided with the decrees of the death sentences? The defendant Saddam answered: "Ask the party that signed the letter". And he evaded answering frankly when asked about the meaning of cases of a special nature that were mentioned in the letter of the department of legal affairs in the office of the Presidency. And why weren't the party and other official bodies informed and asked about the fate of the defendants in Al Dujail case? The defendant responded: "If you ask about every internal letter signed from director to director general and from director general to the chief of the office of the presidency and from the chief of that office to the directors general, then

you should bring lorries and park them here, pointing to their huge quantities in that they need transport trucks to carry them.

The defendant contested the personal identity cards which demonstrated that a number of those sentenced to death by the Revolutionary Court were minors at the time of the incident. He said that these IDs are “forged”. He also contested the letter issued by the department of civil status in Al Dujail, which affirm what was shown in this card regarding the dates of birth, saying that it is forged also.

### **Summary of witnesses defending the defendant Saddam Hussein**

The tribunal heard the testimonies of (21) witnesses defending the defendant Saddam Hussein. Most of their statements were either general or irrelevant to the Al Dujail incident or based upon what they heard others say (hearsay) or focused on proving that there was an attempt to assassinate the former president, the defendant Saddam Hussein on July 8, 1982, and that various types of weapons and munitions were found in Al Dujail orchards, some of these statements pertaining to the attempt of assassination which was said to have been set up and planned, or to the use of the weapons that were found. Some were eye-witnesses and others testified on the basis of hearsay. The statements of the witnesses defending the defendant Saddam were contradictory regarding the number of guns which shot at the car escort of the defendant Saddam and also regarding the numbers of gunshots fired from those guns.

The defense witness Sub’awi Ibrahim Al-Hassan whose testimony the tribunal heard on May 5, 2005 did not remember anything pertaining to the Al Dujail incident. And also, with respect to the witness of defense Tarek Aziz Issa, except for saying (I was with (----)...

### IHT Part 3 Translation

*(...continued from IHT Part 2)*

Taha Yassin Ramadan was tasked with all these responsibilities, and I haven’t heard at all on any day that the accused Saddam Hussein had tasked the accused Taha or anyone of us with the question of Dujail. Witness Abdil Hameed Hammoud (former Personal Secretary of the President of the Republic) who had earlier testified in court on 5/24/2006, said that heavy fire was opened on cars in the motorcade from fields on the left hand side (The fire was so heavy that I cannot tell how concentrated it was.) The rest of his testimony was based mostly on what he heard from others in an attempt to prove that there was an attempt to assassinate the former President of the Republic, the accused Saddam Hussein on 07/08/1982. Witness Abdil Hamid Hammoud testified that he did not witness or hear that the accused Saddam Hussein had ordered the arrest or detention of families or entrusted the former Intelligence chief at the time Barzan Ibrahim, when he visited Ridwaniyyah, with any task.

Similarly, (....), who was a former member of the team entrusted with protecting the accused Saddam Hussein who testified in court on 05/24/2006, stressed that there was an attempt to assassinate the former President of the Republic at Dujail during the incident. Some of his statements were built on what he heard from others. When asked by court about the number of

shots fired at the motorcade, since he was with the accused at the time, he said there was a heavy fire (more than four or five rifles shooting). He denied that anyone was hit in that incident, saying (Nobody was hurt, only cars were damaged).

Also, most of the testimony of same witness (...) formerly a member of the team entrusted with protecting the former accused President Saddam Hussein, who testified in court on 05/24/2006, was also based on what he heard from others, but he stated that (The security unit opened fire and attacked the field from which fire came. Three members of that unit were killed and six or seven were wounded). Witness Lo'i Khairallah Tulfah who testified in court on 05/24/2006, that he did not have anything to say as an eye witness. Everything that he said was based on what he heard from others.

Witness (...) who was a policeman in Dujail in 1982 and who testified in court did not have anything to say as an eye-witness regarding the Dujail incident. All his sayings were based on the period preceding the incident. It was basically focused in general on proving that there was a plan to assassinate Saddam Hussein and that the plan was prepared prior to 07/08/82.

Witness Mohammad Zimam Abdilrazzak As Sadoun who was a member of the Regional Command of the Baath Party, testified in court on 05/29/06. He spoke in general terms not on the basis of what he saw regarding the Dujail incident on 07/08/1982. He mentioned however certain incidents relating to digging out fields in Dujail and compensation paid to fields' owners by the government. That action, he said, was not a result of personal revenge for the assassination attempt against the President of the Republic directed against citizens. It was not a personal revenge, he said, but an institutional act organized according to the law and the plans.

When asked by representative of accused Saddam (attorney Khalil Dulaimy), (as an official in the state, did you issue orders or heard that orders were issued by the President of the Republic or the Chief of Intelligence to launch an attack against Dujail), the witness answered, (I never heard or witnessed this at all).

At this point, the court wishes to stress the fact that if the witness (any witness, whether he is witness for prosecution or witness for defense) did not see or hear anything, that does not mean that others did not see that thing or hear about it.

Witness for defense Mahmoud Diyab Ahmed Mashhadani who testified in court on May 29, 2006, also did not have anything to say based on what he saw. He gave the same answer to a question by representative of the accused Saddam Hussein that he did not hear that the former President of the Republic, the accused Saddam Hussein, had ordered that an attack on Dujail be launched, but that he heard of an attempt against his life. Here, we would like to reiterate that not seeing any witness or not hearing any order does not in any way mean that that order was not issued. Some people might see or hear a certain thing but million others may not see or hear about it.

The testimony or witness (...) before court on May 29, 2006 was based on what he heard from others. A witness for defense who testified under protection in court on May 30, 2006, gave details of a purported attempt to assassinate the former President of the Republic Saddam

Hussein. This witness also said he was hit in the rear of his right foot although he was on the right side of the street and fire came from the left side of the street.

Another witness for defense (under protection) testified in court on May 31, 2006 saying that a large cache of weapons was found in trench-like shelters dug in the ground and covered with wood. He testified that nearly a two-ton load of hand grenades, rockets, rocket launchers, 80 mm mortars, **Kalashnikov** rifles, (Bren) rifles similar to Iranian made Bruno rifles and JC guns, also Iranian-made, were loaded on a truck. He said that he touched these weapons with his hand and that the weapons were found in all the fields around and not in one field in particular. When asked if all these weapons were in the fields, why weren't they used then to attack the motorcade? The witness said he had no answer to that question. Some information offered by this witness was based on what he heard from others.

Most of the information offered by the other witness for defense under protection (...) before court on May 31, 2006 emphasized that there was an attempt to assassinate Saddam Hussein.

The court decided to ignore testimonies by the four other protected witnesses (...) May 30, 2006, (...) May 30, 2006, (...) May 31, 2006, (...) May 31, 2006 for the reasons mentioned earlier.

Most of the testimony of witness (...) in court on 06/13/2006, who was a soldier in the unit protecting the accused Saddam Hussein when he was President of the Republic when the incident took place, meant in part to prove that there was an attempt on the life of the former President of the Republic. The other part of the testimony was based on what he heard. But when asked by the court whether he could estimate the number of shots fired at the motorcade of the former President Saddam and the type of weapons used he answered: I can say they were about 15 or 20 shots of light rifles (**Kalashnikov**) that were coming from the depth of the field in the direction of the cars. He also said that the distance between the field and the street where cars of the motorcade were parked was about 8 meters and that the wall of the field was low. He also said that a number of the protection units' members were killed and he could remember the name of one of the injured who was a major in the army.

The witness for defense (under protection) who testified in court on June 13, 2006, said there was an attempt to assassinate the former President, the accused Saddam Hussein. In answer to a question by attorney of the plaintiffs, he said fire was opened at the mock motorcade and that he was at a distance of about 50 or 20 meters and that he could not tell how many shots were fired because firing was heavy.

Also, witness for defense (under protection) who testified in court on June 13, 2006, said he was a member of the unit entrusted with the protection of the accused former President Saddam Hussein. He testified that fire was opened from the fields and was very heavy. Asked about his estimate of the number of shots fired, he said ten, thirteen or eight **Kalashnikov** bullets. Asked if any member of his unit was injured, he said no member of my unit was injured but three members of the other unit were killed and he did not know their names. The witness said he heard about the incident one week after it took place and that so-called (Major) who is a member of their unit was wounded. Asked by representatives of the plaintiffs if he saw children, women and old men firing at the motorcade of the President, the witness said (No, I did not hear and I

did not see). In answer to another question by representatives of the plaintiffs whether the President was injured in this incident he answered (No).

### **Questions raised in the case concerning primarily the accused Saddam Hussein**

In addition to questions over which the court reached certain convictions when discussing the extent responsibility of the accused Awwad Al Bandar, which we said they necessarily apply to the others accused, including the accused Saddam Hussein, there are other questions waiting for answers so that the picture becomes complete regarding what took place in Dujail on July 8, 1982 and thereafter which would help in determining the extent of responsibility of the accused in this case including Saddam Hussein, although this matter depends on other elements which we shall discuss later. These questions are:

- 1- Was what happened on July 8, 1982 an attempt to assassinate the accused former President Saddam Hussein or was it a planned operation by the accused Saddam and his apparatus to punish the inhabitants of Dujail? If what happened was an assassination attempt, what is the size of this attempt? Was it planned previously?

This also requires knowing:

- 2- The approximate number of those who took part in the attempt.
- 3- The estimated number of guns used in the attempt.
- 4- Were there any arms found in the fields of Dujail and what types?  
If such weapons were found, why were they not used in the attempt?
- 5- Was Saddam or anyone of his bodyguards injured in the incident?
- 6- Was there a large-scale attack on the inhabitants of Dujail? When? How? Who participated in the attack? Who was giving orders? What types of weapons were used in the attack? How long did the attack last?
- 7- Was anyone of the inhabitants of Dujail arrested in 1982? When? How many? How? At whose orders? By whom? What is the gender of those arrested and what is their age range?
- 8- Was anyone of the inhabitants of Dujail detained? When? How many? How? At whose orders? By whom?
- 9- Were any of the inhabitants of Dujail subjected to torture by the intelligence, or public security, or at Abu Ghraib jail, or at Lia desert detention center or in other places?
- 10-What kind of torture were the detainees subjected to? Who ordered that? Who carried it out?
- 11-Were any inhabitants of Dujail killed in places where they were held?  
Who was killed? Who perpetrated the killing? Who ordered the Killing or instigated or helped in that?
- 12- Did any inhabitants of Dujail die in places where they were detained as a result of ill treatment, shortage of food or bad quality of food, lack of medical care and drugs. Who died? Who caused their death?
- 13- Was there any digging out of fields and confiscation of agricultural land and fields in Dujail? Who ordered that? Who supervised? Who executed the orders and who helped?

The answer to most of these questions is contained in detail in the indictment addressed to the accused Saddam Hussein on May 15, 2006. Yet, all these issues and others will be considered by the court in order to reach a conviction concerning them through discussing all the evidence available in the case.

The indictment addressed to the accused Saddam Hussein on May 15, 2006 stated: (I charge you, Saddam Hussein, that when you held the position of President of the Republic of Iraq and Commander-in –Chief of the Armed Forces and President of the Revolutionary Command Council (formerly) and when you visited the town of Dujail which is part of the Province of Salahiddin administratively, on July 8, 1982, under the pretext that fire was shot at the cars accompanying your motorcade, you issued orders to the military, security and intelligence organs, to the Popular Army and Baath Party organization in Dujail to launch a systematic, large scale attack using different kinds of weapons and helicopters to kill, arrest, detain and torture a large number of the inhabitants of Dujail (men, women and children) and then issued orders to dig out fields and destroy buildings belonging to them, and that according to those orders, forces and units killed nine persons that day and the following day.

The victims are: Abbas Jassim Mohammad Rida Alhitto As Sulami, Karim Kathim Jaafar Zubaidi, Imad Hassan Mahdi Jaafar Aswadi, Raad Karbala’i, Mohammad Abid Jawad Zubaidi, Mahrouz Mohammad Hadi Kulabi, Hashim Adnan Jassim Khaz’ali, Sadiq Majid Hameed Khaz’ali and Sattar Tawfic Yahya Al Khataji. A number of family members totaling 399 were arrested and detained by the Department of Investigation and Intelligence, which is a branch of the (now dissolved) Intelligence Apparatus which was under the command of the accused Barzan Ibrahim Al Hassan, according to documents attached to the case papers. The detainees were subjected to torture by the intelligence officers.

During investigation and due to torture during which electric wires were used and detainees were beaten on the head with iron bars and deprived of sleep and other means of torture, a number of detainees were killed. These include: Yacoub Yousef Hussein Al Obaidi, Jassim Mohammed Latif As Sulami, Saleh Mohammad Jassim, Qassim Ali Assad Haidary and Ilwan Hassan Hussein As Sulami. The others were sent to Abu Gharib jail under supervision of the Intelligence apparatus (Now dissolved). There torture continued and a number of others were killed as a result of using the aforesaid methods. They include Majbal Hassan Aziz Marsoumi, Yassin Hassan Hitto Sulamy, Noufah Hassan Agha Az Zubaidi and children Hisham Fakhri Assad Haidary, Zainah Mohammad Hassan Al Haidary, and Ali Majeed Yacoub Al Khurbatly. Then a number of them (men, women and children) were moved to (Lia) desert detention center used to house roving Bedouins with their cattle in Samawa where they were detained for a period of four years during which they were subjected to torture and deliberate severe living conditions including shortage of water and medicine in the desert where Hameed Mahdi Al Khaz’ali was killed and a number of members of other detained families died.

Those victims include: Abdil Wahhab Jaafar Habib Al Obaidi, Sabriah Abbas Ahmed al Obaidi, Sabri Asad Abdallah Al Haidaary and two children Mothanna Majeed Yacoub and Thabit Asad Ali Haidari. Then the Department of National Security Affairs at the Presidential Office (Now dissolved) sent over to the now dissolved revolutionary court headed by the accused Awwad

Ahmad Al Bandar, at direct orders from you, 148 names, including names of some people who died because of torture under investigation in the Department of Investigation and Intelligence and Abu Ghraib Jail. They included teenagers who were under 18 years old, namely (Mahmoud Hassan Mohammad Al Haidary, Abbas Kathim Habib Al Marsoumy, Mahdy Hussain Aly Al Mousawy, Habib Jassim Jawad, Hashem AlyLafteh Az Zubaidy, Mohammad Abid Jawad Az Zubaidy, Mohammad Hassan Mahdy Al Aswady, Fuad Hassan Mahdi Al Aswady, Khamis Kathem Jaafar Al Obaidy, Hussein Aly Habib Al Obaidy, Hady Abdil Wahab Jaafar Al Obaidy, Maitham Mahdy Abbas As Sulamy, Aly Anwar Hassan As Sulamy, Jaafar Aly Hussein Al Mousaway, Mo'ayyid Salem Majid Al Haidary, Imad Abbas Hassoun Al Haidary, Nasser Abdil Aziz Jawad A Zubaidy, Ahmed Jassim Mohammad Rida Hinnou, Jassim Naji Abid Al aswady, Hussain Salman Mislih Al Khazraji, Hussein Duham Sultan As Sulamy, Amer Duham Sultan As Sulamy, Yousef Abid Aly Hassan Al Obaidy, Mahmoud Jassem Abdil Hassan Al Jumaily, Hafiz Mohammad Hady Al Kulaby, Ibrahim Saleh Kazem Al Mousawy, Mosallam Abid Aly Najim Abboud As Sulamy, Ahmed Jassem Abdil Hassan, Mahdy Saed Abboud, Qassem Mohammad Jassem Az Zandah Az Zubaidy, Salem Abbas Aly, Haidar Jassem Hussein As Sulamy). The Revolutionary courtsentenced them all to death by hanging not subject to appeal, in a summary trial that lasted one session only under judgement number 944/G/1984 on June 14, 1984.

Some people were convicted without trial since they were killed during investigation in the directorate of intelligence as a result of torture. In addition, some of those who were sentenced to death and the sentence was carried out, were teenagers who had not reached age 18, in contravention of article 79 of the adjusted penal law No 111, year 1969 and children protection law in effect, and in contravention of adjusted procedures mentioned in criminal trials law number 23, year 1971 and in contravention of article 6, paragraph 5 of the international covenant regarding civil and political rights, dated December 16, 1966, which went into force on March 23, 1976 and ratified by the Iraqi Republic on February 18, 1969, which bars sentencing to death for crimes committed by people who are younger than age 18. You ratified immediately the collective death sentence referred to earlier under the Republican decree signed by you number 778 on June 16, 1984. Then you issued an order by the Revolutionary Command Council ( now dissolved), number 1283 on October, 24, 1982, in your capacity as President, providing for confiscation of agricultural land and fields belonging to citizens of Dujail and then digging them out. The bodies of the dead were hidden and not handed over to their families. Nothing was known about the fate of a number of persons arrested, with six teenagers, including Mohammad Hassan Mohammad Al Haidary, Mohammad Jameel Ayoub Al Khazraji, Najm Ad Dine Abid Jawad Az Zubaidy, Ismael Abbas Al Khazaly, Talal Yacoub Mahid Al Kharbatli and Talib Jameel Ayoub Al Khazraji.

#### Evidence and Circumstantial Evidence Against the Accused Saddam Hussein:

It is clear from what was mentioned earlier that evidence and circumstantial evidence available against the accused Saddam Hussein regarding acts attributed to him under the indictment paper addressed to him on May, 15, 2006 is the following:

1- The accused Saddam Hussein, who held during the period of the incident (from 7/8/1982 to 01/16/1989) the position of President of the Republic and Commander of the Armed Forces



and President of the Revolutionary Command Council, and that the executive and legislative powers were focused in his hands in almost a total way, so that he could issue any law or decision that has the power of law any time he wished, and that the judicial power was in the hand of the minister of justice who was subservient to the chief of the executive power.

2- The visual and audio recording of the accused Saddam Hussein which was shown to court and which shows the accused Saddam Hussein addressing the people of Dujail on July 8, 1982 showing that those who opened fire were two or three but not more than ten.

3- His statement before the investigating team consisting of three judges, in the presence of his attorney Khalil Dulaimy and the presence of a prosecutor at the court on June 12, 2005. In it, he said (My motorcade was subjected to fire opened against it from two or three rifles, I am not sure because it was long ago. Also, he said that "As far as I know, No body was hurt in the incident." It is of no significance what he said later at the court in a number of sessions in this respect, that his testimony in front of the investigating team was not accurate, because that testimony is considered legal, since it is recorded by three of the investigating judges in the presence of the prosecutor and representative of the accused, attorney Khalil Dulaimy. Also, the jurisdiction of the court of cassation in Iraq is that the testimony that is recorded by the investigating judge is the closest to the truth and facts and that there are tens of rulings made by the said court over many years that confirm this trend and the adoption of this principle in the Iraqi justice headed by the court of cassation. Also, this court does not have the conviction that what was stated by witnesses for the defense to the effect that there were many and different kinds and sizes of weapons in the Dujail fields on the day in which the incident occurred, and in subsequent days for several reasons. If these weapons were actually there, at least some of them would have been used, particularly those that are of more extensive fire power and more effect in the assassination attempt. Also defense witnesses for the accused Saddam Hussein have stated that the number of fire arms directed against the cars of the motorcade was limited, not exceeding 15, and that the number of rifles (**Kalashnikovs**) used was limited, not exceeding a few rifles. This was also confirmed by witness Waddah Ash Sheikh in his testimony before the court on October 23, 2005.

This leads us to saying that the testimony of the complainants and witnesses in general, whether they are witnesses for the prosecution or witnesses for defense or inquiry, regarding the instigating cause of the Dujail incidents in 1982, went in three directions:

The first direction is that there was an attempt to assassinate the former accused President of the Republic, Saddam Hussein on July 8, 1982. This direction in turn is divided into two parts, as some witnesses for the defense and the accused (particularly Saddam, Barzan, Taha and Awwad) stated at a stage of the trial that it was an operation planned by the Da'wa party and carried out by residents of Dujail who belonged to this party. That party took part in it with all its powers. It was backed by Iran which was in a state of war with Iraq, including supplying members of the Da'wa party in Dujail with light and medium caliber weapons, rocket launchers, mortars with their ammunition, and a transmitter (Racal) type.

The second part of the testimony of those people, particularly the ones accused in the investigation and some of the complainants, is that there was an attempt to assassinate the former President of the Republic, but it was individual and limited; those who carried it out not exceeding several people. The amount of weapons used in that attempt was limited too, and the number of shots fired in the direction of the motorcade of cars was very few. This direction was also supported by witness Waddah Ash Sheikh and some witnesses for the defense of the accused Saddam Hussein.

The second direction ratified by a number of witnesses for the prosecution is that there was no assassination attempt and that the whole operation was planned by the former regime headed by the accused Saddam Hussein to find a pretext for dealing harshly with the people of Dujail and oppress them, especially since a large number of the inhabitants of this city, most of whom belonged to a certain sect, were opposed to the regime, so the Baath party, the intelligence and security apparatus concocted that incident in order to fulfill their objectives exploiting the war situation between Iraq and Iran.

The third direction represented by a number of the prosecution witnesses, is that there was no attempt to assassinate the former President of the Republic, and that the incident was not planned by the former regime. The incident is not more than a few shots fired by some Party members and members of the Popular army rejoicing at the visit to the town of Dujail by the accused former President of the Republic. Saddam Hussein and his protection unit and security team thought it was an attempt on his life. They seized the opportunity to liquidate anyone whom they suspected that he was not loyal to the Baath Party or imagined that he was a supporter of the Dawa party, and to give the Iraqis in general and the people of Dujail in particular, a lesson in obeying the rule of the Baath Party under the leadership of Saddam Hussein.

This court, on the basis of all the information available to it on the basis of indications and evidence, including statements by parties to the case and witnesses for prosecution and defense, believes it is likely that there was actually an attempt to assassinate the former President, but the attempt was very limited, with the number of those who carried it out not exceeding a few individuals, and that it was not planned, but spontaneous because the accused Saddam Hussein stressed during his trial that nobody knew of the time of his visits to Iraqi towns and villages, in addition to the very small number of persons who carried it out, and the kind of light weapons used in it, (**Kalashnikov**) rifles and the small number of shots fired in the direction of the motorcade. The accused Saddam Hussein and his regime, and intelligence, security, military and party apparatus exploited this isolated and limited incident to punish the people of Dujail, especially since most of them were not loyal to the Baath party and Saddam Hussein.

4- The orders issued by the accused Saddam Hussein following his return to Baghdad from Dujail to security officials associated with him directly to meet at the National Council, and the order he issued to the accused Taha Yassin Ramadan to preside over this meeting and draw a suitable plan to deal with the situation and start arresting and detaining the people of Dujail and interrogating them, and this thing actually happened on the day of the incident and subsequent days and weeks.

5- The accused Saddam Hussein issued in Radwaniyyah an order “to the accused Barzan Ibrahim who was responsible for protecting the accused former President Saddam Hussein to lead operations in Dujal, and who did actually arrive in Dujail the day of the incident and the following day and the arrests that took place during them in violation of the law, of the people of Dujail including women, children, old and young men by the hundreds and sending them to the Party division in Dujail and later to the building of the Directorate of Investigation and Intelligence which is a branch of the Intelligence apparatus and detaining them there and the investigation, torture and killing and forceful deportation of the population.

6- Official documents proving that the accused Saddam Hussein knew what was taking place in Dujail and his orders regarding committing acts that constituted crimes against humanity.

A- The report sent by the accused Barzan Ibrahim to the accused Saddam Hussein dated July 13, 1982, regarding rewarding some of the intelligence personnel for their “distinguished” efforts in the arrest and investigation operations against the people of Dujail.

B- The decision by the Revolutionary Command Council (dissolved) number 982 dated July 31, 1982, according to which the accused Saddam Hussein honored a number of intelligence personnel for their role in those referred to actions.

C- The decision of the Revolutionary Command Council number 100, dated January 23, 1985, and prior to it, the decision of the Revolutionary Command Council number 1283 dated October 14, 1982, regarding transferring ownership of agricultural land belonging to the people of Dujail (confiscating that land).

D- The decision referring 148 names of the people of Dujail to the Revolutionary Command Council (dissolved) and the decision endorsing the verdict by the said court to execute all (the accused) victims of the people of Dujail by hanging until death, under the Republican decree number 778 dated June 16, 1984, only two days after the issue of the conviction and sentence decisions by the said court in June 14, 1984.

E- The report presented by the committee formed under chairmanship of Hussein Kamel in 1987 regarding the Dujail case, containing margin comments and signed by the accused Saddam Hussein.

F- The study presented by the Legal Affairs Department in the Presidential Office (dissolved) dated July 28, 1987, regarding the execution of four persons “by mistake” and considering them dead in detention.

G- The study presented by the Legal Affairs Department in the Presidential Office dated April 5, 1987 regarding the non-execution of two of those whose names were mentioned in sentence issued by the dissolved Revolutionary Court number 944G11984, dated June 14 1984.

7- The visual and audio recording presented in court, in which the accused Saddam Hussein spoke. He said, among other things, in this recording that he does not care for those who die during investigation no matter what their number is. This recording, though not directly related to what took place in Dujail, is considered one of the indications regarding the way of thinking of the accused Saddam Hussein, at least prior to the trial, especially since the accused Saddam Hussein and his attorney testified before the court that this recording was made before the Dujail incident and had nothing to do with it.

8- The accused Saddam Hussein issuing later an order “compensating” the owners of the fields that were dug out and then confiscated as a revenge” against the inhabitants of Dujail as the said accused testified before this court on March 1, 2006 that he issued an order to dig out the fields because of the attack against him. Needless to say, that the subsequent compensation for the action committed, in addition to being “evidence that he committed that action at his orders, it does not deny that the action was in fact committed, and the crime took place in full. Even if the compensation did take place, and it did not concerning all those who were harmed, it concerns a civil liability and has no effect on the criminal liability if it contained a “general right” for the local community (Iraqi) and the international community. In any case, cutting of trees on that large scale, and digging out of fields is considered to be a wasting of the national wealth and compensation for digging out of trees is a wasting of public money.

9- A satellite picture of the Dujail area, taken on September 25, 1982 and later in July 31, 1983 shows the enormous size of fields and agricultural land that was dug out in the Dujail area. These photos were displayed in court.

10- The accused Saddam Hussein issued no order regarding any measure to investigate or try individuals responsible for the arrest, detention, torture and killing of senior citizens, children, women and young men of the inhabitants of Dujail, although he was aware of it.

11- The audio recording of the telephone conversation between the accused Saddam Hussein and the accused Taha Yassin Ramadan about the digging out of fields in Dujail and compensating its owners which the court listened to in one of its sessions.

12- The audio recording of the accused Saddam Hussein in which he addressed the Sheikhs and notables of Jabbour Tribes. In it, he described what happened to the inhabitants of Samijah, the old name of the city of Dujail.

13- The testimony of some of the complainants and witnesses during the series of investigations and trials mentioned earlier.

14- Responsibility of the (Supreme Commander), the accused Saddam Hussein, since he was at the time of the incident from July 8, 1982 until January 16, 1989, “President of the Republic” and “Commander-in-Chief of the Armed Forces” and “President of the Revolutionary Command Council.”

The accused Saddam Hussein was the Supreme Head and Supreme Commander of Intelligence, Security, military, Party and administrative systems. They were connected with him either personally or directly, or connected with his office the head of which is directly connected with him.

This responsibility is mentioned in article 15/four of the court law. Under it, the accused Saddam Hussein is responsible "for crimes committed by individuals who work under his command, particularly if he was aware of them or there are reasons for him to be aware of them, and the accused Saddam Hussein was "Supreme Commander of the Armed Forces", and the military units, particularly in totalitarian and heavily centralized regimes, could never carry out actions like those that took place in Dujail, nor can they even move, without orders from the Supreme Commander of the Armed Forces, especially since the action that the military units carried out was during the Iraq-Iran war and the Dujail area is not more than 60 kilometers away from Baghdad.

What confirms that the accused Saddam Hussein was aware of what took place in Dujail are the documents and correspondence produced in court, including referring victims of the Dujail inhabitants who were considered accused, to the Revolutionary Court (now dissolved) under the reference decision number 762, dated May 27, 1984, and ratification of the said court sentence number 944/C/1984 dated June 14, 1984 to execute all those victims under Republican decree number 778, dated June 16, 1984. Also, the letter sent by the directorate of the Intelligence service to the office of the President /Secretary, number 1969, dated September 12, 1984 saying that many party and official quarters are inquiring about the victims and asking for information about them, and also decision of the Revolutionary Command Council number 1283 dated October 14, 1982, concerning the confiscation of agricultural land in Dujail belonging to the victims, without any compensation. The accused Saddam Hussein admitted before this court that he used to read personally his own mail (that of the Presidency of the Republic, Presidency of the Revolutionary Command Council, and in his capacity as Commander In Chief of the Armed Forces.

The court has evidence of the authenticity of the documents and letters and the comments they contained sent to the Presidency of the Republic and the departments associated with it, the Presidency of the Revolutionary Command Council (dissolved) and departments associated with it and under its command, from Chief of intelligence service (connected directly with the President of the Revolutionary Command Council), and from other agencies and investigating committees, and from what was stated by the report of trilateral committee of the criminal evidence experts dated April 13, 2006 and the report of the five-member of criminal evidence experts dated April 23, 2006 regarding the corresponding identity of the writings and signatures of the accused Saddam Hussein and Barzan Ibrahim with samples of writings and signatures of the said accused men.

It is clear from all the aforesaid that there is a great deal of evidence that proves that the accused Saddam Hussein issued orders to commit actions that constitute crimes against humanity and proves his criminal liability being the supreme responsible authority for the actions of his subordinates regarding most of the crimes committed in Dujail on the day of the incident on July

8, 1982 and later until January 16, 1989 contained in the indictment paper addressed to the accused Saddam Hussein on May 15, 2006, provided for in article 12/1 of the court law.

Still, there is need for more confirmation that that evidence prove the responsibility of the accused Saddam Hussein criminally for those crimes without any reasonable doubt, through reviewing the kinds of criminal involvement and responsibility for it, as stated in article 15 of the court law and also the texts of criminal involvement articles in the penal law number 111, year 1969 (articles 47 –54) of the penal law.

### **Kinds of Criminal Involvement and Liability For It**

In addition to what was stated in article 15 of the court law regarding the kinds of personal criminal involvement and responsibility for it referred to earlier, article 47 –54 of the penal law number 111 year 1969 provides for criminal involvement by the actor and partner, as article 47 of the penal law provided that he is considered perpetrator of the crime:

- 1- Who carried it out, by himself or with others?
- 2- Who participated in carrying it out, if it consisted of several actions so he deliberately “carried out while committing it, a number of acts constituting it”?
- 3- Who urged, by any means, a person “to carry out the act constituting the crime if such a person is not responsible criminally for it for any reason”?

However, article 48 of the penal law states that a person is considered a participant in the crime if he:

- 1- Instigated it and it took place as a result of this instigation.
- 2- Agreed with others to carry it out and it took place as a result of this agreement.
- 3- Gave a weapon “or tools or any other thing used in carrying out the crime while knowing it or assisted him deliberately” in any other way that facilitates or completes its commission.

Article 49 of the penal code states that a person is considered “committing a crime under article 48 every partner who was present when it was committed or when an act that is constituent to it was committed”.

Article 53 of the penal law provided for responsibility of perpetrator and co-conspirator for probable crimes. It stated “A participant in a crime, whether he is actor or conspirator, is punished according to punishment for the crime that actually took place “even if it was other than the one he meant to commit when the crime that took place is a possible result of the participation that took place.” Article 54 of the penal law identified the ruling when the purpose of a participant in the crime is different. It stated, “If the purpose of one of the participants in the crime is different – whether he was actor or conspirator or the way he knew about it from other

conspirators, or the way in which that others knew about it, each one is punished according to his intention or the way he knew.” In this case, we deal with texts relating to the kinds of criminal participation and responsibility for it is mentioned in the court’s law which is a special (article 15) and another mentioned in the penal law which is a public law. It is intuitive that when there is a ruling for a certain case in both laws, the special law is the one that is applicable. If there is no ruling in the special law, the ruling in the public law is applied, which is the criminal law.

### **The Extent of Saddam Hussein’s Responsibility for Crimes He is Charged With According to the Indictment**

According to the indictment addressed to Saddam Hussein, the acts attributed to him were under paragraphs (a, c, g, h, k, l) of the first paragraph line 12 of the court law. So, we shall determine the responsibility of the accused Saddam Hussein for each one of those acts referred to in the above mentioned paragraphs successively.

#### **The Extent of Responsibility of the Accused Saddam Hussein for Deliberate Killing as a Crime Against Humanity Under article 15 (1) of the Court’s Law**

We have shown earlier the bases for which deliberate killing is considered a crime against humanity. They are:

1. That the perpetrator of the crime kills another person or more or causes that,
2. To commit the act as part of a large scale or systematic attack directed against civilian population.
3. That the perpetrator of the act knows that his act is part of a large-scale or systematic attack directed against civilian population. We have shown earlier, when determining the responsibility of the accused Awwad Al Bandar, that the two general basis that should exist to constitute any kind of crime against humanity and responsibility of any one of them for it are the above mentioned bases, two and three. It was proven that these two bases existed in the Dujail case regarding the accused Awwad Al Bandar. Do they exist in the case of the accused Saddam Hussein?

In fact, in order to determine the extent of responsibility of anyone of the accused for the acts attributed to him and which constitute any kind of crime against humanity, all those bases should exist against that accused person.

The incriminating evidence against the accused Saddam Hussein to which we referred earlier “prove criminal responsibility for the accusation of deliberate killing as a crime against humanity which was directed at him, because all bases of this crime existed against him. The material basis in the form of criminal behavior (killing action) and the criminal result (death of the victims) of Dujail inhabitants (victims) and the causal relationship between this result and that criminal

behavior have all existed. It was proven through numerous elements of prosecution, including attacks and killings of a number of people of Dujail carried out by intelligence and security elements, the Popular army, and military units, including the Presidential Guards on the day of the incident and the following day and the arrest and detention of a large number of the inhabitants of Dujail (women, children, old men and young men) and detaining them in the headquarters of the Party division in Dujail then in the jail of the Governorate, which belongs to the intelligence service and in Abu Ghraib jail under the supervision of the Intelligence and in LEA detention desert camp. Some of them were killed in those places under torture, and some others died because of the extremely bad living and health conditions in which they were placed. A larger number of those detainees were sent to the Revolutionary Court (Now dissolved) where they were all sentenced to "die by hanging" until death according to the verdict of the said court number 944/G/1984, dated June 14, 1984 and the ratification by the accused Saddam Hussein who was then President of the Republic of that verdict two days after it was issued on June 16, 1984. Then the execution was carried out against them all by hanging according to the minutes of execution of each sentence referred to earlier, and certificates of death issued by the responsible official departments at the time to those in whom execution was carried out, and those who were killed before that (before their names were sent to the Revolutionary Court). All these prove the existence of the material basis for the deliberate killing crime.

The moral side of the deliberate killing crime as represented by the criminal intention of the accused Saddam Hussein in killing those (victims) of the inhabitants of Dujail with both the will and knowledge elements was proven to the court too. The accused Saddam Hussein was aware of all elements of that criminal incident (deliberate killing) and wanted to fulfill them. That was proven to the court through numerous prosecution elements which we mentioned earlier. "The accused Saddam Hussein knew, as proven to the court through the testimony of the accused himself during investigation and through the testimony of the complainants and witnesses, and through visual and sound recordings of the accused addressed to the people of Dujail less than an hour after the assassination attempt, that the number of those who carried out the attempt does not exceed ten persons at the most. The accused Saddam Hussein himself said during investigation that the shots that were fired in the direction of his motorcade of cars came from two rifles. This was confirmed too by some witnesses for the defense of the accused Saddam Hussein and also the witness Waddah Ash Sheikh. Knowing about this matter does not only prove the existence of the element of knowledge by the accused Saddam Hussein. It proves his will too "to fulfill the criminal act by killing this large number of people of Dujail who were arrested, detained, tortured and then killed, under the pretext that there was an attempt to assassinate the former President of the Republic."

In fact, if there are some people who justify the killing of a number of individuals from the people of Dujail on the first day of the incident under the pretext of chasing, detaining and killing those who started committing that act (assassination attempt) there is no legal, or legitimate, or human justification that can be accepted for arresting and detaining hundreds of women, children old men and young men of the inhabitants of Dujail and killing a large number of them, almost (200), if we take into account the number of those who were killed in (the governorate) jail which belongs to the Intelligence branch and Abu Ghraib jail and LEA desert detention center. These included a large number of young men and old men. The reaction of the Baath Party regime which was led by the accused Saddam Hussein which was characterized with brutality



and lack of concern for humanity by killing this large number of civilians cannot be justified under any pretext whatsoever,

The knowledge and willingness of the accused Saddam Hussein to fulfill that criminal act of killing that large number of people was also proven "through numerous other elements including referring a large number of the population of Dujail to the Revolutionary Court (Now dissolved) to be tried for starting an act which he knew very well "they had nothing to do with and endorsing the court ruling against them all to be hanged until death". By doing that, the accused Saddam Hussein also issued an order to kill all those people. His knowledge happened later when he reviewed the result of investigations carried out by the investigative committees, namely, the liquidation of 47 persons of the inhabitants of Dujail during interrogation as a result of torture without taking any measure to punish those people who committed that act.

It was proven to this court that military units, including the Republican Guards, the military aircraft (helicopters) had fired at civilian inhabitants of Dujail who were in the fields. Who issued orders to open fire on those people? Is it not the prerogative of the Supreme Commander of the Armed Forces? If Saddam Hussein were not the one who issued those orders, why didn't he try to find out who did and punish the officers or officials responsible for issuing those orders? Taking into consideration the fact that when the accused Saddam Hussein denied that he issued those orders, said he knows that it is illegal for the military units to carry out such acts. This court cannot accept the denial by the accused Saddam Hussein that he issued the orders to fire at inhabitants in the fields of Dujail at the time when it is proven to it that military units of the intelligence, some of which are connected directly with the accused Saddam Hussein (The Republican Guard) and units of the Intelligence branch which are connected with his brother the accused Barzan Ibrahim, and units of security and the Popular army moved and began its acts of killing, arresting and detaining people in an area less than 60 Kms from Baghdad in the circumstances of the Iran-Iran war. This court has noted that the accused Saddam Hussein had admitted that the movement of these security and military units required orders to be issued by him being the Commander-in-Chief of the Armed Forces, except in very rare cases (He mentioned that in his testimony which is recorded by the investigative body).

The court is convinced that the Dujail incident and what followed it was not one of those rare cases in which units would act without clear orders from the supreme commands, political, military and party, which were headed by the accused Saddam Hussein, particularly in those circumstances which we referred to and the reasons we mentioned.

The military units and intelligence, security and party units would not have done, or dared to do what was done, without clear orders from the Commander-in-Chief of the Armed Forces, and from the President of the Republic, the President of the Revolutionary Command Council and the primary official in the Iraq Baath Party, particularly in a very concentrated system of government and in circumstances like those that existed during the Iraq-Iran war. It is not important after that if those orders were direct to commanders of those units or to the accused Barzan Ibrahim and Taha Yassin, who issued orders to their subordinates to carry out what the accused Saddam Hussein had ordered.

As a result of what was mentioned earlier, this court firmly believes, without any reasonable doubt, and as the only logical, acceptable and reasonable conclusion that the accused Saddam Hussein issued his orders, directly or indirectly, (through the accused Barzan Ibrahim and the accused Taha Yassin Ramadan) to attack the town of Dujail after the unsuccessful attempt on his life by a few individuals and that large-scale attack was “not necessary nor appropriate” for that “very limited attempt”.

The actions carried out by the military units and intelligence, security and party organs, including illegal arrest, detention, torture and killing was not necessary to stop an immediate and imminent danger. Perpetrating those acts which were a violation of the law, and shelling of fields while their owners were in them with helicopters was not necessary and was not an “appropriate” answer at all from the points of quantity and quality to the firing of a few fire arms against the motorcade of the accused Saddam Hussein. That large-scale and organized attack and its effects constitute crimes against humanity, including deliberate killing as a crime against humanity.

Referring back to the ratification by the accused Saddam Hussein of the death sentence against all those inhabitants of Dujail, whose names were referred to the Revolutionary court (dissolved), the accused Saddam Hussein was asked what is the meaning in your opinion of endorsing a sentence? He said (ratification means that I have the necessary constitutional power to abolish or amend the sentence by exempting people who were convicted by court and sentenced to death). This answer shows that the accused Saddam Hussein was aware of his constitutional authority to abolish or amend a death sentence which lays upon him the responsibility of taking firm measures before endorsing death sentence against all those whose names were referred to the said court so as to be sure that the Revolutionary court did not act “contrary to the law”, but instead of that we see the accused Saddam Hussein endorse the ruling of the said court to sentence to death all victims, only two days after it was issued.

What makes things worse, is the fact that a large number of those whom the accused Saddam Hussein ratified their execution were below the legal age and 46 of those victims were killed before that during investigation as a result of torture. If the accused Saddam Hussein denies that he knew about that, he should have known it before referring this large number of the civilian population to the Revolutionary Court) and then endorse directly a sentence providing for executing all of them at the time when the age of anyone of the accused is recorded in the introduction of the testimony which contains a confirmation of his saying, whether in the stage of investigation (prior to referral) and in the stage of trial when his testimony is recorded by the court, taking into consideration the fact that the accused Awwad Ahmed Al Bander emphasized more than once that the papers of any case in which there is a sentence issued by the Revolutionary court is scrutinized by a specialized legal committee in the Presidential Office before presenting it to the President of the Republic (the accused Saddam Hussein).

The kinds of criminal participation of the accused Saddam Hussein on which his criminal responsibility for the crime of deliberate killing as a crime against humanity is based, we shall discuss later after determining whether the general basis for crimes against humanity applies to him or not.

Taking into consideration that we referred above to some aspects that prove that the accused had committed criminal acts (issuing orders for killing) as part of a large scale and systematic attack against the civilian population, this court will discuss this aspect of the case in detail and will determine whether the accused Saddam Hussein knew that his behavior was part of a large-scale attack or a systematic attack directed against civilian population.

It is proven to this court that the behavior of the accused Saddam Hussein was part of a large-scale and systematic attack directed against a civilian population through numerous indications and evidence, including the large number of the armed forces, and intelligence systems and Popular army, and through organization and repeated acts of arrest, detention and torture, then killing of that large number of the population who the court found out were owners of fields and farmers and their children and wives of the inhabitants of Dujail. The accused Saddam Hussein was in Dujail when the incident took place and the number of people who were killed in the first two days by helicopter fire and other weapons, proves that fire that was directed at the fields was against an unlimited number of people. The local authorities were involved in committing those crimes in addition to the involvement of the political and military commands.

The civilian nature of the victims was as clear as the sun in a clear sky. That large-scale and systematic attack involved scores of families (about 85 families) belonging to 10 tribes, who are most of the tribes in Dujail.

It is confirmed by this court that the accused Saddam Hussein knew that his behavior constituted part of a large-scale and systematic attack against civilian population because of his knowledge of the area which he visited (Dujail) and delivered a speech directly after the assassination attempt and talked to the civilian population. Then a large number of them were arrested after he left Dujail, and even before leaving it, according to some complainants, and since the first day of the incident. The accused Saddam Hussein was aware of the huge size of the actions committed and systematic nature of actions committed against the people of Dujail. The accused Saddam Hussein was the Commander-in-Chief of the Armed Forces, and the direct boss of the accused Barzan Ibrahim. Also, the Presidential Guard forces which took part in that attack are very close to the accused Saddam Hussein.

The criminal responsibility of the accused Saddam Hussein for deliberate killing as a crime against humanity is based on several manners of criminal participation outlined in article 15 of the Court Law, and criminal participation articles provided for in the Penal Law number 111 year 1969 as follows:

#### **Responsibility of the accused Saddam Hussein for Deliberate killing as a Crime Against Humanity for Issuing Orders to Kill**

It is proven through investigation and trial, and through the availability of a large number of documents and evidence, that the accused Saddam Hussein issued orders in Ridwaniyyah to the accused Barzan Ibrahim, who was Chief of Intelligence and responsible for the security of the former President of the Republic to go to Dujail after the former returned from it directly and to personally supervise the attack, killing and arrest of the people of Dujail. And carrying out an investigation among them and that most, if not all testimonies of complainants who were arrested

on the day of the incident, July 8, 1982, and the following day, emphasized that the accused Barzan Ibrahim is the one who issued orders for the arrest of inhabitants of Dujail and sent them to the jail of governorship of Intelligence and that he supervised torture acts in that jail.

Some complainants even stressed that the accused Barzan Ibrahim had tortured them or others in the building of the governorate which belongs to the Intelligence branch. Since it was proven that the accused Barzan received orders from the accused Saddam Hussein to carry out investigations with the inhabitants of Dujail and to carry out all requirements, and since that investigation included illegal arrest, detention and torture until death, and that investigation was in all its wordings in violation of the law and resulted in referring a large number of the people of Dujail to the Revolutionary Court (Dissolved) which issued its verdict to have them all executed, and ratification of the accused Saddam Hussein of that verdict, although he knew that the number of persons who fired at the motorcade of cars in Dujail did not exceed a few individuals, as the accused Saddam Hussein himself admitted, therefore, the orders issued by the accused Saddam Hussein beginning with the order to the accused Barzan to supervise the investigation to the order of referral to the Revolutionary Court, to the order of ratification of execution sentence issued by the said court, had all contained in one way or the other, orders for killing. The first order issued by the accused Saddam Hussein to the accused Barzan to supervise investigation contained an order to commit the act of killing because as a very possible result in a very harsh totalitarian regime, Saddam knew about its nature more than anybody else. The very possible result which is almost natural according to the logical cause of things, is killing those detainees or at least killing a large number of them.

Articles 53 and 54 of the Penal Law number 111 year 1969 complete the picture that proves the criminal responsibility of the accused Saddam Hussein for issuing those orders not only to the accused Barzan, but also to the accused Taha Yassin and to the commander of Security, Party and military systems including the Presidential Guards to arrest those large numbers of the people of Dujail and send them to the jail of the directorate of Intelligence first. Article 53 of the Penal law states that a participant in a crime- perpetrator or conspirator – receives the same punishment for the crime that actually took place even if it were other than the one that it was intended to be committed when the crime that took place is a possible result of the participation that happened.

Article 34/B of the same law states that (a crime is considered deliberate if there is a criminal intent of the person who committed it. A crime is considered deliberate B- If the perpetrator expected criminal results for his actions and yet carried it out accepting the risk of committing it.

Yet, the intention of the accused to kill large number of the people of Dujail was clear without any reasonable doubt when he referred a large number of the civilian population of Dujail to the dissolved Revolutionary court and then ratifying the sentences directly, only two days after the court issued those sentences, to have them all executed, while knowing well that the number of those who participated in the attempt against his life did not exceed a few individuals.

The responsibility of the accused Saddam Hussein as a main perpetrator who issued an order to kill those who remained alive (at least 96) individuals who were sentenced to be executed by the Revolutionary Court (Now dissolved) by endorsing the verdict to have them all executed, is not

based on the fact that he ratified the death sentence against those victims, and before that referring them to the said court. The accused Saddam Hussein was President of the Republic and these matters are within his constitutional and legal prerogatives. He actually defended himself before this court on that basis. But his responsibility for issuing an order is based on the fact that he knew that those whom he decided to refer to the Revolutionary court and then ratified the sentence to execute them all and had the sentence executed, are innocent people who had nothing to do with the assassination attempt, or with the Dawa Party. In fact he stated on the first day of the incident in his speech before the people of Dujail that there are people, not more than ten, who carried out that act (assassination attempt). Also, in his testimony before the investigating team he said that shots were fired at cars of his motorcade from two rifles or more.

Also the responsibility of the accused Saddam Hussein for the crime of deliberate killing against humanity by referring to the Revolutionary court that large number of the inhabitants of Dujail and endorsing the sentence to execute them all, is valid because he knew that his acts, or more accurately his acts are part of that large scale and systematic attack which he personally ordered to have it launched against the people of Dujail. The knowledge here is evident from the fact that Saddam Hussein issued orders to arrest, detain and torture people and then kill them and also endorsing the decision to execute 148 people including children, some of whom were less than 12 years old. They also included people who were killed before being referred to the said Court.

One who issues an order for a crime to be committed, then the one who received the order commits that crime and other possible crimes, is considered a principal perpetrator because he played a principal role and is actually more important and more dangerous than the partner who prepares the site in which the crime is carried out (48 of the criminal law). He is actually more important and more dangerous than the person who plays a leading role in committing the crime without committing the materialistic aspects of the criminal act. His, in any case, is no less important and dangerous than the role of one who carries out in his hand the physicals of the crime. It might be even more important and dangerous.

The responsibility for the death of detainees of the inhabitants of Dujail who were kept in the (Intelligence directorate) jail, and (Abu Ghraib) jail and at (Lea) desert compound who died as a result of shortage of food and its bad quality, shortage of baby milk, shortage and lack of medical care, as well as shortage or lack of medicine falls upon the shoulders of those who arrested and who supervised the arrest, and who detained and supervised the detention. Those who died, even if they were not beaten, they died as a result of those living and medical conditions which are extremely bad. The action of one who caused that result to happen, although it applies, in the opinion of some people, to the provisions of article 410 of penal law number 111, year 1969 because the text of this article includes every one who commits any act that is in violation of the law and leads to death, and the death not necessarily caused by beating. The international penal law considers those people who cause the death of victims to be committing deliberate killing as a crime against humanity according to the interpretation of the term (to kill) outlined in article 7/1/A of the basic statute of the international criminal law which includes anyone who causes the death of one person or more. Those two terms are synonymous in the international basic statute. This court believes that this interpretation is the suitable one that conforms with heavenly laws and human statutes, especially since we are facing a crime against humanity whose harm affects the international society, its values and human concepts.

Anyone who detains children, old men, pregnant and breast feeding women, old women in bad conditions in terms of shortage of food and its low quality, lack of baby milk, shortage or lack of medical care, and in extremely bad living conditions, in terms of the narrowness of place of detention, lack of air and rottenness of atmosphere, non-exposure to the sun, and in remote areas in the desert far from construction and life in every meaning of the word, and subjecting them to the severe cold weather of winter or extreme heat of summer, and gives them rotten food, though in small quantities, that causes them to have diarrhea, if anyone of these people who lives in such conditions dies, the action of the perpetrator who ordered the detention or supervised it, or who assisted or provoked or participated in carrying it out in any way, his responsibility is there because his criminal intent was a probability (indirect intent) to commit a killing crime which is (criminal intention). In this case the direct criminal intention (deliberate) is considered equivalent, as far as the legal cause is concerned, according to article 34B of the afore-mentioned penal law. If it is the intention of the perpetrator or participant to commit a certain crime, he would also be responsible for probable crimes that took place because they were probable results of the participation that occurred, according to article 53 of the afore-mentioned penal law.

The professional posts that the accused Saddam Hussein has held, such as the head of the state, a commander in chief of the armed forces, a chairman of the revolution leadership council, a prime minister and [chairman] to his first partisan [office] of the Baath party in Iraq have [all] enabled the accused Saddam Hussein to issue his orders to the one with direct contacts with him: the accused Barzan Al-Takriti since he was considered the director of intelligence agency and the one in charge of the security and protection of the named accused; and to the accused Taha Yasin, who was the first deputy to the prime minister and a commander in chief of the popular army; to the person in charge of the republican guards; and to the chairmen of the other agencies to carry out unlawful arrests of a large number of the Dujail residents and detaining them without [any reasons].

It is true that there is no direct evidence that the accused Saddam Hussein has issued his orders to the accused Barzan Ibrahim and to the accused Taha Yasin and others to execute many of the Dujail residents, but the criminal intent of the accused can be inferred by the circumstances that surround the crime and the criminal. The position of authority represents one of the circumstances that can be...considered when it becomes established that the accused is aware that his presence in the scene of the [crime] and his statements there or in another place, even if they were implicit, can be interpreted as a sign of encouragement or support of the individual carrying out the criminal act. Therefore, the individual's authority must be considered as an important piece of evidence where simply his presence, or the [utterance] of his words, even if they were implicit and at a later time establish an intentional criminal involvement. The international criminal tribunal of former Yugoslav president has reached an opinion that resembles this opinion to a large extent in a verdict that was issued on June 25, 1999 in the case of Zlatko Aleksovski.

The illegal arrests..., then the [unjustified] detention of the Dujail residents, were carried out on a large scale and systematic manner. The accused Saddam Hussein's participation was of great importance, not only in those operations, but also in facilitating the committing of the killing

crimes against the Dujail victims, making it possible to say that this participation of the great importance will make the person who offered it a perpetrator in the crime.

In the seceded view of Judge **Kassis** [in which] he differentiated between the intentional killing as a crime against humanity and the deliberate killing as a war crime during the verdict of the international criminal tribunal of Yugoslavia in the case of **Dusko Tadic** that was issued on January 26, 2000, he has said, "To state that the deliberate killing is a crime against humanity, it must be part of an organized or wide practice. Additionally, the **cognitive** element of the crime must be proven (the crime objective of the criminal), which does not include the criminal intent...that is related to only killing the victims, but also to [locate] the existence of an organized or wide practice for that. Also, killing as a crime against humanity is simply a one element of the comprehensive criminal act, and the committer of the crime must be aware that his criminal behavior forms part of this general trend."

Judge **Kassis** continues to say, "Usually, the organized (the systematic) or wide practice of act is formerly premeditated, incited, encouraged, supported, or at least be allowed by the governmental authorities, who used their power in the area in which it was committed. [Therefore], deliberate killing represents part of this overall criminal conduct."

This court is in accordance with this view and it is fully convinced that [the charge] related to the accused Saddam Hussein for committing killing as a crime against humanity and then his responsibility for it has been **materialized** when [measured up] to the facts of [such] a view. For all of that and for the other reasons that we have mentioned previously, this court is fully convinced that the accused Saddam Hussein is criminally accountable for the deliberate killing based on the issuance of his orders that led to such results that are presented in the death of the...victims of the Dujail residents, or the indirect orders in other situations that we have previously mentioned.

**Saddam Hussein's accountability for the deliberate killing as a crime against humanity considering that he is the most prominent participants in a collaborative criminal act to execute large numbers of Dujail residents:**

In regards to specifying the extent of the accused 'Awwad Al-Bandar's criminal responsibility for the deliberate killing as a crime against humanity, we have stated that such an accountability is based on his issuance of the execution order, as well as his participation in a collaborative criminal act which intends to execute victims from the Dujail residents who were referred to the named court in accordance with the referral decision that was made by the accused Saddam Hussein. That was one of the aspects of the collaborative criminal act. The other aspect of that act was presented in the participation of the accused Saddam Hussein in **creating** and carrying out [the crime].

This type of responsibility that was specified by the court of appeals in the case of [**Dusko Tadic**], as it was pointed out in the verdict that was issued regarding the case of **Milorad Kornyak**, which was noted previously, is applicable to the a case in which all participants contribute with a collective intent to commit certain criminal acts where the main perpetrator

carries out an act outside the scope of the collaborative criminal act. Nonetheless, it is a normal and predictable outcome resulting from the collaborative criminal act that was agreed upon.

In order for a criminal accountability to be established on the basis of the collaborative criminal act, such [a unanimous] agreement must be proven. As we have stated previously, it is unnecessary for such an agreement to be declared, or to be explicit, but it is possible to conclude its existence from all the circumstances that surround it. Also, it is unnecessary for the agreement to be reached at a certain time prior to committing the crime. For instance, the circumstances in which two, or more, individuals participate in committing a certain crime have proven that an agreement that is undeclared [or] even implicit...is equivalent to an agreement reached between [the perpetrators] during, or prior to, the conduct of the crime.

We have also stated that an individual becomes an accomplice in a collaborative crime either by:

1- A direct participation in committing the arranged crime (by being described as the original perpetrator);

2- Or by his presence (the accused) during the conduct of the crime, with his knowledge that the crime was committed, or will be committed, and he [provides] a willful assistance, or he incites another accomplice in the collaborative criminal act to commit the crime. This instance is available in challenging the accused Saddam, who was not only present during the commission of the crime although he was aware that the crime was going to be committed and he [provided] willful assistance, or he incited another accomplice in such a collaborative criminal act to commit the crime, but above that he ordered the carryout [of the crimes]; especially, in regards to the victims who were referred to the revolutionary court and were all sentenced to death and he approved [their] executions;

3- Or through an act in which he supports a certain regime during which the crime has taken place (meaning the region where such regime was dominant). That can be through the position of the accused in the government, or through his position with his knowledge of the nature of such regime and his intent to support it [in order] to reinforce the criminal activity, or the criminal purpose, of that regime, the group, or the party, with [his] knowledge of an intent for a crime [that will] be committed by this regime, this group, or that party.

This instance is also present in challenging Saddam Hussein. His criminal accountability here is based on the collaborative criminal act in the execution of many of the Dujail residents; especially, those who were mentioned in the second paragraph above, where the accused Saddam Hussein, the head of that regime and the president of the government of it and the chairman of the party that was leading that government, and he was occupying the top posts in the regime, the government, and the Baath party, and he is the most knowledgeable of the nature of that regime and his intent in supporting it is conspicuous and [beyond] any doubt to an extent where even during the trial he was openly announcing, inciting and stressing the support of that regime, which [no longer exists]. The deliberate participation that was carried out by the accused Saddam Hussein in the killing of the Dujail victims was intended to reinforce the criminal activity of the Baath party and the government he was heading, and because he was the head of



that regime and government, he [in fact] is the first to be aware of the intent to commit deliberate killing as a crime against humanity by the regime, the government, and the party.

In reality, if an arranged murder was committed by one or more of the accomplices in such collaborative crime, [it means] that all the accomplices in that act are criminally liable for that crime in spite of the role that everyone one of them has assumed during the commission [of the crime].

The collaborative criminal objective for several of the defendants in this case...**(the objective of the accused Saddam Hussein..., 'Awwad Al-Bandar, and Barzan Ibrahim)** that is required for this type of liability to be established has been established and its availability to the named defendants has been proven by the facts and evidence and **circumstantial evidence** that we have pointed out previously. This was the only logical and available conclusion in the evidence.

Here, the court confirms once again the involvement of the accused Saddam Hussein in this collective crime [as] a deliberate killing [and] as a crime against humanity. There were also predictable and normal consequences for that involvement in that collaborative criminal act, which was presented in the arrest of the Dujail residents and detaining them in ways that violate the law, which means that even if that collaborative criminal act was not established from the start of the arrest, it was accomplished after the arrest and detention of those victims...unlawfully since it is a normal and predictable outcome after the operation of arrests and detentions were implemented. And since the court is convinced that the accused Saddam Hussein is involved in the collaborative criminal act to kill civilian population from the Dujail area, therefore, he is accountable for the deliberate killing as a crime against humanity based on the grounds of the collaborative criminal act.

**The accused Saddam Hussein's accountability for the deliberate killing as a crime against humanity since he is the [commander-in-chief] in accordance with article 15/4 in the court law:**

Article 15/4 in the court law stipulates that: "The commander-in-chief must not be acquitted from a criminal accountability regarding crimes committed by those who work under his command, if the [supreme] leader became aware, or had any reason that [gave him reason to] believe that his followers have committed these acts, or were about to commit them, and the leader did not take the necessary and appropriate measures to prevent these acts from taking place, or refers the case to the designated authorities in order to conduct an investigation and trial.

For this type of accountability to be established, three conditions must be available...prior to considering the supreme leader criminally as liable for the criminal acts that were carried out by his followers. These conditions are:

1. The existence of a leader-subordinate relation between the top official and his followers.

2. The top official had knowledge, or reasons to know that his subordinates were about to commit criminal acts, or they have [committed the criminal acts], but
3. The supreme leader, or the top official did not take the necessary and reasonable measures to prevent those acts, or to punish those who committed [these acts] during his time [of rule].

In regards to first condition about the leader-subordinate relation, there must be an existence of a professional hierarchy relation between the leader and the subordinate. As the international criminal tribunal of former Yugoslavia [ruled] in the case of **Milorad Kornyak**, it is not a prerequisite for the official character to override such a relation as well as it is unnecessary for it to be specified in only an official category. For instance, a hierarchal relation for the top official post might be available on the basis of the rule of power, not the rule of law. What must be proven is that the leader has an influential authority on the people who committed the alleged crimes. An influential authority means the practical ability to prevent crimes, or to punish the [criminals], if the crimes were committed. When the leader has an influential authority and he fails to employ it, he will be held accountable for the crimes that his subordinates commit. A leader, or two [leaders], might be held accountable for the same crime that was committed by one person if it has been proven that the original perpetrator has been under the authority of the two leaders during the event [of the crime].

The court does not see it necessary for a relation between the leader and subordinate to be direct, meaning that this relation is present even if it was indirect. For instance, this relation might be present between the supreme leader and the subordinate's subordinate, [which means that] it is unnecessary for the subordinate to be the one who personally commits the crime, but it might be committed by [a person under him].

Article 15/4 [explains clearly] the accountability of the leader regarding acts committed by individuals who operate under his command. Normally, in a descending [order], the [secondary] subordinates are at the command of the [immediate] subordinate who has a direct relation with the supreme leader. Therefore, they and their [immediate] subordinate are at the command of the supreme leader. This is one of the conditions of establishing this accountability, which has become available to challenge Saddam Hussein since he is the supreme leader, not only to the defendants Barzan Ibrahim, Taha Yasin Ramadhan, and 'Awwad Al-Bandar, but also a [supreme] leader to those who operate at the command of those [defendants] as well, which means that if the supreme leader was able to command his immediate subordinates, then he [primarily] can command the [secondary] subordinates of the [immediate] subordinates.

Moreover, the hierarchical relation of the supreme official position between the accused Saddam Hussein and his subordinates was not only in accordance with the rule of power, but since he is the supreme leader of the Baath party, it also was in accordance with the rule of law. The accused Saddam Hussein has an influential authority on the individuals who committed crimes against humanity in Dujail, including the deliberate killing as a crime against humanity; it was that influential authority, which Saddam has enjoyed [that would have] prevented those crimes or punish the perpetrators.

The accused Saddam Hussein had the aptitude to do whatever he wanted: rewarding and punishing whomever he wanted. Due to the nature of being the head of the Revolutionary Command Council, he had the ability to issue any law he wanted at any time. Saddam Hussein's will was a law that ought to be obeyed no matter how much unjust this law [might be]. The best evidence of that is that he had legislated a law that was issued by the [now] disbanded Revolutionary Command Council, of which Saddam Hussein was the chairman, to cut off the ear of anyone who escapes from the military service or violates it [sic]; this was in the year 1995 and after several years from end of the Iraq-Iran war and the second Gulf war. Also, he had legislated a backward and [brutal] law that calls for the capital punishment of anyone who is affiliated with the Dawa party.

And regarding [the fact that] the accused Saddam Hussein had knowledge or a reason to know that his subordinates were about to commit a murder, or have committed a murder, this has been proven to this court during the investigation and trial and through the explicit and circumstantial evidence available in the case [that specifies] that he was aware of that, and he not only attempted to prevent these murders, or punish the perpetrators of the murder through certain measures and procedures, but he personally has issued the order to commit some of the [murders]; especially, the ones related to executing those who were sentenced to death by the [dissolved] revolutionary court.

Also, when he learned from the information that were available to him through reports by the investigation committees that were formed in 1987, that individuals were executed during the investigation at Al-Hakimiya prison that belongs to the intelligence agency, and a trial was not carried out of those who were referred to the revolutionary court, and the trials were fake, and in spite of that they were all sentenced to death [and] he did not take any measure to question those individuals who committed those murders, except for one instance in which an intelligence officer, Hikmat 'Abd Al-Wahab, was referred to the intelligence court to be only questioned about the mistake made when he inadvertently executed four individuals who had no relation to the Dujail case instead of two others whose names were on the conviction and sentence lists that were issued by the revolutionary court in its report number G/944 1984 on June 14, 1984.

The accused Saddam Hussein has failed to take the necessary and logical measures to prevent, or punish, his subordinates for the crimes that they have committed, which resulted in the killing of many civilians from the Dujail residents. Therefore, he is considered the highest one criminally accountable for those murders in accordance to article 15/4 in the court law that [holds] the criminal accountability on the supreme leader regarding the criminal acts of his subordinates. Although the accused Saddam Hussein had the [full] authority, he did not take any measure to prevent the murders that were committed against the Dujail residents, and he did not do the least of his ability to punish the perpetrators of those murders.

The accused Saddam Hussein, very clearly, was exercising supreme authority on his subordinates and he had advance knowledge of most of the committed crimes, and he did not take the necessary measures to prevent and punish the perpetrators. As a result of that, he must be held to criminal accountability based on article 15/4 of the tribunal law.

On this occasion, the court is clarifying that the knowledge of a subordinate who has very close ties and [access] to the supreme leader, as in the situation between the accused Saddam Hussein and his half-brother from his mother's side, Barzan Ibrahim, is considered a knowledge by the supreme leader, or at least is considered as a reason for knowing. So, the accused Saddam Hussein, even if it was said that he was not aware, [had reasons to know due to the nature of the relation between the accused Saddam Hussein and the accused Barzan, which was not only a relation of leader-subordinate, but also due to the nature of the very close family ties between them in light of a regime which was known to have a concentrated authority in one of the families of the town of Tikrit. Also, communications between the departments of the presidency - the presidential [palace] in particular - and the intelligence, military, and party agencies have proven the availability of reasons that would make the awareness of whoever was the state president (the accused Saddam Hussein) a definite issue.

The accountability of the supreme leader, the heads, and the commander in chief is not [held] through the acts of others, but is an individual accountability that is based on the conduct of those subordinates to the criminal acts, and the leader's infringement of his legal obligation, [which he is responsible for]. The infringement of what the law obliges him to assume as a preventive role when he finds out that there are murders that will be committed and to assume a deterrent role when the murders are committed [after] he learns that they were committed.

Based on what has been presented, it becomes clear that the criminal accountability of the accused Saddam Hussein is not only [derived] from the [fact] that he was the head of the state, or the head of the revolutionary command council, a prime minister, and a commander in chief of the armed forces during the time of the incident only, but it is also [derived] from his issuance of the execution order of the civilians from the Daujail residents and his partaking as well in a collaborative criminal act, all of which was implemented as part of a comprehensive and systematic assault directed against the civilian population and the knowledge of the accused Saddam of that. God, to Whom be ascribed all perfection and majesty, says [in the Qur'an], "And do not kill anyone whose killing God has forbidden, except for a just cause. And whoever is killed wrongfully, We have given his heir the authority. But let him not exceed limits in the matter of taking life. Verily, he is helped (by the Islamic law)." (Al-Isra', verse 33)

**The extent of the accused Saddam Hussein's liability on the displacement of the residents, or the coercive removal of the residents, which forms a crime against humanity:**

In May 15, 2005, the court has also charged the accused Saddam Hussein with the removal of the residents, or the coercive transfer of the residents, which represents a crime against humanity in accordance with article 12/1/D of the court law.

The displacement of the residents, or the coercive removal of the residents, according to article 12/2/D means, "The transfer of the concerned individuals coercively from the area they are legitimately [residing] in by expelling them out, or by another coercive act without pretexts that are admissible by the international law." Based on that and in accordance with this article and with the international humanitarian law, the elements of this crime are:

1. The accused must deport, or coercively displace, one individual or more to another country or another place by expulsion or by any coercive act due to reasons unapproved by the law.
2. The individual, or concerned individuals must be legitimately present in the area, which they were removed, or displaced, from on such a manner.
3. The perpetrator of the crime must be aware of the realistic conditions that prove the legitimacy of this presence.
4. This manner is carried out as part of a comprehensive, or systematic, assault directed against the civilian population.
5. The perpetrator of the crime must be aware that the manner is part of a comprehensive, or systematic, assault directed against the civilian population.

These are the basis, or legal requirements, that must be available in order to be able to state that the accused Saddam Hussein is criminally accountable for this crime. But the elements of evidence to these bases are plenty.... For example, regarding the first element there is evidence that the displacement was done involuntarily, and there is an evidence for the existence of a climate of fear, demolition of the homes of the displaced residents, and there is evidence that the civilians were considered as detainees, etc. The majority of the elements of evidence, which we pointed to, were available in the case of the civilian population of the Dujail residents, who were coercively removed from the area in which they resided (Dujail) in a legal way since they are considered civilians (owners of farms and gardens and [have] wives and children are school students...) who have been living in Dujail for a very long time as Iraqis who are residents of this town.... These [residents], whose number was about 400 people and who are comprised of 85 families and belong to ten tribes, were coercively displaced following their unlawful arrest [that is contrary to] the international law [and even] the Iraqi law, then they were detained at Al-Hakimiya prison, which belongs to the intelligence agency, then [they were imprisoned at] the Abu Ghraib jail. Then after that, they were transferred to the Lea desert complex, which is originally [built] to shelter the traveling nomadic Bedouins and their livestock in the desert of Samawa near the Iraqi-Saudi borders.

There were also other elements of evidence that were made available [that prove] the commission of this crime. Some of these elements are the documents whose authenticity was confirmed to the court. [These documents confirm] the displacement of the civilian population [victims] of the Dujail (men, women, children, and elderly) to a desolated area amid the desert; in addition to what was mentioned by many plaintiffs and the [prosecution] witnesses during both phases of the investigation and trial that both the intelligence and the public security agencies as well as the Muthana (Al-Samawa) provincial security were involved in this mission of transferring those families [in small groups] from Al-Hakimiya and Abu Ghraib prisons to the Muthana (Al-Samawa) capital, and then to the desert complex and [where they were] left there for approximately three years. [But] with taking into account that this period varies from one person to another based on the date of his displacement and the date of his release.

Some of these documents that we have pointed out and were presented before the court is the message of the intelligence directorate (which was linked to the revolutionary command council that the accused Saddam Hussein headed) numbered 1106, dated May 8, 1983, and addressed to the security department of Muthana province to displace 115 people from the Dujail residents, whose names have appeared in five lists accompanied with that message. Also, [there were] documents that include lists of names of the Dujail residents who were displaced. In the [lists] was a mention of [license plate] numbers of vehicles [that were used] to transport the [Dujail residents] to the Muthana (Al-Samawa) capital. [In the lists were also] the names of the drivers of these vehicles.

Moreover, the perpetrators of this crime were aware of the real circumstances that have proved the legality of the presence of those civilian officials from the Dujail residents, considering that those who were displaced were living with their fathers and grandfathers for hundreds of years in the Dujail area. They were owners of properties in [Dujail] and they are Iraqi civilians who descend from the Arabian tribes that still exist in the Dujail area. Some of those who perpetrated that crime were from the same area and personally know the residents who were expelled since Dujail is [basically] a small town and its population is small.

The coercive displacement of the civilian population [has taken place] after their arrest and detention at Al-Hakimiya and Abu Ghraib prisons. Therefore, this manner was part of the comprehensive and systematic assault that was carried out against the civilian population of the Dujail residents. And if we take into consideration the nature of the place where the (victims) of Dujail were removed to and the conditions that surrounded them [in regards] to the freedom of movement and the questions that might be raised regarding the [existence] of a type of intertwinement between this charge and the other charge [against] the accused Saddam Hussein of the imprisonment, or extreme deprivation of free physical movement, [of the victims], which represents a crime against humanity.

After this court has debated the available evidence in this case regarding this matter, and after it has observed that all facts regarding [this case], it sees that the crime of expulsion, or coercive displacement of the people, of the Dujail residents have become...available, [which indicate] that those victims were not imprisoned or extremely deprived from the free physical movement, in spite of their presence at a complex that was named a detention [camp] in the middle of the desert. [This is] evident in [the fact] that they had some freedom of movement, at least in the desert. Also, the dorms and the houses they were placed in were not shut on them from the outside, but from the inside. There are also a number of [those who made complaints regarding this case]. This [situation] is different to a certain degree than what is found in prisons and detention [camps] where prisoners, detainees, or arrestees are extremely deprived from the freedom of physical [movement].

What is left for us [here] is to specify if the accused Saddam Hussein is criminally liable of that crime that is presented in the coercive displacement of a large number of the Dujail residents to that area in Al-Samawa desert. Normally, that basically depends on the extent of his knowledge that his conduct represented part of that comprehensive, or systematic, assault against those civilians. It also depends on the time in which he learned of that displacement and the nature of the measures that he would have taken had he learned that.

During the investigation and trial of the accused Saddam Hussein, he has denied his advanced knowledge that this civilian population was removed from Dujail to that [desolated] area. Nonetheless, sufficient evidence is available to [conclude] that the accused Saddam Hussein was aware of the conduct of the crime that was carried out by the intelligence agency director in coordination with the public security director and the Muthana [province] security director. [This is based on] the message of the intelligence agency, which has ties to the revolution leadership council (which was headed by the accused Saddam Hussein), which is numbered 1106 [with an] issuance date of May 8, 1983, and addressed to the Muthana provincial security department. [Also,] a copy of [this message] was handed to the department of public security to displace 115 individuals of the Dujail residents whose names have appeared on five lists accompanied with that message. [Additionally,] the message of the intelligence [head office] was sent to the security department of Muthana province and a copy [of this message] was sent to the department of public security, numbered 1147 [with issuance date] May 14, 1983, to displace 114 people whose names have appeared on five lists, as well, and in other similar [copies] of these two messages that were issued by the intelligence [head office].

Moreover, the arrival of a presidential delegation to the Lea desert complex at the end of the year 1983, or during the year 1984, to raise funds from the Dujail residents who were displaced to support the party efforts during the Iran-Iraq war. This is according to statements by many of the plaintiffs during both phases of the investigation and trial. All of that prove that the accused Saddam Hussein was aware of the presence of an intent, efforts, practical and functional procedures for the displacement of those of victims from the Dujail residents to that location in the desert since the month of April, or May, of the year 1983, [but] not in the month of April of the year 1986 when the accused Saddam Hussein decided to release them and end their displacement and allow them to return to Dujail.

That silence and negligence by the accused Saddam Hussein was an expression of an implicit and unpronounced consent, which is needed by the collaborative criminal act. And the voluntary involvement by the accused Saddam Hussein in reinforcing the criminal activity and the criminal objective of the group (the Baath party and the regime), was accomplished in that way (by being silent and negligent). Due to the nature of the situation, the accused Saddam Hussein was aware of [those events] because he was the head of that regime and that party.

Therefore, if it is not possible to hold the accused Saddam Hussein accountable to this act in accordance with article 14/2/A,B,G of the court law, the available evidence is sufficient to hold the accused Saddam Hussein criminally accountable to this crime based on his involvement that is established in the collaborative criminal act, which is stipulated in article 15/2/D of the court law, due to the availability of the basis of this crime in challenging the accused Saddam Hussein.

Additionally, this court definitely holds the accused Saddam Hussein criminally accountable to that crime in accordance with article 14/4 of the court law because he was the supreme leader (the head of the state and the chairman of the revolution leadership council...etc.), [and] when learned that there will be a coercive displacement of the victims from the Dujail residents to the Liya complex in Al-Samawa desert from the spring of the year 1983 - if not before that - he did not take any measure to prevent this crime from taking place. Also, when he learned once again

in the year 1986 that they still [reside] at that complex and he decided to release them and end their exile, he did not take any measure to refer this case to the designated authorities in order to launch an investigation and try those individuals from the intelligence and security agencies, including [their] superiors, and punish them for committing that crime against those innocent civilian residents.

The accused Saddam Hussein's awareness of this crime in the year 1983 as well as in the year 1986 is proven through the case documents, including the accompanied documents; also through the statements of those whom are related [to the case] including the plaintiffs who stated that they were released and were able to return to Dujail following the issuance of an amnesty order by the accused Saddam Hussein in spring of the year 1986.

As a result, the accused Saddam Hussein is also criminally accountable for the removal and coercive displacement of the [Dujail] residents, [which is] a crime against humanity in accordance with article 15/4 of the court law.

**The accountability extent of the accused Saddam Hussein for the imprisonment, or extreme deprivation of the free physical movement, which represents a crime against humanity:**

In May 15, 2006, the court has presented another charge to the accused Saddam Hussein in accordance with article 12/1/H of the court law. And for this [charge] to be established, the following [points] must be available:

1. The perpetrator of the crime must imprison one person, or more, and tremendously deprive one person, or more, from the physical movement freedom [in one way or another].
2. The severity of the conduct must reach an extent that forms a violation of the essential principles of the international law.
3. The perpetrator of the crime must be aware of the realistic conditions that prove the severity of the conduct.
4. The conduct must be achieved as part of a comprehensive, or systematic, assault directed against the civilian population.
5. The perpetrator of the crime must know that this conduct is part of a comprehensive, or systematic, assault directed against the civilian population.

There are many elements of evidence for these legal requirements in order for this crime to be established. For example, these are [some of the pieces of evidence that are required]: evidence of arrest; [and evidence of] a large rate of arrests...; an evidence of imprisonment, detention, and an actual detention; evidence for the circumstances of the arrest; evidence of the occupation of every detainee; and evidence of the description, or general descriptions of the detainee; evidence



of the civilian status of the detainees; evidence of the period of the detainment; and evidence of the declaration of the reasons behind the detention; evidence that the interrogation of the detainees has begun shortly after their detention; evidence of the questions that were asked during the interrogation; evidence of the mistreatment, or physical harassment, during the period of detention, or interrogation; evidence that the basic procedural rights were violated during the interrogation; evidence for the death of the detainees; evidence that the detainees were subjected to inhumane [treatment]; evidence that the detainees were forced to sign written reports; evidence that the detainees were set free after the interrogation; and evidence of an arbitrary and illegal detention; evidence that the detainees were brought to court for any crime; evidence that the defendants were convicted of any crime; and evidence for the existence of legal procedures at the location of arrest.

The availability of most of these elements was proven through the evidence that was submitted to the court in regards to this case...that was primarily presented in the documents and files that were presented before the court, including, for example..., 361 pages that were [obtained] from the National Security Center Agency at the presidential palace, which include the names of 148 residents from Dujail with their statements that contain their confessions for their involvement in the [assassination] of the former president on July 8, 1982 and their affiliation with the Dawa party. Also, [there was] an order by the presidency that had them referred to the revolutionary court for trial of [an alleged murder they were charged with], which the accused Saddam Hussein knew before anyone else that they did not commit.

Part of these documents also was a decision to refer these victims to the named court. The occupations that those victims were practicing were proved in those statements. They were mostly farmers and school students. Also, in these documents were reports from the investigation committees that were referred to the accused Saddam Hussein, including the investigation committee headed by Hussein Kamil.

Additionally, the total of the evidence that was submitted to this court was mentioned by the plaintiffs and prosecution witnesses during [the phases] of investigation and trial, where most of the plaintiffs confirmed that they were detained at Al-Hakimiya prison, which belongs to the intelligence agency; and then they were transferred [in small groups] to Abu Ghraib prison. [They also] stated that they were subjected to all kinds of torture during their detention and a number of detainees were executed during the interrogation. Also, many of them have died [due to] the living and health conditions that are extremely [harsh] at those locations; and the interrogation of those detainees has begun after they were admitted to Al-Hakimiya prison.

In summary, the evidence and **circumstantial evidence** for establishing this crime are many. But the question...here is: Is the accused Saddam Hussein criminally accountable for this crime? Who has committed this crime? Who is responsible for it?

In reality, the plaintiffs and witnesses did not state that the accused Saddam Hussein has personally imprisoned any of the Dujail residents. Also, none of them has stated that he has heard Saddam as saying that, or ordering that. But what has been proven to this court is that the accused Saddam Hussein has issued an order to the accused Barzan Ibrahim as well as the

accused Taha Yassin to conduct an investigation of the Dujail residents and to administer all the procedures that must be taken regarding this [case], although he was [fully] aware that those who fired the shots at the motorcade do not exceed a few individuals. The launching of an investigation of this large number of the Dujail residents, which approximately reached 600 people, following the accused Saddam Hussein assignment of his brother the accused Barzan, [who is] the director of the intelligence agency, to that [investigation] has included arrest, detention, and extreme deprivation of physical movement. This means that the accused Saddam Hussein has issued an order for the arrest and detainment of those civilian residents from the Dujail, and this order of arrest, imprisonment, and deprivation of physical movement was in violation of the law.

From another perspective, the accused Saddam has implicitly confessed to his awareness of the imprisonment of those victims when he stated before the court on December 21, 2005 that anything, or any harm, that [was inflicted] upon those [plaintiffs] is a mistake and a violation of the law, [which is] similar to what happens in the Third World countries.

Additionally, the accused Saddam Hussein has learned from the beginning that a large number of the Dujail residents were at Al-Hakimiya intelligence prison. That can be easily inferred from the fact that the accused Saddam has assigned the accused Barzan to open an investigation on them. Furthermore, the accused Saddam was aware of that when he referred a large number of those detainees to the revolutionary court for trial for an act they did not commit. That [was implemented] in accordance with the referral decision that was issued by the presidency on May 27, 1984. Additionally, the accused Saddam was aware of that when the intelligence agency (that has ties with the revolutionary command council) addressed a message to the presidency asking for the [type] of measure that must be taken after many questions were raised regarding the fate of those detainees.

Also, he was aware of that when he reviewed the investigation results that were conducted by the investigation committees in the year 1987. In every situation, the accused Saddam Hussein did not take any measure to prevent this crime from happening. Also, he did not take any measure to punish those...who belong to the intelligence agency or any other individual who participated in committing this crime. This was due to a simple reason, which is that he has [personally] ordered [that crime] even if it was not committed directly by him.

Additionally, the accused Saddam Hussein's participation with a group of individuals with a collaborative criminal intent to commit that crime, was in order to reinforce the criminal activity and the criminal purpose of the regime and the intelligence, security, and party agencies. He was also aware that those in charge of these agencies were intending to commit a crime, because that intent was originally available to him since he is the head of that regime and the head of those agencies.

Based on what has been presented, this court is completely convinced that the accused Saddam Hussein is held criminally accountable of the imprisonment and the severe deprivation of the physical freedom of those who were detained from the Dujail residents, [which is considered] a crime against humanity based on several provisions of article 15/2/B, D as well as article 15/4 of the court law since he is considered the commander-in-chief (the head of the state and the

chairman of the revolutionary command council) during the time in which the crime was committed, which [began on] July 8, 1982 and lasted for...several years that [may] vary due to the difference in the fates that everyone of those detainees has [met].

**The accused Saddam Hussein's accountability extent on torture as a crime against humanity:**

On May 15, 2006, this court has presented another charge to the accused Saddam Hussein, which is [the charge] of torture as a crime against humanity. This crime is stipulated in article 12/1/W of the court law. For it to be established, several elements must be available:

1. The perpetrator of the crime must inflict a severe pain or extreme suffering, either physical or psychological, upon one individual or more.
2. This individual, or these individuals, must be detained by the perpetrator of the crime, or [they were] under his control.
3. That [inflicted] pain, or suffering, must be only the result of a legal punishment, accompanied by it, or belong to it.
4. The conduct is carried out as part of an extensive, or systematic, attack launched against the civilian population.
5. The perpetrator of the crime must be aware that the conduct is part of an extensive, or systematic, attack launched against the civilian population.

Article 12/2/H of the court law has [indicated] that torture means the deliberate [infliction] of severe pain and suffering, either physical or mental, upon an individual in custody, or under the control of the defendant, but torture does not include pain and suffering that were the result of legal punishment, or related to it.

There are many elements of evidence of these basis, or legal requirements, for establishing the torture crime, [which is] described as one of the aspects of crimes against humanity. Some of these [elements] are the presence of fingerprints on the **electrifying [devices]**; beating, solitary confinement for long periods of time with eyes blindfolded and hands tied down together; forcing the detainees to stand on both feet, or one feet, for long periods of time; the violent beating of all parts of the body; the suspension of the victim by hands, or feet, by binding the hands to the back; the extraction of nails, or teeth; burning; subjection to [very] bright light; long periods of sleep or relaxation deprivation; long periods of [starvation]; long periods of hygiene and personal care deprivation; long periods of health care deprivation; threats of torture, killing, or rape of relatives; threat to personally rape the victim; forcing the victim to watch another person being violated; subjecting the victim to humiliating treatment, such as the forceful stripping of clothes accompanied with a method of menacing, such as threatening to cause a severe harm; all of these practices and their likes have been conducted on the detainees from Dujail residents at the intelligence prison in Al-Hakimiya building, Abu Ghraib prison, and in the Lea desert detention camp.

The plaintiff Ahmad Hassan Al-Dujaili has testified before the court that on the afternoon of July 9, 1982 he was placed in a vehicle with fifty detainees. They were transported to the intelligence [bureau], where they were dropped off at the building's garage. They were called traitors; men and women were beaten in that location where 500 detainees were gathered, including men and women. The plaintiff continues to describe the methods of torture that the detainees were subjected to, including women, and the scarce and tasteless food they were served with. He mentioned the names of the individuals, who were subjected to torture, including Qassim 'Abd Al-'Ali Al-'Ubaidy, and those who were executed during the torture, including Jassim Mohammed Latif and Hussein Ya'qub Majid.

The witness (----) mentions in his testimony before the court on December 5, 2005 the details of what had taken place in Dujail and what happened after that [regarding] the arrests and detention, killing and torture. He also mentioned in his testimony that the one responsible for that was Saddam Hussein because he was the head of the state. Also, the female plaintiff (----) has described for the court the journey of agony that she faced with her family in Al-Hakimiya prison, which belongs to the intelligence agency, and at Abu Ghraib prison, and at the Lea desert detention camp with 84 other families.

The **masked** witness (----) stated before the court on December 21, 2005 that the torture with **electricity** was taken place in the presence of Barzan, who was eating grapes during the torture [session] of the victims, and he also saw the body of Jassim Mohammed Latif, which had signs of torture, at Al-Hakimiya prison. Also, Majbal Muhsin was killed in front of him at Abu Ghuraib prison after he [suffered] from a strike to his head by the metal [piece] of the military [uniform] waistband.

Saddam Hussein himself has implicitly admitted in the proceedings on December 21, 2005 after the hearing of testimonies by one of the **masked** plaintiffs, "That anything, or any harm, that was inflicted against those [plaintiffs], was a mistake and violates that law, [which is] similar to what happens in the Third World countries."

The masked plaintiff (----) stated before the court on December 21, 2005 that, "After that, they took me to the intelligence [agency] and placed me inside a room. Then, they took me down to the torture dorm and they began torturing me with all methods of torture, [such as] beating and electrifying; [Then], I only found myself in the [same] room after two, or more, days [where] the torture [sessions] were repeated continuously. Then, they took me once again to the torture dorm. There, I found the accused Barzan. My eyes were blindfolded. Barzan said, 'Take off the cover (the cover of the head and eyes). He said to me, 'Today, I will expose your behind and make you see it with your own eyes....' [Then], they began torturing me with the electricity and I remained in this situation for 70 or 80 days."

Regarding the court's question on how [the plaintiff] recognized Barzan, the plaintiff replied that he recognized him from the pictures, TV, and magazines. And when the plaintiff was asked by the accused Barzan as to how he recognized that the one whom he saw was Barzan Ibrahim, the plaintiff replied that he recognized that when he was sent to the room where he was told that Barzan is calling him and when he entered [the room] he saw [Barzan] in front of him.

The masked female plaintiff (----) has explained before the court on January 29, 2006 that she was tortured by electricity at Al-Hakimiya intelligence prison. Also, she was placed in front of her husband and they threatened to torture her in front of him.

The masked female plaintiff (----) has testified before the court on January 29, 2006 that she saw her father, sister, and her nephew while they were beaten and being tortured at the intelligence prison. She also mentioned that her sister, who was about 20 years old, was severely tortured at the intelligence prison and died after she was released from prison as a result of that torture. She also stated that the intelligence [agency] members were **torturing women and children, who were weeping due to the [lack] of hot water**, the unavailability of milk, and the shortage of food, and they were not able to sleep. [She added] that the torture of women used to take place at night, pointing out indirectly to what might have happened during [this time] and taking into consideration that the issue of rape and the physical [assaults] is a matter that the Middle Eastern woman in general, including the Iraqi woman, can not [discuss] due to fears of [stirring] scandal, which is considered a disgrace even if that woman has been victimized.

Moreover, the plaintiff (----) has explained that he saw women being tortured before his [eyes] at the intelligence [agency] prison, because at that time he was six years old and was usually in the company of women.

The plaintiff (----) has stated before the court on February 1, 2006 that the intelligence [agency] members have arrested his father and brother, who was 15 years old, and that his father was released in the year 1986 he has told him that his brother became insane as a result of torture.

The female plaintiff (----), who was 22 years at the time of the incident, stated before the court on February 1, 2006, that she was arrested and sent to Al-Hakimiya prison, which belongs to the intelligence agency, where she saw Barzan who said to the guards, 'Did you bring her [yet]?' They told him, 'Yes.' Then he said, 'We have brought [you] o' disobedient cuffed. We brought you o' disobedient with bounded arms and legs.' She stated that they began torturing and beating her on her head and connecting electricity to her feet and electrified her.... Also, she [stated] that she was beaten with the rubber tubes...for several times in the same day [where] they have undressed her and Barzan has personally hit her on her head with the handgrip of his pistol and then she fainted. In the following day, she was taken to the torture room and found Barzan, who has ordered one of the guards to inject her with a syringe [when] she [complained from] diarrhea. Then they really [injected her] and then they suspended her [inside] a cell for seven days without food and water. She also stated that she had witnessed the torture of Jassim Mohammed Latif, who had died as a result of that.

The female witness has also indicated that the accused Samir, one of the investigators of the intelligence [agency] has tortured her and broke her hand, and she has witnessed torture [sessions] at the Abu Ghraib prison as well. She watched Hajj Mujbal 'Aziz as he was being beaten on his head with a metal belt, which caused his death.

The accused (----), who was 23 years old during the time of the incident and was a member of the popular army, stated before the court on February 1, 2006 that he had seen the accused

Barzan as he was administering the arrests, which were carried out by members of the intelligence and army.

The accused (----), who was 11 years old during the time of the incident, stated before the court on February 1, 2006 that he had witnessed torture with the electrical shocks at the intelligence [agency] where his sister was tortured before his own eyes. They also stripped off her clothes. And when they were transferred to the Abu Ghraib prison on December of 1982, they were subjected to torture there as well, which included beating, and they were deprived from sleep for long periods. This plaintiff mentions in his testimony that on the day of the incident, he had seen [groups] of the republican guards participate in the arrests.

The accused (----), who was 16 years old during the time of the incident, stated before the court on February 2, 2006 that he was subjected to torture, where they had placed an electric cord on his ear and subjected him to electric currents. Also, the accused Barzan has personally lit a cigarette and put it off behind his ear. The burn mark remains until this day [behind his ear]. This has happened after two guards have held him at the intelligence [agency]. Then Barzan has ordered [the guards] to take him up to a red-colored room after they have beaten him **nonstop**. On the following day, [he stated] that he was tortured by being suspended from his feet. Also, he was tortured after three days by beating while he was stripped off of his clothes, and they placed electric cords on sensitive parts of his body. Furthermore, this plaintiff stated that torture has continued at the Abu Ghuraib prison.

It becomes clear based on what has been presented that there are successive statements by the plaintiffs that confirm that they were, or other victims have been, subjected to torture by members of the intelligence [agency] at Al-Hakimiya prison, Abu Ghraib prison, and at the Lea desert complex, [but] with a lesser degree [at the last site]. This also proves that the torture has resulted in the death of 46 individuals out of the [total of] detainees in the intelligence [building] prison during their interrogation. This also has been proven to the court by the documents that were presented to it, and whose authenticity has been verified, which we have pointed to previously.

Many of the plaintiffs have stated that the accused Barzan Ibrahim was administering torture. Also, some of them have stated that Barzan has personally tortured them. Additionally, some other [plaintiffs] have pointed out that the accused Barzan, in addition to administering torture at the intelligence prison, he has administered the arrests of the victims – men, women, and children - that were carried out in Dujail. The victims were initially [held] at Al-Hakimiya prison and stayed there for periods that varied from one victim to another.

Based on what has been presented, it becomes clear that the basis of this crime were established in challenging the accused Barzan Ibrahim and the...intelligence members who committed it.

So, is the accused Saddam Hussein held criminally accountable of this crime? None of the plaintiffs has stated that Saddam has personally tortured them. Also, they did not hear that Saddam had ordered that. But they all (most of them, if not all of them) have stated that the accused Saddam Hussein is accountable of that because he was the head of the state, and [because] he was the custodian and was responsible for his subjects, and because he had assigned

Barzan to conduct the investigation on the Dujail residents, their arrest and detention, and then their interrogation, which was a normal and...predictable [outcome] that included torture for obtaining confessions that are either genuine (truthful) or not genuine (false), or for the [sake] of torture, or to [satisfy] the desire of some of those who had carried out these acts, or for other reasons.

In addition to that, the accused Saddam Hussein has implicitly acknowledged his awareness of those practices that took place at the intelligence and Abu Ghraib prison when he said on December 21, 2005, "Such acts and harms that occurred against [the plaintiffs] were a mistake and violate the law, similar to what occurs in Third World countries."

Based on that, this court sees that the accused Saddam Hussein had issued an order to the accused Barzan, which is an order, even if not explicit, to torture the victims from the Dujail residents. However, the order to administer the arrests and to interrogate those who were arrested [and sent] to Al-Hakimiya prison is part of the torture order. The order of carrying out that crime was implicit and was issued by the leader to the subordinate. And the evidence of that was proven in the case. Additionally, torture is a predictable crime of the illegal arrests and detentions. Therefore, the accused Saddam Hussein is criminally accountable of torturing the Dujail residents, [which] is described as a crime against humanity in accordance with article 15/2/D of the court law and the article 35 of the penal law.

Additionally, the legal requirements for the criminal accountability of the accused Saddam Hussein for the collaborative criminal act in accordance with article 15/2/D were also made available for challenging him for [committing] torture as a crime against humanity, where [his] participation, regardless of the method, was deliberate, or at least the predictable intent is provided in accordance with article 34/B of the punishment law, which was intended to reinforce the criminal activity and criminal objective of the regime of the Baath part and the intelligence and security agencies, all of which were...under the leadership of the accused Saddam Hussein. Also, the accused Saddam Hussein was aware of the intent of the crime to be committed by those in charge of those agencies, because he was the head of these principals of those agencies, including the accused Barzan who is very close to him to a great extent due to family ties in addition to official reasons. Also, Saddam Hussein was aware [of the crime] because he was the top official in the Baath party, which led the government in Iraq. Moreover, he was aware of that intent [of the crime] because he was the one who had issued the orders to arrest the Dujail civilians in a way that violates the law, and to carry out an interrogation of the [victims] and anything resulting from [such] a predictable criminal outcome.

In addition to what has been presented, the accused Saddam Hussein is held the accountability that is based on the principle of the commander-in-chief's responsibility that is provided in article 15/4 of the tribunal law, where all legal requirements for establishing this charge in challenging the accused Saddam Hussein, including the [presence] of a relation between the leader and the subordinates, [or] between the accused and the perpetrators of the crime. Verily, this relation was evident between the accused Saddam and the accused Barzan Ibrahim, who had personally committed acts of torture against the Dujail victims, who were detained at the intelligence [agency] prison, as well as his direct supervision of the torture of other victims,

which was perpetrated by the intelligence officers who were conducting the interrogation at the said prison.

It has been proven to this court that the accused Saddam was enjoying influential power and a functional ability to prevent those crimes and punish the perpetrators; he had... a power over the accused Barzan Ibrahim and the intelligence agency members, which enabled him to [control] those individuals and prevent them from committing torture. It also enables him to have them referred to investigation and trial if they would really commit torture. This has been proven to the court through several material evidence, including the referral of Hikmat 'Abd Al-Wahab, an intelligence officer, to the intelligence court, not for torturing those victims, executing, or imprisoning them, but for a mistake he made when he inadvertently executed four [other individuals], who were not [members] of the Dujail victims.

The accused Saddam Hussein was aware that the Dujail victims were tortured at Al-Hakimiya intelligence prison, or at least he had reason that [prompted] him to learn that due to several reasons, including the [fact] that he was the one who ordered the...interrogation of that large number of the Dujail residents and then arresting and detaining them in a way that violates the law, in addition to the [fact] that the accused Barzan was at a great degree of direct closeness to the accused Saddam, not only because he is the director of the intelligence agency, but also because he was his half-brother from his mother's side, and he was in a high position in the Baath party, which was led by the accused Saddama Hussein, which is known to all Iraqis that at least the leadership of the Baath party and the country's military, intelligence and security leaderships were [all] essentially concentrated in the family and tribe of the accused Saddam Hussein. So, what is considered knowledge for the accused Barzan Ibrahim is [eventually] knowledge for the accused Saddam Hussein, or at least [considered] a reason to know; especially, when Saddam Hussein is the one who had issued the order to the accused Barzan to supervise the interrogation of the Dujail residents, and on top of that he is accountable for the collaborative criminal act as we have explained earlier. It is an issue that also requires the availability of the knowledge for any of the participants.... Therefore, knowledge is available here, or the reasons that [prompted] knowledge were provided to the accused Saddam Hussein that his subordinates were going to commit torture as a normal and logical sequence of a regime that was described a totalitarian and brutal and a president described as an authoritarian and [known] for using the most brutal methods for eliminating his opponents.

In any case, what is beyond reasonable doubt is that Saddam Hussein had learned when he reviewed the report of the interrogation committee, which was headed by Hussein Kamil in 1987, that several of the detainees died during the interrogation as a result of torture. This proves his knowledge of the torture acts and the killing of the Dujail victims that had taken place. In spite of that, he did not take any measure to conduct an investigation and punish those responsible for committing those crimes.

**The extent of the accused Saddam Hussein's accountability of the coercive disappearance of individuals as a crime against humanity:**



In addition to the charges that were pressed by this court to the accused Saddam Hussein on May 5, 2006, the extent of his accountability to which we have discussed, it has [also] accused him of other charges of coercive disappearance of individuals as a crime against humanity in accordance with article 12/1/T of the court law. Article 12/2/Z of the court law has [defined] the coercive disappearance of individuals by stating that it means the arrest of individuals, detaining them, or abducting them by the state, or a political organization, or by its permission, or support, for this act; or its silence regarding [this act], and then its refusal to acknowledge the deprivation of these individuals of their freedom, or offering information regarding their fate, or the location of their whereabouts in order to deprive them of the legal protection for a long period of time.

For establishing this crime, the following **elements** must be provided:

1. The perpetrator of the crime must:
  - a. Arrest, detain, or abduct one individual, or more.
  - b. He refuses to acknowledge the arrest, detention, or abduction of this individual, or individuals, or to offer information about their fate or their whereabouts.
2. This arrest, detention, or abduction must be followed by refusal to acknowledge the deprivation of this individual, or individuals, of their freedom, or offering information about their fate and their whereabouts.
3. The perpetrator of the crime must know:
  - a. That the arrest, detention, or abduction of this individual, or individuals, will be followed in the sequence of normal events by refusal to acknowledge depriving them of freedom, or offering information about their fate, or whereabouts.
  - b. This refusal must be preceded by deprivation of freedom, or coincides with it.
4. This arrest, detention, or abduction must be carried out by the state, or a political organization; or is implemented by its permission, support, or approval.
5. The refusal to acknowledge the deprivation of this individual, or individuals, of their freedom, or offering information about their fate, or their whereabouts, has been upheld by the state, or a political organization; or by its permission, support, or approval.
6. The perpetrator of the crime must intend to prevent the individual, or individuals, of the protection that is obliged by the law for a long period of time.
7. The conduct must be carried out as part of an extensive, or systematic, attack directed against the civilian population.
8. The perpetrator of the crime must know that the conduct is part of an extensive, or systematic, attack directed against a civilian population.

After a examining and debating the available evidence in this case, it has become clear to the court that some of the basis that were required for establishing this crime are unavailable. Thus, it is not possible to hold any of the defendants in this case, including the accused Saddam Hussein, accountable for acts that do not form a crime in accordance with international law, where nothing has been proven to this court that anyone of the relatives of the victims has submitted a request to any government agency asking for the fate, or the whereabouts, of the victims. Also, it has not been proven that these agencies, including the ones related directly to the accused Saddam Hussein, have refused to acknowledge the arrest, detention, or abduction of any of the Dujail residents after their arrest, or detention, or during that. Also, it has not been proven to this court that the accused Saddam Hussein, or any of the defendants in the case who were accused of this, was aware that the arrest and detention of the Dujail residents was going to be followed in the normal progression of events by refusing to acknowledge their deprivation of freedom, offering information about their fate, or whereabouts either during their arrest, detention, or after that. And if the previous basis become unavailable for establishing this crime, this will lead to the unavailability of another element, which is that the refusal to acknowledge the deprivation of members from the Dujail residents of their freedom, or providing information about their fate, or whereabouts, had been upheld by the state, or by a political organization; or by its permission, support, or approval, and because it has not been proven to this court that there was refusal by one of the government agencies, or the Baath party, to acknowledge that because no one from the relatives of the Dujail residents has submitted an inquiry regarding this issue.

Based on these reasons, the court has decided to dismiss the charge he is accused of regarding this crime in accordance with article 182/b of the principals of penal law number 23 for the year 1971 as amended.

**The extent of the accused Saddam Hussein's accountability regarding the other inhumane acts, which represent a crime against humanity:**

This court has charged the accused Saddam Hussein with another charge on May 15, 2006. This charge is [based] on the other inhumane acts, [which are considered as] a crime against humanity in accordance with the article 12/1/Y of the court law.

The legal requirements for establishing the crime of the other inhumane acts that are...similar to and deliberately resulted in an extreme suffering, or a grave harm, inflicted upon the body, mental, or physical health are:

1. The perpetrator of the crime must inflict an extreme suffering, or severe harm, upon the body, mental, or physical health when he commits an inhumane act.
2. That act that must be of a similar character to any other act that is outlined in article 12/1 of the Iraqi High Criminal Tribunal.
3. The perpetrator of the crime must be aware of the realistic circumstances that prove the nature of the act.

4. The conduct must be carried out as part of an extensive, or systematic, attack directed against a civilian population.
5. The perpetrator of the crime must be aware that the conduct is part of an extensive, or systematic, attack directed against a civilian population.

This court sees that the other inhumane acts [that are considered] as a crime against humanity in the case of Dujail are represented in the uprooting of the gardens that belong to victims from the Dujail residents, the confiscation of their lands in way that violates the law, which has inflicted upon them an extreme suffering. Also, there are in this case other inhumane acts that have intertwined with the crimes against humanity, whose criminal accountability by the accused Saddam Hussien has been specified. Therefore, there is no need to [repeat that here] and we will [only] specify the accountability of the named accused for the uprooting of the gardens and the confiscation of the farmlands of the civilian population in Dujail.

On March 1, 2006, the accused Saddam Hussein acknowledged before the court that he had ordered the uprooting of the gardens in Dujail. Additionally, the majority of plaintiffs during the phases of investigation and trial have testified that their gardens had been uprooted after the failed assassination attempt on July 8, 1982. Then, those gardens and lands that belonged to them were confiscated, their homes were destroyed and their contents were stolen by the security members and the Baath party in Dujail after they were arrested, detained, and expelled to Al-Samawa desert.

Therefore, due to the acknowledgement of the accused named above, and the plaintiffs' testimonies, whose authenticity has been proven to the court, and the aerial images of Dujail before and after the uprooting, which was shot from satellite, and which show the degree of the disaster that was [inflicted] upon those gardens that have become a barren land; and [due to] the ruling that was issued by the [dissolved] revolutionary command council number 1283 on October 24, 1982, which was ratified by Saddam Hussein, in his capacity as the head of that council, which included the seizure of the farmlands and the uprooted gardens that belonged to the civilian population in Dujail. Also [due] to the ruling of the revolutionary command council number 100 that was issued on January 23, 1985, which was also ratified by the accused Saddam Hussein, which includes a similar language to the first ruling; and because these two rulings were issued illegally; especially, the law of ownership in addition to [the fact that] these two rulings have violated the interim constitution of the year 1970; and because the uprooting of the Dujail gardens has [inflicted] extreme suffering upon the residents of the area; especially, on the owners and workers [of the gardens], where the uprooting and damaging of all fruitful plants took place; and because that act is similar in nature to the coercive displacement of many of the Dujail families; and executing, imprisoning, or torturing many of them. The destruction of the sources of living...of those victims, which is an act considered like other crimes that are provisioned in article 12/1 of the tribunal law, in which the Baath party headed by the accused Saddam Hussein had targeted the Dujail residents, who have suffered the most severe harm and damages, that can hardly be [reversed], and the destruction and theft of their homes, the theft of their vehicles that belonged to the Dujail residents were all acts that are similar in nature to other acts that form a crime against humanity as stated in article 12/1 of the court law.

Affluence to humans has an equivalent value that is not less than the value of [one's own child]. God, to Whom be ascribed all perfection and majesty, says [in the Qur'an], "Wealth and children are the adornment of the life of this world." (Al-Kahaf chapter, Verse 46)

Furthermore, the criminal laws of all world countries allow the legitimate defense of man's wealth at the same degree of defending oneself. For example, look at article 42 of the penal law number 111 for the year 1969 and the well-known proverb in Iraq, which was repeated continuously by Saddam Hussein, which goes, "[Better to separate one's head than to separate him from making his living]." Therefore, the acts of uprooting the gardens and the confiscation of the farmlands and gardens, which were the source of living of those victims, are considered as part of the other inhumane acts that have a character similar to the crimes against humanity that are stipulated in article 12/1 of the court law. moreover, the accused Saddam Hussein's consciousness of the wealth value (gardens and lands); especially, to those owners and farmers, who consider these trees as their children. Thus, it has become clear to the court that the criminal intent of the accused Saddam Hussein to commit these inhumane acts has become available, which represents an international crime in accordance with the international and tribunal laws.

And since the accused Saddam Hussein was cognizant of the nature of that extensive and systematic attacks, and was aware that his conduct...was part of that, which is evident in his statements before the court on March 1, 2006 regarding the uprooting of gardens, and what was noted in the cassettes, which were heard by the court, and in one of which he said that what had taken place in Dujail was a lesson and an example that others have learned from ('Abd Al-Ghani 'Abd Al-Ghafur) during the [suppression] of the 1991 uprising.

Moreover, the accused Saddam Hussein's statement, which was mentioned above, contains [a verbiage indicating] that the uprooting of gardens in Dujail was a collective punishment for failed assassination attempt that took place on July 8, 1982. And since the uprooting of gardens was the [final block] that completes the intensive, or systematic, attack against the Dujail residents; and since the accused Saddam Hussein had directly contacted the accused Taha Yasim Ramadhan after that [assassination] attempt as soon as he returned from Dujail, and had assigned him to supervise the procedures that must be taken in [charging] the Dujail residents, and had ordered him to meet with other officials at the national council building to present and discuss those measures and take the decisions regarding that; and since it has become clear to the court that the issue of uprooting the gardens in Dujail was part of the questions that were raised and a decision regarding that had been made; [and] the accused Taha Yasin Ramadhan had formed a committee to accomplish this mission; and he personally had supervised the [process] of the uprooting, as it was noted in several of the testimonies by the plaintiffs, who have offered their statements during the investigation and trial phases. Due to all of the [above], this court has ruled that the accused Saddam Hussein is held criminally accountable for this crime (the other inhumane acts as a crime against humanity), which have resulted in the severe suffering of the Dujail residents; especially, the owners of those lands and gardens.

It would not have helped if the accused Saddam Hussein had the concerned Iraqi state agencies compensate the owners of the gardens and lands because the crime had [already] taken place, and the [reversal] of some of the damage is related to the civic responsibility and had no relation to

the criminal accountability; especially, when this act represents an international crime and because the uprooting of gardens was a squandering of the national resources, and the compensation of some [victims] is a squandering of the common wealth.

The court's decision regarding the charges that the accused Saddam Hussein is accused of:

First, it has been proven beyond reasonable doubt to this court that the accused Saddam Hussein has committed acts that correspond to the terms of article 12/1/A/D/H/O/Y of the Iraqi High Criminal Tribunal number 10 for the year 2005 and denoted by the article 15/1/2 of the same law. Therefore, [the court] has decided to convict him in accordance with these [laws]. Specifying the punishment pursuant to these [laws] is as follows:

1. Convicting the accused Saddam Hussein Al-Majid of the deliberate killing as a crime against humanity in accordance with article 12/1/A of the court law as denoted by article 15/2/B, G, D, O and article 15/4 of the same law.
2. Convicting the accused Saddam Hussein Al-Majid of the removal, or coercive displacement, of the residents as a crime against humanity in accordance with article 12/1/D of the court law and as denoted by article 15/2/B, D and article 15/4 of the same law.
3. Convicting the accused Saddam Hussein Al-Majid of the imprisonment, or extreme deprivation of [any kind] of physical freedom, which violates the basic principals of international law, as a crime against humanity in accordance with article 12/1/H of the court law and as denoted by article 15/2/B, D and article 15/4 of the same law.
4. Convicting the accused Saddam Hussein Al-Majid of the torture as a crime against humanity in accordance with article 12/1/O of the court law and as denoted by article 15/2/B, G, D and article 15/4 of the same law.
5. Convicting Saddam Hussein Al-Majid of the other inhumane acts that have a similar character to what [inflicts] an extreme suffering, or a grave harm, upon the body, or mental and physical health, as a crime against humanity in accordance to article 12/1 of the court law and as denoted in article 15/2/B, D of the same law.

All of the [above] are in conformity with article 182/A of the principals of the penal court law number 23 of the year 1971.

Second, [since] the crime of the coercive disappearance of individuals was not established as a crime against humanity due to the unavailability of one of its basic elements, this court has decided to dismiss the charge that the accused Saddam Hussein Al-Majid is accused of regarding this act and has acquitted him of it in accordance with article 182/B of the amended principals of the penal court law number 23 of the year 1971. It is a verdict that was reached by **unanimous** agreement in the **presence of the parties** and was openly announced on November 5, 2006....

Signature

Signature

Signature

Member

Member

Member

### **Conviction Resolution Against Saddam Hussein**

The court discussed at length and with objectivity the details of the accusations against Saddam Hussein Al Majeed in its session dated May 25, 2006, according to the provisions of article 12/first A,D,E,Z,P,O, article 15 with its paragraphs First-Second-Third-Fourth, of the law of the High Iraqi Criminal Tribunal, number 10, year 2005, which in general contains issuing of orders directly by you in your capacity as President of the Republic and Commander in Chief of the Armed Forces, to the military units, intelligence and security organs and in cooperation with personnel of the Ba'ath Party in Dujail and members of the Popular army to carry out a large scale systematic attack, using different weapons including aircraft and armed helicopters, and placing the small town under a military security order – by placing a security cordon around its quarters, entrances and exits. Since July 8, 1982, and subsequent days, all that was in response to firearms shot at your motorcade that passed through the town in the morning of that day, in order to impose a collective punishment on the people of the town under pretext that they were “agents of a foreign power and criminals.” This task of punishment was entrusted with chief of Intelligence branch, the accused Barzan Ibrahim al Hassan, whom you met on the first day directly after you arrived in Baghdad and authorized him to do the job. The aircraft shelling of the firing sites was under direct orders from you as Commander in Chief of the Armed Forces and those who were killed in the field as a result of aircraft shelling are (Abbas Jassim Mohammad, Rida Hittou As Sulamy, Kareem Kathim Jaafar, Imad Hassan Mahdi Jaafar Al Assady, Mohammad Abdil Jawad Az Zubaidy, Mahrouz Mohammad, Hady Al Kilany, Hashem Adnan Jassem Al Kharbatly. Sadeq Majid Humaid Al Khaz'ly, Sitar Tawfiq Yahia Al Khafaji).

Then, with a direct order from Barzan Ibrahim – authorized by you – the town was placed in a state of siege for a period of three days. Armored military units (Special Forces brigade of the Republican Guard) and the Popular army, launched a large-scale systematic attack according to an emergency plan, together with different branches of the state and the Party to encircle the town and close its entrances and exits. Barzan Ibrahim took the headquarters of the Ba'ath Party division as a tactical headquarters. Then campaigns of sudden attacks and arrests began day and night against residences of families individually and collectively on the basis of former security indications against those families and what was stated in verbal talks that there was “a security sense concerning them.” The families were so numerous that they were placed in some schools, police centers and Popular Army headquarters.

Then so-called “preliminary” investigation began with beating, kicking, and checking homes by members of the party and security apparatus under supervision of representatives of intelligence officers who came immediately to Dujail for this purpose. Then came special Mercedes buses type with dark curtains driven by people from outside the area and all families were taken directly to the intelligence headquarters in Baghdad. The number of people detained exceeded one thousand belonging to 399 families. They were placed successively in the office of investigation and interrogation in the intelligence branch. Professional intelligence officers tortured members of families individually and collectively and a number of them died under torture (with electric current directed at sensitive parts of their bodies and beaten heavily on the head, and deprived of sleeping. Families were placed in rooms “that had red walls, ceiling and

lighting.” In addition, the clothes of women and girls were taken off during torture, and torturers had sexual intercourse with them in degradation of traditions and dignity of the woman and her family.

Those who died under torture are, (Yacoub Youssef Hussein al Obaidy, Jassim Mohammad Latif As Sulamy- Saleh Mohmmad Jassem- Qassem Aly Assad As sulamy). After three weeks, the remaining detainees were sent to Abou Ghareeb jail – which is run by Intelligence – and there torture and degradation of women and girls continued and men were separated from women. As a result of torture, lack of services, high temperature and indecent treatment, another number of detainees died including (Mijbil Hussein Aziz, Yassin Hassan Hitto As Sulamy, Nofah Hassan Agha Az Zubaidy). Of the children (Hisham Fakhry Assad Al Haidary, Zainah Mohammad Hassan Al Haidary, Aly Mijbil Yacoub Al Kharbatly).

Those that remained were moved to the remote heart of the desert in Samawa governorate “Desert area of Lea” where they were detained for a period of four years. During that exhausting period they suffered from harsh life in the desert, severe depravation, suffering, bitter water. They were subjected to very harsh and torturing health and living conditions and were deprived of medicine and nutrition and another group of them died including: (Hameed Mahdi Al Khaz’ali, Abdil Wahhab Jaafar Habib Al Obaidy, Sabriyyah Abbas Ahmed Al Obaidy, Sabry Asad Abdallah Al Haidary).

The children included (Mothanna Majid Yacoub, Thabit Assad Aly Al Haidary. The bodies of those who died were eaten by hyenas and wild animals of the desert. Despite all these catastrophes, members of the regime continued to visit those wretched people, one time to take their remaining children for military service, being in military age and taking them directly to the flaring fields of battle with Iran. Another time to collect contributions from those stricken people in support of so-called “Saddam’s Qadisiyya” in the war against Iran.

At a subsequent date 148 members of the victims were referred to the Revolutionary court under presidency of the accused Awwad Hamad Al Bandar under charges of “sabotage, threatening security of the country, and being agents of a foreign power.” They were all sentenced to death including those who died under torture in the Intelligence branch, and those who died in the desert in Abu Ghraib jail including 22 who were below the legal age, for execution in violation of article 79 of the Iraqi Penal Law number 111, year 1969, the Proper Penal Trials Law number 23, year 1970, and Children Custody Law number .... Year1983, in violation of international laws and rules of human rights including paragraph 5 of the list of civil and political rights issued by the United Nations on December 16,1966 which went into effect on March 23, 1969 and was ratified by the Iraqi government in February 18, 1969. Article 6, paragraph of the List of Civil and Political Rights prohibits execution for crimes attributed to people who are less than 18 years old.

In spite of all these legal facts, you, Saddam Hussein, in your capacity as President of the Republic issued the Republican Decree 778 dated June 16, 1994, ratifying the death sentences issued against those victims. After execution, their bodies were not given to their families and they were buried in secret locations.

You also issued The Revolutionary Command Council ruling number 1283 dated October 12, 1984 confiscating and destroying agricultural land and digging out fields belonging to the families of those young victims who were executed (Mohammad Hassan Mohammad Al Haidary, Mohammad Jameel Ayoub Al Khazraji, Najm Ad Deen Abid Jawad Az Zubaidy, Ismael Abbas Al Khas'aly, Talal Yacoub Majid Al Kharbatly, Talib Jameel Ayoub Al Khazraji)

In light of these established facts under official documents issued by centers of the authority referred to among the papers of the case, and in light of minutes and sovereign decisions to carry out executions, detain bodies and destroy buildings and homes and dig out flourishing fields and agricultural land.

In your capacity as the Supreme head of the ruling Revolutionary Command Council, President of the Republic, the Commander in Chief of the Armed Forces, and in view of your high responsibility, you are directly responsible for crimes committed against those victims and their families. Also, during investigation and trial sessions you explained clearly and with a kind of arrogance that you are the sole person responsible for all these measures and orders issued in this respect by you. You explained in your testimony before the court in March 1, 2005, (Since the Commander bears responsibility why do you look for details) and you said, (It is not my habit to rely on others). And in view of your position in the regime and in issuing laws, republican decrees and sovereign orders, and in view of your position in the regime, and in government and your ability to issue republican laws and decrees and sovereign orders, and in view of your position as being responsible for issuing orders to carry out a death sentence and repercussions of such strange measures, you bear full criminal responsibility in this respect.

Regarding digging out fields and destruction of homes, signing of orders to this effect was not denied since you said, "Opening fire on the procession of the President of the Republic requires that the Revolutionary Command Council to take action." Concerning digging out, destruction of homes and your role in this action, you explained in front of the court "If Taha Yassin said that then he would be saying the truth," in confirmation of what he did regarding facilitating the process of digging out at personal and direct orders from you.

And you said in front of the court regarding the families detained in jail and in Lea concentration desert camp, "these families were moved in order to be separated from each other."

In light of these facts, considering the papers and complications of the situation since the visit of Saddam Hussein to Dujail on July 8, 1982, and in light of documents that were produced and ratified in minutes of court sessions, and in light of the accused Saddam Hussein sayings under interrogation and saying read by the accused Saddam Hussein in form of "challenge" and "rejoicing" at the mishap of the victims and their families in a language of superiority, and since the accused Saddam Hussein was the actual President who is feared by his subordinates, which leaves no doubt that the military forces and intelligence forces had definitely moved from Baghdad to Dujail at direct orders from President of the Republic Saddam Hussein and under supervision of the accused Barzan Ibrahim in light of his sayings under investigation and trial.

Firing of bullets by the military forces and bombings of aircraft was under direct orders from him "that is the President of the Republic" Saddam Hussein.



On the basis of the aforesaid and in light of the material and established facts on the ground in the field, and according to sovereign decisions and official statements and after scrutinizing papers of the case and noting facts that were discussed before the court and according to official documents that were produced and referred to by parties to the case and which were viewed and scrutinized by the court, it is found that the attack in Dujail on July 8, 1982 and later on was aimed in the first place at civilian population since the victims are children of families that had no military or even organizational connects with the attempt to assassinate Saddam Hussein on July 8, 1982. Even saying that it was an act to "discipline the attackers is untrue because "disciplinary actions" exceeded by far those attackers. According to official statements, those who died in the fields by aircraft shelling were nine, and their names were mentioned in the indictment but the large number of the civilian population at whom the attack was directed included all families of the small town.

The number of the detained amounted initially to a thousand people, more than one tenth of the whole population which is ten thousand. In the final analysis, more than 500 of the elderly, women and even babies were killed, and according to intelligence records, the number of detained people had finally reached 399 and the number of killed 143, that is more than five percent of the number of population of the small town, in addition to material damage which the population suffered as a "collective punishment" for the attempt including destruction of homes, and digging out of fields surrounding the agricultural town a thing which harmed the whole families which were deprived of their property and means of living in the future. It was found, as a result of analyzing and scrutinizing of the attack and blockade against the town and its inhabitants that it was on a large scale since the town became under the control of the regular military forces for days and weeks and large scale military and security blockade was imposed against it, as if war was declared "with every scale of war declaration and state of emergency." Military units were there in full numbers, including Republican Guard forces fully armed and supported with military aircraft and helicopters, and filling the town with individuals from the Intelligence branch - headed by the accused Barzan Ibrahim al Hassan- chief of the service, and putting members of the Popular Army and the Party, security and local police units under his command in a state of emergency. Detachments were deployed in the streets and narrow lanes of the town and its entrances and exists were cut off in order to arrest whole members of families, and even calling in the remaining members of those families whether they were in the war front outside Dujail or employed in certain branches of the state outside the town, as it is shown and explained by names in the details of this indictment. In the end, groups of families from the town were executed, tortured and transferred forcefully outside Dujail for years until an amnesty decision was issued regarding the remainder of these stricken families on June 8, 1986.

Regarding the application of severe punishment against the accused and killing a large number of them during detention as it is explained, and the death of other members of families as a result of torture, subjugation and deprivation of health services and means of living necessary to prolong life, and since these actions against the people of Dujail were part of a large scale organized and systematic measure that continued for several years, and then an expanded engineering project was organized affecting properties and homes and destruction of fields calling the digging out operation (town development) plan, and issuing of sovereign decisions by the "President of the Republic" concerning re-registration of fields and agricultural land within the borders of the

towns of Dujail and Bald in the name of the state under a resolution by the Revolutionary Command Council number 1283 dated October 12, 1984.

On the basis of the aforesaid and in light of established facts, the criminal body in this court finds unanimously that the former regime with its head Saddam Hussein and its team the President and others, Barzan Ibrahim, Taha Yassin Ramadan have committed a series of crimes that lie within the provisions of article 12 of the law of the High Iraqi Criminal Tribunal number 10, year 2005 as a large scale systematic and programmed attack with the aim of punishment and intimidation.

Since the accused Saddam Hussein, in view of his influential position as the force that is in actual dominance of sources of power, and in view of the responsibility which he exercised as a President and Commander in Chief, and as his followers called him "leader of the people," he bears primary criminal responsibility for the crimes that were committed in Dujail, beginning with his individual responsibility as a commanding person and from the point of his responsibility as a President responsible for the acts of his subordinates as it is stated in applicable laws that are in effect.

#### IHT Part 4 Translation

*(...continued from IHT Part 3)*

#### **Verdict Convicting Saddam Hussein in the "Dujail" Incident**

Under Penal Code No. 111 of 1969, whereas Saddam Hussein held the position of the supreme leader of the state and commander in chief of the armed forces in a pervasive regime in which he held exclusive power in the political authority, party authority, and administration of the country; whereas all important decisions were issued directly by him or subject to his approval as the dreaded one with the "strong security sense" as he was described by a member of his retinue; and whereas he was interrogated about his approval of the judgments issued by the Revolutionary Court against 147 citizens from the population of Dujail, "the judgment was issued, and nothing in the constitution requires the President of the Republic to determine whether the court has observed the proper procedures in discharging its judicial duties before approving the death penalty."

The accused knew his authorities and the limits of his subordinates' authority when he stated during the interrogation and trial "regarding the movement of units," i.e., army units, in his capacity as general commander of the armed forces, that "the armed forces generally may move to execute security missions..." in response to a question regarding the movement of Republican Guard forces to the town of Dujail on the day of the incident, 8 July 1982.

Saddam Hussein responded to a question posed by the interrogator regarding the Revolutionary Court's unrestricted authority to appeal a given decision: "Every one of these trial[s] were initiated by law, this law. The authorities were aware of the type of appeal that must be filed." Regarding his approval of the death sentences, Saddam Hussein responded, "Approval means that I have the necessary constitutional authority to cancel and amend sentences to thereby 'pardon' individuals who have been convicted by the court and sentenced to death." Thus, based

on this response, Saddam Hussein had the authority to refrain from approving the execution of the death verdicts issued by the Revolutionary Court against 148 persons from Dujail. However, he knowingly and with design summarily approved the execution of the death sentences, and a republican decree concerning the wholesale execution of the death sentences was issued.

The accused Saddam Hussein was the commander in chief of the armed forces. In this capacity, he assigned his associate, Hussein Kamil, to investigate violations of several procedures in the Intelligence Service. During the investigation, Hussein Kamil submitted an explanation regarding the killing operations, including the killing and execution of four persons without the issuance of a sentence in this regard by the person in charge of executing the death penalty. Nonetheless, no appropriate measures were taken, and he [Saddam Hussein] remained silent about the matter.

[Stamp:] Iraqi Higher Criminal Court - Iraqi High Tribunal - Office of the President of the Iraqi Higher Criminal Court [end of stamp]

However, in the same context, when it was stated that several party members did not participate in the identification of suspects, or "criminals" as they are called in the report, "he [Saddam Hussein] stated, in his own handwriting, that he is seeking an explanation from the minister of interior regarding the motives for the behavior of the security [personnel] and ascertainment of the names of the party elements that did not identify criminals."

This indicates resolutely that he [Saddam Hussein] was aware of the measures taken regarding the people of Dujail and was harsh in his treatment of these people and the members of these families, whom he called, in his handwriting, "criminals," even before an investigation was conducted in this regard. This indicates and moreover confirms clearly that he was biased against the population of Dujail and that he had prior knowledge of the harsh, oppressive revenge measures taken against individuals and families of Dujail. Accordingly, in the same context, he quickly agreed to the authorization and execution of the judgments issued by the Revolutionary Court concerning 148 victims from Dujail in Republican Decree No. 778 of 11 June 1984. The Intelligence Service attached this republican decree to the death sentence [sent] to the Adult Reform Department's Long-Term Sentence Section for immediate execution of the death sentences.

Regarding the forced displacement of the population of Dujail, the accused Saddam Hussein, holder of supreme authority and dreaded by everyone, planned the deportation of families from Dujail after arrests, imprisonment, and collective executions. This is indicated by the fact that these families remained in the desert until Saddam Hussein issued a decree pardoning them was issued on 18 July 1984, and they were informed officially of the decree, after which they returned to their localities.

The accused had prior knowledge of the removal of the orchards of Dujail, which caused psychological suffering, harsh economic effects, and damage to the economy of the area. Another piece of evidence, Revolutionary Command Council Decree No. 1283 of 14 October 1998, indicates that the accused ordered the registration of the orchards and land in Dujail [and]

al-Balad.<sup>1</sup> Regarding the removal of orchards in the village, in the 1 March 2006 session, a compact disk was presented to the court. The disk contains a voice recording of the meeting between the accused, Saddam Hussein and ‘Abd-al-Ghani ‘Abd-al-Ghafur, a member of the Regional Command. Saddam Hussein states in the recording that “he borrowed the removal of orchards in Dujail from the removal of forests in Basra.” This is indicated in the case documents and in the judgment.

Last but not least, the Intelligence Service command submitted—in Letter No. 1220 of the Office of the Head of the Intelligence Service of 21 May 1982—the names of six Intelligence Service staff members to the Office of the Secretariat (Saddam Hussein’s office) [requesting that] honor and favor be granted them “in appreciation for the brave stances demonstrated by Intelligence Service members during their counteraction against elements of the mercenary Da’wah Party in the Dujail area and their effective pursuit, besieging, and arrest of them.”

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Consequently, Decree No. 982 dated 31 July 1982, signed by Saddam Hussein, was issued to grant these six persons one year of seniority as a bonus and promotion.

The orchards that were removed were filled with different types of fruit trees, which were the backbone of Dujail’s economy. The destruction of the orchards destroyed the town’s infrastructure. On 11 March 2005, Saddam Hussein stated that he ordered the destruction of the orchards “to punish the citizens of Dujail” following an attempt to assassinate him.” In other words, he had prior knowledge of the removal of the orchards that so damaged the population of Dujail.

Accordingly, based on the material facts, written evidence, and the statements and theses put forth by Saddam Hussein during the interrogation sessions and trial; based on the documents and official decrees issued by him personally with his signature; given Saddam Hussein’s status as the supreme authority and dreaded one, which rules out any action by his subordinates without direct, specific orders from him; given that he was mindful and apprised of what was happening around him; given that everyone carried out his orders and directives; given that the Dujail incident and the catastrophes and tragedy resulting therefrom were a natural result of the firing of bullets at his personal procession—accordingly, based on the facts, material evidence, and official documents mentioned above, the court ruled unanimously to convict the accused Saddam Hussein for the charge leveled against him under Article 12(I)a, d, e, f, and j, (II), (III), and (IV) of Iraqi Higher Criminal Court Law No. 110 of 2005 with reference to Article 15 thereof, paragraphs I, II, III, and IV and Article 406, paragraph 1(a) of Iraqi Penal Code No. 111 of 1969, and the sentencing of Saddam Hussein thereunder.

The decision was issued by a consensus and rendered publicly on 5 November 2006.

[Signature]

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<sup>1</sup> [The decree directs that land in Dujail and Balad be retitled to the Ministry of Agriculture (Source: [http://www.law.cwru.edu/saddamtrial/entry.asp?entry\\_id=95](http://www.law.cwru.edu/saddamtrial/entry.asp?entry_id=95)).]

Member

[Signature]

Judge

Ra'uf Rashid

President, Higher Criminal Court

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Higher Criminal Court [end of stamp]

## **The Accused Barzan Ibrahim al-Hasan al-Tikriti**

The charges made against the accused Barzan Ibrahim:

On 15 May 2005, this court charged the accused Barzan Ibrahim with committing a number of crimes against humanity under Article 12(I)a, d, e, f, i, and j of Iraqi Higher Criminal Court Law No. 10 of 2005. These crimes include the following:

1. Intentional killing.
2. Deportation or the forceful transfer of a population.
3. Imprisonment, or harsh denial in any other way of physical freedom, in violation of the basic rules of international law.
4. Torture.
5. Forced concealment of persons.
6. Other inhumane acts of a similar nature that caused intentional harsh suffering or serious damage to the body or mental or physical health.

These charges were made with reference to Article 15(I),(II), (III), and (IV) of the Higher Criminal Court Law.

### **Summary of the Statements of the Complainants and Witnesses Against the Accused Barzan Ibrahim:**

Among the statements made by the witness Waddah al-Shaykh during the examination on 25 January 2001 are the following paragraphs:

“On 8 July 1982, when I was in my office, the accused Barzan Ibrahim al-Tikriti telephoned me and requested that I go to his office in the Intelligence Service at al-Mansur, where the Intelligence Service was located at that time. When I went to his office, I noticed that the atmosphere was charged, and things seemed abnormal there. When I entered the secretary’s room, before entering the room of the accused (Barzan), the accused came out to us and met us in the secretary’s room. There were no more than 12 persons present there. Of those present, I remember Muhammad ‘Ulaywi; Hasib Sabir, who used to hold the position of deputy director-general for counter espionage; Ali Mahmud Hashim, who used to work in the Secret Service Corps; Khalil Ibrahim Mahmud, who I believe held the position of director of security or something else; and Mani’ ‘Abd-al-Rashid, who served as the director of security of the department. The accused Barzan, who held the position of chief, General Intelligence Service, informed us that the accused Saddam Hussein, who held the position of president of the republic, had been subject to a failed assassination attempt in the Dujail area, which is 60-65 km north of Baghdad. Barzan ordered us to move immediately to the Dujail area and investigate the matter. He also ordered the protection unit to move to the same location. We indeed moved to the Dujail

area. We adopted the party division [headquarters] as an operating location. It was at the entrance to the Dujail area. We all went without exception and began the investigation.

“At around 7 pm, specifically at sunset, the accused Barzan and Sa’dun Shakir, who held the position of minister of interior, were present at the party headquarters in the party division, which was our headquarters. At this time, a large number of people, officials from the area of the village al-Kazimiyah, and Dujail came to us. All of them settled down in the garden of the party division. As the lead person in the investigation, I asked the accused Barzan and Sa’dun Shakir, who was standing in the same headquarters, whether any person had been hit by a bullet in the attempted assassination of the accused Saddam Hussein. He responded that no one was hit, and that the procession was not subjected to any shooting. In addition, through my survey of the situation, and my question regarding whether one of the persons carrying out [the assassination attempt] were on top of the orchard wall, I learned that they were behind the wall, and that empty cartridges of rounds from a Kalashnikov rifle were inside the orchard wall, which is to say inside the orchard, not outside the orchard. Also, the distance between the orchard wall and the public road does not exceed 25-30 meters. The height of the wall ranges up to 2 meters. By virtue of my work, during the investigation, I found 12-15 empty Kalashnikov cartridges. The accused Barzan informed me that no person or car had been hit.

“As the commander of operations in the area, Barzan ordered police, party, and security personnel to arrest suspects and their families, including women and children. Also present at the time was a Republican Guard unit, a special forces brigade. I do not remember the unit number. The Intelligence Service had not participated up until that moment, because there were only a few intelligence personnel, numbering 10-12. The executing agencies arrested women and children no older than 12. The investigators thought that if there had been an assassination operation, the perpetrators would not have returned to their houses. However, the persons arrested were old men and adolescents no older than 12. I informed the accused Barzan, who was commanding operation in the area, that these were children, old people, and women who had no connection to the incident. I asked the accused Barzan what I should do with them, as there were many of them. He requested that I send them to Baghdad. Because the number was so great, I contacted those working with us in the Intelligence Service’s Hakimiyah<sup>2</sup> Building, located near the Passports Directorate and near the House of Justice in al-Karadah. I asked them to free a place to absorb the persons being sent from Dujail and to send those located in the Hakimiyah Building to sectors subordinate to the intelligence director in Abu Ghraib Prison. Large jumbo vehicles were in fact sent. Each one accommodated approximately 50 passengers. The accused Barzan Ibrahim stood at the door of the hall of the party division. We began to take the people out and put them in the vehicles. The accused Barzan ordered that the persons be put on the vehicles. He released many of the detainees. The release was conducted based on appearance! This situation continued for three days. The transport of families and individuals continued until the second day. On the third day, no person was transported. The units, whether from the Army, protection unit, police, security, or the Popular Army, who were present along with the accused Samir al-Shaykhli, all received orders from the accused Barzan, who was commanding the operation. The communication and orders were verbal, because Barzan had

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<sup>2</sup> [Translator’s note: “Hakimiyah,” which means “jurisdiction,” refers to the building that housed the Investigation and Interrogation Department of the disbanded Office of the Head of the Intelligence Service. (Source: [http://www.law.case.edu/saddamtrial/documents/20060515\\_indictment\\_trans\\_saddam\\_Hussein.pdf](http://www.law.case.edu/saddamtrial/documents/20060515_indictment_trans_saddam_Hussein.pdf).)]

settled into the party division and was issuing orders verbally and directly to this unit. Because the area was very small, the orders were direct. I did not hear the orders issued to the accused Barzan. However, I gathered that they were issued directly by the accused Saddam. On the evening of the first day, when we were present at the headquarters of the party division, Barzan asked me for an initial report on the reasons for the occurrence of this incident. I in fact wrote a report that covered the history of the area. I informed him that there are families that hate the party. I submitted a two or three-page report the next day. Hussein Kamil came and asked him [Barzan] about the report. I gave it to him. Hussein Kamil was working at the time as an escort for the accused Saddam Hussein (i.e., the report was sent to Saddam Hussein). In addition, the accused Barzan ordered that anyone capable of bearing an arm be referred to the court.

“We subsequently went to the Intelligence Service in Baghdad and began the interrogation process. Almost all of the persons present, who have been classified according to family, were interrogated. The statements of two or three persons from each family were recorded. The interrogations concerned not just the Dujail case, but many other acts as well.

“The interrogation of the inhabitants of Dujail continued, though it had slacked off. We sent some of the inhabitants of Dujail to the prison at Abu Ghurayb. Some of the prisoners were young, including the witness....., who was small at the time. At the time, a committee was formed under the chairmanship of the accused Taha Yasin. The department was represented on the committee by Muhammad ‘Ulaywi, who was the director of the Intelligence Service office for handling the Dujail matter, which was quite major. Among the recommendations submitted by the accused Taha Yasin was the cutting down of trees and orchards 1-3 km in each direction. This recommendation was carried out based on the orders of the accused Taha Yasin. The orchards and trees were cut down in the Dujail area.

“This committee decided to imprison the detainees in the area of Nuqrat al-Salman, south of al-Samawah, in a camp prepared for them.

“To be specific, in February 1984, members of families of Dujail were detained from 1982 until I left the Hakimiyah in February 1984. They were sent to a camp that had been prepared for them. The committee chaired by the accused Taha Yasin ordered this. I learned that the accused Saddam Hussein issued a directive to refer anyone capable of bearing a weapon to the courts. This was the same order issued by Barzan when I was in the Dujail area in 1982. I believe that the order was written, though I did not see it.

“Barzan Ibrahim, who commanded the operation at Dujail, left his job as Intelligence Service chief in February 1983.”

The following is from the statements made by the witness Waddah al-Shaykh. Three judges of the first panel of the Iraqi Higher Criminal Court recorded these statements on 23 October 2005 at the military hospital at Abu Ghraib. The statements were recited in court during the trial on 28 October 2005.

“On the date of the incident, 8 July 1982, I was the director of interrogation and investigation in the Intelligence Service headed by the accused Barzan at the time. He informed me that the



procession of the accused Saddam Hussein had been subjected to gunfire in the Dujail area during his visit there as president of the republic at the time. I went to Dujail accompanied by a number of directors in the Intelligence Service, including 'Ali Mahmud, Hussein Muhsin, Muhammad Sab'awi, and Mani' 'Abd-al-Rashid. We arrived at the [Ba'th] party division [headquarters] there. The party official was Ahmad Ibrahim, who is also known as Abu-Nabil. The investigations into the incident commenced. I went to the site, which was near the court in Dujail. It consists of a mud wall. I believe that the persons who fired were behind this wall. They numbered between 7 and 12 persons. I inferred this based on the traces left by their rifle magazines on the wall. The wall was of such a height that one can assumed that a person standing behind the wall could raise his head to see on the other side of the wall. When I went, I saw that other governmental forces, army, party, and contingency forces were present. Each group had an estimated 100-150 persons. They were present in Dujail with a Republican Guard special forces brigade. These groups included contingency, security, intelligence, and party forces. Sometime after my arrival, on the same date as the incident, the accused Barzan went to the party division headquarters with the former minister of interior, Sa'dun Shakir, whose role was merely to be present, as he remained silent.

"The forces present there received information by the security and party agencies. Barzan then ordered them to deploy in the form of detachments in different areas of the city. They began to arrest citizens without focusing on a specific sect. They arrested men and women of different ages, including entire families of women, children, old people, and youths, including a number of deserters from military service, totaling around 400 persons. They were detained at the party division headquarters and the security headquarters at Dujail. There was no Intelligence Service headquarters at Dujail. At that time, I learned that several persons had been killed before my arrival in Dujail. Among them were 1-3 persons who were killed in the orchards. According to what I heard, they were killed by personnel protecting the procession after the shooting incident. The detainees were then transferred to the Intelligence Service's Hakimiyah Building located in Baghdad. They were transported in Mercedes vehicles, each accommodating 50 passengers. These vehicles belonged to the Intelligence Service. On the day after the incident, I submitted a report to the accused Barzan, which included preliminary details on the incident and information on the inhabitants of Dujail. When I submitted the report to the accused Barzan, he signed it and then returned it to his superior, Hussein [Kamil], who was the personal escort of the accused Saddam Hussein at that time, who had come to Dujail on the day following the incident."

The witness Waddah al-Shaykh continued:

"The detainees were interrogated at the Hakimiyah Building by our officers, who included Faysal Shahin, Hikmat 'Abd-al-Wahhab, Kamil Hussein, Jabbar Shihab, Da'ud Salim Iyad Hadi, and the examining magistrate Sadiq Salim, whose role was limited to supervising these officers. I also interviewed the detainees when I inspected the site. On the day following the incident, the families, including civilian farmers and others, were transferred to the section set aside for the Intelligence Service in Abu Ghraib Prison. This occurred in January 1983. The accused Barzan, who was until that time the chief of the Intelligence Service, requested that I transfer the detainees to the governorate of al-Muthanna, where they were delivered to personnel of the al-Muthanna Security Directorate. I do not know what happened to them subsequently. I remained in my position as the director of investigation and interrogation until the end of January 1984."

Then, the witness Waddah al-Shaykh explained the following:

“During the period I spent in the Intelligence Service, many of the detainees were tried. I handed over everything to the Hakimiyah [Investigation and Interrogation Department]. This is recorded in the delivery and receipt record.”

In response to a question directed by the court, [the witness responded:] “None of the detainees died when I was present there, and I did not observe any of them being subjected to physical torture. If there was any individual action, I was not aware of it, and it was not based on orders from me. I did not receive any orders from Barzan or any other person to torture the detainees. There were two officers, ‘Abd-Sharif and Shihab, whose father’s name I do not remember, whom I observed treating the detainees abusively and insulting them. I therefore requested that the two be transferred to the Residency Directorate [subordinate to the interior ministry].” After investigating the site of the incident, the witness Waddah al-Shaykh stressed no more than 12 persons could have participated in the shooting. He said, “I emphasized this in my report which I submitted to the accused Barzan. I do not know why such a large number of citizens was arrested.” In response to a question from the public prosecutor, he responded that “a number of Intelligence Service officers were rewarded by the former president of the republic, the accused Saddam Hussein, who granted them first-class seniority of one year in appreciation for their efforts in investigating the Dujail incident, and I was among these officers.”

In response to another question from the public prosecution, he responded, “Barzan issued orders directly to us regarding the investigations that were conducted, as I mentioned earlier. Most likely, the search of the orchards and the deployment of forces in the area were based on orders from the accused Barzan. The witness also said, “I heard from Judge ‘Abd-al-‘Aziz Dawud, who held the position of presidential palace judge at the time, that Saddam Hussein had issued a decree to refer whoever could bear an arm to the court. Barzan asked me to refer to the court any person [capable of] bearing an arm at the time of the incident and any person connected to the incident. All of this was carried out in coordination with the party and security. However, I do not remember details concerning the plan of the committee headed by Taha Yasin Ramadan. I learned recently that the detained families sent to the governorate of al-Muthanna were released three or more years later, because I was imprisoned at that time.” In response [to a question] regarding the people who were executed, he said, “They were executed despite their innocence.” Then, he said that he handed over responsibility for the Hakimiyah [Investigation and Interrogation Department] after he was transferred to the Intelligence Service Security Department to an Intelligence Service officer named Khalil Ibrahim Mahmud on 28 January 1984.

Regarding the letters to which the public prosecutor referred, which were [written] in 1987, and which state that a number of detainees died during interrogation, he said, “The tension in the relationship between Barzan and Fadil Al-Barrak, who was then director of security, was the reason why he wrote that information, which is contained in those reports. I doubt its credibility, because, during my presence, no one was tortured.” In response to a question from the court, he responded, “On the day of the incident or the day following the incident, we arrested a person who had been hit in the orchards and was among those who shot at the procession of cars. His

name was Hussein Hasan al-Hajj Muhammad. He is from Dujail. When he was arrested, he confessed to having assembled individuals, whom he did not know, except for one person, namely, one of the sons of Kazim Ja'far, to fire at the procession." Then, the witness Waddah al-Shaykh, stated that "a non-military helicopter was exposed to gunfire from the orchards, and the pilot was hit." In response to another question, he stated, "Most of those who were referred to the Revolutionary Court denied any connection to the shooting or to the supply of weapons, and I do not know why they were brought before the court."

The complainant, Ahmad Hasan Muhammad Dujaili, stated, in his testimony before the court on 5 December 2006 [sic], that on 8 July 1982, 10 minutes after the accused Saddam Hussein, who was then president of the republic, exited the house of Raddam al-Hatim, he heard, with others, the sound of rounds being fired. He then saw aircraft bombing the orchards. Then, a curfew was imposed in the area. The daughter of his sister (Amnah Jabbar Mustafa) was hit by random gunfire. Mass arrests were made. Citizens were arrested collectively and randomly. They included a 65-year-old man. On the day after the incident, the arrests continued. Elements from the Intelligence Service arrested women and children and detained them at the headquarters of the party division, where he saw nine bodies of persons whose names he remembers. These names are stated in the indictment against the accused Saddam Hussein and in the indictment against the accused Barzan Ibrahim.

The witness Ahmad Hasan Muhammad states that he saw the accused Barzan on the next day wearing jeans and red shoes, as he was putting on his sunglasses, had a goatee beard and was wearing armor. He also witnessed a number of security and party officials, including Taha Yasin Ramadan, on the afternoon of 9 July 1982 as he was being placed in a vehicle with 50 detainees and transported to the Hakimiyah Building of the Intelligence Service in Baghdad, where they were debarked at the garage of the building and called traitors. Men and women were beaten. About 500 persons were detained there, including women and children.

The witness Ahmad Hasan stated that he was in the hall, where he was detained with his father and brothers (Muhammad, Salim, Mahmud, Muhsin 'Ali, Jawad, and Ibrahim), his mother (Majudah Shakir Mahmud), and his sisters (Najdiyah, Su'ad, Zaynab, Asma' and Layla).

The witness went on to describe the types of torture to which the detainees, including the women, were subjected and the types of bad, meager food they gave them. He remembers the names of the detainees who were tortured. They included Qasim 'Abd Ali al-'Ubaydi and Qasim 'Ali Asad. He also remembers the persons who were killed during torture. They included Jasim Muhammad Latif and Hussein Ya'qub Majid, whose arms and legs were broken. The witness said, "They brought Salih Muhammad Jasim, a teacher born in 1950, and shot him in his leg during the interrogation. They also tortured Qasim 'Abd 'Ali al-'Ubaydi. For this purpose, they burned a rubber hose and poured it over his body. All of this was during the torture. Jasim Muhammad Latif also died during torture, because he had deserted from military service. They shot and injured Qasim 'Ali Asad during the interrogation. They tortured Hussein Ya'qub Majid, breaking his arms and legs.

The detainees told the interrogators that they were prepared to sign anything, so that their women or sisters would be left alone. "After about 70 days in the Intelligence Service, we were sent to

Abu Ghraib Prison. The situation there was not as bad as at the Intelligence Service. However, the guards beat us constantly. On the night they forcibly sent us for medical treatment, we were standing in lines. When one of us complained of water on a part of his body, such as his head for example, they beat that place specifically.” At Abu Ghraib Prison, the complainant, Ahmad Hasan, also known as Mujbil Hasan ‘Aziz al-Marsumi, who was detained with them, observed the guard beating that person on the head, and the person died immediately from the beating. His age at that time was 65. He does not know the fate of the killed person’s corpse. The witness states that the guards at Abu Ghraib Prison tortured them in front of the women. The guards fired rounds at night to frighten them. They placed the children in quarantine. The witness remembers the death of a child, Hisham Fakhri Sabri Asad, born 6 June 1982, whose mother requested milk from the prison guard, so that he would not die. The guard told her to give him the child through the window if the child died. When the child died, she gave the child to the guard, who threw him into a trash basket. The witness remembers cases of pregnant women giving birth and miscarrying in those poor conditions at Abu Ghraib Prison. The guards permitted the detainees to sleep from 3 a.m. until 6 a.m. (three hours).

The complainant, Ahmad Hasan, went on to detail the torture, killing, and poor conditions at Abu Ghraib Prison and in the special section in Lea Prison in the desert to which they were transferred. He was transferred to Lea Prison on 18 June 1984. He remembers that he did not know the fate of his seven siblings and does not know to this day where they are buried. However, after the regime fell, he learned that they had been executed from a document located at the Association of Released Prisoners.

The complainant Jawad ‘Abd-al-‘Aziz Jawad stated the following in his testimony before the court on 5 December 2005: “After the procession of the accused Saddam Hussein reached al-Ibrahimiyyah School, I noticed gunshot in all directions. The protection personnel were heavily armed. I observed the presence of cars filled with machine guns. They began to fire at the people. A curfew was imposed in the area. This was in the afternoon. The army began to pour in densely. They carried out a broad attack. I saw helicopters bombing the area. Many citizens were killed, including ‘Uqayl ‘Ali Al-Khayyat al-Makdami and Jamil al-Marsumi. They were killed as a result of the helicopter bombardment. They were members of the Ba’th Party. They were considered martyrs at the time. This indicates the random nature of the firing. The helicopters bombardment by lasted for four days. I saw the army firing in all directions from atop the walls of the orchards, and I observed the arrest of many young people.”

The public prosecutor asked the complainant if he recalled from his statement given in the initial interrogation whether he saw the accused Barzan with a sniping [rifle] in his hand, firing randomly. He responded, “my father saw him, not me.” The complainant remembers that three of his siblings, Faris, Masir, and Qays, were executed, even though they had no connection to the incident and did not belong to any political entity. On 6 December 2005, the court heard the statements of the protected complainant A, including the following: “On the day of the incident, when we were fasting in the month of Ramadan, we heard noise. We knew that Saddam had come to Dujail. We went out to see him. A short time later, we saw a large military force and planes bombing the area, causing citizens to flee. The security forces arrested citizens and transported them in darkened vehicles. They were arrested. Among the arrestees was an elderly woman. They were lead to the party division accompanied by a party official, Abu-Nabil. The

party division was filled with families. Then, vehicles with cages came and took them to the Intelligence Service. They arrested those located in the direction of the wall. Then, they detained them in hall no. 58. There were about 85 families. The place was crowded. They slept in shifts. The water was very hot as it was July. The witness remembers the following: “They took my mother for interrogation. They placed my brother in front of her. She was 60 years old. My brother sustained a head injury due to the intensity of the torture. Then they brought me for interrogation. They tortured me with electricity. Then, they brought me up to the hall the next day and brought me down again for interrogation.”

The witness continues, mentioning details of the torture, insults, and abuse, including that she was compelled to take off her clothes and was suspended by her hands. Electricity was also used in the torture. Her legs were lifted up to strike her, and she was placed in a red room. She remembers that the elderly and children were subsequently transported to Abu Ghraib Prison, and the young girls were kept in the Intelligence Service until the end of the interrogation. Then, they sent them to Abu Ghraib Prison. There, the suffering continued. The place was dirty, and their heads and bodies were filled with lice. The water was very cold in the winter. They tortured the men in front of the women. They did not permit them to remain in the bathrooms for more than five minutes. Her sister was also beaten with rubber hoses. Then, she remembers that they were later transported to the Security Department in al-Samawah and from there to the desert Lea Prison, where she learned that her maternal aunt, Sabriyah, had died there. The witness describes the poor conditions and lack of food at the Lea desert complex. The court asked who beat her. The complainant responded: I do not know, because I was blindfolded. In another question, she was asked about the type of assault. She responded: The most repulsive types of assault. Can you imagine that they raised a woman’s legs and removed her clothes. They tortured us with electricity and beatings. They told me, “Praise your God, you are in the Intelligence Service. Were you in General Security, no girl would remain, and most of the girls did not marry because of the effects of the torture (an indirect reference to the fact that they were raped, resulting in the loss of their virginity).

This complainant stated that four of her brothers, who are..... were executed. The second complainant, whom the court heard on 6 December 2005, stated that on the day after the Dujail incident, she and her family, comprising her husband and 4 daughters, ....., and their six sons were arrested. “Then, they transported us to the Intelligence Service, and we were detained in a hall. I saw the rest of my relatives, all of them, detained in the hall. They gave us very hot water. It was from a boiler. They took the young women for interrogation. They beat them and insulted them. They took pictures of us. We stayed in the Intelligence Service for about one month. Then, they transported us to Abu Ghraib Prison and placed us with other detainees. We were about 30 persons in a very small room with a length of about 3 m and a width of 1 m. We were a total of four families. The room was too small for us. The small girls slept in the bathrooms. We stayed at Abu Ghraib Prison for one year. Then, they transported us to the desert near Saudi Arabia, where we remained for three years at a prison is located in the governorate of al-Samawah. My four daughters were with me. My husband and six sons were not with us. I have not found out their fate since they transported us from the Intelligence Service to Abu Ghraib Prison. I am petitioning to submit a complaint against Saddam Hussein, Barzan Ibrahim, the security officer of Dujail, who is named Abu-Ahmad, and against Majid Hamid Nasir and ‘Umran Hasan ‘Umran, as these persons detained us.”

On 6 December 2005, the court also heard the statements of another complainant, complainant C. He said, among other things, that he was arrested with his family, comprising his father, mother, and sisters, on the day following the incident. They took them to the party division in Dujail. They remained there for about an hour. Other detainees were with them. Then, vehicles were brought to transport them to the Hakimiyah Building of the Intelligence Service. The witness explains the types of torture to which his sister was subjected, including the use of electric shock, even though she was only 12 years old at the time. His sister was young. The interrogation of them continued from 11 am until 2 am, without food. After remaining for 19 days in the Intelligence Service, they were transported to Abu Ghraib Prison, where they remained for 11 months, during which they were tortured. Women, children, and men were with them there. They required the men to bark like dogs in front of the women, and they beat them with rubber hoses.

He states that he witnessed the guards beating the head of 'Amir Dahham al-Sattan, who developed epilepsy as a result of being struck by a cable. This occurred in front of him, and he was an eyewitness to it. They tortured another person named Ibrahim Salih Kazim. He went insane due to the torture. They took the children out in front of their mothers and tortured them. They compelled them to wake up early in the morning after going to sleep at 3 am. He states that the children died as a result of malnutrition and lack of medicine. The pregnant women miscarried. He also states that his father was killed at Abu Ghraib Prison as a result of being beaten and tortured. He learned of his father's death at Lea Prison in the desert from a number of persons who were brought there later Abu Ghraib Prison. He said that his brother was brought by a soldier from his military unit. They began to torture him, even though he was not in Dujail on the day of the incident but rather in his military unit. He then states that they were transported to the desert of al-Samawah. The witness goes on to state details of the miserable health and living conditions at the Lea compound and the death of a number of detainees there. He petitioned to submit a complaint against Saddam Hussein, Barzan Ibrahim, etc.

The accused Barzan asked the complainant if he spent a long time in the prison and whether he saw him [Barzan]. The complainant responded that he had seen him at Dujail, but that he had been blindfolded at the Intelligence Service. He saw him at Dujail, at the party headquarters, on the day after the incident.

Two other complainants were heard by the court on 6 December 2005. Witness E stated information similar to the information mentioned by witness C, whose statements were previously quoted in full.

On 7 December 2005, complainant no. 1 gave testimony before the court. He testified that he and his family were arrested after the failed assassination attempt. He was taken to the party headquarters at Dujail to be presented to the accused Barzan, who interrogated all of the detainees. The complainant reported that he was detained in a red room for two or three days in the prison of the Intelligence Service's Hakimiyah Building. Before that, he was detained in another room containing five or six persons whose hands were bound, and they were deprived of water to satisfy their needs for a period of four or five days. Then, he was transferred to chamber 69 inside the headquarters of the Hakimiyah Building subordinate to the Intelligence Service.

Chamber 69 is where he was tortured continuously for 70 days. Then, he was sent to Abu Ghraib Prison. He testified that a detainees who requested food was beaten and kicked. The complainant added that, at Abu Ghraib Prison, he was detained with members of his family. There, he was prevented from sleeping or sitting for a number of days. If one of them fell asleep, they beat him. The witness states that he and others were tortured and beaten at Abu Ghraib Prison. They were placed in the "special" section, in a room 1.5 x 2 meters without any bathroom facilities. Five detainees were placed in each such room.

One day they were given food. Two hours later, all of the detainees had diarrhea. When they asked to be taken out to the bathroom facilities, [they were denied], which compelled some of them to relieve themselves in the same room. Then, they were transferred to the desert Lea complex near the Saudi border. This complainant stated that he did not see the accused Barzan in the Intelligence Service. Rather, he heard his voice. When the complainant asked whose voice it was he was told it was the voice of Barzan. Complainant no. 1, who gave his testimony before the court on 21 December 2005, stated that his family was arrested after the failed assassination attempt. They were taken to the party headquarters in Dujail. There, they saw nine bodies and many bound and blindfolded persons. This witness added that when he entered the hall, he saw Barzan Ibrahim surrounded by an armed guard. He stated that he had not seen Barzan before. However, he had a beard and he was able to recognize him from a photograph in Barzan's book [in Arabic] on the seven attempts to assassinate Saddam Hussein. All of the detainees were sent to the Intelligence Service in Baghdad, where they were tortured and forced to sleep amid the filth of others. He drank boiled water. A girl aged 16 who was tortured with him said she saw Barzan. Complainant no. 1 added that he heard the screaming voice of Ya'qub Yusuf al-'Ubaydi before it suddenly ceased. An Intelligence Service officer came and took Ya'qub from his prison cell. He also said that he saw the body of Jasim Muhammad Latif after a group of armed persons had passed before him led by Barzan. [The witness said:] "At this time, I was suffering with fever, because I had been left, thrown onto the ground, and I was leaning against a wall, with my legs spread out in front of me, because I did not have enough strength to bear my body weight. Despite my poor health condition, they required me to sit on my knees to be treated. I believe there was a doctor. Barzan came and stood over my head, asking the guards about my status. They told him that I was suffering from fever. He asked me my name, and I responded that my name is 'Ali. He, the accused Barzan, asked, 'Are you Hussein's brother?' I responded yes. At that point, he delivered a strong blow to my feet, which caused me to forget the fever. At that point, the accused Barzan said, "Leave him be and do not treat him. This family does not deserve to live." Then, they took me to my cell again. I continued to suffer there for weeks from the pain in my feet before I was transferred to Abu Ghraib Prison. I was placed in a prison belonging to the Intelligence Service. In this prison, called Abu Ghraib, families from Dujail were tortured and children died. Those who survived, remained there for 7-9 months, until they were transferred to Lea Prison near the Saudi border, where they remained for three years." This witness stated that a number of rape incidents occurred during the detention, and he knows two of the persons whose torture was supervised by Barzan.

This witness was released from the Lea Prison. He then returned to Dujail. He found his house destroyed. This complainant filed a complaint against Barzan, because Barzan tortured him and his brothers at the Intelligence Service. This witness explained that Barzan was present at the party headquarters in Dujail and at the Intelligence Service building. All of the guards

surrounding Barzan feared him, because he was the man who gave the orders. [The witness said:] "I saw him in the Intelligence Service, and he is the one who struck me." This witness was 14 years old at the time of the incident.

The second complainant, who gave his testimony before the court on 21 December 2005, said that he was arrested in the evening of the failed assassination attempt. He was taken to the Ba'ath Party headquarters at Dujail, where he saw 11 bodies, four in the corridor and seven in a room. He was asked to identify the body of his son. However, he could not do so, because the bodies were disfigured. When he was taken to another room with 50 other persons from the population of Dujail, he saw Barzan there. Then, he was transferred to a pickup truck outside the party team headquarters, where he saw two bodies inside the truck. He recognized the bodies of his son and another person. Then, he was transported to the Intelligence Service Hakimiyah Building in Baghdad, where he was placed with 140 persons in a room that could accommodate no more than 30 persons. There were feces everywhere. They tortured him and interrogated him regarding his son for 17 days. The witness said, "I will never forget Barzan. He was sitting on a chair, eating grapes during the interrogation and torture. I am dying, and he is eating grapes." Then, he said, "Then, I collapsed due to the torture. He took me and placed me with the others for two days. I was unconscious." Then, he was transferred to Abu Ghraib prison for 14 months, where he was also tortured.

This witness saw, in Abu Ghraib Prison, guards beating an old man to death. The old man's name was Mujbil Hasan. He had complained of a beating and died two days later from his wounds. Then, this witness was transferred to Lea Prison near the Saudi border, where he remained for three years and six months. Then, he was released. After he returned to Dujail, he was arrested again and taken to the Intelligence Service, where he was placed in a cell by himself. He was released three days later. The witness said that he recognized Barzan, because any person would recognize him immediately. "I saw him previously on television." He said that he is petitioning to file a complaint against Barzan, because Barzan was responsible for the death of his son.

Another complainant gave testimony on 21 December 2005. The witness said that he was a soldier in the 1145<sup>th</sup> Detachment, Special Operations Unit. He left the detachment 20 days before the incident in the village of Dujail. He was arrested and sent to the party headquarters in Dujail, where he was interrogated and asked to confess that he was a member of al-Da'wah Party. He also said that he was tortured with electricity and asked to confess that he is a member of al-Da'wah Party. He said, "They tortured me using electric shock when I was hanging from the ceiling of the room. My mouth was drooling and foaming like soap due to the intensity of the torture. The torture sessions continued until I was transferred one day to a fourth room, where I met Barzan, the head of the Intelligence Service. I met with him face to face. He asked the guards and other officers to remove the mask from my face. They removed the mask. Barzan informed me of the following: You must now confess everything. If you do not confess, I will remove your intestines and show them to you. As a result of the harsh, difficult-to-bear, continuous torture, I constantly hoped that I would die or be killed. I responded to Barzan by saying that he was being unacceptable for a person in this position, that he should utter such words. He then asked the guards and the rest of the team to finish me off. They tortured me using electric shock. They removed my fingernails and toenails. Then, they left me hanging. It



was difficult to know whether it was day or night. I lost consciousness as a result of the electric shocks. Then, they left me until I regained consciousness, and the interrogation continued in the same manner on ten other occasions. They used various types of torture.”

“After the end of these ten occasions, they were finished with me. I was left in a room until they finished interrogating me. This torture continued for eight or nine days. I did not know what would happen to me.” Then, the witness was transferred to Abu Ghraib Prison where he saw many people from Dujail. He remained there for one year and seven months. He was tortured repeatedly. Then, he was transferred to the Intelligence Service Directorate and asked to confess. They informed him that he must say and sign something or return to his military unit and work as an informant for them. When they returned him to his unit, he visited Dujail during his leave. There, he saw destroyed trees and orchards. The witness filed a complaint against Barzan. He said that he recognizes Barzan, because he had a beard when he appeared in magazines and newspapers, and we know that he is Barzan. The witness said that when he saw Barzan for the first time, “They placed me in a room, where he was sitting, near the door. He then told them to remove the mask from my face, so that he could see me. We stood face to face. I swear to God the almighty that I am telling the truth. I again met you (Barzan) there face to face, and we knew that we were in the Intelligence Directorate.”

Witness no. 2 gave her testimony on 1 February 2006 before the court. She stated that she was arrested and taken to the party center in Dujail and to the intelligence headquarters in Baghdad. She tortured, because she refused to confess that she was a member of al-Da’wah Party. She said: I do not know anything. He said: Bring clothing for here to wear. He ridiculed me. An electric shock device was brought to me. It was placed on my ear. He said, do you not wish to confess? When I responded to him that I had nothing to say, he said, take her to the operations room. When they took me to the operations room, they removed my clothes, and I was hung from my hands. I did not know from where I would receive blows with a rubber stick. Two persons beat me. One of them called them and informed them of Barzan’s arrival. When he arrived, I pleaded with him. I told him that I did not know anything and had nothing to say. Why are they treating me in this way? Barzan asked the guard: Has she not confessed yet? The guard responded: No sir. He, Barzan, told him: Change the way in which she is suspended. They changed the way in which I was suspended. They suspended me from my feet. They placed wires in my ear, on my fingers, my toes, and all parts of my body. Barzan screamed and said keep her suspended for a full hour. I was beaten from all sides during that hour. I pleaded with the guards to undo my fetter. My neck was broken. Before Barzan left the room, he struck me on my chest, causing a fracture. A sign of this fracture can still be seen today. Barzan turned to the guard and said, keep her this way for an hour. Then, the witness was transferred to Abu Ghraib Prison, where she and her father contracted diarrhea. She and her family were subsequently summoned to the headquarters of the Intelligence Service Hakimiyah. She stated that Barzan tortured her father. Her paternal aunt witnessed. She added: At that headquarters, the daughter of my paternal uncle was summoned with my uncle. Barzan tortured her too. After 15 months, she was brought again to Abu Ghraib, where she was detained for one year before being sent to the Lea complex near the Saudi border. Three and a half years later, she returned to the Dujail area, where she found her house and the orchards destroyed. She filed an action against Barzan, in which she declares that Barzan supervised and participated directly in the torture of her.

Complainant no. 1 who gave testimony on 2 February 2006 before the court. He stated that all of the members of his family were arrested and taken to the party headquarters in Dujail, where Barzan beat his father. The witness said, "I asked my father, why did Barzan beat you? He responded, saying, your brother was killed in the aircraft bombardment when he was in the orchard. The witness's father stated that Barzan beat and tortured him. He stated that, despite his unfamiliarity with Barzan, his father, who was middle-aged, had informed him that Barzan beat him and caused his forehead to strike the ground. The witness added, "I heard Barzan vilifying my father and pushing him onto the ground. Barzan was wearing civilian clothing. Barzan said, take them. Then, they brought my father and the husband of my paternal aunt. They took us in a vehicle and transferred us to the Intelligence Service Hakimiyah headquarters in Baghdad, where they were tortured during their presence there. He stated that Barzan burned the fingers of Hajji Mahir, a 60-year-old man from Dujail.

Complainant no. 2, who gave testimony on 2 February 2006. The witness stated that he was arrested after the failed attempt to assassinate Saddam Hussein. He was transported to the Hakimiyah headquarters in Baghdad. He said that when he was there, he saw persons and told his father to come and see who was present. He got up from his seat and looked. He told me that Barzan was being accompanied by civilians. The witness said that a man named Sanir and a guard later tortured him with electricity. They brought two pincers and placed them on my ear. The guard tortured me with electricity. The guard, named Ra'id, kicked me. At times, he placed two pincers on my ear. At other times, on my nose. After about 10 minutes, when I was screaming, Barzan entered the room where I was and asked the interrogator about me. The interrogator responded that I refused to confess. There were two persons with Barzan. He asked one of them to give him a cigarette. He placed it on my head, behind my ear. The marks are still obvious. The witness was subjected to harsh torture for a number of days. Then, he was transferred to Abu Ghraib Prison and the Lea complex. The witness has filed a complaint against Barzan, because Barzan tortured him with his own hands and extinguished a cigarette on his head.

Numerous complaints were recited during the trial on 13 February 2006:

Witness no. 4, in his statement, says that he was nine years old at the time of the incident and that "after we were arrested at home, they took us to the party headquarters in Dujail, where we saw Barzan al-Tikriti." Statement no. 1 contains the following: "On the day of the incident, Saddam Hussein and Barzan al-Tikriti, who supervised the arrests and headed the Intelligence Service, were present." Statement no. 17 was given by an army conscript. He states that, after the attack against Saddam, there were collective arrests in Dujail. All of his brothers were arrested. He said, "I heard that Barzan Ibrahim was with a group and gave arrest orders."

Numerous complaints were cited on 1 March 2005:

The accused Barzan al-Tikriti was at Dujail after the incident. He ordered Intelligence Service elements and party members to arrest suspects in Dujail. Another witness added that "my brother and a large number of the inhabitants of the area were arrested. I learned that the accused Barzan Ibrahim was in the city at that time, but I did not see him."

**Statements of Other Accused in the Action Regarding the Accused Barzan Ibrahim:**

The Court of Cassation in Iraq generally does not admit a accused's statement against another accused in the same case. However, if the first accused is involved in a second action, and he makes a recorded statement against another accused in the first action, the court will admit the statement of the first accused against the other accused in the same action. In this case, the statement is admitted as a presumption, not as evidence. Moreover, it must be supported or corroborated by facts, because greater support and corroboration are needed in this case compared to other evidence. This is particularly the case if the statement may be construed as an attempt by the first accused to evade liability by casting it on another accused in the same action. Therefore, below, we will publish the most important content of the statements of the other accuseds regarding the role the accused Barzan Ibrahim's role in the Dujail case. In doing so, we will take into account the rules to which we refer above. We will also take into account that the statements given by these accuseds in the initial investigation period are closer to the facts and reality than the statements given subsequently before the court for the reasons that we mentioned previously. This is consistent with the principle to which the judicial authorities of the Court of Cassation Iraq adhere in this regard. In addition, this matter will facilitate ascertainment of the truth and the achievement of justice, far from the influence of one accused over other accuseds, particularly if one accused has considerable psychological influence over the other accuseds or their families in difficult security conditions, such that the other accuseds would fear to make statements in front of him that might damage him or his interest in the action.

**Statements of the Accused Ali Dayih 'Ali Regarding the Accused Barzan Ibrahim:**

In his statement recorded before the investigation panel on 25 May 2005, the accused's Ali Dayih 'Ali stated the following: "I returned to the Dujail area in the afternoon. I found the city surrounded by armed forces and security. I believed that the Intelligence Service and the party apparatus were all present. Among them was a party official at the time, the accused (fugitive) Ahmad Ibrahim Hassun, nicknamed Abu-Nabil. Also with us were the accuseds 'Abdallah Ruwayd, a member of the party division at that time, and his son, Muzhir 'Abdallah. I learned that the officials who are accuseds and were in the area included the accused Barzan Ibrahim al-Hasan. However, I did not meet him. I also learned during my presence that a group of corpses had been brought. These corpses belonged to persons who were killed in the area of the orchards by helicopters in the area. On 8 July 1982, a group of entire families from the population of Dujail was arrested. The families consisted of women, children, and men. After they were arrested and placed in the Dujail party division headquarters, darkened vehicles resembling buses came. They boarded these families on the buses. The families were transported to a location unknown to me. My duty at the time was to protect the party division. Because of the presence of the accused Barzan Ibrahim al-Hasan, who was commanding the operations, particularly the arrest operations, in Dujail, I believe that the orders to transport the suspects were carried out through him. A group of persons and families were tortured inside the party division, specifically inside the room that was occupied by the accused Barzan Ibrahim, the accused Ahmad Ibrahim, and a group of leaders at that time."

**Statements of the Accused Muzhir 'Abdallah Regarding the Accused Barzan Ibrahim:**

The accused Muzhir 'Abdallah gave his statements before the investigation panel on 21 February 2005. He stated the following regarding the accused Barzan Ibrahim: "At this time, I saw a force from the security agencies riding in vehicles toward the area of the orchards. Among them was the accused Barzan Ibrahim, who held the position of Intelligence Service chief. At this time, I was still standing in front of the door of the party division. Regarding the removal of the earth and cutting down of trees, I was assigned a mission by the party apparatus that was ordered by Barzan Ibrahim. The order was conveyed to us through the party. The mission was to escort power shovels, steamrollers, and graders tasked with cutting down the trees and removing earth. I in fact went with the power shovels, which carried out the operation...etc."

**Statements of the Accused ‘Abdallah Kazim Ruwayd Regarding the Accused Barzan Ibrahim:**

The accused ‘Abdallah Kazim Ruwayd made statements before the investigation panel on 21 May 2005. [He said:] A number of rounds were fired at the procession. I heard them. They were intermittent. There were not more than 10 or 12 rounds. I am a farmer. I am well aware of what a round sounds like. Regarding the speech given by Saddam Hussein, I did not hear it myself. However, I heard it through others. It was said that there were only a few [who heard it]. After the gunfire, I returned to the party division [headquarters] and remained there. Sometime later, major forces from Baghdad, including military forces, came and encircled the city. A number of Intelligence Service personnel came. Also present was the accused Barzan Ibrahim, whom I saw at the party division. A number of members of the command were present. Helicopters began to fire at the orchards. The orders to arrest were not based on arrest warrants issued by an official authority. I do not know the arrest mechanism [used] at that time. However, of course, they [the arrestees] had no connection to the incident, and I do not know why they were arrested.”

**Statements of the Accused Muhammad ‘Azzawi ‘Ali Regarding the Accused Barzan Ibrahim:**

On 1 June 2005, the statements of the accused Muhammad ‘Azzawi ‘Ali were recorded by the investigation panel. Among other things he said: “When I was in the party division, I saw the accused Barzan Ibrahim al-Hasan, ‘Abdallah Ruwayd, and the official in charge of the party division Ahmad Ibrahim al-Hassun al-Samara’i. I also saw Sa’dun Shakir and ‘Ayyadah Kan’an al-Sadid in the same location, where a group of families had been detained. They put them in large vehicles and transported them to a destination unknown to me. Among these families were women and children. I did not arrest any of the inhabitants of Dujail. I did not participate in any operation. I did not torture any person from among the inhabitants of Dujail. The arrest operation in Dujail at the time was conducted by Barzan Ibrahim.”

**Statements of the Accused Taha Yasin Ramadan Regarding the Accused Barzan Ibrahim:**

The statements of the accused Taha Yasin Ramadan recorded by the investigation panel on February 9, 2005, include the following paragraphs:

“In 1982, as I recall, I held the position of vice-president of the Council of Ministers in the former regime. I was contacted by telephone by the accused Saddam Hussein, who held the position of president of the republic at that time. He informed me that he had been subjected to an assassination attempt in the Dujail area. He asked me to go meet the security agencies. He informed that he had ordered them to be present at the headquarters of the National Council. As far as I remember, it was Friday. I did indeed go and found Fadil al-Barrak, who held the position of director of security. He was executed subsequently for other reasons. I also found a person whose name I do not remember. He informed that he represented the director of the Intelligence Service. He informed me that the director of the Intelligence Service had gone to meet with Saddam Hussein after the incident and two or three persons whom I do not precisely remember. The recommendation issued to me was that I listen to what the officials of the

security agency had to say and provide my remarks and direct them as to how to act if I had any instructions, etc.

“As is known, the security agencies are not linked to a ministry. They are linked to the office of the president directly. Agencies such as the Intelligence Service or security under the previous regime were linked directly to the person of the president of the republic, as was military intelligence. The communication channel was the office of the secretary.

“These agencies usually received orders directly from the accused Saddam Hussein, because they were linked to the office of the president of the republic, and he held the position of president of the republic at that time.”

#### **Summary of the Statements of the Accused Barzan Ibrahim al-Hasan in the Investigation and Trial:**

Generally, the accused, Barzan Ibrahim, denied the charges made against him in the investigation and trial. However, the statements of the accused Barzan in the investigation and trial are not devoid of important details that help shed light on what happened at Dujail on the day of the incident and the crimes against humanity that ensued.

The accused Barzan Ibrahim states in his statement recorded by the investigation panel on 25 January 2005, in the presence of his attorney at the time and the public prosecutor, that on the day of the incident he went to the area of al-Radwaniyah, where he congratulated the accused Saddam Hussein on his well being after the incident. He then went to Dujail. Sa’dun Shakir accompanied him. There, he questioned those present about the incident. Some persons, whom I do not remember, informed him that, during the passing of the procession of the accused Saddam Hussein, shots were fired by several persons whom they did not know. The accused Barzan also states that the accused Saddam Hussein asked him to go to the Dujail area to ascertain the reasons for the incident and to conduct an investigation in the area to identify suspicious persons. Barzan said that this was his mission, because he was responsible for the president’s security. Upon going to Dujail, the accused Barzan Ibrahim found Republican Guard forces from the army, forces from security and the police, and several members of the Ba’th Party. He states that he saw army troops encircling the area. Every quarter was under their command. The accused Barzan, as head of the Intelligence Service and the person responsible for the president’s security, arrived in Dujail two or three hours after the incident. When he asked about the incident, he was informed that persons outside the law had fired at the procession of Saddam Hussein. The accused Barzan states, “I was the official present in the area. I spent the daylight hours of the day of the incident and the night in the Dujail area until the following day. After I learned details of the case, I requested the encirclement of the orchards. Military forces encircled the orchards. Helicopters also hovered in the area. An exchange of fire occurred between persons concealed in the orchards and the military forces. As a result, two or three persons were killed. In addition, three or four persons were arrested and interrogated. I heard that the director of security at that time—I just heard, I do not have official information—was taken to Dujail and that he arrested a large number of persons and many with their families. He also cut down trees and date palms. I informed the accused Saddam Hussein, who held the post of president of the republic, that this action was not in accordance with

regulations and was to be rejected.” In response to a question by the investigation panel, the accused Barzan responded, “The persons who were arrested in my presence and by my order and sent to the Intelligence Service Hakimiyah at that time for interrogation numbered no more than three or four persons.” He does not know about the arrest of groups of families, women, and children. He also denies that the Intelligence Service has any connection to the sending of detainees to Abu Ghraib Prison and the desert complex of Lea, where they remained until 1986.

He was asked about the case that was referred to the Revolutionary Court by the Intelligence Service by order of the office of the president of the republic. The case number in the Intelligence Service was 1984/40. The referral was made under order no. 762/6 on 27 May 1984. The investigation departments in the Intelligence Service were the authorities responsible for the interrogation process, while you [Barzan] stated that the Intelligence Service had no connection to the matter. What is your response? Barzan responded that “the Intelligence Service had no knowledge of or connection to the matter. It could be that the case, after it was abandoned, belonged to the office of the chief of the Intelligence Service in 1983.” He repeated that he had no connection to the matter. He emphasized that “the referral of suspects to the Revolutionary Court, he believes, occurred after he left his post in the Intelligence Service. He stressed that the General Security Directorate at that time exploited the name Intelligence Service in many cases.

The statements made by the accused Barzan Ibrahim before the court are to a large degree similar to his statements before the investigation panel. However, they contain additional details. In addition to the statement heard by the court, which the accused Barzan gave on 15 March 2006, the court allowed him in many sessions to give his statements, comments, and arguments regarding the case and the charges made against him. On 15 March 2006, the accused Barzan stated that he submitted his resignation from the top post in the Intelligence Service for the second time in August 1983, and that his resignation was accepted on 6 October of the same year. He severed his tie with the state. He also explained that he visited Dujail on the day of the incident and the day after it, and that the General Security Directorate had received the case. He further stated that, on the first day, he (Barzan) released detainees at the party division and shook their hands. He stated that he placed the blame on the security agencies and the party, because they detained, on the basis of suspicion, and that he placed such blame in front of dozens of people, including the accused Muhammad ‘Azzawi al-Marsumi. Barzan stated that he did not detain anyone, as evidenced by the fact that they were referred to the court two years after his resignation. He said that he did not supervise the interrogation and did not see any memorandum by Waddah al-Shaykh. He stated that those gave testimony against him were false witnesses who had been prompted, because the Investigation Department could not accommodate this large number of people, as it is a small, two-story building, with the first story for offices and the second containing only three cells, which were left in this state until the start of 1983. No one had been arrested. The arrest of people is not the purview of the Intelligence Service. It did not assign Waddah al-Shaykh to prepare a report and submit it to Hussein Kamil, because “Hussein Kamil was subordinate to me, in his capacity as one of Saddam Hussein’s protection personnel, and I am responsible for protecting President Saddam. Waddah al-Shaykh is an unreliable person. As events have proven, he has priors and fabricates. The accused Barzan also emphasized that “the director of general security established a camp and struck strongholds of al-Da’wah Party. He cut down trees and detained others. Dujail is one of the strongholds of al-

Da'wah Party and one of their refuges. Weapons, explosives, mortars, medical supplies, canned food, printers, paper, etc. were seized. The accused Barzan said that the letters whose signatures are attributed to him are forged. He stressed that he released a large number, around 80 persons, from among the detainees at the party's Dujail division on the first day of the incident when he arrived at Dujail. Generally, the accused denies that the Intelligence Service had any connection to the events at Dujail. He denies the charges made against him, particularly that he committed crimes against humanity in the Dujail case.

**Summary of the Statements of Defense Witnesses for the Accused Barzan Ibrahim:**

The court heard the statements of nine defense witnesses for the accused Barzan Ibrahim al-Hasan. The first was given on 22 May 2006. The defense witness, Sab'awi Ibrahim al-Hasan, who is the brother of the accused Barzan, stated that on the day of the incident, which was determined during the trial to be 8 July 1982, he went to his younger brother, Barzan, and found him in his home at 9 pm. Barzan told him that he heard of an attempt to assassinate the president. Barzan told him, "I was in the department, and we received the news. I went to Dujail," because, at the time, he, Barzan, was responsible for protecting the president, because there was no special security agency. Rather, Barzan supervised protection. He went to Dujail to see the situation and to see whether there was any shortcoming in the protection [personnel's] performance of their mission. Barzan told me, I went and surveyed the location. There was no shortcoming on the part of protection. It seems that the matter [the assassination attempt] was planned and prepared in advance. He told me that the director of general security came. I asked him if he would have a role in the matter. He told me that he had no role and that you, Sab'awi, know the jurisdictions. He said that this is the jurisdiction and area of security, and that the political parties were prohibited. It is the jurisdiction of security. I went to survey the location. Perhaps there was a shortcoming on the part of the protection [personnel]. I did not find any shortcoming."

The court interjected, telling the witness that he is a defense witness for the accused Barzan, and that when we hear his testimony regarding the accused Saddam, we will give him an opportunity to speak about Saddam. The witness responded that he had mentioned the subject of Barzan to the court: Barzan told me that this is not my purview and not the purview of the Intelligence Service, but rather that he went to see how the situation occurred and to see if there was any shortcoming in the performance of the protection mission. He said: This is security's jurisdiction; the director of general security was present in the area, and I will convey to the president whether there is any shortcoming on the part of security and the party. Khalil al-Dulaymi, the lawyer for the accused Saddam Hussein, and the accused Barzan Ibrahim, asked whether a number of witnesses, particularly witnesses from the population of Dujail, mentioned that Barzan released more than 70 detainees when he visited Dujail, and whether he informed you [Sab'awi Ibrahim al-Hasan] of this? The witness Sab'awi responded in the affirmative, saying: He told me this, and someone was there who can confirm it (Muhammad al-Marsumi, a accused in the same case). He came to me and asked me to mediate in a tribal issue. He told me of Barzan's position with him when he released him with the detainees. That was two years ago.

Another defense witness, given the symbol, "2," gave his testimony before the court on 22 May 2006. This witness worked in the Intelligence Service during the incident. He stated that he



does not remember the date of the incident. However, he specified the date during the trial as 8 July. (The proceedings of the trial sessions were broadcast directly over television channels.) [He stated:] I went to the intelligence department shortly before the close of business. I learned that members of the intelligence department were present in the department. One or two hours after the official close of business, the members of the Intelligence Service were permitted to go down (leave the department). The next day, we learned that there was an attempt to assassinate the president in the Dujail area. I do not see any abnormal or precautionary measures in the Intelligence Service. I did not see any arrests or interrogations in the initial days or in the following days in the service. In response to a question posed by the court, this witness said that he was not assigned anything and no other person whom he knows was assigned anything. He added that he had no direct contact with the accused Barzan at the time. In response to another question posed by the court, he responded that he did not see detainees in the Intelligence Service. In response to another question, he responded that he had no connection with the Investigation Department, because the Investigation Department was separate, and that his work was in the Counterespionage Department.

The accused Barzan asked the witness the following: When you went, because of your work, to the Investigation Department, did you sense that there was anything abnormal, or did anyone accompanying you inform you directly or indirectly that there was a case of this type at the time? The witness responded: We have requests that occasionally come to the Investigation Department to follow up in an investigation. During this period, I did not hear anything out of the ordinary in the investigation building, which we would frequent from time to time. In response to a question from the public prosecutor, the witness said he would go every two or three months to the investigation department (Hakimiyah) in 1982 and 1983.

One of the defense witnesses, assigned the symbol "4," gave his testimony before the court on 29 May 2006. He was among the personnel who protected the accused Barzan at the time of the incident. He stated that, after he had gone with another witness from among the protection personnel on the day of the incident to the farm of the accused Saddam in al-Radwaniyah, where the accused Barzan was, the two went with Barzan to Dujail and entered the headquarters of the party division. There were close to 70 to 80 persons there. When the accused Barzan asked a party division member, the member responded that the people there were detainees from Dujail. After he met with them, he released them. Even one of the women wanted to kiss his hand. He told her, we are at your service. We came to see the situation out of fear that a mistake or wrong would be committed. After eating the break-the-fast meal, as it was the month of Ramadan, they returned to Baghdad. The witness also went with the accused Barzan on the following day, at noon, to the party division headquarters in Dujail, and they found matters calm. They returned to Baghdad before the break-the-fast meal.

The witness confirmed that he observed detainees who said that the accused Barzan had released them on the day of the incident inside the room in the party division, because its door was open. In response to a question from the public prosecution as to whether these 70-80 detainees had been released by the accused Barzan, and whether there was mixing of men, women, and children, the witness responded, "Yes, the men, women, and children were mixed. Some were 15 years old, some were 20 years old, and there were 5 to 10 women detainees."

On the same day, 29 May 2006, the court heard the statements of another defense witness for the accused Barzan Ibrahim. These statements included the following: "We headed for Dujail. When we arrived at the party division headquarters, I was near the door. I saw the Popular Army [Iraqi Ba'th Party Militia] in front of the party division. People were present. They were annoyed. At the entrance to the party division hall, there were many detainees. He [Barzan] greeted them, apologized, and released them. One of those present invited him to the break-the-fast meal. After the meal, we returned to Baghdad." The witness stated that he went with the accused Barzan and another person (the previous defense witness) to Dujail on the following day and left Dujail before the break-the-fast meal (before sunset).

This witness, who is the son of the accused Barzan's paternal uncle, was asked by the public prosecution whether he saw detainees when he arrived at the party division in Dujail, in the hall. The witness responded affirmatively. There were detainees in the hall in the party division. They numbered 70 or more. They were subsequently released. The public prosecution also asked whether the detainees included women and children. The witness responded, "all of them were men." This contrasts to what the witness said previously regarding the presence of women and children in addition to men.

On 12 June 2006, the court heard the statements of another defense witness for the accused Barzan Ibrahim. The witness was given the symbol "1." He also was one of the personnel protecting the accused at the time of the incident, as he claimed. This witness stated that he was among those who went to Dujail with the accused Barzan on the first day of the incident. He remained outside the party division headquarters. After about an hour, people came out of the division cheering the president, the party, and the chief of the Intelligence Service in reference to their release. One of the Popular Army guards present at the division gate informed him that the president had been subjected to an assassination attempt but was not hit. This witness states that they, the protection personnel, were carrying weapons consisting of machine guns. They were wary, because the area is dangerous. After the break-the-fast meal (during Ramadan), the Intelligence Service chief (the accused Barzan) went out and returned to his home in Baghdad. The witness went with the accused on the following day to Dujail. They arrived at around 4 pm and returned to Baghdad before the break-the-fast meal [at sunset]. In response to a question posed by the public prosecution, the witness responded, "All of the detainees who were released from the division by the accused Barzan were men according to one of the guards. There were no children or women among them."

On the same day, 12 June 2006, another defense witness for the accused gave his statements before the court. He stated that he went with the accused Barzan to Dujail on the day of the incident. They went to the party division. There, after an hour or less, citizens came out from the division cheering the president. When he asked one of the guards, he was told that the president had been subject to an assassination attempt, and that Barzan had released them. The witness said that, after the break-the-fast meal, they returned to Baghdad. The witness also said that he went with the accused Barzan to Dujail. They remained there for two or three hours. They returned to Baghdad before the break the fast meal. On 13 June 2006, the court heard the statements of another defense witness for the accused Barzan Ibrahim. This witness was assigned the symbol "3." His statement is similar to the statement given by the previous witness. He repeated that the accused Barzan freed about 50 detainees on the first day of the incident

from the party division headquarters in Dujail. He said they were all men. He said that, during his work with the accused Barzan, he did not go again to Dujail and “we did not go to the Hakimiyah [Building of the Intelligence Service].” He did not see detained families, neither at the general headquarters of the Intelligence Service nor at the Hakimiyah! Another witness whom the court heard on 13 June 2006 did not have eyewitness testimony concerning the Dujail incident or what occurred in Dujail after the incident. In response to a question posed by Barzan’s attorney Khamis al-‘Ubaydi, he responded that he did not see detained families, either at the general headquarters of the Intelligence Service or at the Hakimiyah [Building].

### **Evidence Against the Suspect Barzan Ibrahim:**

The accused Barzan Ibrahim held the position of Intelligence Service chief from 1979 until autumn 1983. He was also the senior official responsible for protecting the security of the accused Saddam Hussein, who held the post of president of the republic and chairman of the Revolutionary Command Council at the time. The accused Barzan is Saddam Hussein’s half brother (they have the same mother). At noon on 8 July 1982, he met the accused Saddam Hussein at al-Radwaniyah farm. He received an order from Saddam Hussein to go to Dujail to conduct an investigation of the incident. The evidence available in this action against the accused Barzan Ibrahim includes the following:

1. The statements of the accused Barzan Ibrahim recorded by the investigation panel comprising three examining magistrates on 25 January 2005, in the presence of his attorney and the public prosecutor. This statement contains the following: “I was requested to go to the Dujail area (i.e., the accused Saddam Hussein asked him to do so). This was my duty, as I was responsible for the security of the president at the time. When I went, I found army forces from the Republican Guard and forces from security and the police as well as several Ba’th members. At that time, the military forces were encircling the area. I saw them myself. The entire area was under their command. I was in the area as the Intelligence Service chief and the person responsible for the president’s security. I was the official present in that area. I spent the day and night in the Dujail area until the following day.” The accused Barzan Ibrahim went on to say: “After I learned the details of the case, I requested the encirclement of the orchards, which were encircled by military forces. Helicopters also hovered in the area. An exchange of fire occurred between persons concealed in the orchards and the military forces, resulting in the killing of two or three persons. In addition, three or four persons were arrested and interrogated.” The accused also said the following in his statements before the investigation panel: “The persons who were arrested in my presence and by my order and sent to the Intelligence Service Hakimiyah at that time for interrogation numbered no more than three or four persons.”
2. Confession of the accused Barzan Ibrahim before the court on 15 March 2005 stating that he went to Dujail and was present at the party division headquarters for two consecutive days (the day of the incident and the day following it).
3. The statements of the witness Waddah al-Shaykh before the examining magistrate on 25 January 2005, which included the following: “On 8 July 1982, I was in my office. The accused Barzan Ibrahim telephoned me and requested that I go to his office in the Intelligence Service at al-Mansur. When I went to his office, I noticed that the atmosphere was charged, and things

seemed abnormal there. When I entered the secretary's room, before entering the room of the accused (Barzan), the accused came out to us and met us in the secretary's room. There were no more than 12 persons present there. Of those present, I remember Muhammad 'Ulaywi; Hasib Sabir, who used to hold the position of deputy director-general for counter espionage; Ali Mahmud Hashim, who used to work in the Secret Service Corps; Khalil Ibrahim Mahmud, who I believe held the position of director of security or something else; and Mani' 'Abd-al-Rashid, who served as the director of security of the department. The accused Barzan, who held the position of chief, General Intelligence Service, informed us that the accused Saddam Hussein, who held the position of president of the republic, had been subject to a failed assassination attempt in the Dujail area, which is 60-65 km north of Baghdad. Barzan ordered us to move immediately to the Dujail area and investigate the matter. He also ordered the protection unit to move to the same location. We indeed moved to the Dujail area in our cars. We adopted the party division as an operating location. We all went without exception and began the investigation...."

The witness Waddah al-Shaykh also said: "At around seven o'clock, specifically at sunset, the accused Barzan and Sa'dun Shakir, who held the position of minister of interior, were present at the party headquarters in the party division, which was our headquarters. At this time, a large number of people, officials from the area of the village al-Kazimiyah, and Dujail came to us. All of them settled down in the garden of the party division... By virtue of my work, during the investigation, I found 12-15 empty Kalashnikov cartridges. I did not take into account that subject, because no person or vehicle had been hit in the incident... however, I asked in the accused Barzan, and he informed me that no person or car had been hit... As the commander of operations in the area, Barzan ordered police, party, and security personnel to arrest suspects and their families, including women and children. Also present at the time was a Republican Guard unit, a special forces brigade. I do not remember the unit number. The Intelligence Service had not participated up until that moment, because there were only a few intelligence personnel, numbering 10-12. The executing agencies arrested women and children no older than 12. The investigators thought that if there had been an assassination operation, the perpetrators would not have returned to their houses... I informed the accused Barzan, who was commanding operation in the area, that these were children, old people, and women who had no connection to the incident. I asked the accused Barzan what I should do with them, as there were many of them and there are no service resources. He requested that I send them to Baghdad... Large jumbo Mercedes vehicles were in fact sent. Each one accommodated approximately 50 passengers. The accused Barzan Ibrahim stood at the door of the hall of the party division. We began to take the people out and put them in the vehicles. The accused Barzan put them on the vehicle. He released many of the detainees. The release was conducted based on appearance... This situation continued for three days. The transport of families and individuals continued until the second day." The witness Waddah al-Shaykh went on to say: "They all received orders from the accused Barzan, who was commanding the operation. The communication and orders were verbal, because Barzan had settled into the party division and was issuing orders verbally and directly... I did not hear the orders issued by the accused Barzan. However, I gathered that they were issued directly by the accused Saddam. On the evening of the first day, when we were present at the headquarters of the party division, Barzan asked me for an initial report on the reasons for the occurrence of this incident. I in fact wrote this report[...] I submitted a two or three-page report the next day. Hussein Kamil came and asked him [Barzan] about the report. I

gave it to him. Hussein Kamil was working at the time as an escort for the accused Saddam Hussein (i.e., the report was sent to Saddam Hussein). In addition, the accused Barzan ordered that anyone capable of bearing an arm be referred to the court...”

4. The statements of witness Waddah al-Shaykh recorded by the three-judge panel from the court at the military hospital at Abu Ghraib on 23 October 2005. These statements, which were recited during the court session of 28 October 2005, are similar to the same witness’s statement before the investigation panel on 25 January 2005.

5. The statements of a large number of complainants in the investigation and trial, who witnessed the accused Barzan Ibrahim personally supervising the interrogation of them in the Intelligence Service Hakimiyah [Department of Investigation and Interrogation]. He also supervised the torture during the interrogation. Some of these witnesses witnessed the accused Barzan personally torturing them.

6. The statements given by several of the aforesaid accuseds in this action in the investigation phase, including the statements of ‘Ali Dayih ‘Ali, ‘Abdallah Kazim Ruwayd, Muzhir ‘Abdallah, Muhammad ‘Azzawi, and Taha Yasin Ramadan.

7. Official documents and letters between the Intelligence Service, the office of the president of the republic, and Revolutionary Command Council, including:

a. Letter no. 1220 issued by the office of the chief of Intelligence Service to the accused Saddam Hussein in the latter’s capacity in the chairman of the Revolutionary Command Council, to which the Intelligence Service and its chief are directly subordinate. This letter contains a request to honor several Intelligence Service officers for their role in pursuing and arresting inhabitants of Dujail. The signature of the accused Barzan Ibrahim on this letter has been verified pursuant to the report of the Criminal Evidence Experts Committee of 13 April 2006 and 23 April 2006.

b. The report submitted by the accused Barzan Ibrahim to the accused Saddam Hussein dated 13 July 1982, which includes the measures taken regarding the inhabitants of Dujail.

c. Two internal memorandums, no. 5682 of 23 September 1982 and no. 6282 of 25 October 1982, issued by the investigation directorate in the Intelligence Service. The criminal evidence experts’ report substantiates that the marginal note and signature on both memoranda belong to the accused Barzan Ibrahim.

d. Referral Decree No. 762 Issued on 27 May 1984, issued by order of the accused Saddam Hussein, which states: “In view of the grounds for referring investigative case no. 40/1984 – Intelligence Service.”

e. The statements of the accused Awwad al-Bandar before the investigation panel on 9 February 2005, which contain the following: “The interrogation was in the Intelligence Service.”

f. The report of the committee formed under the chairmanship of Hussein Kamil, which was submitted to the accused Saddam Hussein in 1982. The fifth paragraph of that report states, "The committee undertook the following: It examined all of the essential elements of the Dujail incident in the possession of the Intelligence Service."

g. Letter No. 1282 of the Intelligence Service issued to the Office of the Chief of the Administration, Office of the President of the Republic on 31 March 1982, paragraph 3, which states that the Intelligence Service is responsible for investigating the inhabitants of Dujail. The letter states, "Implementation was carried out regarding the remaining convicts, because a number of them died during the interrogation."

h. The memorandum of the Intelligence Service to the MM7 [expansion unknown], signed by the committee comprising a chairman and four members, all of them members of the Intelligence Service, whose paragraph 3 states, "Among the convicted persons against whom judgments were issued are 46 persons who were liquidated or died in the interrogation." This memorandum contains other paragraphs concerning what befell the population of Dujail in a detailed manner.

i. Verdict to Convict No. 26/1987 of 21 September 1987 issued by the Intelligence Service Court, subordinate to the Intelligence Service, against Intelligence Service member Hikmat 'Abd-al-Wahhab for failure to execute the death sentence against to two victims of Dujail, Jasim Muhammad Rida al-Hatu and 'Ali Habib Ja'far. The names of the latter two appear in the Verdict to Convict issued by the Revolutionary Court (abolished), no. 944/C/1984 of 14 June 1984 and in Republican Decree No. 778 of 16 June 1984, authorizing the death penalty for the inhabitants of Dujail. Page 2 of the Verdict to Convict issued by the aforesaid Intelligence Service Court states, "In view of the shortness of time, and the fact that 96 convicts remain from the total number of convicted persons as a result of the liquidation of the others during the interrogation..."

j. The report of the panel headed by Hussein Kamil submitted to the accused Saddam Hussein in 1982-paragraph 5 reads: "The panel undertook the following; reviewed all preliminaries of Al Dujail incident, at the Department of Intelligence".

k. The letter from the Department of Intelligence to the head of office of cabinet affairs, at the presidency of the republic numbered 1282, dated 1987, paragraph 3 of which reads: "The remaining guilty ones, were executed, a number of them died during the interrogation".

l. Letter of the Department of Intelligence headquarters dated May 8, 1983, under number 1106, the letter of Department of Intelligence headquarters, dated April 28, 1983, the

letter of Department of Intelligence headquarters No. 2291, dated Oct. 27 1983, and its letter No. 568 dated March 25, 1984, and its letter No. 998 dated June 17, 1984, its letter No. 841 dated May 17, 1984, to Almuthana province security directorate. A copy of which was also sent to the directorate of public security, containing information of sending Al Dujail families to the above mentioned security directorate in Almuthana province; attached with them was a list of the names of individual members belonging to those families and the total number in that group.

m. Letter of Almuthana province security directorate No. 647 dated Feb. 11, 1984 addressed to public security directorate and to the revolutionary command council/intelligence apparatus. It included a reference made to the letter of Department of Intelligence No. 322 dated Feb. 6, 1984, stating the receipt of 49 persons from the people expelled from Al Dujail, and also other hand over notes, some of them hand written and others typed, bearing signature of Almuthana security director. On Oct. 29, 1983 and Feb. 11, 1984, stating the reception of a number of expelled people of Al Dujail in Almuthana province, who were sent from there (Al Dujail) to (Lea) desert camp.

n. Letter of the National Security Council, which was under the (dissolved) Revolutionary Command Council, No. 173, dated April 13, 1985 addressed to the director of the Department of Intelligence containing the cancellation of detention order of the expelled people of Al Dujail.

o. Letter of the Department of Intelligence No. 1253 dated March 2, 1985, addressed to Adult Correction Center, department of Extended Sentences, which made reference to the Republican Decree No. 778 of 1984, which contained directives to send those sentenced to death (148) names, according to the above mentioned letter, and carry out the death sentence immediately.

**Extent of liability of the accused Barzan Ibrahim of the crimes leveled against him, according to the indictment sheet.**

We earlier made reference that this court had pressed charges against the accused Barzan Ibrahim for crimes against humanity on May 15, 2006 in accordance with Article XII, I section 12/first of the court law.

In the following we will come to specify to the extent of liability (guilt) of the accused on each count:

**Extent of Liability of the Accused Barzan Ibrahim for Deliberate Murder, as a Crime Against Humanity**

There is no direct evidence in the case that the accused Barzan Ibrahim (personally) killed with his own hands any of the victims of Al Dujail. But there is direct and indirect evidence that establish that the said accused gave orders to the military sectors, intelligence and security units, party apparatus, and the popular forces in Al Dujail to kill the victims of Al Dujail who were in the orchards during the early days of the incident. There are also so many pieces of evidence

that he verbally ordered, during those days, the arrest of hundreds of Al Dujail people; women, children, old people, and youth, to be sent to Hakimiya intelligence prison; first to Abu ghraib prison, then to Lea Desert [prison] camp. Transfers were made through the directorate of AlMuthana province security where many had died during the torture or as a result of extremely bad living conditions in the camp. The reality becomes apparent when sitting through the abundant evidence in the case file of the accused Barzan as we mentioned earlier. The material includes documentary evidence and testimonies of complaints and witnesses, including even the defense witnesses, of some of those who are accused in the case. In the first two days of the incident, which the accused Barzan confirmed himself, that he was present at Al Dujail branch of the party and when the accused Barzan was at Al Dujail issuing orders to military forces, intelligence, security and party units to attack the people of Al Dujail.

Those forces, units and organizations, which since proof was made that they were receiving orders from him. Those people are (nine); (Abas Jasmin Mohamed, Redha Hato Alsalami, Karim Kazim, Ja'afar Alebidi, Emad Hassan, Mahdi Ja'faar, Alsaudi Alkarbalani, Mohamed Abdul, Jawad Alzurbidi, Mahroz Mohammad, Hadi Alkiladi, Hashim Adnan, Jasim Alkhazali, Sadik Mujeed, Hammed Alkhazidi, and Satar Tawfik Yahya Alkhataji).

A large number of Al Dujaili families were also arrested and detained those days; the total number reached 399 people. They were put in the custody of the interrogation and investigation section of (AlHakimiya prison) which was a branch of the Intelligence Apparatus, under the direction & instructions of the accused Barzan Ibrahim. This was confirmed by the witness Wadhah Alshiekh, who was a director of that section at the time of the incident until the beginning of 1984. This was also confirmed by the documentary evidence in the form of notes and letters attached to the particulars of this case, exhibited before the court. A number of people were also killed, due to torture, which was practiced on a large scale in AlHakimiya prison, by the intelligence officers of that directorate (of interrogation & investigation). Those killed were; (Yakoub Yosif Alebadi, Jasim Mohammed Latif AlSalami, Salih Mohammad Jasim, Kasim Ali Asad Al-Hideri, and Alwan hassan Husein Al Salami). A large number of Al Dujail victims including children were also killed or have died at the special branch of the intelligence section in Abugareb prison, as a result of torture and bad living conditions as mentioned earlier. Those killed were: (Mujbal Hassan Aziz AlMorsomi) who died as a result of a blow with the iron bar of a belt end – on the head, by one of the prison wardens (Yasin Hassan Hato Al Salami, and Nofa Hassan Agha AlZubidi, and the children: (hisham Fakhri Asad ALHideri, Zina Mohammad Hassan Alhideri, and Ali Mujeed AlKharbatli) also killed or died as a result of bad conditions, subjected to expelled Al Dujail people in Lea desert camp (Hamid Mahdi AlKhazabli, AbdulWahab Ja'afar Habib Alebidi, Sabria Abass Ahmad Alebidi, and Sabri Asad Abdallah AlHaidari), and the two children: (Methni Mujeed Yakoub, and Thabit Asad Abdallah AlHaideri).

The arrest, detention, and torture of the civilian population of Al Dujail was carried out from the beginning by orders issued by the accused Barzan. Murder was very possible under those circumstances. Even after the resignation of accused Barzan from the head of the intelligence organization, on Oct. 6, 1983, he will remain legally liable of killing (148) of Al Dujail people. Those were whose names were submitted to the revolution court, which passed sentences of death to all of them without trial; 46 of whom were confirmed killed during interrogations by the



intelligence operatives in unspecified places. The 46 people of Al Dujail were killed before the alleged trial, at unspecified periods, between July 1982 and May 1984. That the accused Barzan had left the head of the intelligence in October 1983 does not exonerate him from the liability, because even if they were not killed while he was the head of the intelligence apparatus, he caused their death, when he arrested them and incarcerated them at AlHakimiya intelligence prison. Adding to this, some of the present complainants were at the detention with the dead victims, had testified, confirming that some of the victims had been killed due to torture, while they were there with them in the detention and that the accused Barzan was himself there, not only supervising the torture, he was also actually participating himself. For instance, see the testimonies of complainant No.1 and complainant No. 2 and complainant No. 3.

No. 3 at the court session of Dec. 21, 2005 and the testimony of the lady complainants No. 2 and No. 3 at the court session of Feb. 1, 2006, and the testimony of the complainant No. 1 at the court session of Feb. 2, 2006.

It is useful here to cite the decision of the international criminal court on former Yugoslavia on Dec. 10, 1998, paragraph 199, which reads: (it is not essential that the aiding and abetting of a commission of the ill deed to be materially liable. It could be in the form of moral support to the actual perpetrators of the crime).

The above decision refers to the British case (Rod) where six people appear to be involved in the killing of 4 British prisoners, who were in the hands of Germans. The women were killed by lethal injection; their bodies were disposed of by cremation, in the prison crematory.

Regarding the definition of the phrase: "implicated in killing" the referred judge explained it in the court martial: that actual presence at the scene of crimes is not necessary for a person to be (implicated in the killing). Reference was also made in the (Antofermdjia) case, to the decision of the (Jewish shrine), and to the decision of (pig's wagon procession), which stated: presence if supported by influence could constitute aiding in moral form. That is the act of the accused constituted by attack. The supporter must have a particular center, for the evidence to be sufficient enough to constitute criminal responsibility for the person purported to have rendered aiding and abetting. This principle became entrenched in the decision of the (Zilatco Alxofiski) case of June 25, 1999 (referred to above) which stated that "the mere presence could constitute sufficient participation under certain circumstances, if proved that the presence had effective effect on the commission of the crime through encouragement, and the presence of the person at the scene in itself rove that he had the criminal intent (Mensrea) required." The same decision also stated that the criminal intent could be inferred from the circumstances; and the position of authority could constitute one of these circumstances, which could be taken into consideration when establishing that the accused knew that his presence could be interpreted as a sign of encouragement or support for the person actually doing the illegal act. Therefore, the authority of the person must be taken into consideration, as important evidence, to establish that his mere presence constitutes the action of deliberate [participation. (See paragraph 65 of the decision in Zelatco Alexofeski).

This court firmly believes that the accused Barzan had a very extensive influence. This influence emanated from a large number of positions, such as being the head of the intelligence

organization in a dictatorial regime, and a brother of the former president of the Republic (the accused Saddam Hussein) who also held the number one position in the state and the party in addition to the presidency of the Republic. The accused Barzan himself also was in high position in the party that led the country. In addition, the accused Barzan was not only present at the place of the commission of the crimes, he was actually taking part in the torture of the victims.

All 148 victims of Al Dujail people, whether the 96 people that were executed after words (after the decision for execution by the dissolved revolution council) or the 46 people who were killed under torture while being interrogated at the intelligence centers. The accused Barzan bears the liability for their deaths. Along side other accuseds in this case, and along with the officers and operatives of the intelligence, who committed the act of killing with their own hands (the original perpetrators), with the assumption that the accused Barzan Ibrahim even though there is no direct evidence that he killed them by himself, there is evidence that he knew that some of them were killed by the officers, operatives and guards of directorate at the time of interrogation and investigation (AlHakimiya), and he was present at the time, and did not take any measure to prevent the commission of these crimes. He did not also take any action to question any one of them after he learned of the crimes. Moreover, he encouraged the commission of those criminal acts.

The accused Barzan also caused the killing of those remained alive people of Al Dujail, whose names were listed in the decision of reference to the revolutionary court; because the concept of the international criminal law, which is also inconsonant with Islamic criminal jurisprudence, and also inconsonant with other divine legislations, extends to questioning a person criminally, on any crime, including murder if the person intentionally caused the criminal result, which is the death of the victim or victims, that's if he other elements of crime are present. From the documents of the execution of Al Dujail victims, there is proof that execution was carried out on the remaining victims of Al Dujail on March 23, 1985 and also on January 16, 1989.

This court has the total conviction, that a great deal of the testimonies of the witness Wadhah AlSheikh, during the investigation and the trial were true. His testimonies were strengthened and consolidated by statements of many complainants (who testified at the investigation and the trial), and who were also detainees at AlHakimiya prison (and Abugareb prison, and Lea desert camp). The testimonies were also strengthened by documentary evidence attached to the particulars of the case exhibited before the court.

With regard to the testimony of the witness Wadhah AlSheikh, as to his obliviousness to acts of torture, during his presence, as director of interrogation and investigation at AlHakimiya prison, the intention is clear, which is evasion of responsibility. The court has the right to consider only part of his testimony, if satisfied by it, and disregard the other part that is not satisfactory, in accordance with section 215 of the law of penal trials No. 23 of 1971.

If without reasonable doubt, that Wadhah AlSheikh enjoyed direct control over the investigations of the failed assassination attempt, by order of the accused Barzan Ibrahim, and he submitted his reports to the accused Barzan (as confirmed by the witness Wadhah at the investigation and the trial). This meant that the accused Barzan was aware of what was going on in AlHakimiya and Abughraib prisons.

In another respect, not recovering the bodies of the victims - buried secretly in unknown locations – does not absolve the accused and should not be a precondition to constitute the crime of killing - then liability - since killing is proved by an abundance of material and tangible evidence, such as the decision of death sentence by the revolution court, assent by the accused Saddam Hussein (the then president of the Republic) to the death sentence, and the notes of the carried out executions death certificates of those executed, issued by relevant medical bodies of the time, in addition to death affidavits issued by family courts, not to mention the registry of the civil registration that confirms the death of the victims.

In respect of the legal authority and the actual power that enables a person to prevent the occurrence of crimes, and question their perpetrators in case of commission, the accused Barzan Ibrahim enjoyed that legal authority in his capacity as the head of the intelligence apparatus in accordance with intelligence law. He also had the actual power, which he himself had confirmed in this court on Dec 21, 2005 when he stated that: if not for him, the entire people of Al Dujail would have been annihilated, and that he had set more than 70 detainees of Al Dujail victims free on the first day of the incident of Al Dujail. This was confirmed by the accused Barzan himself and his defense witnesses, and also by the prosecution witness Wadhah AlSheikh. What could be more actual authority than this?

The evidence of actual authority for the accused Barzan emanates also from that fact that he is the brother of the accused Saddam Hussein, who was president of the Republic, and chairman of the armed forces, prime minister, and number one official of Al-Baath Party in Iraq. Barzan himself was one of the prominent members of the party, under a dictatorial regime. This accused Barzan was in a position to stop the commission of these crimes committed in Al Dujail on the day of the incident, he was also in a position to stop the crimes committed afterwards in AlHakimiya and Abughraib prisons, and at the Lea desert concentration, in his capacity as the head of the coercive organization of a dictatorial regime, but he did not do it because he knew it, and wanted it to happen. His liability, or the criminal intent of accused Barzan emanated from this, the commission of killing as a crime against humanity. The general elements of murder as a crime against humanity are assembled.

The accused Barzan Ibrahim was aware of the collective arrests and imprisonment of the people of Al Dujail. It has been proven that the order for doing that came from the accused Barzan Ibrahim. Those who transferred the detainees were following the orders of Barzan. This was done using the vehicles belonging to the intelligence. The place of their detention also belonged to the intelligence Apparatus. Dozens of victims testified that he himself was the one torturing many of the detainees in the prison of Al Dujail as well as supervising the torturing of others.

Among the evidence showing the criminal intention of the accused Barzan Ibrahim was that he knew the number of people who attempted the assassination of the accused Saddam Hussein, being very few. No one was injured in that incident. The number of shots at the convoy of vehicles did not exceed 15 shots as reported in the testimony of witness Waddah Al-Sheikh during the investigation and trial. No damage was done to any of the vehicles at that time. This information about the number of bullets was based on the number of shells found in the orchid from where the shots were fired. The reaction of the former Baath regime about launching that

wide-scale programmed attack against the people of Al Dujail was not exaggerated a lot. It was intended to achieve certain goals through these crimes against humanity. This is why the accused Barzan wanted to achieve these criminal acts including intentional killings.

This crime was perpetrated by several people by orders initiated by the accused which were in turn received from the accused Saddam Hussein. This crime was perpetrated by the accused together with other partners.

The participation of the accused Barzan Ibrahim in these criminal objectives, which included intentional killings, did not spring from only his being the head of the intelligence apparatus. This court is in accordance with the international courts' resolutions, which say that being a member of any oppressive government apparatus or in a criminal organization is not enough to conclude that this member took part in implementing a joint plot in some way or another. It is supposed that each member has some kind of role to play either directly or indirectly leading to a criminal act in the final round. Yes, Barzan Ibrahim, in addition to being the head of the intelligence at that time, he did participate in very highly important roles in killing and torturing the people of Al Dujail. He gave the orders of killing in Al Dujail in the first few days of the incident. He gave the orders to arrest and detain people, which led to the criminal acts of torturing and killing. This was proven to the court by the submitted evidence in the case.

The testimony of the witness Waddah Al-Sheikh, was not the only evidence or source of information of the criminal acts perpetrated by the accused Barzan Ibrahim. There were other evidence and information that confirmed the acts of that accused in intentional crimes against humanity. There were the testimonies of those who testified in addition to the documentation submitted and whose authenticity has been proven to the court. All these proved that Barzan Ibrahim was aware of what being perpetrated by those officers. The fact of this is that Barzan requested honoring those officers for their efforts in the case of Al Dujail from the beginning.

This court is convinced, beyond any reasonable doubt, that the accused Barzan Ibrahim ordered the arrest and supervised the torturing and even did torture some victims himself. These acts of torturing resulted and led to the logical findings that these were intentional crimes as proven by the savage methods used in torturing and the scars left on the bodies of the victims leading to the intentional crimes, including intentional killings. Among those who participated in the perpetration of these crimes was the accused Barzan Ibrahim.

There are many pieces of evidence that show the main and very important role played by the accused Barzan Ibrahim. This court can conclude that this plot was planned through many facts, among them are: the meeting of Radwaniya with the accused Saddam Hussein, the meeting of the national council which was attended by Mohamed Alawi representing the accused Barzan Ibrahim from the intelligence apparatus, the quick and direct move of the accused Barzan to Al Dujail on the day of the incident and the days that followed, the orders and supervising the arrests and the transfer of the detainees residing in Al Dujail to the prison of Hakimiya using the vehicles of the intelligence apparatus, initiating the interrogation by intelligence officers in the prison of Hakimiya. The objective of this plan was so obviously shown by the illegal acts and reaction to just firing few shots which injured nobody.

The accused Barzan Ibrahim was in control of the intelligence apparatus and its officers and members. He gave the orders to arrest a huge number of the citizens of Al Dujail and supervised many of those officers as well as other members of the security forces, the army and the popular army in arresting the people of Al Dujail. He supervised the interrogation process. Several

officers worked on implementing a coherent plot. Their efforts were organized as they exchanged information. There were some overt approval of some and covert approvals of some others. This court can conclude from the available evidence that there was a joint plot implemented on different phases working in concordance leading to the same objective.

In the report to the accused Saddam Hussein dated July 13, 1982, the discontent of the accused Barzan Ibrahim about the efforts of some officers and their shortcomings prior to the incident of the assassination attempt against Saddam Hussein, gives another proof that there was a joint plot and concordance in the activities to achieve the goals of liquidating those in opposition to the Baath regime, as well as getting rid of those who reflect doubtful intentions about the regime. This was also intended to teach a lesson to others, as was proven by an audio tape, previously mentioned, of the accused Saddam Hussein talking about what happened in Al Dujail.

The common trend in the international courts goes that no need to have a joint plot drawn by several persons each with a certain role in order to hold them responsible of committing these crimes. This court is also fully convinced that this common plot was in existence and that the accused Barzan Ibrahim participated in drawing it and implementing very important steps in it.

This court believes that this is the only logical and reasonable deduction available in this case and in this regard. The accused Barzan Ibrahim and others had the intention of committing a crime against humanity. They were aware that their actions may lead to crimes. This intention and awareness were obvious and apparent to other participants including the accused Saddam Hussein, the intelligence officers and others.

Due to all that, this court is deeply convinced that the accused Barzan Ibrahim bears the full responsibility for intended killing as a crime against humanity, in accordance with Article 12, section "I" Paragraph "A", and in accordance with Article 15, Section "II", paragraphs "A", "B", & "C" of the same Law.

**The Extent of the Liability of the Accused Barzan Ibrahim  
For the Intentional Killing as a  
Crime Against Humanity According to  
Article 15, Section "II", Paragraph "D" of the Court Law.**

What was mentioned in the above paragraphs gives another proof that the participations of the accused Barzan Ibrahim with others including Saddam Hussein, Taha Yassin, and others who were in Al Dujail on the day of the incident especially the high officials in the government and the Baath Party, were intended to commit crimes against humanity including intentional killing. These practices including those of the accused Barzan Ibrahim were intentional and aimed at re-enforcing the criminal objectives of the Baath Party Regime under the leadership of the accused Saddam Hussein (the brother of the accused Barzan Ibrahim). He is the one who came to power by force in 1968 and maintained his position by liquidating his opponents and those whom he had some doubts about their loyalty to the Party for over three decades. This regime was based on committing crimes that fall under the specialty of this court's authority as they are crimes against humanity.

As for the perpetrators of these crimes as members of the regime and the leadership of the Baath Party including the first of whom, the accused Saddam Hussein, being aware of what was going on, this stems from the presence of the joint plot which has become apparent to the court through its logical deductions. This plot which was engineered and implemented by those leaders, has become apparent and obvious by the actual acts of committing crimes against humanity. As we have indicated, the pieces of evidence of this plot are numerous. These include the discussions that took place in the Radwaniya meeting between Saddam Hussein and Barzan Ibrahim on the same day of the incident and directly in the following few days in the meeting of the national council attended by a representative of the accused Barzan Ibrahim, the head of his office.

The existence of this joint plot was an undoubtedly clear fact confirmed by the documentary evidence attached in this case file which included the facts (the above noted meetings), hence confirming its truth.

Knowing about the perpetration of these crimes has been clearly evidenced by the numerous phrases pronounced by the main suspects of this case before the court during the hearing sessions.

During the first few court sessions, accused Barzan Ibrahim described the victims of Al Dujail as criminals. When one of the complainants asked to read the Koranic Sura of "Al-Fatiha" for the victims of Al Dujail, Anfal, & Halabja, the accused Barzan said : "To the Hell Fire" instead of reciting "Al-Fatiha". Similar statements were uttered by other accuseds like Saddam Hussein, Taha Yassin Ramadan and Awwad Al-Bandar, describing the victims who were killed in Al Dujail as "traitors and criminals". The matter even went beyond that to reach even the members of this court and its judge, talking about them in the same manner, especially by Saddam Hussein and Barzan during the court hearings. Even though these things are not considered direct evidence of the intentions on the day of the incident and later on, they are still good addition to the evidence that the participants had the intention of committing these crimes, and the fact that accused Barzan was aware of everything.

Also the leaders of the Baath Regime and the heads of the main oppressive agencies being aware about the intentions of committing these crimes, stems from the fact that accused Barzan Ibrahim was one of the icons of this regime and the head of the most important apparatus. He was also very close to main political decision maker both family wise and position wise. The head of the intelligence is directly connected to the head of the Revolutionary council and the President of the Republic (the accused Saddam Hussein), who is in turn also the brother of the accused Barzan Ibrahim. He is also in close contact with the other heads of the regime and the Baath Party, among them is Taha Yassin Ramadan. Accused Barzan was well aware of that intention because he received the orders from accused Saddam Hussein to commit these crimes. He is the same person who gave the orders to others including intelligence officers and used to supervise these crimes being perpetrated.

In light of the above, accused Barzan Ibrahim is fully responsible for these determined crimes of killing against humanity. He participated with others in the perpetration of this crime against humanity. His participation was predetermined aiming at enhancing the criminal activities of the intelligence and security apparatus of the regime and the Baath Party. He was also well aware of

the perpetration of these crimes at the hands of the regime and Party members, based on Article 15, Section II, paragraph "D" of the court law.

Barzan Ibrahim's Extent of liability regarding his accusation in the commission of willful crime considered crime against humanity while the head of the intelligence agency as per article 15-4 of the court law:

The accused, Barzan Ibrahim, was the head of the intelligence agency. Thus, A relationship existed between him, the intelligence officers, and the subordinates within the secret service and investigative directorate of the agency. This relationship is that of an officer to subordinates type. That is to say that those responsible of willful criminal acts in Al-Hakimiya and Abu Ghraib prisons were under his control and were given orders executed under his legal and de facto authority. This control was real since Barzan Ibrahim was aware of the officers and subordinates commission of crimes among which that of intentional killings. In fact some of these killings took place in his presence. Moreover, he knew of intense use of acts of torture such as electric shocks, firing, severe head beating of the victims [with Sticks], iron bars, and the use of other means. Furthermore, he personally tortured some victims. These types of tortures could have led to their deaths. Even after his resignation as head of the intelligence agency on 10/6/1983, Barzan still did have the ability to know before that date that those officers and their subordinates committed similar acts. In fact, these criminal acts constituted activities that fell under his effective responsibility and control. However, he did not take the necessary and diligent measures within his power to stop or to punish the criminal acts or to refer the matter to the concerned authorities for investigation so as to insure accountability of the perpetrators. As a matter of fact, Barzan himself undertook such acts, gave orders, allowed these acts to occur, condoned them, and encouraged other crimes such as intentional killings. As a result, he is criminally responsible for such crimes in his capacity of head of the highest intelligence office as per article 15-4 of the court law.

The accused, Barzan Ibrahim had a legal responsibility over his subordinates. Likewise, he head a large de facto authority emanating from the fact that he is the brother of the president of the republic, head of the revolutionary council, and general secretary of the national Baath party in Iraq at that time. Thus, the government and the party were run by a dictatorial regime. The evidence is that Barzan Ibrahim enjoyed an effective de jure and a de facto authority that he exercised in fact and in a way that would have been possible only for a limited number of people belonging to the former key Baath party membership. This authority has made it possible for him to order the release of 40 prisoners of Al Dujail detainees from the party's headquarter in Al Dujail during the first day of the incident.

This has been confirmed by the accused, Ibrahim Barzan more than once during the sessions of the court as confirmed by the defense witnesses and the witness for the prosecution [Waddah Asheiykh] in his testimony before the inquiry commission on 1/15/2005.

In the above mentioned [Zlatuco Alexosvski?] case [in paragraph 76 etc.] the court determined that the responsibility of the higher official is not confined to official powers only. In fact any person who is in de facto higher official position could bear responsibility under article 7/3 of the court law. The key criterion in determining the rank of a higher official as per international law is



not only confined to the official legal position of the accused but extends to include his capacity and his duties, as well as his ability to exercise power. As the court has underlined in the case of [ALB?], the determining factor when it comes to responsibility as in this case of criminal liability is the de facto control or the lack thereof in terms of control and power over subordinates. In accordance to this, official appointment as a leader is not considered a necessary condition linked to said responsibility which can be derived from the de facto position of the person added to the de jure leadership in paragraph 77 of the same decision in the above mentioned case, the court asserted that "In most cases tried by the courts after the second world war, the relationship of the key leader and the subordinates" was necessary to trigger higher accountability. Thus, in the case of [Toyota], the level of responsibility was defined as the "de facto true authority in control is that which issued orders not to commit illegal acts so as to avoid prosecution".

In this case the accused, Barzan Ibrahim had the material capacity, power, and the legal control as well as the effective de facto authority which allowed him to stop and forbid the crime leading to these killings. Moreover, he had the capacity and the power to punish the perpetrators of these killings; nonetheless, he chose not to do so because, as we said, he was the one who gave orders, committed some of these crimes, encouraged, and condoned others. The evidence pertaining to the material capacity of the accused, Barzan, to punish the perpetrators of these crimes is equal to his ability to reward them. Therefore, whoever is able to reward is also able to issue procedures leading to accountability and punishment. Barzan has admitted before the court that it was within his power to reward intelligence officers, then why would he ask the chief of the revolutionary council for undertaking such a thing? This was contained in his statement before the court as presented in the report emanating from the intelligence addressed to Saddam Hussein in his capacity as the chief of the revolutionary council. This report included a reward request for the intelligence officers whose names were listed to extent to them one year seniority to further their ranks as well as a compensation for their efforts in Al Dujail incident. In addition, The evidence relative to the chief of intelligence's capacity to legally exercise control over accountability and punishment is the fact that he introduced the accused, Hikmat Abdelwahab, before the intelligence court for failing to implement the execution of the sentence concerning two of the Dujail's victims and instead falsely executing four others. Barzan knew of the intentional killings which occurred in Al Dujail. Even if this was not direct, there was a probable or indirect criminal intent and a knowledge of one of the factors involved. The probable or indirect criminal intent equals direct intentional cause in accordance to article 34/b of the code of criminal procedure no. 111 of 1969.

It is true that knowledge is not function of the position itself, but a higher position is one of the factors which confers knowledge. Among the other sources of knowledge is the presence of the accused in the crime scene, his involvement in investigating the victims, as well as his carrying over of some of these crimes as has been established in the case of the accused, Barzan Ibrahim.

The accused, Barzan Ibrahim, had direct knowledge of these crimes because he was present in the crime scene, was personally involved in the commission of some of the crimes while other crimes were undertaken under his direct supervision.

The accused, Barzan Ibrahim, knew of the illegal arrest in Dujail at least during the first and second days of the event. He also knew of the imprisonment since the arrested people were transferred in an intelligence car in his presence. Then, the detainees were put in the Hakimiya prison with his knowledge since he was present. Moreover, he knew of the torture which was taking place in the Hakimiya prison since it occurred under his supervision and with his involvement in this prisoners' torture. Furthermore, he knew of the forced expulsion of the inhabitants in 1983. Likewise, he must have known of the killings "even if he did not know about this directly" which constituted a probable cause proven by the severe and extreme torture perpetrated in the Hakimiya and Abu Ghraib prisons.

There is nothing in these proceedings that shows that the accused, Barzan Ibrahim, has initiated any procedures to stop the commission of these crimes including murder. On the contrary, there is strong evidence that he was a participant in these crimes. In fact, a recourse to and review of the immense documents available to which the defense has referred to, there is no single proof showing that Barzan has undertaken any action to put an end to these crimes, nor did he contemplate any procedure for punishing the perpetrators. In addition, the accused did not refer to the existence of such procedures at the outset during the investigation or the trial.

The lack of evidence showing that Barzan had undertaken any actions to prevent the commission of these crimes, the failure to hold accountable those who committed these crimes, and the fact that Barzan did not refer to such procedures, emanates from the simple reason that Barzan has never ask for and is an indication that Barzan had in fact participated in the commission of these crimes. As a result, it cannot be said that Barzan had prevented the occurrence of these crimes or had worked out procedures to punish the perpetrators.

Based on the foregoing, the accused, Barzan, bears the criminal liability for intentional killings as a crime against humanity because he occupied he position of chief of intelligence as per article 15/4 of the court law.

God said in his sacred book: "Oh Lord! Because thou hast bestowed a favor on me, I shall never be a backer of the guilty" Quran: XXVIII-17, Al-Qasas.

**The accused Barzan Ibrahim's Liability regarding forced expulsion of the population as a crime against humanity**

The court has established that a great number of men, women and children inhabitants of Dujail [around 400 people] were forcibly transferred to the [Lea] center located in the Sahara governorate of Muthanna. This was evidenced by the statements of a large number of victims [who complained] who provided their testimony during the investigation as well as before this court. This was also evidenced by the above mentioned documentary proofs [letters] emanating from the intelligence agency [refer to the available proofs against the accused Ibrahim Barzan sent to the directorate of the governorate of Muthanna indicating the transfer of family members from Dujail, imprisoned in Hakimiya and Abu Ghraieb prisons with a list of names contained in letters originating from the intelligence agency]. Some of these letters were issued when Barzan

was still the head of the intelligence agency and other letters came after Barzan retirement on 10/6/1983.

Thus the expulsion of this civilian population occurred in phases. Likewise, it was established from exchanged letters and issued correspondence, signed by the director of intelligence of the Muthanna governorate that the displaced people of Dujail had arrived to his circumscription.

The issue at hand is the intricate situation that the Dujail inhabitants had gone through when they were forcibly transferred out of their area [without their consent of course] and were held in the Lea Sahara camp. Is the crime of population expulsion and forced transfer not considered as a crime against humanity? Does the situation in which the Dujail people were put in [camps or prisons] not constitute a serious privation of any type civil liberty, thus in violation of the fundamental rights of international law and constitute a crime against humanity.

The court has previously determined during the discussion of Saddam Hussein's extent of criminal responsibility relative to the transfer of the population and their forced expulsion. In spite of the letters issued by the intelligence agency which attest to the transfer of the populations and families of Dujail to the police directorate of the governorate of Muthanna, those letters spoke of [detention]. Detention in that area did not resemble the situation of prisoners who are strongly denied any civil liberty because in Dujail detainees enjoyed some freedom of movement even though they were in a Sahara camp. Despite the presence of guards of the governorate police directorate, the doors of the detainees' rooms were not closed from the outside. In fact, the detainees were able to close the doors from the inside using stones.

Based upon the foregoing, the court considered that the situation of the Dujail population in that detention center [Lea] in the Sahara is tantamount to an expulsion or forced transfer and not a prison or an extreme curtailment of civil liberties as was the case when they were held in Hakimiya or Abu Ghraib prisons. It is true that the detainees were unable to freely leave the area and go where they wanted or return to Dujail. The limitations which were placed upon the detainees are an act found in both crimes [that is forced transfer of the population and imprisonment or serious civil liberties curtailment]. At least, the detainees were able to go outside the camp to gather wood even in the Sahara, something they were not allowed to undertake while in prison. Also, the fact that the detainees were able to close their doors from the inside using a stone to block them is something that is not possible in a prison. Likewise, the detainees were able to cook their own food. This choice was not available to them in the prisons of Hakimiya and Abu Graieb where they were supplied food by prison authorities whereby the portions were small and of poor quality.

Based upon the foregoing, the court believes that Barzan Ibrahim who held the position of chief of the intelligence Apparatus has issued the orders to carry out the expulsion of the civil population from Al Dujail to the governorate of Muthanna, along with their forced transfer to Lea camp. These orders were indeed executed by his subordinates in the intelligence apparatus, by the directorate of secret police, and the police office of the governorate of Muthanna as a part of a joint and criminal activity plan. The actions of Barzan were intentional and aimed at furthering criminal activities of the intelligence and security agencies as an extension of the

criminal acts of the Baath regime, led by his brother Saddam Hussein. Barzan was therefore aware and intended to undertake these crimes against others because he participated in that plan, for that purpose, and for issuing the orders. He undertook all these activities while he was the chief of the intelligence agency while enjoying legal and actual authority to end these crimes or punish the perpetrators once the crimes occurred. This has been proven in the foregoing when we discussed the responsibility for the intentional killings as a crime against humanity. Barzan did not undertake such actions because he was indeed the one who ordered the crimes of forced transfer and expulsion of the civil population from Dujail to that area. This action constituted a scheme of a large methodical attack on the Dujail civil population. Barzan was well-aware of that, and for that reason he is criminally liable for the crimes of expulsion and forced transfer of the population which falls under article 12/1/d of the court law as stated in article 15/2/abd and article 15/4.

**Extent to which Barzan's Imprisonment and extreme denial of civil liberties to detainees constitutes a crime against humanity**

It has become clear to this court based upon the testimony of Mr. Waddah Al-kaiykh and other victims from Dujail that during the investigation and trial that Barzan has issued orders in the first two days of the Dujail incident at least for the troops, the intelligence, party, and security agencies, as well as to the national people's army to arrest a large number of men, women, and children among Dujail population. This order was effectively implemented and the arrested were first put in the rooms of a facility belonging to the local party in Dujail. It has also become clear to the court from testimonies provided by witnesses that Barzan has personally supervised the transfer of the detainees to the Hakimiya prison using vehicles of the intelligence agency. This prison was placed under the authority of the directorate of investigation and secret police within the intelligence agency where he jailed them. Then, Barzan held them in the section of the Abu Ghraib prison belonging to the intelligence agency. The accused, Barzan, was seen by many victims in the Hakimiya prison as he was supervising interrogations and torture, and participating personally in the torture of some victims. In addition, it became clear that those victims were civilians who were entrusted to the intelligence agency presided over by Barzan. Many of the victims were presented before the revolutionary court [now banned] by decision of Saddam Hussein. This emanated from the office of national safety which was under the presidency of the republic, letter no. 762 issued on 5/27/1984 which included that [concerning the reasons for the transfer before the revolutionary court investigative issue no. 40/1984 – intelligence] the testimony of Mr. Awad Al-Bandar during the investigation committee report on 2/9/2005 [as for the investigation, it had taken place at the intelligence agency's location]. Likewise, It is also based upon paragraph 5 of the report of the investigation committee presided over by Mr. Hussein Kamil which included [The committee has undertaken the following: It has consulted all the key elements concerning the Dujail incident which was available at the intelligence agency, the letter issued by the intelligence agency to the office of the president no. 1382 dated 3/31/1987 whose paragraph 3 stated that the intelligence body is in charge of conducting investigations of the Dujail inhabitants. Moreover, this letter contained the following: [implementation concerning the remaining civilians had taken place and some of them died during interrogations]. Based on the foregoing, Barzan, is criminally liable about imprisonment and extreme denial of civil liberties to detainees which constitutes a crime against humanity as per article 12/1/h of the court law as evidenced by article 15/2/ab of said law. The action of

Barzan who issued those orders to imprison those victims means that he criminally and intentionally contributed and participated to commit a crime with the assistance of a group of his subordinates. This participation to commit the crime was intentional and aimed at reinforcing the collective activity of the intelligence agency, the secret service, and the party over which he presided. This was also undertaken to vindicate the satisfaction of the criminal activity of the Baath regime led by his brother, Saddam Hussein.

Barzan's intent was to commit this crime on behalf of the regime and the party of which he was a pillar and to enforce an order issued by Saddam Hussein. Because his act was the outcome of a large attack; because the act was well-planned in so far as it was directed against civilians; because he knew of such attack and issued the orders; Thus, based upon the foregoing, Barzan is considered criminally liable regarding imprisonment and the extreme denial of the victims civil rights which amounts to a crime against humanity in accordance to article 15/2/d of the court law.

The legal requirements that trigger Barzan's criminal responsibility abound because he was the chief of the intelligence agency and failed as such to put an end to the actions of his subordinates [officers, and members of the intelligence agency] and stop the occurrence of the crime. Yet, he had the capacity and the legal and actual authority to do so. Moreover, he did not undertake to issue procedures to hold these perpetrators liable for their actions. This was the result of the fact that he was indeed the one who gave orders to put the Dujail victims in Hakimiya and Abu Ghraib prisons. Barzan is considered criminally liable regarding imprisonment and the extreme denial of the victims civil rights, and this amounts to a crime against humanity in accordance to article 15/4 of the court law.

Extent of Barzan's responsibility in torture as a crime against humanity:

Most of the victims of the Dujail area who testified during the investigation and the court proceedings were arrested the first day of the incident and the following days. After their arrest, they were kept initially in the building of the party section in Dujail. They were then transported via intelligence vehicles on the orders and under the supervision of Barzan to Hakimiya then to Abu Graieb prisons, and finally to the Sahara camps of Lea. The victims testified that there were tortured in all detention centers by officers and subordinates of the intelligence agency in Hakimiya, the prison guards in Abu Ghraib who belonged to the intelligence agency, or the guards of Lea Sahara camps members of the Muthanna secret police. The torture was widespread in Hakimiya under the supervision of the accused, Barzan Ibrahim. In fact the latter has personally tortured many victims in the Hakimiya prison. This is evidenced by the testimony of many victims mentioned above [refer to: the section relative to the complaints against Barzan]. Many proofs can be found in the documents attached to this suit which were presented to the court which attested to this fact. Among these documents whose accuracy the court has asserted as per the criminal evidence commission report upon matching the handwriting and the signatures of the victims with samples of their writing and signatures referred to in paragraph (3) of the report issued by the intelligence agency.

This report was addressed to the presidency of the republic under no. 1282 on 3/31/1987 in which it was mentioned that [ the execution of the remaining convicted has been carried out but

many of them died during interrogation]. The court has also asserted the accuracy of the information relying upon the previously mentioned aide-memoire of the intelligence agency addressed to MM7? in the evidence relative to Barzan and whose paragraph (3) stated that [among the convicted, 46 were eliminated or died during interrogation. Moreover, this accuracy of the information is found in the conviction report emanating from the intelligence court against the intelligence officer, Hikmat Abdelwahab who was a member of the directorate of investigation which reports to the intelligence agency. The latter conducted investigations at the Hakimiya prison with the Dujail detainees as referred to above in page 2 of the report which states:[the number of the remaining sentenced detainees is 96 because of the elimination of others during investigation]. In fact, these documents show that a large number, at least 46 detainees of the Dujail area were killed during torture in Abu Ghraib and Hakimiya prisons, and other unknown locations belonging to the intelligence agencies for the period between the date of the event on 7/8/1982 and the spring of 1984 when 148 people of the Dujail area were in the custody of the intelligence agency and presented to the revolutionary court [abolished].

Thus, the acts of torture perpetrated by Barzan in person as well as by officers and their subordinates and the guards at the Hakimiya and Abu Ghraib prisons – especially at least as far as Hamikia was concerned – took place under the direct supervision of Barzan. These acts of torture took the form of severe body beating using rubber sticks, by firing weapons in their direction, by electrical shocks, by attaching wires to the ears, nose, or genitals, and by obliging the victim to sit on a bottle. Psychological torture was also used by undertaking these acts in front of a mother, a brother, or a father. This form of torture is corporal when applied to the detainee on the one hand; but, on the other hand, it is also psychological as far as the sufferings of these relatives are concerned. This torture was applied to women and men of different ages, and to 12 year old children. The torture took place before children of a lesser age. Other types of torture comprised extinguishing cigars on the head of the detainee, sleep deprivation for longer period of time, kicking. One of the witnesses said that Barzan had extinguished cigars by placing them behind the victim's ears. Another witness maintains that Barzan kicked him in the leg while the victim was sick to the point that the detainee lost consciousness. A third witness affirmed that Barzan was eating raisins while watching torture. Some female witnesses added that girls were raped and were interrogated until late in the night and when they returned to their cells, they showed signs of suffering and their faces were pale. Other female victims spoke of humiliation, insults, and were subjected to dishonoring acts such as removing the clothes, putting up their legs, and foot beatings. Men witnesses reported humiliation, degrading comments, and insults made by Barzan, intelligence officers and their subordinates, and the guards of Abu Ghraib prison section under the control of the intelligence agency.

As a result, there is comprehensive evidence showing the undertaking of acts of torture upon the victims of Al Dujail detainees by Barzan personally, by the officers and subordinates, as well as the guards of the Hakimiya intelligence section of the directorate of investigation. These acts took place in his presence and under his supervision most of the time and in many cases. Moreover, these acts were the outcome of a large and organized attack on the Dujail civil inhabitants. In addition, Barzan knew about the torture since he was the one who issued orders for the arrest, imprisonment, and torture of the inhabitants, as well as the one who supervised these actions. Indeed, Barzan participated in the torture of the victims in some cases. Therefore,

Barzan is criminally liable for torture as a crime against humanity in accordance to article 12/1/f of the court law as evidenced by articles 15/2/abc and 15/4.

Since it has become clear that the actions of the accused, Barzan, relative to torture of civilian population in Al Dujail area has been perpetrated by the accused himself, assisted by a group of people for committing a criminal act. Considering that this participation was intentional because it met both criteria of knowledge and intent [i.e., knowledge of the criminal act [torture] and willingness to commit the crime. This intentional participation in the commission of the crime was undertaken with the objective of furthering the intelligence criminal activity and the Baath party in power of which Barzan was a key pillar as the brother of the head of the government, president of the revolutionary council, and the general secretary of the national Baath party in Iraq. Since he knew of the commission of the crimes by the key personalities of the regime for the already cited reasons and because he got his orders from Saddam Hussein to arrest and imprison a large number of women, men, and children without any legal grounds. Also, Barzan implemented the orders despite the fact that both Saddam Hussein and Barzan knew that the number of people who participated in the assassination attempt was limited to a small group. This is evidenced by the declaration of Saddam Hussein himself before the investigative commission on 6/12/2005 and by the witness, Waddah Al-Skeikh during investigation and court proceedings.

Based on the foregoing, Barzan is guilty of torture as a crime against humanity according to article 15/2/D of the law of the court.

#### IHT Part 5 Translation

*(...continued from IHT Part 4)*

Moreover, due to the fact that the accused Barzan Ibrahim was the Head of the Intelligence Service, the Head of the officers and staff and guards of the Investigation and Interrogation Department (Al-Hakimiya) and Head of the guards of the special section of the Abu Ghuraib Prison that followed the aforementioned department as well as the Intelligence Service; and the presence of a superior-subordinate relationship between him and them and that those employees were following the orders of the Accused Barzan Ibrahim, and that he knew that his employees tortured those civilian victims as these acts of torture were performed in his presence and under his supervision, and some of these acts were even perpetrated by him in person in the presence of those employees, and he did not do anything to prevent that crime; and because that crime involved activities that were within his responsibilities and active control (acts of torturing victims to force them to confess performing an act which they did not perform and that is the assassination attempt against the Accused Saddam Hussein or forcing them to confess that they were members of the "Daawa Party", or forcing them to sign statements with confessions about their involvement in those acts without reading these statements first), or even torturing them just for revenge; and the fact that the Accused Barzan did not take any of the measures that were necessary and reasonable within his legal and de facto authority, and consequently within his capacity to prevent committing the crime, despite the fact that he had the legal authority being the Head of the Intelligence Service and the de facto authority being one of the major figures in the former regime and the Head of a service that was so scary that just mentioning its name could

horrify any Iraqi, and in a dictatorial regime that was led by his brother the Accused Saddam Hussein, and he also did not take any measures to prosecute any of the officers and staff of the Intelligence Service who worked at the Investigation and Interrogation Dept. about this particular crime or the other crimes that were committed against the residents of Dujail in contrast with all human laws, values and customs, and divine laws; therefore, the Accused Barzan Ibrahim is also found responsible for torture as a crime against humanity according to article 15/ fourth of the High Court's Law.

Almighty Allah says: "We have honored the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favors, above a great part of our creation." The Holy Qur'an (AL-ISRA: 70)

**The extent to which the accused Barzan Ibrahim is responsible for the forcible disappearance of persons as a crime against humanity.**

We mentioned earlier that for this crime to take place and thus to prosecute its perpetrator, a number of elements must be available. These elements have been indicated earlier when we were examining the extent of Accused Saddam Hussein's criminal responsibility for this crime. After examining and discussing the available evidence in this trial, it has become clear to the Court that some of the elements of the crime of Enforced disappearance of persons as a crime against humanity are unavailable and thus none of the those accused in this trial who were accused of doing this, including the Accused Barzan Ibrahim, can be held responsible for actions that are not considered a crime by the International Law and the Law of the Court, especially that it was not proven to the Court that any relative of the victims has come forward to any official department to enquire about the fate of the victims or their whereabouts. It has also not been proven to the Court that any of those departments, including the one that was headed by the Accused Barzan Ibrahim, has refused to admit detaining, keeping in custody or kidnapping any of the residents of Dujail whether during or after arresting them and keeping them in custody. Some enquiries may have been submitted by the relatives of some of the victims in this regard, and there may have been denial of imprisoning, keeping in custody, or kidnapping any of the residents of Dujail by the Intelligence Service, but what is definite is that none of these enquiries or denials of imprisonment or keeping in custody is available in the documents presented to the Court.

It has also not been proven to the Court that the Accused Barzan Ibrahim or any of those accused in this trial who have been accused of this charge were aware that arresting the residents of Dujail will be normally followed by denial of depriving them of their freedom or not offering information about their fate or whereabouts whether during the process of arresting them and keeping them in custody or even after that.

And if none of these elements of the crime is available, this would lead to the unavailability of yet another element of this crime and that is: that the denial of depriving these residents of Dujail of their freedom or not offering information about their fate or whereabouts was done by the government or by a political organization or done with its permission, support, or recognition; and because it has not been proven to the Court from the available evidence in the trial that there was refusal on the part of any of the government departments or the Baath Party to admit this as none of the relatives of the victims has put forward an enquiry in the first place, or that this



enquiry may have been put forward but is not available in the documents presented to the Court, and for all of those reasons, this Court has decided to annul the charge against the Accused Barzan Ibrahim for this crime, and more accurately for this act in accordance with article 182/b in the Amended Criminal Court's Law No. (23) 1971.

**The extent to which the Accused Barzan Ibrahim is responsible for the other inhumane acts as a crime against humanity**

The evidence available in this trial against the Accused Barzan Ibrahim regarding the razing of the orchards in Dujail lies in the statement given by the witness Waddah Al-Sheikh and also the statement of the Accused Mizhir Abdullah during interrogation, and the statement of the Accused Taha Yassin Ramadan during interrogation too, in addition to some more documentary evidence, and as follows:

The witness Waddah Al-Sheikh stated during interrogation on 25 Jan 2005 that:

“At that time a committee was formed and it was headed by the Accused Taha Yassin Ramadan, and the department’s representative (referring to the Intelligence Service) was Muhammed Olaiwi. One of the suggestions put forward by the Accused Taha Yassin Ramadan was to raze the trees and the orchards to a distance of 1 to 3 kilometers in all directions, and this suggestion was carried out following orders from the Accused Taha Yassin Ramadan, and the orchards and trees in the area of Dujail were razed.”

The Accused Mizhir Abdullah stated to the interrogating committee on 21 Feb 2005:

“Regarding the matter of razing the land and the cutting of the trees, I was assigned by the seniors in the party and by the order from the Accused Barzan Ibrahim that was delivered to us through the party to escort the (bulldozers, and graders and other heavy equipment) for the purpose of cutting the trees and razing the land, and I did go with the bulldozers that performed the act, etc.”

As for the Accused Taha Yassin Ramadan, he states in his statement that was put on paper by the interrogation committee on 9 Feb 2005:

“I did go to the National Assembly following the orders of the Accused Saddam, and I found Fadhil Al-Barrak who used to hold the position of Head of the General Security Service ... I also found a person whose name I cannot remember right now. This person told me that he represented the Head of the Intelligence Service, and informed me that the Head of the Intelligence Service went to meet Saddam Hussein after the incident with two or three people that I do not remember in particular, etc.”, and there are documents in this trial that were issued during the period between September and November of the year 1982, that indicated the plans of the Intelligence Service to deal with the land of the imprisoned residents of Dujail, when the Accused Barzan Ibrahim the Head of the Intelligence Service used to support that resolution issued by the Revolution Command Council headed by the Accused Saddam Hussein numbered 1283 on 14 Oct 1982 and signed by the Accused Saddam to confiscate the land that is owned by victims from the residents of Ballad and Dujail, and to transfer their ownership to the Ministry of

Agriculture and Agricultural Reform. This document is important because it shows that the former Baathist Regime has implemented a plan to confiscate the land that is owned by victims from the residents of Dujail and the same for those from Ballad, a plan that was put forward by the Intelligence Service that was headed by the Accused Barzan Ibrahim.

And since satellite imagery for the Dujail area before the razing and after it and which was presented to the Court showed that the orchards of Dujail with their fruitful trees has become arid land after razing; and since that plan which was put forward by the Intelligence Service, and the resolution that was issued by the dissolved Revolutionary Command Council were against the law and the Temporary Constitution of the year 1970; and since the razing of the orchards in Dujail and the confiscation of the lands had caused great suffering to the residents of Dujail, especially to the land owners and the civilians who worked on them, as all fruitful trees were uprooted and destroyed; and since this act is similar in character to the inhumane criminal acts stated in article 12/1<sup>st</sup> in the Court's Law; and since this act aimed at destroying the sources of income of those victims; and since the Baath Party regime that the Accused Barzan Ibrahim is considered one of its major figures has targeted the residents of Dujail victims who had great suffering because of that action and underwent great damage that was beyond repair whether physically or psychologically; and since it has been proven for this court that the decision to raze the orchards was taken in the meeting that was attended by "Muhammed Olaiwi", who was the chief of staff at Accused Barzan Ibrahim's office at the time, and that was during his meeting with Accused Taha Yassin Ramadan and Fadhil Al-Barrak at the National Assembly building on the day that followed the event; and since the Accused Barzan Ibrahim's participation in this concern along with that of others was with a mutual criminal purpose with the intention to commit this act, and this participation was made on purpose and was offered in order to further the criminal activity of the Intelligence Service in which Muhammad Olaiwi attended the meeting where it was agreed to commit this act and that was held at the National Assembly building on behalf of the Head of the Intelligence Service the Accused Barzan Ibrahim; and since that participation aimed at furthering the criminal activities of the Baath Party regime, and the fact that the Accused Barzan Ibrahim knew that the Accused Saddam Hussein had the intention to commit this crime as the Accused Barzan had direct contact with him because the Intelligence Service that participated in planning for the orchard razing and land confiscation was directly linked to the Revolution Command Council of which Accused Saddam Hussein was the Chairman, and as the Accused Barzan Ibrahim knew about the Accused Saddam's decision due to his close family relation with him being his half-brother (having the same mother); and since those inhumane acts were part of a widespread systematic attack against civilians and that the Accused Barzan Ibrahim had had known about the attack, and following what was stated by the witness Waddah Al-Sheikh on 25 Jan 2005 and what was stated by the Accused Mizhir Abdullah on 21 Feb 2005 and Taha Yassin Ramadan on 9 Feb 2005, and for all of the documentary evidence indicated earlier, the Accused Barzan Ibrahim is considered criminally responsible for the other inhumane acts that constitute a crime against humanity according to article 12/1<sup>st</sup>/j from the Court's Law and article 15/2<sup>nd</sup> b, d in the same law.

### **The Court's verdict regarding the charges against the Accused Barzan Ibrahim**

First: It has been proven to the court beyond reasonable doubt that the Accused Barzan Ibrahim has committed acts that comply with the rulings of article 12/1<sup>st</sup> /a, d, e, f, j in the Iraqi High

Criminal Court's Law No. (10) 2005 under articles 15/1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> of the same law, and therefore the court has decided to convict him for them and as follows:

1. Convicting the Accused Barzan Ibrahim Al-Hassan for willful killing as a crime against humanity according to article No. 12/1<sup>st</sup> /a in the Court's Law and under article 15/2<sup>nd</sup> / a, b, d and article 15/4<sup>th</sup> of the same law.
2. Convicting the Accused Barzan Ibrahim Al-Hassan for displacing residents or forceful transfer of residents as a crime against humanity according to article No. 12/1<sup>st</sup> /d in the Court's Law and under article 15/2<sup>nd</sup> / a, b, d and article 15/4<sup>th</sup> of the same law.
3. Convicting the Accused Barzan Ibrahim Al-Hassan for imprisonment and extreme deprivation of physical liberty, an act that goes against the basic rules of the international law as a crime against humanity according to article 12/1/E. of the Court's Law and under the article 15/2/B, D, and F and article 15/4<sup>th</sup> of the same law.
4. Convicting the Accused Barzan Ibrahim Al-Hassan for torture as a crime against humanity according to the article 12/1/G. of the Court's Law and under article 15/2/A, B, C and F and article 15/4 of the same law.
5. Convicting the Accused Barzan Ibrahim Al-Hassan for other acts of the same character that can deliberately cause great suffering and grave harm to the mental or physical health as a crime against humanity according to article 12/1/I of the Court's Law and under article 15/2/B, D of the same law.

All of the above goes within article 182/A of the penal Court's Law, number 23 of the year 1971.

Second: Since the crime of enforced disappearance of persons as a crime against humanity has not been committed and due to the unavailability as one of its elements, the court has decided to annul the charge against the Accused Barzan Ibrahim Al-Hassan from this act and acquit him of this charge according to 182/B of this amended penal Court's Law, number 23 of the year 1971. In the presence of the Accused, the decision was taken by consensus and declared in public on November 5, 2006.

Signature,  
Member

Signature,  
Member

Signature,  
Member

### **The Conviction Verdict of the Accused Barzan Ibrahim Al-Hassan**

Following the Indictment, dated May 15, 2006 against the Accused Barzan Ibrahim Al-Hassan under article 12:

Since you were the head of the Intelligence Service and were personally in charge of the security of the head of state, your brother, the Accused Saddam Hussein, when he visited Dujail, and when his procession was shot at on July 8, 1982, and on the same day he met you on his orchard in Radwaniya and then you came to the Dujail to lead the operation of interrogation and investigation with the criminals as they were described and you stayed in that town for three days using the headquarters of the Baath Party office as your own office to run the operations where you have given direct orders to the security and party members and the popular army to put the town under blockade and a state of alert in preparation for launching a systematic attack on a large scale using different kinds of weapons, including war planes and military helicopters to bombard the town and neighboring orchards and to encircle them. And then to search houses and keep in custody family members including men, women, and children, and put them in the police station and Baath Party Headquarters in preparation to transport them in groups using private cars and buses that belonged to the headquarters that belonged to the Intelligence Service in Baghdad so you could start interrogation and investigation of a different kind. From the members of the families that have been transported from Dujail to Baghdad where things took a different turn that was against the rules and laws of investigation procedures, according to the amended penal Court's Law, number 23 for the year 1971.

Where first the Intelligence Service investigator started by exploring the scene of the incident when the director of interrogation and investigation of the Intelligence Service. Waddah Al-Sheikh surveyed the place and supervised along with other officers, the process of group imprisonment and transporting those arrested in groups to Baghdad and in the building of the investigation department that belonged to the Intelligence Service. Waddah Al-Sheikh stated in front of the head of the court on October 23, 2005 that "The searching of the orchards and the deployment of troops in Dujail was done following orders from Barzan and at the end that most of the people who were referred to the Revolution Court denied the shooting incident or having any connection with what happened; and since the very first hours of the incident, you became like military ruler with full authority and the court has noticed that in your presence, starting in the Baath Party Headquarters that you released some of those who were already arrested but that after applying a sophisticated but tasty security plan and under your actual supervision, big group imprisonment processes for whole families including old people and infants were done and according to a well calculated plan, these people were all transferred to the investigation headquarters of the Intelligence Service instead of referring them to the judicial authorities in charge of investigation according to the current laws in this regard.

And after finishing the procedures in terms of arresting all suspects as families and not as individuals, all their possessions and money and orchards were confiscated."

And Waddah Al-Sheikh mentioned in the above statement that "the searching of the orchards and the deployment of the troops in Dujail was upon orders from Barzan" adding that "there was no action plan. It was all done haphazardly." "Barzan has also issued an order that all those who carry weapons should be referred to court which means that all those who could carry weapons are referred to the Intelligence Service headquarters...and most of those who have been referred to the Revolution Court later have denied the shooting incident and having any connection with what has happened."

And so when you ran the investigation in the case of Dujail, you have looked at them from the very beginning as criminal enemies and you were violent to the accused or those who were under suspicion and the intention to destroy lives was clear and obvious to all those who were arrested and accused in the first place.

Therefore, the cases of murder and torture and violation of rights that occurred later were premeditated according to a long term systematic plan that did not accept any retreat or absence of implementation and within this spirit, and from the very first hours of the incident, you ran the arresting of the operations like a "military ruler with full powers" and the court has noticed from the statements that you have actually supervised directly the group arresting operations as individuals and families, women, men and children and that during your stay for three days, that you were directly in charge and the commanding officer with regard to the group arrests and then transporting them using cars that belonged to the Intelligence Service to the investigation and interrogation office that belonged to the Intelligence Service in Baghdad without any interference from the judicial authorities that are concerned with the investigation procedure according to the penal Court's Law, number 22 for the year 1971.

This means that the interrogation and from the beginning has taken an irregular turn that was against the law for those who were arrested including women and children who were treated like spies and traitors with the claim that they were conspiring against the government since those who were shooting where "intelligence agents from an enemy or hostile country". This accusation was thrown at those groups of people, even at the very beginning of the interrogation according to the official statement by the official authorities about this incident.

According to your directives, the town was put under an "exceptional programmed military blockade" in preparation for launching "a large scale systematic attack" and under your supervision using different kinds of weapons including military helicopters and warplanes on orchards and the suburbs of the town followed by searching and group arrests and nine people were killed right away in the orchard and the bodies were brought from the orchards to you to recognize them and to their families and these were Abbas Jasim Muhammed, Ridha Hatto Al-Salami, Karaam Kadhim Jafar Al-Zubaidi, Imad Hassan Mahdi Jafar Asadi, and Raad Al-Karbalai who was visiting town, Muhammed Abd Jawad Al-Zubaidi, Mahroos Muhammed Hadi Al-Kilabi, Hashim Adnan Jasim Al-Khazaali and Sadiq Majid Hamid Al-Khazaali Sattar Tawfiq Yihiya Al-Khafaji and following direct orders from Barzan Ibrahim from family members were gathered after the attack by joint forces from the army and the security and party members in their houses and the number of the family members who were arrested was 399 people including men, women and children and they were transported under direct orders from you and using

buses belonging to the Intelligence Service with drivers from outside Dujail to Baghdad "the headquarters of the investigation department of the Intelligence Service" and following your direct orders, those who were arrested were put in halls, in rooms that were lit with red lights and where the walls were all painted in red and then interrogators started torture and maltreating those arrested including "old people, men, and women", "unmarried young women" and "little children" using different kinds of physical torture using electricity, "hitting them on the head with iron bars" and hanging them by their feet or hands, "depriving them from sleep," "sexually assaulting the young women, and forcing them to get naked." As a result of this torture the following people died: Yaqub Yusuf Hassan Al-Obaidi, Jasim Muhammed Litif Al-Salami, Salih Muhammed Jasim, Qassim Ali Asad Al-Haidari, and Alwan Hassan Al-Salami and after more than seventy days of torture, the remaining family members were transported to the Abu Ghuraib Prison (the section that belongs to the Intelligence Service) and there the torture continued and deprivation of sleep, and facilities, as well as physical and psychological relief where "women and children were isolated from the men in their families" and the court has eyewitness statements regarding your personal participation in torture and maltreatment towards those who were arrested and as follows:

1. Complainant Number 1 who came to the court on January 21, 2005 testified that "Barzan personally kicked him during interrogation"
2. The lady witness, Number 2, testified to the court on February 1, 2005 that Barzan issued the order "of hanging her upside down from the ceiling" and he watched as "she was being tortured" by hitting her with electric wires and then he hit her himself "in her chest and he broke her ribs".
3. Complainant Number 2, who testified in the court session on February 2, 2005 that "Barzan burned his head in the ear area" using a lit cigarette and that he put off the cigarette on his ears which caused it to burn and that there are some marks that still show until now.
4. Complainant Number 2, who testified on December 21, 2005 that Barzan was present in the torture room and that he was eating grapes as the guards were torturing him in the building of the interrogation court of the Intelligence Service.
5. Complainant Number 3, who testified to the court on December 21, 2005 that Barzan threatened "to take out his intestines, to snatch them out of his anus (saying that I'm going to take out your asshole and give it to you in your hand)" and Barzan used to torture him on a daily basis and repeatedly.
6. Complainant Number 3, who testified in the court session of February 1, 2005 that "Barzan shot her and he hit her with a stick" and he ordered to transport her to the "operation room" and he tried to "put her in a sack to hang [from the ceiling] her".
7. The witness, Shehab Ahmed Abbas Al-Khazraji, in his statement to the interrogation judge on July 13, 2004 that Barzan personally supervised "the group arresting operation" and based upon the statements given by witnesses, objective facts and the evidence that has been provided to the court during the interrogation and the court process and based upon the documents and official evidence within the context of this case

And since there is sufficient evidence in the case in hand and as a result of the trial and interrogation and after examining the statements of the interrogation documents and in accordance with article number 182 of the amended penal Court's Law number 23 for the year 1982. The court in consensus has decided to convict the Accused Barzan Ibrahim Al-Hassan according to the rulings of article 12/1 and the items A, D, E, F, H and article 15 items 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> of the Iraqi criminal Court's Law number 10 for the year 2005 and in accordance with article 406 of the penal law number 111 for the year 1969 in the case in front of it, number 1/C/Dujail/2005 and to decide upon his punishment according to it, and the Accused was informed in public on November 5, 2006.

Judge Raouf Rashid AbdulRahman (seal & signature)  
Seal of the Iraqi High Court

The Accused Taha Yassin Ramadan

The charges against the Accused Taha Yassin Ramadan

On May 15, 2006, this court charged the Accused Taha Yassin Ramadan with participating and committing a number of crimes against humanity embodied in article 12/1/A, D, E, F, I, and J from the high Iraqi criminal Court's Law, number 10 for the year 2005 and the article 15/1<sup>st</sup> and 2<sup>nd</sup> and 3<sup>rd</sup> and 4<sup>th</sup> of the same law.

A summary of the statements given by the complainants and the prosecution witnesses against the Accused Taha Yassin Ramadan

The majority of the complainants and witnesses did not mention that they saw the Accused Taha Yassin Ramadan arresting, imprisoning, torturing, murdering or deporting any of the residents of Dujail by force or enforcing the disappearance of any of them or ordering anybody to commit any of those acts that constitute crimes against humanity.

And also none of the complainants or witnesses said that they heard themselves (not from others) the Accused Taha Yassin Ramadan giving orders to others to commit those criminal inhumane acts. Apart from the other inhumane acts as a crime against humanity, a large number of those complainants and witnesses stated that they had seen the Accused Taha Yassin Ramadan as he was supervising the acts of razing the orchards in Dujail area or that he has known about this from others.

However, the witness Waddah Ismail Al-Sheikh mentioned in his statement that was transcribed by the interrogation committee on January 25, 2005 "at that time a committee was formed, headed by the Accused Taha Yassin Ramadan and in that committee Muhammed Olawi represented the service who was at the same time the chief of staff of the Intelligence Service to deal with the case of Dujail as it was a serious event and one of the suggestions that were put forward by the Accused Taha Yassin Ramadan was to cut the trees and orchards to a distance of one to three kilometers in all directions and this suggestion was carried out upon orders issued by the Accused Taha Yassin Ramadan and the orchards and trees in Dujail area were cut and razed. This committee also decided to keep them in custody in the area of Nugrat Al-Salman south of Samawa in camps that were made ready for them knowing that until now and this was said in 1984, not a single Accused was referred to court and in particular in November 1984, the people from the families of the Dujail were kept in custody from 1982 until I left the Intelligence Service in February 1984 when they were sent to the camp that was made ready for them but which I have not seen as I was informed that they will be kept in Nugrat Al-Salman and this order was given by the committee that was formed and was headed by the Accused Taha Yassin Ramadan and I think that the order was between Taha Yassin and Saddam Hussein, but as far as the razing of the lands and orchards is concerned, that was Taha Yassin Ramadan's.

The witness Waddah Al-Sheikh mentioned in his statement that was transcribed by a committee of three judges and the first committee of the high Iraqi criminal court on October 23, 2005 during his presence at the military hospital in Abu Ghuraib and which was read in court on October 28, 2005 "as for the role of the Accused Taha Yassin Ramadan, at the beginning he didn't have any role but almost one month later a committee was formed and it was headed by him and that committee as far as I can remember had as its primary role the razing or uprooting of the orchards in Dujail and Balad as for the second role of the committee, that had to do with the families that were kept in custody and I don't know the details of that role and one of the members of the committee was Muhammed Olaiwi and Sadoun Sabri.

The witness Waddah Al-Sheikh was a director of the interrogation and investigation at the Intelligence Service and Muhammed Olaiwi was the chief of staff at the Intelligence Service at that time. The witness Waddah Al-Sheikh also said "as I mentioned earlier the party member



who was in charge in the Dujail, Ahmed Ibrahim who had full power inside Dujail to follow up on arresting citizens after the incident and before it in Baath Party follow up was transferred to the intelligence and he remained in the Intelligence Service until I was convicted and as far as I remember he was returned to the dissolved Baath Party in Dujail.

And it can be observed that Ahmed Ibrahim the Baath Party member who was in charge in Dujail must have been one of the major members of the popular army in Dujail at that time and thus had contact with the general leader of the popular army at the time the Accused Taha Yassin Ramadan. The Accused Taha Yassin Ramadan was also a member in the regional command of the Baath Party and Ahmed Ibrahim being the Baath Party member who was in charge in Dujail must have had contact with him through this position in one way or another.

Complainant/Ahmed Hassan Muhammed Al-Dujaili in the trial session that was held on December 5 mentioned in his statement about the Accused Taha Yassin Ramadan:

1. After asking the complainant by the general prosecutor about who razed the orchards and the houses, the complainant answered that the Accused Taha Yassin was the one who did it by himself as he supervised the razing operation and we have five orchards that have been razed too and he demanded moral and financial compensation and when the complainant was asked by the defense attorney of Taha Yassin Ramadan about the manner in which the Accused arrived to the area with so many military people in that area at the time and there was a major government member referring to Taha Yassin Ramadan and also how did the razing of the trees happen at the same time that the other events were happening and how did the heavy equipment and bulldozers arrive on the next day and started demolishing houses and razing the orchards. The complainant answered that he was in prison and he did not see this but the presence of the Accused Taha Yassin was well known in the area and that the razing happened four months after our arrest and not the very next day after the incident as the defense lawyer mentioned. The complainant mentioned that he saw the Accused Taha Yassin Ramadan with other officials when he was arrested one day after the incident and the complainant raised a complaint against the Accused Taha Yassin.

Complainant-Jawad Abdul Aziz Jawad/and the court session held on Dec. 5<sup>th</sup>, stated the following about the Accused Taha Yassin:

1. The complainant stated that in Oct. 1982 dozens of bulldozers razed the orchards and they started from the west side; and on the 11<sup>th</sup> of Oct. 5 of our orchards were razed and 3 pumps were buried with the wells and the crops of 3 months were destroyed and 4 of our houses that belonged to my brothers were demolished; and I saw the Accused Taha Yassin as my father and I were in a small land of ours and some of the popular army men called us so my father talked to Taha Yassin and the latter asked him "what is this?" My father answered him "this is a garden and not an orchard and it belongs to me and the other one is my brothers and he is an officer in the army and has a war injury." The Accused Taha Yassin said "leave this garden and he was leaning on a stick and 5 months later this one was razed too."

2. He also mentioned that some individuals of the popular army were the ones who were shooting to express their joy for the visit of Saddam to Dujail.
3. The complainant mentioned that the Accused Saddam Hussein visited the Dujail again and went up the roof of the police station and said "I did not order that so much of these orchards should be razed, but the brothers may God forgive them expanded it."
4. The complainant raised a complaint against Taha Yassin and asks for moral and financial compensation for the damage.
5. The complainant mentioned that he saw the Accused Taha Yassin in Dujail.
6. When asked by the prosecutor: who razed the orchards? The complainant answered that was upon an order from the resolution command council (Saddam Hussein) and under the supervision of Taha Yassin Ramadan and many members of the popular army and all of the Baathists in Dujail.
7. When asked by the defense lawyer Khalil Al-Dulaimi how were you able to recognize Taha Yassin when you were only 10 years old for you have mentioned that you saw him and that he was there? The complainant answered: I have seen him and I knew him well because I used to see him on T.V. and also because they informed my father that Taha Al-Jazrawi wants you and I saw him myself.

Complainant/Referred to with the letter C when called upon in the court session on December 6, 2005 stated the following about the Complainant Taha Yassin: when the prosecutor asked him who razed the orchards and demolished the houses in Dujail? The complainant answered: that he was in the prison at that time but I heard after we were released that Taha Yassin and the party members were the ones who did it.

Another complainant referred to with the letter D in the court session held on December 6, 2005 stated the following about the Accused Taha Yassin:

1. To a question by the court: were your orchards razed or not? The complainant answered: I don't have any orchards but the orchards in the area were razed.
2. In another question by the complainant of the prosecution attorney: did you see the razing of the orchards yourself? The complainant answered: Yes as I was in the military and I came to visit my family in Dujail after the incident and I was not able to identify my house because all houses looked like the desert and people told me that my house was next to the police station so I thought that I could identify it but I could not.

Another complainant referred to with the letter C in the court session held on January 29, 2006 stated the following about the Accused Taha Yassin: The complainant raised a complaint against the Accused Taha Yassin "because he razed the orchards that belonged to us"

The other protected complainant referred to with the letter E when referred to in the court session on December 6, 2005 stated the following about the Accused Taha Yassin:

1. The complainant mentioned that the ones who did the shooting on the day of the incident were members of the popular army.
2. The complainant also mentioned that when he was released from the Laya Prison in the desert he found that his house had been robbed and the money that was in it which was 44,000 Iraqi Dinars was stolen in addition to nine motors that were stolen from his orchards knowing that members of the popular army and others used to enter his house whenever they wanted and they razed his orchards and demolished its walls.
3. The complainant mentioned that "the popular army killed nine people. I saw their dead bodies thrown away and when I turned myself in the next day after the my family was arrested and among those who were killed was my son and another one who was the son of Jasim Ridha Al-Hatto and another person who was Faris Ibn Muhammed Hadi and I could not recognize the other ones who were killed because their bodies were mutilated and all of these nine killed ones were killed in the eastern orchards and these were owned by Khazraj and I did not see them get killed but I saw their dead bodies.

The other protected complainant referred to with the letter A in the court session held on February 2, 2006 stated the following about the Accused Taha Yassin: Having been asked by the lawyer who was assigned for the complainant: Why are you raising a complaint against the Accused Taha Yassin? The complainant answered because when I returned back to Dujail, the residents of Dujail informed me that it was him who razed the orchards.

Another protected complainant referred to with the letter F when called upon in the court session held on December 7, 2005 stated the following about the Accused Taha Yassin:

1. The complainant mentioned that he raises complaints against Taha Yassin because he had razed the orchards in Dujail, keeping in mind that at the time of the razing of the orchards this person was in jail and he said that he heard from the residents of Dujail after he was released that the Accused Taha Yassin was the one who did it and he asks for moral and financial compensation.
2. When asked by the defense attorney for Taha about how he heard that the orchards were razed and who were the people who said that to him? The complainant answered I heard that from the residents from Dujail and in particular from Jawad Aziz Jawad and many of the residents of Dujail but he was unwilling to mention their names for security reasons.

The complainant Ali Hassan Muhammed Al-Haidari in the court session held on December 21, 2005 stated the following about the Accused Taha Yassin:

1. In his statement he mentioned that he saw the presence of the popular army as they took their places all over the city and that was on the day of the incident.

2. The complainant mentioned that on the Friday that followed the incident "intelligence agents broke into our house and they were wearing civilian clothes and they had with them members of the popular army in addition to others from the regular army".

3. He also stated that a force made up of members of the popular army and the guards broke into our house as we were in the house: 6 boys, 4 girls, and my father and my mother and they arrested us all and that was on Friday which was the day after the incident in the afternoon.

4. The complainant also stated that "after our release on April 22, 2006 we found out that the town had changed as the orchards had already been razed and cut months after our arrest for they brought in bulldozers and the residents of Dujail saw the Accused Taha Yassin telling them (the drivers) "Destroy the birds' nests so they will not be able to go back to their nests."

5. The complainant raises complaints against Taha Yassin because he was the one who razed the orchards.

The other protected complainant referred to by the number 1 in the court session held on December 21, 2005 stated the following about the Accused Taha Yassin:

1. On the day of the incident a number of cars and members of the popular army arrived.

2. The complainant mentioned that "on the day of the incident after 4pm, the security officer Abu Ahmed and with him Mishaan Daham came to my house and took me to the special headquarters of the guards of the popular army and a person named Abu Nabil interviewed me.

3. The complainant raises complaint against Taha Yassin and when the court asked him: why do you raise a complaint against him, the complainant answered that he was present with him, and he [Taha] was the one who razed the orchards in Dujail.

4. And in a question from the attorney Majid Haddad to the complainant: What was the nature of the complaint against the Accused Taha Yassin? The complainant answered when the orchards were razed, the complainant Taha was present and with him were the rulers of Dujail.

The protected complainant referred to by the number 4 in the court session held on December 22, 2005 stated the following about the accused Taha Yassin:

1. That 20 days later my whole family was arrested by the security men and members of the Baath Party and the popular army and we were taken to the police station in Dujail and I was put in a room with another family and then we were taken to the Intelligence Service

2. The complainant also mentioned that after they returned back to Dujail they found that the orchards and lands were razed and in the orchards was a house that contained things and a burnt motor and the water supply was cut off from it and we found it all burnt out and this happened within four years.

The protected complainant referred to with the number 3 in the court session held on December 22, 2005 stated the following about the Accused Taha Yassin:

1. Our possessions of all types had been confiscated and our house was demolished and our orchards were razed as I saw the orchards being razed by bulldozers under the protection of the popular army with my own eyes and I raised a complaint against Taha Yassin because he was in charge of the popular army.

2. And in a question from the court to the complainant: Did you see the orchards being razed? The complainant answered yes I saw them because I was inside the house.

3. In another question from the court to the complainant: when did the razing happen, in months and days? The complainant answered I don't remember the months and days but I only saw the bulldozers razing the orchards and that happened after the incident.

The complainant referred to by the number 5 in the court session held on December 22, 2005 stated the following about the Accused Taha Yassin:

1. The complainant mentioned that he raises a complaint against Taha Yassin because "he was the one who razed our orchards and our houses and we knew that through the people of Dujail who told us that the popular army razed the orchards and that Taha Yassin supervised them"

2. When asked by the Accused Taha Yassin through the court about the relationship between the popular army and the razing of the orchards, the complainant answered: the popular army was protecting the people who were razing the orchards.

The protected complainant who was referred to by the letter B in the court session held on February 1, 2006 stated the following about the Accused Taha Yassin:

1. That after the arrival of Saddam Hussein to Dujail "we heard gunshots and after half an hour we went out to the streets and saw the popular army..."

2. The complainant mentioned that "on the same day of the incident forces from the republican guards and popular army knocked on our door and entered the house and arrested my father and brother"

3. The complainant also mentioned that the ones who arrested people were the popular army.

4. The complainant mentioned "our orchards were razed and I raised complaints about the Accused Taha Yassin"

The lady complainant referred to by the letter A in the court session held on January 29, 2006 stated the following about the Accused Taha Yassin:

1. The complainant raises a complaint against Taha Yassin

2. The complainant mentioned when asked by the accused Ali Dayih Ali did the complainant see him during the incident and what was her complaint? The complainant answered that he was in charge of the popular army and he came with them.

3. The complainant mentioned that she was given the keys to the house when they came back by Yunis Al-Samarai who used to be the security officer of Dujail and also Abu Nabil who was in charge of the popular army then.

Another protected lady complainant referred to by the letter B in the court session held on January 29, 2005 stated the following about the Accused Taha Yassin:

1. The complainant mentioned that the popular army and the police were the ones who arrested us and sent us to the intelligence after we stayed in the police station for five days.

2. In a question in a court to the complainant: who arrested you? The complainant answered "the republican guards and the popular army and others whom I don't know were the ones who arrested us"

The protected complainant referred to by the letter B in the court session held on February 2, 2006 stated the following about the Accused Taha Yassin:

1. In a question from the defense attorney to the complainant: Did you see Taha Yassin on the Tel Maskeen? The complainant answered I didn't see him with my eyes as I was in the military.

2. In a question from the prosecution attorney to the complainant: who arrested you, what were their clothes like, and what did they look like? The complainant answered two people from the intelligence and with them Abu Ahmed and Abu Nabil and a person who was covering his face wearing traditional clothes.

3. The complainant mentioned that he raises complaint against Taha Yassin because he is the one who razed the orchards and was standing on the Tel Maskeen.

The protected complainant referred to by the letter A in the court session held on February 1, 2006 stated the following about the Accused Taha Yassin:

1. The complainant mentioned that she saw the Accused Taha Yassin wearing military uniform and carrying a gun where he supervised the razing of the orchards "and we have nine orchards that had been razed"

2. In a question from the defense attorney who was assigned to the complainant did you see the Accused Taha Yassin razing the orchards? The complainant answered: Yes I saw the Accused supervising the razing of the orchards and he is a person who is known to all people and at the time he was wearing a military uniform and had a beret over his head.

3. In a question from the defense attorney who was also assigned for the complainant that she mentioned that Taha was the one who razed the orchards so where did she see him? The

complainant answered I saw him in an area called Tel Maskeen in Dujail and he was supervising the razing of the orchards.

4. In another question from the attorney assigned for the complainant: what was the distance between you and the Accused Taha when you saw him razing the orchards? The complainant answered: I cannot give an accurate estimation but due to my work as a farmer working in orchards and collecting wooden logs I saw the aforementioned Accused.

The protected complainant referred to by the letter C in the court session held on February 1, 2006 stated the following about the Accused Taha Yassin:

1. The complainant mentioned that when Saddam Hussein came to Dujail we became a war front and the forces of the popular army and republican guards were deployed.

2. The complainant raised a complaint against Taha Yassin.

The protected complainant referred to by the number 8 in the court session held on February 1, 2006 stated the following about the Accused Taha Yassin:

1. The complainant mentioned that on the day of the incident the popular army and the republican guards were deployed everywhere in Dujail, and Dujail became a military area and the complainant at the time was on guard duty for the popular army on the street opposite the party headquarters.

2. The complainant mentioned that the Accused Taha Yassin gave orders to raze the orchards and the order was also to arrest the residents of Balad and Dujail and to raze their orchards and they set up security entrances to the area and the one who supervised all of that was the Accused Taha Yassin.

3. The complainant mentioned that the person who was in charge of the popular army in Dujail was Ahmed Ibrahim Al-Hasoun.

4. And in a question from the prosecution attorney to the complainant about the role of the popular army in the events of Dujail and whether they participated in the process of arresting families or anything of the sort? The complainant answered that the Accused Taha Yassin ordered sending fighters to protect the equipment that razed the orchards.

5. And in a question from the defense attorney assigned for the complainant:

Did you see the order in which Saddam Hussein ordered razing the orchards in Dujail? The complainant answered: yes and it was issued by Taha Yassin for the purpose of razing the orchards.

6. The complainant confirmed that the Accused Taha ordered razing the orchards and used to meet the engineers and one of them was Thannoon who used to meet with them for the purpose of razing the orchards.

7. The complainant raises a complaint against Taha Yassin.

A summary of the statements given by those Accused in this trial regarding the Accused Taha Yassin Ramadan

A summary of the statements given by the Accused Barzan Ibrahim during interrogation regarding the Accused Taha Yassin Ramadan

Among the things mentioned in the statement of the Accused Barzan Ibrahim Al-Tikriti during interrogation on January 25, 2005:

Q: A question from the interrogation committee from the Accused Taha Yassin. "A committee was formed and was headed by the Accused Taha Yassin Ramadan with a direct order from the Accused Saddam Hussein to study the conditions of the families of Dujail and the area of Dujail and the representative of the Intelligence Service and this committee was Muhammed Olaiwi who used to hold the position of chief of staff at your office at that time. Do you have any information about this?"

A: "Yes I have information about this. A committee was formed upon the order of the Accused Saddam Hussein who used to be the head of state at that time and this committee was headed by the Accused Taha Yassin Ramadan and its members were the director general of General security at that time and Muhammed Olaiwi the representative of our department in the committee who used to hold the position of chief of staff at that time.

An appendix to the statement given by the Accused Barzan during interrogation regarding the Accused Taha Yassin Ramadan

As for what happened later in Dujail a committee was formed as I remember and I think it was headed by the Accused Taha Yassin Ramadan who used to hold the position of Deputy Prime Minister and its members were the Head of the General Security Service, the deceased Fadhil Al-Barrak, a representative of the Intelligence Service at that time. This committee was concerned with the Dujail case and was formed for this purpose in particular. As for the nature of its specialty and the duration of its work and the tasks that were assigned to it, I have no idea and I was not informed about it but I am sure that this committee was formed and was headed by the Accused Taha Yassin and that one of its members was Fadhil Al-Barrak.

A summary of the statement given by Barzan Ibrahim during the court proceedings regarding the Accused Taha Yassin.

Among the things mentioned in the statement given by the Accused Barzan Ibrahim during the proceedings of the court in the court session held on March 15, 2006:

Q: A question from court to the Accused Barzan. In your statement it was mentioned that you had a minor role or that you had no role at all and that Fadhil Al-Barrak had a major role since he used to be the director general of General Security and I think he was a member along with Taha



Yassin Ramadan in the matter of razing orchards and that the General Security Service often used the name of the Intelligence Service. Elaborate on this.

A: The Accused Barzan Ibrahim answered "what was said is correct with the exception of what was mentioned regarding Taha Yassin Ramadan because he was not present"

Q: A question from court to the Accused Barzan Ibrahim. Was this statement when your attorney was present and he did not read it?

A: The answer of the Accused Barzan Ibrahim verbatim "I personally read the statement and the name of Taha was not present"

Q: From the prosecution attorney to the Accused Barzan Ibrahim: It was mentioned in your statement that there was a committee headed by Taha Yassin Ramadan and its members were Fadhil Al-Barrak and Muhammed Olaiwi representing the intelligence and chief of staff at the Intelligence Service?

A: The Accused Barzan Ibrahim answered verbatim "No, there was never such a committee and it did not decide anything."

A summary of the statement given by the Accused Saddam Hussein to the interrogation committee on June 12, 2005 regarding the Accused Taha Yassin Ramadan

Q: From the interrogation committee to the Accused Saddam. It was mentioned in the statement given by the Accused Taha Yassin Ramadan that you phoned him and asked him to meet with the Security Services responsible for the investigation the next day after the incident and to see how things were happening and to offer advice and keep them informed about the development of interrogation in the city.

A: Verbatim "If the comrade Taha Yassin Ramadan had said this then he must have told the truth."

Q: From the interrogation committee to the Accused Saddam Hussein. "Two months after the incident in Dujail, Taha Yassin Ramadan was seen with a large number of engineers and equipment and they razed the agricultural lands and they cut the orchards in the city. Who ordered that?"

A: The court can direct the question to comrade Taha Yassin Ramadan to answer it. But for me I don't remember that I ordered him to do anything like this.

Q: You are accused of issuing orders to Taha Yassin Ramadan regarding razing agricultural lands in the area of Dujail and cutting orchards?

A: "I don't remember having made such an order."

A summary of the statement given by the Accused Muhammad Azzawi during interrogation regarding the Accused Taha Yassin Ramadan

1. Appended to the statements given by the Accused Muhammed Azzawi Ali Al-Marsoomi to the interrogation committee on May 25, 2005 in which he talked about the Accused Taha Yassin Ramadan and in which he said verbatim "that the one who is responsible for the matter of cutting the orchards and the agricultural lands at that period because one day I saw the Accused Taha Yassin Ramadan supervising this operation in addition to Ahmed Ibrahim Al-Samarai as he was standing near the area of Tel Maskeen.

2. Also in the statement of the Accused Muhammed Azzawi Ali as for the razing of the agricultural lands I saw the Accused Taha Yassin Ramadan with the party member who was in charge of that area at the time Ahmed Ibrahim Hasoun and they were all supervising this operation. As for my seeing Taha Yassin Ramadan, it was only by accident when I was going to my orchard in the area.

A summary of the statement given by the Accused Muhammed Al-Azzawi during the court proceedings regarding the Accused Taha Yassin Ramadan

The statement given by the Accused Muhammed Al-Azzawi to the court on March 13, 2006:

Q: from the court to the Accused "which of those accused in this trial who are present in court did you see then?"

A: The Accused answered "I mentioned in my statement to the interrogation judge that I saw Taha Yassin Ramadan near Tel Maskeen and when I came here I told the attorney that I didn't see him because he looked different from the person I saw."

Q: From the court to the Accused "didn't you know the person (Taha) before the incident?"

A: The Accused answered "No I didn't know him before the incident. I did not concentrate on him."

Q: From the court to the Accused. The following was mentioned in your statement "I saw the Accused Taha Yassin Ramadan with the party member who was in charge of that area at that time and they were supervising the razing process." Clarify that to the court.

A: The Accused answered as I mentioned earlier I did not see Taha Yassin Ramadan and I saw someone else.

Q: From the court regarding the razing of the orchards and lands: what did you see?

A: The Accused answered, yes I saw the bulldozers when they razed the orchards that belonged to me and there were three orchards of them.

Q: From the court, did you see any units that belonged to the popular army?

A: Yes I saw units of the popular army and they were from outside the Dujail area and they escorted the bulldozers as they were razing the orchards, for fear of clashes with the residents of Dujail.

A summary of the statements given by the Accused Ali Dayih Ali during interrogation regarding the Accused Taha Yassin.

The statement given by the Accused Ali Dayih Ali during interrogation on May 25, 2005

The following was mentioned verbatim in his statement regarding Taha Yassin Ramadan: "as for the razing of the agricultural lands and the demolishing of the houses I did not participate in these operations but I believe that they were razed upon an order from Taha Yassin Ramadan as he was seen by some people in the area."

A summary of the statement given by Ali Dayih Ali during court proceedings on March 12, 2006.

1. It was mentioned in his statement verbatim "I did not participate in the razing of the orchards"

Q: A question from court "it was mentioned in your statement regarding the razing of the agricultural lands and the demolishing of the houses I did not participate in this operation but I believe they were razed upon an order from the Accused Taha Yassin Ramadan as he was seen by some people in the area. As for the arresting operations these were carried out by the party and some party members that I remember were so and so. Clarify this.

A: He answered "I did not participate in razing the orchards and the orchards of my father had been razed and there were two of them. As for the Accused Taha Yassin, I did not see him but I heard he was present and the supervising the razing of the orchards was under protection fearing clashes with the residents of Dujail"

Q: A question from court. Who did you see of those Accused in this trial other than the Accused Taha Yassin?

A: He answered I didn't see the Accused Taha Yassin, and I don't know the Security Services that were present in Dujail because there were forces from private guards and the popular army as well as party members who were headed by the person in charge of the party Ahmed Al-Samarai, and I didn't see anybody.

Q: In a question from the prosecution attorney to the Accused Ali Dayih "Since you were present near the door of the building of the party, which government figures were you able to see?"

A: He answered I didn't see, but I heard that Barzan was present and so was the Accused Taha Yassin Ramadan supervising the razing of the orchards.

Q: A question from the prosecution attorney to the Accused "What did you see regarding the orchards and how were they razed and what was your role?"

A: He answered "I did not participate in razing the orchards and the director of the county Jasim Al-Nuaimi brought bulldozers to raze the orchards and I did not see the razing operations. I only heard from people that they were razed by the Accused Taha Yassin but did not see it."

A summary of the statement given by the Accused Mizhir Abdullah Kadhim Ruwaid to the interrogation committee on February 21, 2005

It was mentioned in his statement about the Accused Taha Yassin:

1. In a question from the court to the Accused it was mentioned in the statements of the complainants (...), (...), (...), (...) and others that you arrested them along with the security forces in the area and you brought them to the building of the party and then they were deported to Baghdad and they were put in prison with their families from 1982 to 1986?

The Accused answered : I did not participate in the arresting operation but regarding the razing of the lands and the cutting of the trees I was assigned by the party leadership in the area and upon an order from the Accused Barzan Ibrahim that was delivered to us through the party to escort the bulldozers and graders and other equipment for the purpose of cutting and razing the lands and I did go with the bulldozers that carried out the operation and during the razing of the agricultural lands, the Accused Ahmed Ibrahim Al-Samarai Abu Nabil was directly supervising the operation and I escorted one of the bulldozers and my duty was to raze the lands of Hussein Al-Humaidan and Kadhim Al-Humaidan.

2. In another question to the Accused, you worked at the post office and your position at the party was not of a member and the party duties were political duties, whereas your job was a civil job, so what was your relationship with this, keeping in mind that it was a political duty or action.

The Accused answered: Yes I was ordered by my party superior and in accordance with the directives with the higher authorities and I had to carry out this order because I was afraid of not carrying it out despite the fact that I knew that this was against the law, but I still had to carry it out of fear for myself.

3. In an answer to a question from the civil defense attorney, the Accused Mizhir Abdullah Kadhim answered during the court proceeding on March 12, 2006 "the members of the popular army were from outside the area"

A summary of the statement given by the Accused Abdullah Kadhim Al-Ruwaid during the court proceeding on March 12, 2006

The following was mentioned in his statement about the Accused Taha Yassin:

1. In a question from the court to the Accused: you mentioned in your statement to the interrogation judge that you were a member of the popular army in Dujail, so who was the leader of the popular army?

The Accused answered: The leader of the popular army is Tariq Al-Tikriti Abu Zeyad and he was a senior party member and the head of the youth union in Tikrit.

2. In another question from the civil defense lawyer to the Accused, one of those Accused in this trial mentioned that the Security Service asked the party authorities in the popular army from outside Dujail for help?

The Accused answered: Yes I mentioned this when the prosecution attorney asked me and the popular army was present outside Dujail and I don't know where those security units came from.

A summary of the statement given by the Accused Taha Yassin Ramadan during interrogation on February 9, 2006 to the interrogation committee

1. The Accused mentioned that Saddam Hussein asked him to go to the headquarters of the national assembly to meet the Security Service officers and that was on Friday and I did go there and I found Fadhil Al-Barak and another person from the Intelligence Service and the directive I received from the Accused Saddam Hussein was to listen to what the security officers say and to give them my notes if I had any and I didn't have any at the time and I did not issue any formal document regarding this. It was only a directive and that was all I had to do with this.

2. It was mentioned in the statement given by the Accused Taha Yassin Ramadan that I did not go to the area neither at the time of the incident nor after it and I did not meet the Accused Barzan Ibrahim during that period nor after it and I did not issue any order to cut or raze the agricultural lands and I don't know about the authority that performed that act and this was never discussed in the Ministers' Council and there may have been orders issued in this concern by higher authorities.

3. "I heard that those who carried out the assassination attempt were people who belonged to the Daawa Party"

4. I have no authority over the Security Service officers. I just listen to them and that service received orders only directly from the Accused Saddam Hussein since they are linked directly to the office of the head of state.

5. "The assassination attempt did not result in any victims."

An appendix to the statement given by the Accused Taha Yassin during interrogation on August 28, 2005

I have no idea who razed the lands and the authority that is specialized with the likes of the Dujail incident (the assassination attempt) is the general Security Service unless there was an order from a different authority.

A summary of the statement given by the Accused Taha Yassin during the court proceeding held on March 14, 2006

1. I was not assigned to do anything in this case and I had no role whatsoever and the testimony given by Waddah Al-Sheikh is false as I was not asked to do anything by Saddam Hussein and he did not ask any member in the leadership nor in the Ministers' Council including the Minister of the Interior.
2. I neither visited the location in Dujail the next day after the incident nor the day after that.
3. I was not assigned to head the security committee that was formed and I did not issue any orders to the members of the popular army in the Dujail incident and the popular army had no role in it because it was only a local formation and the party member in charge in the area is the one who issues orders and my duty was to form units and send them to the warfront of the war with Iran.
4. The Accused mentioned that all that happened on the day of the incident was "I was at my home in Baghdad and Saddam Hussein called me in the afternoon and told me that his procession was attacked on that day in Dujail and that if I wanted to know more about the details being the first deputy, you should know and you can go to the Hamurabi Building which is the building of the national assembly where the director of general Security Service along with others are coordinating with the other services and I did leave my house and go to the headquarters of the national assembly.
5. The Accused mentioned that what happened regarding the razing of the orchards in Dujail as a result of what happened earlier was a normal thing and that it is the state's right to do this as long as there is general benefit or necessity to confiscate the orchards or institutions or real estate with appropriate compensation.
6. The Accused Taha Yassin Ramadan mentioned that the popular army in Dujail or Ballad was under the authority of the party members in charge in that area and that Ahmed Ibrahim Al-Samarai was in charge of the popular army in Dujail and he used to give the members of the popular army tasks to stand guard on the institutions and equipment that belonged to the state and they didn't have the right to take the decision to raze the orchards and that such a decision is issued by the revolution command council and that the other services of the state carry it out and that the popular army as you know is part of the party and is led by the party members inside the province.
7. The Accused mentioned that protecting the equipment by the popular army was decided by the party member who was in charge in the area.
8. The Accused Taha Yassin Ramadan mentioned that the only authority that could assign any task to me in addition to the ones I already have is Saddam Hussein and that any other allegation is false and not true.
9. The Accused said that in his point of view the people who acted against those who carried out the assassination attempt (Saddam Hussein) in the incident in Dujail were not guilty and they were only doing their job.

10. The Accused mentioned after being asked by the defense attorney for the complainants: I do not deny that I was the general leader of the popular army and I'm honored to say that and I think that the popular army is the most honorable militia.

A summary of the statements given by the defense attorney for the Accused Taha Yassin Ramadan

Witness number 6, date of testimony, March 17, 2006 stated that he did not see Taha Yassin Ramadan in Dujail when the orchards were razed.

Witness number 2, date of testimony, March 30, 2006 stated that he had lived in Dujail all his life and he ruled out the presence of Taha Yassin there and that he got compensation for his land which was confiscated and that the compensation was larger than the real value of the land. The witness also stated that those who were allegedly killed in Dujail came back from Iran on the tanks of the American invasion and he indicated that he received compensation with the value of 1,800 Iraqi Dinars for one acre of land and that most of the destroyed lands were later reformed and improved. The witness also said that he had seen the general prosecutor Jafar Al-Mosawi during a funeral in Dujail on July 18, 2004.

Witness number 2, date of testimony in the session of March 30, 2006 said that he did not see Taha Yassin Ramadan in Dujail.

Witness number 5, date of testimony: the session of March 31, 2006 stated that he hadn't seen Taha Yassin Ramadan in Dujail at all and the witness was a member of the popular army in Dujail and he said that the duty of the popular army was to search the orchards and that the popular army did not search the houses.

Witness number 1, date of testimony: the session of June 6, 2006 stated that he was a member in the Security Service (the body guards) who escorted Barzan during his visit to Dujail on the day of the incident and he did not see Taha Yassin because he was not there.

Witness number 2, date of testimony the session of June 6, 2006 stated that he was within the body guard team of Barzan Ibrahim and that Taha Yassin was not there.

The protected defense witness, referred to by the number 3 and who gave his testimony on the session of May 31, 2006 stated the following about the Accused Taha Yassin:

1. I was one of the fighters in the popular army at the time of the incident and my commander came to me and told me consider yourselves on duty (under alert) and with us was a member of the Security Service in the area where orchards were searched in Dujail and I with a group of fighters and members of the Dujail Security Service searched the orchards and the witness added that the security men's duty was to search the houses and our duty was to search the orchards.

2. In a question from the defense attorney for the Accused Taha Yassin to the witness: Was the role of the popular army restricted to the Dujail area since you are one of its members? The witness answered: I have worked in the popular army and participated in the warfront and the

Accused Taha Yassin Ramadan saw us off when we were heading to the warfront and that was not in Dujail but it was in the military camp where I had my military training course.

3. In another question from the defense attorney to the witness: Do you know the Accused Taha Yassin? The witness answered: yes I know him because he had seen us off at the units of the popular army three times and I shook hands with him and met him at a very close distance.

4. In another question from the same attorney to the witness: Did any members of the popular army come to Dujail other than those who had already been there? The witness answered: No, we as a unit in Dujail were assigned to search the orchards.

5. In a question from the prosecution attorney to the witness: What was your status regarding military service? The witness answered: I joined the popular army because of the military service because those who serve in the popular army do not have to do military service and I served in the popular army until I was dismissed from the party when I was convicted and later I joined the military service.

#### The available evidence in the trial against the Accused Taha Yassin Ramadan

1. The following was mentioned in the statement given by Taha Yassin Ramadan to the interrogation committee which consisted of three judges and in the presence of his attorney Majid Haddad Hallool and in the presence of the general prosecution attorney on February 9, 2005:

2. “The Accused Saddam Hussein who used to hold the position of head of the state at that time called me and told me that he had been attacked in Dujail and asked me to go and meet the Security Service officers and informed me that he ordered them to go to the national assembly and I did go there and found Fadhil Al-Barrak who used to hold the position of the Head of the General Security Service and who was executed later for other reasons. I also found a person who’s name I don’t know and who told me that he represented the head of the Intelligence Service and he told me that the head of the Intelligence Service had gone to meet Saddam Hussein with two or three other people that I cannot remember and the duty that was assigned to me was to listen to what the security officers say and to give them my notes if I had any instructions.

3. The following was mentioned in the statement given by the witness Waddah Al-Sheikh during the interrogation on January 25, 2005. “At that time a committee was formed and was headed by the Accused Taha Yassin Ramadan and the service was represented in that committee by Muhammed Olaiwi who was the chief of staff at the Intelligence Service to deal with the issue of Dujail since it was a very serious matter and one of the suggestions that were put forward by the Accused Taha Yassin Ramadan was to cut the trees and the orchards to a distance of one to three kilometers in all directions and this suggestion was carried out upon orders from the Accused Taha Yassin Ramadan and the orchards and trees in Dujail were later cut and razed and this committee also took them into custody (he means the residents of Dujail) in the area of Nugrat Al-Salman, south of Samawa in camps that were prepared for them knowing that until now, and this was said in 1984, none of them were referred to court and in particular in February 1984 so



the people from the families of Dujail were kept in custody from 1982 until I left the Intelligence Service in February 1984 when they were sent to the camp that was prepared for them but which I did not see as I was informed that they would be imprisoned in Nugrat Al-Salman and this order was from the committee that was formed and was headed by the Accused Taha Yassin Ramadan and I think that the order was between Taha Yassin Ramadan and Saddam Hussein. As to the issue of cutting the lands and the orchards, this was Taha Yassin Ramadan's."

4. The same witness Waddah Al-Sheikh stated to a committee that consisted of three judges from the first criminal court when he was at the military hospital in Abu Ghuraib on October 23, 2005 and his statement was read in court on October 28, 2005, said that "as for the role of the Accused Taha Yassin Ramadan at first he had no role but a committee was formed and was headed by him one month later and whose main role as far as I remember was to raze or uproot the orchards in Dujail and Ballad. As for the other role for that committee, that had to do with the families in custody and I don't know the details of that. And one of the members of the committee was Muhammed Olaiwi and Sadoun Sabri and as we said earlier the witness Waddah Al-Sheikh was the director of the interrogation and investigation department in the Intelligence Service and Muhammed Olaiwi was the chief of staff in the office of the Accused Barzan Ibrahim at that time.

5. The following was mentioned in the statement given by the Accused Barzan Ibrahim and which was transcribed by the interrogation committee that consisted of three interrogation judges and in the presence of his attorney and in the presence of the general prosecution attorney regarding the Accused Taha Yassin Ramadan. "Yes, I have information and this concern that there was such a committee and it was formed upon an order from the Accused Saddam Hussein who used to hold the position of head of state at that time and this committee was headed by the Accused Taha Yassin Ramadan and its members were the director of General security and Muhammad Olaiwi who represented our department at the committee and who used to hold the position of the chief of staff at my office at that time.

6. The Accused Barzan Ibrahim repeated the same information stated above and he reaffirmed it when the appendix to his statement was transcribed during the interrogation stage.

7. The statements given by a large number of the complainants and the prosecution witnesses and even the statements of some of the defense witnesses for the Accused Taha Yassin Ramadan emphasized that the members of the popular army participated in arresting the families in Dujail and surrounding the city with the military forces and security forces and in searching houses.

8. Part of the statement given by the Accused Muhammed Azzawi during interrogation on May 25, 2005 included the following quote "the one responsible for the matter for cutting the orchards and the agricultural lands during that period as one day I saw the Accused Taha Yassin Ramadan supervising this operation in addition to Ahmed Ibrahim Al-Samarai as he was standing near the area of Tel Maskeen.

9. The statement given by the Accused Saddam Hussein to the interrogation committee on June 12, 2005 when he was asked about what was mentioned in the statement given by Taha Yassin Ramadan regarding the phone call that the Accused Saddam made to him and asking him to meet

with the security authorities responsible for the interrogation, etc, the Accused Saddam answered the following “if the comrade Taha Yassin had said this then he must have said the truth.”

10. What was stated in the answer given by the Accused Ali Dayih to a question from the general prosecution attorney during the court proceedings on March 12, 2006 “I did not see but I heard about the presence of Barzan and also that the Accused Taha Yassin Ramadan was supervising the razing of the orchards.”

11. The audio recording between the Accused Taha Yassin Ramadan and the Accused Saddam Hussein that the court listened to and in which the Accused Taha Yassin Ramadan informs the Accused Saddam Hussein that the razing of the orchards was in two stages, the first was to raze one kilometer and a half around the city and that it was going to become a white area...and that the culprits will be identified by the security authorities and that they will not be compensated and that their names will be decided upon and so will the names of those who will be compensated and that the areas that will be given to them will also be decided upon and that he was going to send the Accused Saddam Hussein a list of all that was mentioned earlier. This audio recording was listened to by the court on April 24, 2006.

12. Satellite imagery that compares the Dujail area between September 1982 and September 1983. This photograph which shows the Dujail area before razing and after it shows the level of destruction that hit the area and the marks that were left by the former Baathists regime through their destruction and razing of the orchards and fields that surrounded the city of Dujail.

13. The document that was issued by the Intelligence Service, dated on August 30, 1984 and addressed to the national security office secretariat and its subject was (the imprisoned residents of Dujail and in which there was reference to the order given by the vice president number 2/6/8750 on July 29, 1984 to arrest 26 people from the areas of Dujail and Ballad who have finished their military service) this document was shown to the court on March 13, 2006.

14. The document presented to court, numbered 14446 on November 29, 1984 and the memo dated November 20, 1982 and the letter that was hand written by the Accused Taha Yassin and his signature dated December 10, 1984 that was addressed to Ahmed Hussein Khudhayir chief of staff at the president’s office (dissolved) and in which the Accused Taha Yassin admitted that the handwriting and signature were his.

15. The resolution by the revolution command council (dissolved) numbered 1283 on October 14, 1982 and the resolution by the revolution command council (dissolved) numbered 100 on January 23, 1985.

The extent to which the Accused Taha Yassin Ramadan is criminally responsible for the crimes against humanity within the Indictment against him

On May 15<sup>th</sup>, 2006 this court charged the Accused Taha Yassin Ramadan with participating and committing a number of crimes against humanity that were indicated in article 12/1<sup>st</sup> in the high Iraqi criminal law. These charges included the following crimes:

1. Willful killing
2. Deporting people or transferring them by force.
3. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law.
4. Torture
5. Enforced disappearance of persons
6. The other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to the mental or physical health.

Following is a discussion of the extent to which the Accused Taha Yassin Ramadan is criminally responsible for those crimes under article 15/1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> of the Court's Law and also under the articles 47-54 and the penal law numbered 111 for the year 1969. And this follows what was mentioned in article 15/2<sup>nd</sup> in the Court's Law in which it was mentioned that "the person is considered responsible according to this law and to the rulings of the penal law if he does the following..." and we will start with the charge against the Accused Taha Yassin Ramadan concerning Imprisonment or other severe deprivation of physical liberty as a crime against humanity for the reasons that we will mention later when we discuss the extent to which the Accused Taha Yassin Ramadan is criminally responsible for this crime but before that it has to be mentioned that there are questions that have to be asked regarding the extent to which the Accused Taha Yassin Ramadan is responsible for this crime (imprisonment and extreme deprivation of physical freedom) as a crime against humanity and the other crimes of which he is Accused and are mentioned in the Indictment and these are the following: 1. Is the razing of the orchards and the confiscation of the lands a criminal act in the Iraqi law and the international law?

2. Did the Accused Taha Yassin Ramadan supervise the operations of razing the orchards and did he have a role in the confiscation of the lands in Dujail or did he order that? Or did he have any criminal participation of any kind?

3. Did the Accused Taha Yassin Ramadan issue an order to arrest the people of Dujail and to imprison them or torture them or kill them? Did he supervise that? Did he assist or instigate or encourage that? Did he overlook that? Did he participate in carrying that out in any way?

4. Did the popular army or any of the members of the Baath party in Dujail participate in the arresting operations or those of detainment or imprisonment or torture or murder or razing orchards in any way against the people of Dujail?

5. Was the Accused Taha Yassin Ramadan the head of a committee that was formed upon an order from the Accused Saddam Hussein on the day of the incident and which had a meeting in the national assembly on that day?

6. Was the Accused Taha Yassin Ramadan a member of the National Security Council? What was the structure of this council? What was he authorized to do?

7. Did the Accused Taha Yassin Ramadan have legal control or de facto control over the members of the popular army?

8. Did the Accused Taha Yassin Ramadan know that the actions that are attributed to him were part of a widespread systematic attack against civilian citizens?

All of these questions will be discussed and the court will come to an answer for them and to form convictions regarding them that are beyond any reasonable doubt keeping in mind that it has already been proven to this court that the Accused Taha Yassin Ramadan was at the time and after it holding the following positions in the state of Iraq and the Baath party that was leading the state a member of the revolution command council, a deputy prime minister, the general leader of the popular army, a member of the regional command of the Baath party.

The extent to which the Accused Taha Yassin Ramadan is criminally responsible of imprisonment or other severe deprivation of physical liberty as a crime against humanity

It has been proven to this court through the evidence mentioned earlier that a number of repeating campaigns launched by the military forces and intelligence and security forces to arrest hundreds of people of Dujail (woman, children and men) on the day of the incident and the following days and that was in response to the failed and very limited assassination attempt against the former president on July 8, 1982 and it has also been proven to the court that the systematic large scale repeated arresting campaigns that were launched by these forces and services were done with active participation on the part of members of the popular army and Baath party in Dujail and the surrounding areas and that the people who were in charge of the Baath party in Dujail who were by definition leaders in the popular army there keeping in mind the circumstances of the Iraqi Iranian war in which the popular army took part on the war front and in different locations inside Iraq. They participated actively in the arresting campaigns of those residents of Dujail in addition to their providing the forces as well as the Security and Intelligent Services with information about the people of Dujail who were suspected of either belonging to the Daawa party or lack of allegiance to the Baath party or lack of allegiance to the defendant Saddam Hussein.

Among the Baath party leaders in Dujail was Ahmed Ibrahim Hasoun Al-Samarai Abu Nabil who was very active in the operations of arresting people and identifying families that were not loyal to the Baathist regime and Saddam Hussein (c.f. the statements of a large number of the complainants and prosecution witnesses)

Those illegal arrests of those victims of woman, men, children and elderly people led to imprisoning them in an illegal manner first in the headquarters of the Baath party in Dujail and then led later, and since the first day after the accident, to transporting them and then imprisoning them in the prison that belonged to the intelligent service again in an illegal manner and then a large number of them were transported to the Abu Ghuraib prison and then later a large number of them were sent to the Laya desert compound. These facts are solid and the court firmly believes that they took place and within this trial there is an enormous amount of evidence to confirm this.

Based upon what has been mentioned up until now the only logical and reasonable conclusion in this regard leads us to say that the members of the popular army and Baath party in Dujail participated actively and largely in imprisoning those victims of the civilian residents of Dujail.

The Accused Taha Yassin Ramadan, in addition to his being a deputy prime minister and an important member in the revolution command council and very close to the Accused of Saddam Hussein, he was also a member of the regional command of the Baath party in Iraq and a general leader of the popular army and in addition to that he was a member of the national leadership of the Baath party (covering the whole Arab homeland) that was headed by the Accused Saddam Hussein. All of the official party positions that the Accused Taha Yassin held kept him in direct contact and very close to the Accused Saddam Hussein and all of that occurred in a regime that was totalitarian and whose main concern was to stay in power and the head of that regime (the Accused Saddam Hussein) kept saying that the law is nothing other than what he wants and therefore there were numerous intelligence and security and military and Baath party services and departments and they were all dedicated to serve the purposes of the regime and on top of these keeping the Accused Saddam Hussein in power at any cost even if that lead to the killing of hundreds of thousands of citizens or others.

The Accused Taha Yassin Ramadan enjoyed great legal power over the members of the popular army and contrary to what he claimed during the court proceedings that his power was limited to training the members of that army which was considered the backup for the regular army, what the revolution command council (dissolved) resolution number 1563 and issued on Oct 9<sup>th</sup> 1980 included proves the opposite of what the Accused Taha Yassin stated earlier. The first item of that resolution gives the general leader of the popular army the authorities of the minister of defense upon the Amended Military Court's Law number 44 for the year 1941 regarding the military people or those joining the popular army and this means that the Accused Taha Yassin was capable of taking all the appropriate legal procedures for the interrogation and to prosecute the popular army and even the military people who work in the popular army if they commit any crimes whether those were indicated in the military penal law number 13 for the year 1941 or the penal law number 111 for the year 1969 or any other penal law. He was also capable according to the military Court's Law mentioned above to form court martial for the purposes mentioned in it.

The second item in the revolution command council (dissolved) resolution number 1563 on Oct 9<sup>th</sup> 1980 authorized the chief of members at the general leadership of the popular army to form interrogation committees and to give these interrogation committees all the authorities of interrogation committees in accordance with the military Court's Law. It can be noted in this text also that within the popular army that there was the position of chief of staff and that the person in this position was linked to the general leader of the popular army and this means that the authorities and specialties of the general leader of the popular army were not limited to training the members of that army for it is known in all armies in all of the countries of the world that one of the most important authorities and specialties of the position of chief of staff is to move its units to any place. This means that these units are moved and are given tasks upon an order from the chief of staff who is linked to the general leader of the popular army. The units of the popular army had been moved from their headquarters to other places in Iraq and on the warfront and had been given specific tasks and it is very clear that the movement of those units and the tasks they were given were all upon orders of the general leader of the popular army and the chief of staff in it.

The third item of that resolution that was issued by the revolution command council (dissolved) gave the chief of staff of the popular army the authority to be the unit officer and to keep people in custody and to refer them to the nearest court martial.

The fourth item of that resolution authorized the chief of staff in the popular army (who is linked to the general leader of the popular army) to give the authorities mentioned in items 1 and 2 of this resolution to the leaders of the regions or those who work on behalf of them.

According to the fifth item of that resolution an assistant to the head of the legal department of the general leadership of the popular army as appointed and he is given the same authorities that are given to the assistant of the head of the legal department in the regular army. This means that there was a legal department in the general leadership of the popular army that had the same authorities as those of the legal department at the ministry of defense and the office of the chief of staff in the army.

It has become clear from what was mentioned above the great extent of the legal power that the Accused Taha Yassin Ramadan had over the members of the popular army and despite the fact that just possessing the legal power by itself is enough to hold him criminally responsible for the crimes committed by the people working under his leadership according to the international criminal law if he knew that those crimes were about to be committed by them and he did not prevent them from happening or if he knew after they were committed and did not take the proper procedures to investigate and prosecute the perpetrators (look for example at the resolution issued on the case of Zalatkano Aleksovski mentioned earlier, items 117, 118, 133, 135 of that resolution. Also look at the resolution issued by the appeal committee in the case of Mucic item 88).

The Accused Taha Yassin Ramadan had de facto power over those under his leadership as he was one of the few people who were in direct contact with the Accused Saddam Hussein since he held advanced official and Baath party positions in the country. Therefore, the Accused Taha Yassin Ramadan had an important and real personal interest in keeping that regime and party in power and in absolute submission to the Accused Saddam Hussein in everything he said or did.

Therefore, the Accused Taha Yassin Ramadan knew about the widespread systematic attack in which his popular army forces participated actively against the civilian residents of Dujail. He also knew that his action of taking the silent but covert decision of those illegal arrests of the people of Dujail (during the national assembly meeting with the Head of the General Security Service Fadhil Al-Barrak and the representative of the head of the Intelligence Service Mohammad Olaiwi late in the evening of the day of the incident or the following day upon the order of the Accused Saddam Hussein a few hours after the assassination attempt) knew that it was part of that widespread systematic attack against civilian citizens.

That deliberate participation on the part of the Accused Taha Yassin Ramadan aimed at furthering the criminal activities of the Baath party staff which constituted the backbone of the popular army as well as the military and security and intelligence forces in committing that crime that led to imprisoning those victims without any legal justification and retaliation for a very restricted and failed attempt committed by very few people as indicated in the confession given

by the Accused Saddam Hussein during the 28<sup>th</sup> proceeding of the court. In addition to that the deliberate participation of the Accused Taha Yassin at that time aimed at furthering the criminal purpose of the regime lead by the Baath party of which the Accused Taha Yassin was one of the major figures ever since that party took power by force in 1968. The Accused Taha Yassin has also known about the intention of the other participants in that crime when he received the order to do that from the Accused Saddam Hussein and during the meeting in the national assembly specially that he was the head of the committee that was formed directly after the incident to further the criminal activities of those services and to further the criminal purpose of that regime and that party. The Accused Taha Yassin had implicit agreement, if not explicit, about what was happening and will be happening in Dujail. This means that there was agreement between him and the Accused Saddam Hussein and the Accused Barzan Ibrahim who was represented in the meeting (that was held at the national assembly) by his chief of staff Muhammad Olaiwi and the Head of the General Security Service Fadhil Al-Barrak. This fact was confirmed by the Accused Taha Yassin himself when he said in his statement that was transcribed by the interrogation committee on Feb. 9<sup>th</sup> 2005 "The task that was assigned to me was to listen to what the Security Service officers say and to give my notes and to direct them to take action if I had any instructions."

It was said that the purpose of the meeting that was held at the national assembly of that committee that was headed by the Accused Taha Yassin Ramadan upon an order from the Accused Saddam Hussein was to develop the city of Dujail. Does it make any sense that the Accused Saddam Hussein issues an order on that day (the day of the incident) for the Accused Taha Yassin Ramadan to meet as the head of that committee with the representative of the head of the Intelligence Service Mohammad Olaiwi who was the chief of staff of the Accused Barzan Ibrahim and the Head of the General Security Service Fadhil Al-Barrak a few hours after the incident to consider developing the city of Dujail at the same time that the arrests were taking place? And if the purpose of the above mentioned committee which was headed by the Accused Taha Ramadan was to develop the city of Dujail why was it necessary to have in it a representative for the Head of the Intelligence Service and the director of the General Security Service?

If the Accused Taha Yassin Ramadan did not know about what happened in Dujail as he claimed during the court proceedings, he had firm reason to know being a member in the revolution command council (dissolved) and a deputy prime minister and a major member in the regional leadership of the Baath party and a general leader of the popular army and the head of a committee that was formed upon an order from the Accused Saddam Hussein a few hours after the incident in which held its meeting at the national assembly with him heading the meeting. These very powerful positions that the Accused Taha Yassin held enable him to easily know about anything that was happening in Dujail and he definitely, as the only reasonable and logical conclusion, in one way or another he knew about what was happening without taking any procedures to stop those crimes from happening or any procedures to prosecute their perpetrators after they took place.

It has become clear from what was mentioned above that there was joint criminal act in which the Accused Taha Yassin Ramadan had played a large role and that there was a joint criminal intention and that that extremely important deliberate participation of the Accused Taha Yassin

aimed at furthering the criminal activity of those security and intelligence and Baath party services and also to further the criminal intention of the Baath party regime under the leadership of the Accused Saddam Hussein.

For all that has been mentioned above the Accused Taha Yassin Ramadan as held criminally responsible for imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law under article 15/2<sup>nd</sup>/d in the Court's Law.

The Accused Taha Yassin Ramadan was also a general leader of the popular army and his relationship with the members of the popular army was a superior-subordinate relationship and the person who was the direct subordinate to the Accused Taha Yassin in Dujail was Ahmad Ibrahim Hasoun Al-Samarai (Abu Nabil) being the Baath party member in charge in that area and consequently in charge of the popular army in Dujail and who issued orders for the members of the popular army there. These orders included committing crimes against humanity. The Accused Taha Yassin Ramadan who was a general leader of the popular army also had vast authorities which were the same as those as the minister of defense and he was also a member of the regional command of the Baath party and the party leaders in Dujail are by definition the leaders of the popular army in the area and they had to report to him as he was their leader, and they had to report to the members of the regional command of the party and the Accused Taha was also one of these. So the Accused Taha Yassin was a superior to those party members in Dujail and he was their leader since they had been members of the popular army that was led by the Accused Taha Yassin.

So what was mentioned above has proven that the subordinates who committed the crime were legally and actually under the authority and control of the leader (the general leader of the popular army) the Accused Taha Yassin Ramadan. Those subordinates committed the crime (the illegal detention and imprisonment of the people of Dujail) if not upon a direct order from the Accused Taha Yassin, at least with his implicit consent and him overlooking their acts and not using his powers rightfully against them. And the Accused Taha Yassin knew, or at least there were reasons that should have made him know, that his subordinates were committing or they were about to commit those crimes including arresting and later imprisoning the victims of the people of Dujail and he did nothing to stop the commission of those crimes.

Supposedly the duty of the popular army was to protect people and civilian citizens and to guarantee their safety (especially during the circumstances of the war between Iraq and Iran when most men between 18 and 45 years were at the war front) and this matter-guaranteeing the safety of citizens-was within the authority and power of the Accused Taha Yassin Ramadan since he was the general leader of the popular army but instead of that the popular army activities in Dujail were focused on committing those crimes that they were supposed to stop from happening. However it seems that the loyalty of those party members and popular army members lead by the Accused Taha Yassin Ramadan was not to their country but rather to the Baath party and the Baathist regime and to Saddam Hussein in particular. The Accused Taha Yassin Ramadan failed to take the necessary and reasonable procedures within his power to stop these crimes from happening or to present the matter to the authorities especially the judicial authorities for investigation and prosecution after they took place. Therefore, the Accused Taha



Yassin Ramadan is held criminally responsible for Imprisonment or other severe deprivation of physical liberty as a crime against humanity under article 15/4<sup>th</sup> in the Court's Law.

The extent to which the Accused Taha Yassin Ramadan is responsible for torture as a crime against humanity

It has been proven for this court based on the evidence available and the trial that the victims of Dujail woman, children, men, young people, elderly men and women have been exposed to torture on a large scale using all kinds of psychological and physical torture and the prison that belonged to the intelligent service and the section that belonged to the intelligent service inside the Abu Ghuraib prison and in the Laya desert compound and before that they were all assaulted and insulted when they were arrested and when they were brought to the party headquarters in Dujail. Those arrests, in which members of the popular army and the Baath party in Dujail had active participation, and those assaults which were caused by these members of the party and the popular army against the people of Dujail and the party headquarters. During the arrests, hundreds of people of Dujail, who were civilians, were transported to the intelligence prison and later to the Abu Ghuraib prison where they were tortured by the intelligence officers, staff and guards and by the Accused Barzan Ibrahim himself. As a result of torture, at least 46 people of Dujail lost their lives, and later a large number of those victims were transported to the Laya desert compound and were tortured there by the guards who worked for the security directorate in the Muthanna province. These crimes are solid facts that are beyond reasonable doubt.

This court is firmly convinced that when those victims were arrested none of them were told about the time they will spend in custody and whether there were any possibilities for their release. Those prisoners (detainees) were asked in general about their attempt to assassinate the former president. Does it make any sense that children and women from the countryside are capable of committing this act? They were also asked if they had joined the Daawa party and they were asked to confess about things that they did not do or did not join. And for that purpose they had to undergo the cruelest kinds of torture.

So the arrests were against the law. In these arrests, neither the age nor the gender nor even the health status of the detainee was taken into consideration and also there was no logical justification for these arrests since it did not make any sense at all that these children and young countryside women and those elderly men and women could commit the act that they were accused of doing and that was attempting to assassinate Saddam Hussein or that they were members of the Daawa party.

Those illegal arrests, in which the members of the popular army and Baath party in Dujail participated, have led to imprisoning these victims illegally too. And torture in the prisons of the former Baathist regime with accusations similar to those against those victims as a very probable crime. Therefore those who participated in these arrests are considered responsible for the crimes of imprisonment or other severe deprivation of physical liberty and torture as crimes against humanity under article 53 in the penal law number 11 for the year 1969 this is in case of the absence of a probable criminal intention (indirect) to the perpetrators of those crimes under article 34/b of the penal law.

Moreover those arrests which were not based upon any laws or logic or reason and that deprivation of physical liberty which goes against not only law but all divine laws and human

principles and values were accompanied during the arrests and detaining the victims and the party headquarters by assaults by the party members and members of the popular army in addition to the staff of the other security forces.

That act (torture) which caused the victims of Dujail severe psychological and physical pain or both together was done intentionally and aimed at obtaining information or confessions from some of the victims. It also aimed at punishing or intimidating the victims or other people and humiliating them or discriminating against them for political and sectarian reasons. Those who tortured the victims of Dujail were intelligence officers and staff and the security staff at the Laya compound in the Samawa desert and the members of the popular army at the party headquarters who were also civil servants. This is because the resolution number 373 which was issued by the revolution command council (dissolved) on March 23, 1978 included all members of the popular army who were volunteers within the amended military service and contracting law number 1 for the year 1975 (c.f. a similar opinion in this regard issued on the case of Antu Frandjea mentioned earlier (item 159) of the verdict that was issued in that case).

Among the possible purposes of torturing the victims is humiliating them where as the general spirit of the international humanitarian law is to maintain human dignity and more important than that that almighty Allah says in the holy Qur'an, "We have honored the sons of Adam ..." The Holy Qur'an (AL-ISRA: 70).

Going back to the Accused Taha Yassin Ramadan we say that despite the lack of direct evidence that he committed the act of torture by himself, he deliberately participated in committing this crime when he participated in a joint criminal act with a joint criminal intention when he received the orders from the Accused Saddam Hussein and he attended the meeting at the national assembly that was mentioned earlier and in which very important decisions were made by the committee that was formed and headed by the Accused Taha Yassin Ramadan on the day of the incident. Those decisions had to do with what was going on, and would be going on in Dujail and to its civilian residents: participating by issuing those decisions with the intention of furthering the criminal activity of the military and intelligence and security and party forces and the popular army and also with the intention to further the criminal purpose of the Baath party regime. Moreover the fact that the Accused Taha Yassin Ramadan knew about the intention to commit those crimes among the other participants is confirmed for the reasons mentioned earlier. What is more than that was that he wanted those crimes to be committed. Here it must be said that it is possible for the intention of one of the participants in a joint criminal act is direct and when the intention of another participant in the same joint criminal act is probable (indirect) it will have the same legal value in all situations.

Naturally as we said earlier the arrests lead to imprisonment and torturing is a very probable crime in the prisons of the former Baathist regime especially for such accusations as those that the victims of Dujail were accused of which was very normal and logical in those prisons and especially after a joint criminal act has been proved. The Accused Taha Yassin Ramadan had large legal and de facto power over those working under him for the reasons mentioned in the previous items and that power was not utilized to prevent committing those crimes before they took place or to prosecute their perpetrators after they took place but that power was utilized by the Accused Taha in order to commit those crimes based on the joint criminal act according to

article 15/2<sup>nd</sup>/d of the Court's Law and also based upon his leadership responsibility according to article 15/4 of the same law.

The Accused Taha Yassin knew about these crimes and at least he could have known because he was the general leader of the popular army and had de facto and legal power over the members of the popular army because he's a major figure in the Baath party and very close to the Accused Saddam Hussein and because he was present in the meeting of the national assembly as the head of the committee that was formed upon the order of the Accused Saddam Hussein and because many things were decided in that meeting about how to deal with the people of Dujail. The punishment that will be given to him and in fact none of the members of the command council and especially the members of the revolution command council was not aware about what was happening in Dujail after the very limited failed assassination attempt and the proof to that is that the Accused Saddam Hussein confessed it when he said in court "That the revolution command council gets together to discuss the assassination attempt and the measures to be taken is a normal thing" and the Accused Taha Yassin Ramadan is an important member in the council mentioned above.

Moreover the Accused Taha Yassin Ramadan did not take any measures to prevent those crimes from occurring because he himself wanted them to take place and he did not take any measures to prosecute its perpetrators and he was capable of doing this for the same reason mentioned above because it did not make any sense that someone should punish another person for doing something that he himself wanted done.

For all of that the Accused Taha Yassin Ramadan is held criminally responsible for torture as a crime against humanity according to article 15/2/D of the Court's Law and the article 15/4 of the same law.

The extent to which the Accused Taha Yassin Ramadan is responsible for deporting the residents or transferring them by force as a crime against humanity

What needs to be emphasized here is that deporting people or transferring them by force from the city of Dujail to the Laya compound in the Samawa desert in addition to its being a very probable crime due to the detainments and arrests for the residents of Dujail that were committed by the members of the popular army and the party in Dujail and under the circumstances that we referred to earlier in the previous paragraphs and for the reasons mentioned earlier, the witness Waddah Al-Sheikh emphasized in his statement during interrogation on January 25, 2005 and during the court proceedings on October 23, 2005 which was read in the proceedings of October 28, 2005 that the committee headed by the Accused Taha Yassin Ramadan upon an order from the Accused Saddam Hussein on the day of the incident and which met at the national assembly a few hours after the incident and whose members were the head of the Intelligence Service and the Accused Barzan Ibrahim who sent his chief of staff Muhammed Olaiwi to represent him as well as Fadhil Al-Barrak the head of the General Security Service. This committee decided to detain the victims from the people of Dujail who were arrested and kept in the intelligence prison and then the Abu Ghuraib Prison and then deported to the area of Nugrat Al-Salman south of Samawa in the camp of the compound that was prepared for them and indeed it has been proven to the court that these victims of women, children, men and elderly were transferred to the Laya

compound in the Samawa desert close to the borders of Saudi Arabia starting from the spring of 1983 and that was in groups and they were forced to stay there until the spring of 1986 and those deportees constituted 85 families, all in all 399 people of different ages and both sexes. Among the documentary evidence that proves to which we have referred earlier in addition to others is the document issued by the headquarters of the Intelligence Service number 106 on May 8, 1983 which is addressed to the General security office in the province of Muthanna to deport 115 people from the people of Dujail whose names were on five lists that were appended to this document and it is already known that Muhammed Olaiwi the chief staff of the head of the Intelligence Service the Accused Barzan Ibrahim had already attended the meeting at the national assembly representing him as the head of the Intelligence Service was a member in the committee that was formed upon an order from the Accused Saddam Hussein as we mentioned earlier and that the Accused Taha Yassin Ramadan was the head of that committee which held its first meeting right after an order to form it was issued by the Accused Saddam himself.

We reiterate here that the perpetrators of this crime knew about the realistic circumstances that prove the legality of the presence of those civilian citizens of the people of Dujail since they have been living there they themselves, their fathers and their grandfathers for hundreds of years as Iraqi citizens and that some of those who arrested them and then detained them were members of the popular army and the party who lived in the same area and knew the people who were deported in person considering that Dujail is a small area and has a small population.

Therefore the Accused Taha Yassin Ramadan is held criminally responsible for deporting people and transferring them by force as a crime against humanity according to article 15/2/D and article 15/4 in the Court's Law and also the articles 34/B and 53 of the penal law number 111 for the year 1969.

The extent to which the Accused Taha Yassin Ramadan is criminally responsible for Enforced disappearance of persons as a crime against humanity

For this crime to be proven all of its elements mentioned above must be available. And since one of the elements that are required to prove this crime was not proven available in the papers of this trial at least and for the reasons that we mentioned when discussing the extent to which the other Accused people (Saddam Hussein and Barzan Ibrahim) were criminally responsible, so the Accused Taha Yassin Ramadan cannot be held criminally responsible for the act of Enforced disappearance of persons as a crime against humanity and therefore the court has decided to annul the charge against him according to article 12/1/I of the Court's Law and to acquit him from this charge according to 182/B of the amended penal law 123 for the year 1971.

The extent to which the Accused Taha Yassin Ramadan is criminally responsible for willful killing as a crime against humanity

First we can classify the victims of the civilian residents who were killed in Dujail and other places later into four groups:

1. The first group: Includes the victims who were killed by the members of the military forces including the republican guards and the army warplanes and also the members of the popular

army and security and Intelligence Services on the first two days of the incident and there are at least 9 of these people whose names are mentioned in the Indictment.

2. The second group: Includes those victims who were killed due to torture, to extort false confessions or to force them to sign false statements that were prepared for them or in retaliation against the victims or to intimidate them in the prison of the intelligence or in the Abu Ghraib prison and the Laya compound in the Samawa Desert and there are at least 46 victims in this group.

3. The third group: Includes the victims who were killed in the places mentioned in the second item above due to the health conditions and living circumstances and inhumane treatment which was both illegal and horrible.

4. The fourth group: Includes the victims who were executed upon an order issued by the Accused Awwad Al-Bandar and the members of his court which was called a verdict and that was not what it really was on June 14, 1984 and there were about 96 victims in this group.

The available evidence in this trial proved to the court that the members of the popular army and Baath party in Dujail have participated in killing an unspecified number of those mentioned in the first group above and that they also participated in arresting and assaulting and detaining a large number (hundreds) in the second, third, and fourth groups mentioned above.

It has also been proven to this court that the popular army participated actively in surrounding the city of Dujail and in the widespread systematic attack launched by the military units and Intelligence Service and Baath party members against the people of Dujail.

It has also been proven to this court that the Accused Taha Yassin Ramadan did not only know but also wanted these crimes of arresting and detaining the victims of Dujail illegally and this was made obvious through his heading the committee that was formed upon an order from the Accused Saddam Hussein on the first day of the incident and whose members were the chief of staff of the Intelligence Service Muhammed Olaiwi representing the head of that service the Accused Barzan Ibrahim and the head of the General Security Service Fadhil Al-Barrak and also due to his being the general leader of the popular army and a member of the revolution command council (dissolved) and a member of the regional leadership of the Baath Party in Iraq which proves that he must have known about what was happening in Dujail not only for holding those high party and official positions but also because of his extreme closeness and contact with the Accused Saddam Hussein (compare a similar in the verdict issued in the case of Zalatico Aleksovski that was mentioned earlier item 118).

And since the Accused Taha Yassin Ramadan was a general leader of the popular army and had legal power as has been proven earlier over his subordinates of the members of the popular army who participated in the killing operations that were committed on the first two days of the incident (at least by surrounding the city of Dujail) and participated to a larger extent in the operations of arresting the victims of the people of Dujail in the few first days after the accident and because willful killing is a very probable crime and that is considered a normal sequence of events after torturing people in the prisons of the former Baathist regime especially for charges

like the ones that were raised against the victims of Dujail like trying to assassinate the former head of state, the Accused Saddam Hussein and being members of the Daawa Party keeping in mind the brutal and very cruel methods that were used in torturing those victims in addition to the terrible health and living conditions that those prisoners had to undergo in the intelligence prison and the Abu Ghuraib prison and the Laya Desert compound which led to killing another number of victims, and since at least 96 victims were executed upon an order from the Accused Awwad Al-Bandar and the other members in his court and was approved only two days later by the Accused Saddam Hussein and they were actually executed. The order to kill these victims was under the pretext that a verdict has been issued by a "court" was also a very probable crime due to the acts of arrest and detention in the prisons of the former Baathist regime for those charges which had to do with the head of the state and that was also within the normal sequence of events for those in power in that regime. Therefore, even if the direct criminal intention for the Accused Taha Yassin Ramadan to kill those victims was not available, the probable criminal intention (indirect) for killing them must have been available according to article 24 of the penal law number 111 for the year 1969 and even if the probable criminal intention was not available to the Accused Taha Yassin Ramadan to kill the victims and the court has total conviction that he had it as a minimum, the Accused Taha Yassin Ramadan is held criminally responsible for the probable crimes that were committed by the members of the popular army when they arrested and detained that large number of the residents of Dujail and this is according to article 53 of the penal law number 111 for the year 1969 and article 15/2/D of the Court's Law.

Thus the Accused Taha Yassin Ramadan is criminally responsible for a joint criminal act in which he participated actively and deliberately due to what we mentioned earlier regarding him heading the committee that met at the national assembly on the day of the incident and his being the general leader of the popular army who had great authorities and de facto and legal power over the members of the popular army and since he had a joint criminal intention with the other participants and that he knew about the intention of these other participants and that he knew that his action is part of a widespread systematic attack for the reasons mentioned above; and since he knew that his participation and his role in this joint criminal act aimed at furthering the criminal activity of the members of the popular army and the military and party of Intelligence Services and he knew also that his action at that time was to further the criminal intentions of the Baath party regime for the reasons mentioned above and for other reasons mentioned earlier (when deciding the extent to which the Accused Taha Yassin was responsible for the other crimes against humanity that he was charged with) (see about this in the case of Zalatico Aleksovski item 64 of the verdict issued in it) Therefore he is held criminally responsible for willful killing as a crime against humanity according to article 15/2/D of the Court's Law.

Since the Accused Taha Yassin Ramadan was a general leader of the popular army and there was a superior-subordinate relationship between him and the members of that army who committed those crimes (participating in killing 9 people at least and arresting and detaining hundreds of the civilian citizens of Dujail in the first days of the incident) and since the Accused Taha Yassin Ramadan had big legal authority and de facto control over the officers and members of the popular army (see about the de facto and legal control in the verdict issued in the case of Kordish and Sharkash item 418) and since the accused did not only give up his rightful control over them but more than that he at least overlooked their acts (see the verdict issued in the case of Miloraker Noglak item 89) for the purpose of committing these crimes; and since the Accused

Taha Yassin knew and at least had good reason to know that his subordinates were committing or about to commit those crimes since being the general leader of the popular army he must have known the names and the members of those who were involved in those crimes and on top of these Ahmed Ibrahim Al-Samarai the party member who was in charge in Dujail and consequently one of the important figures if not the top figure of the popular army in Dujail and this is since the Accused Taha Yassin Ramadan the general leader of the popular army and a member of the revolution command council that used to issue resolutions and amongst which were those that had to do with the case of Dujail and he was also a member of the regional leadership of the Baath party, etc and that the activities of those subordinates had to do with crimes that were part of the act of responsibility of the Accused Taha Yassin Ramadan since he was the general leader of the popular army and one of the important officials who were responsible for providing security for people especially during the circumstances of the Iraq-Iran war; and since the Accused Taha Yassin failed to take any of the necessary and logical measures within his power to prevent his subordinates from committing those crimes and he did not take any measures to conduct an investigation in these crimes after they took place and to prosecute their perpetrators in court of law or at least as part of his authority over them despite the fact that he had already known about them therefore he is held criminally responsible for them based on the principle of the responsibility of leaders and superiors according to article 15/4<sup>th</sup> of the Court's Law.

### The Conclusion

It has become clear from what was previously discussed that the accused Taha Yassin Ramadan knew that the actions of the members of the popular army were part of the widespread systematic attack against the civilian residents of Dujail and that this knowledge of his came through his role as a general leader of the popular army and also through his phone call with the accused Saddam Hussein on the first day of the incident and through his heading of the committee that was formed upon an order by the Accused Saddam Hussein a few hours after the incident at the national assembly and through the presence of the head of the General Security Service Fadhil Al-Barrak and Muhammed Olaiwi the chief of staff at the Intelligence Service and that meeting in which they discussed and made plans and decided upon procedures and methods that will be followed (see regarding these requirements the separate opinion of judge Kassas in the case of Ducutadi/the appeal committee item 14. This case and opinion were previously mentioned).

To respond to the failed and very limited assassination attempt in Dujail and that the Accused Taha Yassin based upon all of that knew about the regime plan to attack Dujail through the arrests of hundreds of its residents. Therefore it is only natural to say that the Accused Taha Yassin knew about the actions of the popular army and that he had known that those acts and actions were part of that widespread systematic attack against the civilian citizens of Dujail and had also known that his action was part of that attack.

The awareness of the Accused Taha Yassin about this following all what was mentioned above stemmed from his being a leading member in the Baathist regime under the leadership of the Accused Saddam Hussein which was based on power and cruelty against the opposition and

liquidation of opponents and the use of the most brutal and ugly methods with even those ordinary people who know nothing about politics when there is any suspicion about their loyalty to Saddam Hussein and the Baath Party. The Accused Saddam Hussein was an absolute tyrant and dictator and the regime used to continuously start and make up crises to intimidate the Iraqis to guarantee that it stays in power. The crimes against humanity have been considered international because punishing them aims in the first place to put an end to the injustice practiced by the oppressive authorities and the purpose of incriminating them is to protect the people's humanity and as a result to maintain the human values since the humanity in any country is not separated from that in the international community which cares about the destiny of its members everywhere in the world. Therefore the Accused Taha Yassin Ramadan is also held criminally responsible for willful killing as a crime against humanity according to article 15/4<sup>th</sup> of the Court's Law.

The extent to which the Accused Taha Yassin Ramadan is held responsible for the other inhumane acts as a crime against humanity

In the matter of razing the orchards in Dujail, there is enough solid evidence not only to prove the razing operations of those orchards, since this is obvious from what is there on the ground up until now and through satellite imagery of the area of Dujail taken before razing on September 25, 1982 and after it and through the confessions of those accused in this trial and on top of them the Accused Saddam Hussein during the trial who confessed that the razing operations on those orchards had happened. Among the evidence were the audio recordings of the phone calls including the audio recording of the phone call between the Accused Saddam Hussein and the Accused Taha Yassin Ramadan and also the phone call between the Accused Saddam Hussein and Abdul Ghani Abdul Ghafour who was trying to get close to the Accused Saddam by saying that he had done to the orchards in Shatt Al-Arab in Basra during the uprising in 1991 just like what happened to the orchards of Dujail and that when he did it he was following what was done by his president Saddam Hussein, and also through the statements of the dozens of complainants whose orchards were razed in Dujail, and also in what was stated by the witness Waddah Al-Sheikh in his statements during interrogation and trial.

The questions here and which have to be answered before deciding to what extent the Accused Taha Yassin Ramadan is criminally responsible for razing the orchards in Dujail are: Are razing orchards and confiscating lands that we will discuss later criminal acts in Iraqi law and International Law? Did the Accused Taha Yassin Ramadan supervise the operations of razing orchards in Dujail or did he order it? Did any of the members of the popular army participate in the razing operations in any way?

Regarding the first question article 479 of the penal law number 111 for the year 1969 states that (1. The penalties of imprisonment or paying a fine or either of these two penalties is given to those...C who uproot or cut or damage a tree that belongs to others or due to their desire to take the tree or its bark to kill it. 2. And the penalty is imprisonment for a period of no more than 7 years if the crime was committed between sunset and sunrise by three people at least or by two people one or both of whom resorted to violence against others or if one of whom was carrying a conspicuous or hidden weapon)



These razing operations of those orchards are considered inhumane and a crime against humanity because it caused great suffering due to the moral and financial damages that the victims in Dujail who owned those orchards had to undergo since it was their sole source of income and since money is dear to people like their sons and daughters and therefore writers of constitutions all over the world permit legal self defense for people's lives and money (see for example article 42 of the Iraqi penal law number 111 for the year 1969) and before that Almighty Allah says in the Holy Qur'an "The wealth and sons are an adornment of the life ....." (Surat Al-Kahf: 46). So when the fruitful trees some of which were tens of years old were cut it felt as if those who committed the razing operations or supervised them or ordered them as if they have murdered those victims whether the owners of their orchards or their sons and daughters. They have taken from them the things that meant for them the most, their lives and their children's lives and their orchards in addition to taking their honor and freedom and dignity. Therefore we can safely say that razing the orchards is one of the other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to the mental or physical health stated upon in article 12/1<sup>st</sup> of the Court's Law.

The question now is did the Accused Taha Yassin Ramadan supervise the razing of those orchards? Did he order the razing? The statements of a large number of complainants confirm that they had seen the Accused Taha Yassin Ramadan supervising the razing operations. Moreover another number of complainants who were detained during the razing operations in the intelligence prison and the Abu Ghuraib or the Laya compound stated that they had heard from the people of Dujail when they came back from the Laya compound in the Samawa desert in 1986 that the Accused Taha Yassin Ramadan supervised the razing of those orchards. There are people who saw what happened and there are people who heard about it from others. These testimonies are generally consistent and they support each other. Therefore this court is firmly convinced that the Accused Taha Yassin Ramadan must have come to Dujail and supervised the razing operations for at least once and this was emphasized by some of those accused in this trial in this case two and one of whom is the Accused Muhammed Azzawi Ali during interrogation.

Now we come to the other question: Did the Accused Taha Yassin Ramadan order the razing of the orchards? The witness Waddah Al-Sheikh and the Accused Saddam Hussein and the Accused Mizhir Abdullah give us an answer for this question.

The Accused Saddam Hussein admitted that he ordered the razing of the orchards and that was during the trial on March 1, 2006. The Accused Saddam Hussein also admitted implicitly in his statement during interrogation on June 12, 2005 that he ordered the Accused Taha Yassin Ramadan to head a committee whose members were the head of the Intelligence Service and the head of the General Security Service and to meet with them in the building of the national assembly on the day of the incident a few hours after it took place and this was confirmed by the Accused Taha Yassin in his statement during interrogation on December 9, 2005.

In addition to that the Accused Barzan Ibrahim admitted during interrogation on January 25, 2005 that this committee was formed and was headed by the defendant Taha Yassin Ramadan upon an order from the Accused Saddam Hussein and its members were Muhammed Olaiwi representing the head of the Intelligence Service and the head of the General Security Service.

The picture becomes complete when the witness Waddah Al-Sheikh comes and says in his statement during interrogation on January 25, 2005 “one of the suggestions put forward by the Accused Taha Yassin Ramadan was to cut the trees and the orchards to a distance of one to three kilometers in all directions and this suggestion was carried out upon orders from the Accused Taha Yassin Ramadan and so the orchards and trees in Dujail were cut and razed” and also his statement given during the trial on October 23, 2005 and which was read in the court session of October 28, 2005 “as for the role of the Accused Taha Yassin Ramadan at first he had no role but about one month later a committee was formed and he headed that committee and the main role of that committee as far as I remember was to raze and eliminate the orchards in Dujail and Ballad.”

Now the picture is clear and complete and we can say without any reasonable doubt, keeping in mind all the other considerations regarding his supervising the razing operations of the orchards that were mentioned earlier, that the Accused Taha Yassin Ramadan being the head of that committee that was formed upon an order from Saddam Hussein and which met for the first time after the accident directly at the national assembly and which must have had other meeting afterwards has issued orders to raze the orchards in Dujail.

Now we come to the other question: Did the members of the popular army and Baath party in Dujail participate in the razing of those orchards? There is plenty of evidence regarding this as a large number of the complainants and the prosecution witnesses stated during interrogation and the trial and even some of the those Accused in this trial including the Accused Muhammed Azzawi Ali and the Accused Mizhir Abdullah Kadhim during interrogation that they had seen the members of the popular army supervising the razing operations of those orchards, or, that they were protecting those who were performing the razing operations. Others among those complainants stated that they heard about that from the people of Dujail when they were set free and came back from the Laya compound in the desert of Samawa to Dujail in the spring of 1986.

As for the confiscation of the lands in Dujail the Revolution Command Council (dissolved) issued resolution number 1,283 on October 14, 1982 and the resolution number 100 on January 23, 1985. These two resolutions did not talk about taking possession of those lands according to the rulings of the law of gaining possession and were against what was stated in the temporary constitution of the year 1970 and what was stated in it regarding the rights of ownership as article 16/C in it stated that “private ownership cannot be removed unless there was public benefit and for a just compensation according to the conditions set by the law.” So, was confiscating those lands actually for the public benefit, or for other reasons? Was there any fair compensation? Those two resolutions included confiscating the lands owned by some of the victims of the people of Dujail without compensation (the third item in the resolution 1283 on October 14, 1982 and the first item from the resolution number 100 on January 23, 1985) whereas the second item of the first resolution states that those in possession of the agricultural lands or constructions on orchards should be compensated in the first item above by giving them agricultural lands in the areas specified by the Ministry of Agriculture and Agricultural Reform or by giving them lands where houses can be constructed, etc and here comes the element of discrimination that is required by the International Law to say that this act constitutes an international crime, since some of the orchard owners and these are only a few were compensated because they supported the party and the leadership and Saddam Hussein and

because their orchards were razed and confiscated as a result of the immediate anger of the former president and therefore it was ok to compensate them. As for the large part of the owners of those confiscated agricultural lands and orchards that were razed earlier these were not compensated either because they opposed the party and Saddam Hussein or because he suspected that they were not loyal to Saddam Hussein and the Baath Party.

So now all the elements of the crime are available and compensating some of the victims later does not give an excuse for those who participated in committing them in any manner whether as a major participant or as a partner to escape the criminal responsibility for it. And even if many years later another group of the victims were giving compensations that were of no real value due to the decrease of the value of the Iraqi Dinar thousands of times during the '90s of the previous century from its real value of the earlier 80's of the previous century. And in all cases, compensating for some of the financial damage after all those years has no influence over the existence of criminal responsibility against those who committed those crimes because this compensation, and even if it was really adequate enough, it still has to do only with the civil responsibility and has nothing to do with the criminal responsibility. And as we said those compensations which were not adequate even if they had paid for the physical damage they definitely were not able to compensate them for the psychological damage these victims had to undergo. And on top of that we are dealing with an international crime where paying some inadequate compensation for a few of the victims of the people of Dujail does not preclude paying more compensations for the other victims of the residents of Dujail.

So what is the role of the Accused Taha Yassin Ramadan in confiscating those lands and orchards which constitute inhumane acts that have a similar character to the other crimes against humanity stated upon in article 12/1<sup>st</sup> of the Court's Law and which caused great suffering to the owners of those lands and orchards and the residents of Dujail?

We should not forget here that the Accused Taha Yassin Ramadan was a member of the Revolution Command Council (dissolved) which issued the two resolutions that were mentioned earlier (resolution 1283 on October 14, 1982 and resolution 100 on January 23, 1985) since in this case he has participated in issuing the order to confiscate those agricultural lands and orchards that belonged to the victims of the residents of Dujail and in this case he is one of the major participants in issuing these two decisions. It must also be indicated that the Accused Taha Yassin Ramadan had known that this action of his to confiscate the agricultural lands and raze the orchards constituted part of a widespread systematic attack against civilian citizens since he was a member of the Revolution Command Council who is supposed to know about the content of the resolution before he approves it with his signature and that he had also known because he had supervised the razing operations of those orchards before they were confiscated and this has been proven by the evidence mentioned earlier and he knew also or at least had reasons to know being the general leader of the popular army but he did not take any measures to stop those crimes from taking place and did not take any measures to prosecute the perpetrators because he himself participated in committing them deliberately in various ways and methods.

Therefore the Accused Taha Yassin Ramadan bears the criminal responsibility for the other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the

body or to the mental or physical health as a crime against humanity according to article 15/2<sup>nd</sup>/A, B, C, D of the Court's Law and article 15/4<sup>th</sup> of the same law.

The Court's verdict regarding the charges against the accused Taha Yassin:

1. Convicting the accused Taha Yassin Ramadan for willful killing as a crime against humanity according to article 12/1/A of the Court's Law and the article 15/2/D and article 15/4<sup>b</sup> of the same law and also under article 34/B and article 53 of the penal law number 111 for the year 1969.

IHT Part 6 Translation

*(...continued from IHT Part 5)*

2- The conviction of the accused Taha Yassin Ramadan for the expulsion of residents and the forcible transfer of residents as a crime against humanity under Article 12/First/D of the court law and under Article 15/Second/D and Article 15/Fourth of the same law. Also under Article 34/B and Article 53 of the penal code No.111 for the year 1969.

3- The conviction of the accused Taha Yassin Ramadan for imprisonment or extreme deprivation in any other form of physical freedom as a crime against humanity under Article 12/First/E of the court law and under Article 15/Second/D and Article 15/Fourth of the same law. Also under Article 34/B and Article 53 of the penal code No. 111 for the year 1969.

4- The conviction of the accused Taha Yassin Ramadan for the torture as a crime against humanity under Article 12/First/F of the court law and under Article 15/Second/D and Article 15/Fourth of the same law Also under Article 34/B and Article 53 of the penal code No.111 for the year 1969.

5- The conviction of the accused Taha Yassin Ramadan for other inhuman acts as a crime against humanity under Article 12/First/E of the court law and under Article 15/Fourth of the same law.

This is all based on Article 182/A of the rules of the criminal courts number 23 for the year 1971.

6- The nullity of the accused Taha Yassin Ramadan of the coercive disappearance of individuals as a crime against humanity for lack of evidence and therefore dropping the accusation against him under Article 12/First/I of the court law, based on Article 132/B of the amended rules of the criminal courts law No. 23 for the year 1971.

The issuance of a unanimous summoning order on November 5, 2006.

Signed below  
Member

Signed below  
Member

Signed below

Member

### **Conviction Verdict of the accused Taha Yassin Ramadan**

The accused Taha Yassin Ramadan also known as (Taha Al-Jazrawi) was present at the time of al-Dujail incident, in addition to being a prominent member of the regional command of Ba'ath party and a member of the Ruling Authority's Revolutionary Command Council. As for his public functional duties, he held the position of deputy prime minister and general commander of the people's army that trains civilian party groups which acted as a supporting force of the armed forces, "according to the leader's authority publications". Even during the arrest and trial he showed allegiance to Saddam Hussein, as he replied to one of the witnesses during a court hearing "It is an honor for me to be present at al-Dujail but the leader did not entrust me to be there and if he did I would perform any duty he asks of me and I will be honored to do that". Based on what the witnesses and accusers have said during the trial hearings regarding his presence at al-Dujail, he stated at the hearing of March 14, 2006 "I didn't not visit al-Dujail on the first day of the incident nor on the second". Although it is almost definite that he had visited al-Dujail in the following days after the incident. In reality, he was responsible if not the brains behind dredging the fields, according to documents and voice recordings that were presented at the hearing dated   /  /  . A CD was presented of a recorded telephone conversation between him and Saddam Hussein who pointed out that "Dredging Basra forests inspired him to dredge al-Dujail". Also, he personally added before the court at the hearing of March 14, 2006, "As for the fields of al-Dujail, due to what has happened, it is natural and it is the government's right as long as there is a public interest at stake or a need for taking over of farms, buildings, or estates in exchange of an appropriate compensation". With this view, the accused expressed the idea of dredging fields and agricultural lands belonging to the residents of al-Dujail, following the shooting at Saddam Hussein's convoy from within one of the fields surrounding the town.

In Tarek Azziz's testimony, Taha Yassin's personal friend, before the court at the hearing of May 24, 2006, defended Taha Yassin Ramadan "He did not have anything to do with the al-Dujail affair at all because the chief of public security is responsible for security matters". And in Ali Dayeh Ali's deposition, "Before the court hearing of March 12, 2006 (I did not see Taha Yassin Ramadan, but I heard he was there to supervise the dredging of the fields with security protection for fear of clashes with the local residents). But it is obvious from the established and declared facts that on the afternoon of the day of the incident and after Saddam Hussein's return to Baghdad, he called for a limited meeting "attended by the accused Taha Yassin Ramadan, who did not deny it. When the subject was brought up in the court hearing "quoted by Taha

Yassin”, Saddam Hussein answered (If Taha said so then it is true). This case, and in light of the stated facts in the context of the case and lawsuit documents, even if Taha Yassin Ramadan did not have a direct connection with the operation of group arrests, imprisonment, displacement of al-Dujail residents, and the looting of their properties, he is considered to be second in charge or among the leading circle of people close to the accused Saddam Hussein, based on his position in the political party, and therefore he bears responsibility as a senior leader in the regime and by virtue of being the commander of the people’s army, he is responsible for issuing these arrest warrants. From another perspective, based on the inspection of the depositions of witnesses and among them defense witnesses for the accused, we view that “the operation of dredging fields is an occurrence that has occurred” and its purpose is clear “as part of the revenge plan from al-Dujail residents”. Where the defense witness (Saba’wi Ibrahim) for the accused and before the hearing June 13, 2006, the witness testified: Fadel Barak, chief of public security, told me (we dredged the fields because they are hiding sanctuaries for organizations opposing the density of fields and their proximity to Baghdad). In a deposition for Saddam Hussein dated April 5, 2006 (Since the fields are interlocked and unmanageable without military force). In continuation to this statement (had it not been for the case of al-Dujail fields it may not have been possible for the shooting at the president and for the perpetrators to imagine that they can escape). He added (I was surrounded by special guards and a number of special security and others involved who conducted inspections and surrounded the area, and there was resistance - some of them were injured and killed - even if there was objection to the inspection of the fields in al-Dujail and the search for perpetrators). Within the context of the security thinking the decree was issued by the revolutionary command council, referred to by number 1283 and dated October 12, 1982 to record the agricultural lands and fields owned completely or owned by the government which include management rights for others or suspended and placed under the new basic design “for the cities of al-Dujail and Balad” and based on the lists prepared for this purpose by the ministers of agriculture “void from any rights for others”. Exception to this decree “those concerned with the lots recorded in the decree and the names of their owners of compensation” or any confiscation of property of al-Dujail families without compensation, which is contrary to all legislations and laws. Taha Yassin Ramadan is the person assigned the responsibility of dredging fields and the execution of the case. When executing the dredging operation “based on the testimony of the two witnesses (Khader Abbas Ruweid) and (Jabbar Burhan Majeed) as defense witnesses for the accused (Abdullah Khathem Ruweid) at the hearing of February 17, 2006 in the trial “dredging began in the public street where they established camps that included ten to twelve bulldozers, the bulldozers loaded trees and disposed of them outside al-Dujail area. And “those who came with the bulldozers came from outside of al-Dujail”.

“As the witness (Kathem Abdullah Kathem) asserted, three months after the incident, the tractors, bulldozers, international type cars and six-wheel drive vehicles came and loaded the trees and disposed of them outside the city”

However, the accused Taha Yassin Ramadan, in his deposition at the hearing of March 14, 2006, and in response to the court’s question stated the following: “The people’s army’s general command has nothing to do with it, but the people’s army present in al-Dujail reports to the party leaders in that area”.

The witness (Mahmoud Thiab Ahmad al-Mashhadani), who was interior minister during Saddam Hussein regime, stated in his testimony before the court at the hearing on May 29, 2006 (Fields of party leaders were dredged). The accused (Ali Dayeh Ali) in his deposition before the court on March 12, 2006 stated that he did not see (Taha Yassin Ramadan), but heard he was there supervising the dredging of the fields to maintain security for fear of clashes with the residents, and that fields that belonged to us were dredged”.

As for the accused in the case (Abdullah Kathem al-Mashaykhi), he testified before the court and on the same date my field of 12 donums was dredged and among them was lot number 102/2 district 2 housing hill. He added that state fields and fields belonging to my father and relatives amounting to 16 fields were confiscated. As for the accused (Mohammad Azzawi Ali), he testified before court at the hearing of March 13, 2006, “I saw the bulldozers when three fields belonging to me were dredged”.

The accused (Mizhar Abdullah Kathem Ruweid) in his testimony before the investigating judge on February 21, 2005 stated “I did not take part in the arrest operations but with regards to the dredging and cutting of the trees, I was appointed by the party organization, and the accused Barzan Ibrahim ordered us through party channels to accompany the tractors, machinery and cables used to dredge the fields and cut the trees. And we did that and went with the tractors and I accompanied one of the tractors and my duty was to dredge the land of the plaintiffs”.

In the testimony of the defense witness for Saddam Hussein (Kareem Kathem Yassin) at the hearing of May 30, 2006 stated, “After the shooting at Saddam Hussein’s convoy, the tractors came with the border police to al-Dujail, and I knew them because they are my relatives, and after the incidence things changed in al-Dujail. A six-meter wide street became 60-meter wide after the dredging”.

In light of this testimony one of the commissioners asked (Is the explosive plan they talked about not implemented without the dredging of productive fields and therefore voiding these fields of vegetation).

This is another consequence of shooting at the convoy of the accused Saddam Hussein in al-Dujail on July 8, 1982.

Based on the above, and in light of those facts, the army’s participation in dredging al-Dujail fields is an established fact. And the dredging was a catastrophe in terms of the large number of losses incurred by the families such as the loss of their livelihoods and properties, which are their productive fields of fruits, vegetables and trees. Some of the accused among the residents of al-Dujail confirmed that “the fields were dredged” in such a way that people could not survive there as they did before the dredging took place. This destructive operation of permanent properties has undoubtedly led to and will cause in the future great agony and thus will have a devastating effect for years, and thereafter for their children, causing harm in terms of physical and psychological health to the owners of the fields, including those people and families who were members of the ruling Ba’ath party at the time. The operation was harsh and backward in a way that “puzzles the mind”. How could an authority or government be capable of destroying the living life of a city just because shooting originated from one of those fields.

In addition, this action does not fit under any political or administrative description in terms of “destroying the nature of the city and changing the lifestyle of communities” and its negative actual, economic, and psychological effect on the life of all the residents and also on the life of the developing and growing generation. There is an old Iraqi popular saying, going back to the time of the Ottoman authority “cutting of necks but not the cutting of livelihoods”.

The devastating operation of destroying and dredging the fields in the town is an action “against nature, against life, against future living” to the people of al-Dujail and of the neighboring town of Balad. It is painful and sad that the destructive operation to the environment and to the lives of generations and livelihood of the town’s families (it is carried out in the name of the civil and constructional development to the city) as explained in the documents of the former regime. Despite the authority’s justifications, groups of people lost their properties, and the deliberate loss of these properties caused by direct orders from the ruling authority had no doubt led to and will lead in the future to great suffering that will affect the standards of living of the civilian residents in al-Dujail.

No doubt the ruling authority was aware of its revengeful nature which was devoid of values and good governance and the extensive and destructive operation to the livelihood of the families and members of the ruling Ba’ath party and those who helped the security forces in the arrest operations of suspects and distrusted people when all of the town’s families were accused, and the whole town was subjected to mass punishment, abuse and revenge. Punishment took the form of assaulting not only people and families, but also nature itself and future living of the people. This amounts to a crime against humanity. This was planned and implemented by the prominent leading member in the authority and party Taha Yassin Ramadan. He was aware that this doing causes pain and suffering to the town’s residents and that this destructive act is part of a planned and organized extensive attack against the people of al-Dujail as a horrible revenge due to the shooting at Saddam Hussein’s convoy. When Taha Yassin Ramadan led this operation, he was aware of the consequences of this destructive act and he went through with it as part of a programmed plan against civilians carrying Iraqi nationality. On the other hand, the accused Taha Yassin Ramadan, as commander of the people’s army and one of the planners of the rules and conduct of the “The people’s army took place in implementing the mass arrests in al-Dujail and that he is the one that ordered these arrests as the leader in control, and was aware of the nature of these arrests”.

These acts in their extensive, wide scope and revenge from nature and life in this small town are group and mass punishment against the entire population of the town and were not directed against certain individuals or families. Being a government official with an administrative mentality, Taha Yassin Ramadan was aware of the danger of this act and the brutal treatment of the people of the town. Taha Yassin Ramadan and others were also aware without doubt that those who fired at Saddam Hussein’s convoy were around 12 people or less, according to investigators of the operation. The dredging was part of a systematic and extensive plan that came after the mass arrests totaling (399) people, including adults, women and children. These arrests were carried as a coercive plan against the people of the town and as part of the systematic and extensive attack.



Based on the above and in light of the established facts and factual evidence, the evidence for conviction is complete against the accused Taha Yassin Ramadan, based on Article (12) First (A,D,E,I) and in evidence of paragraphs one, two, three, and fourth of Article (15) of Iraqi Criminal Court law and in evidence of article (406) of penal code number (111) for the year 1969 and was publicly conveyed on November 5, 2006.

Judge Raouf Rashid AbdulRahman (seal & signature)  
Seal of the Iraqi High Court

### **The accused Abdullah Khathem Ruweid**

#### The accusations against the accused Abdullallah Khathem Ruweid.

The court charged the accused Abdullah Khathem Ruweid on May 15, 2006 with several accusations for committing crimes against humanity.

These accusations are in accordance with Article 12/First/A,F,E,I for the court law, deliberate murder, and imprisonment or extreme deprivation in any other form of physical freedom, torture, coercive disappearance of people, as crimes against humanity.

#### Summary of the depositions of plaintiffs and evidence witnesses against the accused Abdullah Khathem Ruweid

- The plaintiff Ahmad Hassan Mohamed Al-Dujaili testified in the trial dated December 5, 2006 that the child (Batoool Mohammed Hassan) who suffered an injury in her leg during the al-Dujail incident and remained with her grandmother who cared for her the entire time of her stay. Her grandmother (Fadelah Mohammed Qassem) who is from the town of Balad and is 70 years old, and who at the time sought the protection of the accused Abdullah Khathem, and informed him that the child was in the hospital. He then personally handed the child and grandmother to the authorities by calling the security forces and intelligence units to the hospital, where they arrested them there.....the child at that time was 11 years old, who was hospitalized when the party units and intelligence units arrested her there and placed her and her grandmother in prison for a period of four years, where the grandmother died during that time.
- The plaintiff Ali Hassan Mohammed al-Haidari in his testimony before the investigating judge on March 3, 2005 complained against the accused Abdullah Khathem, and stated that he was sectarian in nature and that the accused Abdullah was behind all the random arrests that occurred because they were members of another sect.

- The witness Sa'adoun Shaker testified in the investigation dated June 16, 2005 that the accused Abdullah Khathem was arrested in 1964 because he was a member of the Ba'ath party, and that he was among those arrested as members of the Ba'ath party, and his name is Abdullah Khathem al-Mashaykhi, and was known during the investigation as Abdullah Ruweid.
- The witness Fadel Mahmoud Ghareeb al-Mashaykhi in his testimony before the investigating judge on January 27, 2005 mentioned that Abdullah Khathem Ruwied is the brother of his mother (uncle) and he is responsible for the tribe (Qabeelah) to which he belongs, and believes that he is a member of the party, and that Abdullah Ruweid displays a (slight) sectarian spirit.

Summary of the depositions of the accused Mohamed Azzawi and Ali Dayeh regarding the accused Abdullah Khathem

The accused Mohammed Azzawi stated in his testimony before the investigating commission on May 25, 2005 the following (....Everyone was informed to join the party division, and because at the time I was one of the prominent and dignitary members of my tribe and a member of the Ba'ath party at the time, I joined the party division in al-Dujail. During my presence in the party division I saw the accused Barazan Ibrahim al-Hassan, and Abdullah Ruweid and the head of the party division Ahmad Ibrahim Hassoun al-Samurai, and I also saw Sa'adoun Shaker and Obadah Kana'an al-Sadeed in the same place, where several families were arrested and taken into big cars and were transported to an unknown destination. These families included women and children).

During the hearing that took place on March 13, 2006, the accused Mohammad Azzawi denied his depositions concerning Abdullah Kathem which he testified before the investigating commission on May 25, 2005. The accused Ali Dayeh Ali stated in his testimony before the investigating commission on May 25, 2005 that when he joined the party division headquarters on the afternoon of the day of the incident, the party leadership was present in its entirety and among them was the party leader at that time Ahmad Ibrahim Hassoun al-Samurai (Abu Nabeel). Also with us were the two accused Abdullah al-Ruweid, member of the division at that time and his son Mizhar Abdullah.

The accused Ali Dayeh confessed that he took part twice or three times in the house inspection campaigns. He mentioned that the accused Abdullah Ruweid was part of the party leadership that executed the arrest operations with the participation of the security forces, stating verbatim "As for the arrest operations, they were executed by the party leadership and a few government officials, and I remember that among them were Abdullah Ruweid, Younis Ahmad Ghazal and Masha'an Dahham and others. And all this was done with the participation of the security forces at that time".

During the trial on March 12, 2006, Ali Dayeh denied statements in his testimony during the investigation regarding the accused Abdullah Kathem al-Ruweid.

Summary of Statements for the accused Abdullah Kathem al-Ruweid during the investigation

From what was stated by the accused Abdullah Kathem al-Ruweid which he testified before the investigating commission and in the presence of an appointed lawyer on May 21, 2005:

1. He was born in 1925
2. "I was holding a party position with a rank of a member of a division command in 1970 and remained in that position as a division member and then an active member in the Ba'ath party (dismantled) till I left the party after I turned over 60 years old. I think that this was in the year 1985 or 1986".
3. He mentioned that he saw the accused Saddam Hussein during his visit to al-Dujail in 1982 "I saw him near the mosque and followed him like the rest of the people, and when we arrived near the Ibrahimiah School, I heard gunfire and ran like the rest of the people".
4. He mentioned that "the number of bullets fired and that I heard were intermittent and were not more than 10 or 12 bullets. I am a peasant and know gunfire well".
5. "After the gunfire I went back to the party division and remained there, and I think my son Mizhar was among them".
6. "After a while, large military units from Baghdad arrived, among them military forces, and surrounded the city. A few people from the intelligence service came, and the accused Barazan Ibrahim was present, and I saw him in the party division. Other leaders arrived, and helicopters began firing at the fields".
7. "I remained in the party division at that time and did not see al-Dujail residents when they were arrested and so I did not know that they were arrested by the security forces. I remember the (al-Hito) and (al-Kathem Ja'afar) among these families and other families, but I don't know their numbers.
- 8- ((One of the individuals refused to surrender to the authorities unless I was present, so I accompanied the security authorities, where I was the representative of peasant societies and the party and a friend, and I called him from behind the door and his name is (Yacoub Majeed or Yacoub Mohamed al-Kharbatli)...and asked the security forces after they took him in not to harm him)).
- 9- ((After the arrest of these individuals, and I heard that among them were women, children and old men, and they sent them to an unknown destination to me, and that the orders of arrest were not based on subpoenas issued by an official agency, and I was not familiar with the arrest mechanism during that period, but naturally they were not related to the incident and I did not know the reason behind their arrest)).

10- ((As for me, I did not take part in the arrests, with the exception of what I mentioned regarding Yacoub al-Kharbatli)).

Among what was mentioned in the attachment of his testimony before the investigating judge on the same day of May 21, 2005.

- 1- ((I was rewarded with an Oldsmobile car of metallic color for the fact that I was the Sheikh of my tribe Ulama. I was the only one from al-Dujail tribes who was rewarded with a car (from the accused Saddam Hussein), and he did not bestow any other person in al-Dujail with such an honor. There were other tribe sheikhs who were not rewarded with anything and are from al-Dujail area....in addition an agricultural contract was signed for me and my family for about 24 donums and that was a long time ago)).
- 2- ((During that period I was in the people's army/Osama squad, and I was on a seven-day periodic leave during the month of July 1982, which coincided with the visit of the accused Saddam Hussein to al-Dujail area, and because I was a veteran member of the Ba'ath party at that time, I joined the party division)).
- 3- ((Among the people who did not surrender was Yacoub al-Kharbatli. The security forces sought my help to accompany them to his house since I knew him, and I actually went with them and called him. After he made sure it was me he opened the door and was arrested by the security forces...)).
- 4- ((On the following day of July 9, 1982 I joined the party division headquarters, where the accused Barazan Ibrahim al-Hassan and the individuals I mentioned before were present)).

#### Summary of the depositions of the accused Abdullah Khathem Ruweid before the court

The accused Abdullah Khathem Ruweid stated his depositions before the court on March 12, 2006.

We can summarize these depositions in the following:

- 1- On the day of the incident I left my home and I saw people crowded near the mosque...I returned home due to heavy gunfire.

- 2- I went to the party division to ask about the location of the people's army division.
- 3- I saw at the party vision headquarters (Sa'adoun Shaker), member of the Ba'ath party's regional command, and he was accompanied by (Barzan) and the director of al-Dujail security (Younis al-Samurai) also came.
- 4- I was asked by the secretary of the division to go to (Yacoub) house, after he refused to surrender... and after calling him...he opened the door and he mentioned that he had nothing to do with the incident.
- 5- I went back to the party division and told the secretary of the division what happened with (Yacoub).
- 6- A car driven by (Hadi Jawad) loaded with corpses drove to the party division.
- 7- Afterwards I joined the people's army squad.
- 8- I did not take part in the party units involved in arresting the residents.
- 9- In response to a question by the court about the report attributed to him and the certified writings attributed to him, he stated that this report is baseless and that I did not give Sa'adoun Shaker any report and that the writing and signature are not mine.
- 10- The highest party rank I reached was a division member, and I was demoted to member.
- 11- I didn't see (Ali Dayeh) and (Mizhar) in the party division.
- 12- I was sitting in the division yard when they brought the corpses.
- 13- The accused Barzan was in the party division.
- 14- I went to the division's secretary and found (Masha'an) there and asked him to free those people, and I told him that they don't know to whom these corpses belong.
- 15- After al-Asser prayer I went to the party division.

- 16- I saw Barzan and Sa'adoun Shaker in the party division on August 7, 1982.
- 17- I saw military forces inside the party division and heard that (Saeed Hamo) was in al-Dujail and he held the position of lieutenant general at that time and had the town of al-Dujail surrounded.
- 18- I did not witness the dredging because I was outside al-Dujail area with the people's army.
- 19- I did not file any party report
- 20- I have been a party member for 17 years and became a base leader in the people's army because I was known in the party and then I was suspended.

#### Summary of depositions by defense witnesses for the accused Abdullah Kathem al-Ruweid

In one of the statements of the defense witnesses for the accused Abdullah Kathem, and was known as (1) in the hearing of May 16, 2006: "The accused Abdullah Kathem beat me in going to the convoy of the accused Saddam Hussein when he came... and the accused Abdullah Kathem went to the party division's headquarters to make sure of his squad's position in the (people's army).

Another defense witness for the accused Abdullah Kathem was heard by the court in the same hearing on May 16, 2006 and was known as (8). He testified that "the day of the incident was the last day of leave for the accused (Abdullah). I met him afterwards after the accused (Saddam) left al-Dujail. He mentioned to us that the matter is big and that he has to go through many procedures and asked us to stay and then he went to join the people's army squad... and that the accused (Abdullah Kathem) was the one to raise the subject with the accused (Saddam) about returning the lands to the people".

Another defense witness for the accused Abdullah Kathem Ruweid, referred to as (1) in the hearing held on May 17, 2006, mentioned in his deposition ((on the following day Friday at 8:30 I left my home where I saw the accused who is in custody Haj Abdullah Kathem Ruweid in his private car, and he stood next to me and I asked him where he was going. He told me that his duty had ended at the people's army near Mosul and will join it here. I took some supplies from the store and thereafter I returned home and I did not see the accused Haj Abdullah Kathem Ruweid al-Mashaykhi for a month. And through my acquaintance with him, he had many relations in the area and during his leave from the people's army he used to work in his farm with members of his family. During that period I never heard from people in the area that he never arrested or even took part in arrests conducted by the security forces)).

Another defense witness, referred to as (2) in the hearing held on May 17, 2006. Stated in his deposition in defense of the accused Abdullath Kathem Ruweid ((on the day of the incident during which I was fasting and sleeping on Thursday, and thus I did not leave the house. Meanwhile, during the afternoon I heard gun shots and planes flying over the fields, and then I heard that (the president) was attacked, and in the following day which was a Friday I went to the house of (Abdullah Kathem Ruweid) to bid him farewell since he was going to join the army. He (packed) his belongings in his car and asked me to look over his kids by not allowing them to go to the fields, as the situation is dangerous, and the accused was known for his good reputation and this accusation is vexatious)).

The defense witness referred to as (3) testified in the hearing held on May 17, 2006. He stated in his deposition in defense of the accused Abdullath Kathem Ruweid ((I used to live in Sheikh Abdullath Kathem al-Ruweid's home because our home was close to Abdullath Kathem Ruweid's home. In the meantime, there was heavy gunfire, and thereafter he went in the afternoon to the party division to ask about the location of the people's army squad, inquiring about whether it changed its location or not, as there was a duty for each individual enrolled in the people's army. After he returned home he had breakfast with us and the next day he packed his things and went to the people's army location north of Mosul in the Turkish-Iraqi-Syrian triangle, and he never returned for a whole month, so he could not have possibly taken part in any of the arrests that occurred during that time.

### **The evidence in the verdict against Abdullath Kathem**

1-Testimonies of plaintiffs and prosecution witnesses, including Ahmad Hassan Mohammed al-Dujaili before the court and Ali Hassan Mohammed al-Haidari in both the trial and investigation sessions and other plaintiffs (protected) in the investigation session.

2- The confession of the accused Abdullath Kathem in both the trial and investigation sessions to his presence at the location of the party division headquarters the day of the incident and that he saw the accused Barzan Ibrahim and Sa'adoun Shaker and other officials and his meeting with them. He also confessed to going to the home of (Yacoub al-Kharbatli) with an intention of arresting him for the aborted assassination.

3- The security information report (party) presented by the accused Abdullath Kathem to the member of the Ba'ath party's regional command during that time Sa'adoun Shaker (who at that time was minister of interior) and who was present on the first day of the incident at the party division's headquarters in al-Dujail and was accompanied by Barzan Ibrahim and others.

4- Reports by criminal evidence experts in the three-member committee and the five-member committee in which eight experts agreed unanimously that the signature and the writing in the above-mentioned report belonged to the accused Abdullath Kathem Ruweid.

The first report (the report prepared by the three-member committee dated April 13, 2006) (paragraph three from the test result). The second report (the report prepared by the five-member committee was dated April 23, 2006 paragraph (4) from the report).

5- The verdict and conviction decisions number 944/C /1984 issued on June 14, 1984 by the revolutionary court (dissolved) and republican decree which mentioned the name of the victim Yacoub Al-Kharbatli and the proceedings and records of the carrying out of the execution in the years 1985 and 1989 which included the names of several victims from al-Dujail whose names were listed in the party report (security and information) that belonged to the accused Abdullah Kathem Ruweid.

The extent of criminal responsibility the accused Abdullah Kathem Ruweid bears for the accusations against him on the basis of the accusation paper

The evidence available against the accused Abdullah Kathem Ruweid includes what was said by some of the plaintiffs and witnesses in the court and in the investigation, and in addition to the statements of the accused Mohammed Azzawi and Ali Dayeh in the investigation session.

The accused Abdullah Kathem confessed that he was present at the party division's headquarters the evening of the incident, and assisted in the arrest of Yacoub al-Kharbatli. He also confessed that he was a division member in the Ba'ath party in al-Dujail area at the time of the incident and that he saw the witness Sa'adoun Shaker at the party division's headquarters the day of the incident. The other evidence (important) against the accused Abdullah Kathem is the party report (security) which this court proved that it was written and signed by him on July 8, 1982. This report was addressed to (Sa'adoun Shaker) who at the time of the incident was a member of the Ba'ath party's regional command and at the same time was the interior minister (during that time), and was present in al-Dujail with the accused (Barzan) and other high-ranking officials in the party and in the government during that day. The report included names of (49) victims of the people of al-Dujail. The accused Abdullah Kathem instigated their arrests and took procedures against them and aided in their expulsion from al-Dujail by considering them hostile to the party and to the revolution and describing them and the party they belong to as (Dirt) (that they committed this shameful crime by shooting at the hope of the nation...etc). The accused Abdullah Kathem in this report considered the families of the victims hostile to the Ba'ath party, meaning that he did not stop at just describing the individuals as hostile to the party but he also generalized this description to include their families.

Based on that report, arrests were actually made against those people whose names were mentioned in the report. Those victims were imprisoned and tortured and then nine of them were killed (among them two juveniles) by an order of the accused Awad al-Bandar and the accused Saddam Hussein.



The party report included what was written by Abdullah Kathem the day of the incident which illustrated the related criminal contribution (participation) stipulated in the court's law (Article 15/Second/C) and in the international court laws, and in the penal code No.111 for the year 1969 (Article 48). In the report the accused provoked others to commit crimes against humanity, as what was mentioned in it by the accused Abdullah Kathem is considered crucial aid to the suppressive agencies of to the previous Ba'ath regime in committing these crimes. It is clear that the accused Abdullah Kathem presented that report to Sa'adoun Shaker who was present at the party division's headquarters in al-Dujail, accompanying the accused Barzan Ibrahim just hours after the failed assassination attempt.

This issue (presence at crime site) makes the accomplice that assists or instigates the committing of the crime an original perpetrator based on article 49 in the penal code No. 111 for year 1969.

The report written by Abdullah Kathem is an important aid to the committing of crimes against humanity which in fact were committed. The report also contained instigation for the arrest and imprisonment of the victims whose names and the names of their families were listed in this report. Those victims include (juveniles).

The total number of those whose names were listed in the report is (49) victims of which 9 were killed and (two juveniles) were among them at the time of the incident. The court verified and was fully convinced of what was written in the criminal evidence experts' two reports (three-member committee and five-member committee). This report was adopted unanimously by the experts who were convinced that it was accurate and without any reasonable doubt. It was also proven that the writing and signature belong to the accused Abdullah Kathem. There was unanimous agreement among the experts.

The court did not reveal the names of those experts for their protection as they are considered prosecution witnesses and disclaimer witnesses and this is due to the unstable security situation in Iraq at that time of the trial. This situation should not be an obstacle to achieving justice at this time, as justice must be a factor in achieving stability in Iraq.

The court has conducted a thorough investigation with regards to the qualifications, competence, and reputation of the experts that carried out the matching of handwriting and signature of the accused including Abdullah Kathem. Each expert had no less than 20 years of experience in his field of work. They were proficient and had years of experience before the demise of the former regime. They worked independently and were not under any kind of influence. This has been known about criminal evidence experts in Iraq for tens of years. In addition, the court has selected these experts with diligence from various districts and different ethnic and religious backgrounds. Despite that, their agreement was unanimous.

Due to the fact that Abdullah Kathem was in the party division in al-Dujail hours after the incident and being member of division in Ba'ath party in al-Dujail, is further evidence and indication that he took part in committing the crimes he is accused of. This fact reinforces the other evidence found against him, especially what was mentioned in the party report that he

submitted to Sa'adoun Shaker at that time. This is also reinforced by what was stated by the accused Mohammed Azzawi and Ali Dayeh during the investigation verifying the fact that Abdullah Kathem accompanied the security intelligence agency in arresting the victims of al-Dujail. It was noted by some of the plaintiffs that Abdullah Kathem came hours after the incident to help with others in committing the crimes.

The court believes without any reasonable doubt that Abdullah Kathem held an important party position in al-Dujail. Although he couldn't enforce his views and authority on other party officials like the accused Barzan Ibrahim, he surely was capable of taking control of his own position in the party, and to some extent was able to influence other party leaders in some way to prevent the crimes from happening. Instead he chose to participate in committing them.

The position that includes important connections in identifying individual criminal liability in assisting or inciting a criminal crime against humanity (Issue is examined by the verdict in the Anto Frendejehe (paragraph 245) previously referred to). It is irrelevant that the accused was present at the crime site in accordance to criminal contribution subordinate (Participation), meaning that it is not obligatory that the accomplice carry the criminal liability, (if he assisted, incited, or agreed with others) for committing the crime to be present at the crime site, if the crime has been committed by the original perpetrators (examined by paragraph 62 from the issued verdict on the Zlatko Kowfski case that refers to the verdict on Tadi Case which was referred to previously). It was made clear to the court that the accused Abdullah Kathem was present on the first day of the incident at least at the crime site and he presented a report to Sa'adoun Shaker who was present at the party division headquarters. He also took part in the arrest of al-Dujail victims. The accused Abdullah Kathem assisted in and incited these crimes against humanity. He initially incited the arrest, imprisonment and deportment of the civilians from al-Dujail. This is factual and the court is absolutely convinced that the accused Abdullah Kathem committed these criminal acts. The imprisonment of these victims led to their torture, and this was very probable and expected in such circumstances under the Ba'ath party control over the Iraqi regime particularly if the accusations at that time were to attempt killing the head of the party and regime (Saddam Hussein) and being part of Da'wah party or any party that was considered hostile and threatening by the regime at that time (this is something people don't argue about in Iraq ). In addition, Article 34 of the penal code number 111 for the year 1969 states (the crime is deliberate if criminal intent is found, and the crime is deliberate if the perpetrator anticipated the criminal consequences of his actions that he committed willingly accepting all risks entailed). The accused Abdullah Kathem was an original perpetrator in the arrest and imprisonment crimes under Article 49 of the same law and not only an accomplice because he was present during the crimes or he took part in the acts that led to them (examined in article 49 of the penal law).

Also Article 53 of the penal code No. 111 for the year 1969 punishes the participant in a crime, whether he is a perpetrator or an accomplice for the crime that actually occurred, even if it was not the one he intended to commit and when the crime occurring was a possible result of the participation that took place.

Despite that, when the accused Abdullah Kathem took part in committing these criminal acts, he anticipated and accepted the criminal consequences as we will explain later in details, showing his behavior and participation.

Imprisonment in the former Ba'ath regime, torture in various brutal methods that was practiced against the victims by members of the suppressive agencies of the former regime lead to a natural and normal consequence of killings of victims. As for the torture and trying the prisoners in phony trials, they were all excuses to kill them and to cover up the names of the people who were killed.

This is what happened to a large number of al-Dujail victims, and among them were nine victims whose names were listed in the report that was submitted by the accused Abdullah Kathem to Sa'adoun Shaker. The victims were arrested, imprisoned, and tortured and then their names were brought up in Awad Bandar's court that ordered their execution and carried out the sentences later after they were certified by Saddam Hussein.

It was not necessary to submit that report through party lines under those extraordinary circumstances mentioned by the writer of the report (accused Abdulullah Kathem) in the report's introduction if Sa'adoun Shaker, a member of the Ba'ath party command and who is the minister of interior, was present in person at al-Dujail on the same day of the incident, especially because Abdullah Kathem shared a close old relationship with Sa'adoun Shaker that goes back to the mid-1960's. This is proven in the documents of this case. Contrary to that, it was deemed necessary by the party to submit the report and others to the member of the party's regional command and minister of interior without going through the routine methods of submitting reports through the party hierarchy because that takes more time, and the time factor then was crucial.

Although there was no need for assisting and inciting a crime to be something physical or tangible, it is enough for it to be in the form of moral support or encouragement to the actual perpetrators in committing these crimes (examine the verdict issued in the Anto Ferdenjeh case (paragraph 199) referred to previously). The accused Abdullah Kathem provided the physical evidence at least through the report he submitted to Sa'adoun Shaker and through his actual participation in arresting one of al-Dujail's victims (Yacoub al-Kharbatli). And that in addition to what was mentioned by the plaintiff Ahmad Hassan Mohammed that the accused Abdullah Kathem had arrested 11-year-old child (Batoul Mohammed Hassan) and her 70-year-old grandmother (Fadilah Mohammed Jassem) and who entrusted him with her safety, but he delivered her to the party's security organization.

General principles for crimes against humanity and criminal intent of the accused Abdullah Kathem in committing the imprisonment and deliberate killing and torture that are considered crimes against humanity.

It was made evident to the court that a wide and systematic attack took place at that time by a large number of military, intelligence, and security forces belonging to the government. Members of the people's army and party system also contributed to these attacks against the civilians of al-Dujail. The accused Abdullah Kathem was one of the important party members in

al-Dujail and was enlisted in the people's army at that time. The wide and systematic attack took place immediately after the limited and failed assassination attempt.

(Criminal Intent) of the accused Abdullah Kathem existed on the day of the incident when he wrote the security information report (party) that he submitted to Sa'adoun Shaker, who was there that afternoon on al-Dujail. Therefore the participation of the accused Abdullah Kathem and his contribution in committing these crimes is factual. Even if he left al-Dujail the second day of the incident to join the people's army some place in North West Mosul. This is because the presence of the accomplice at the time of the crime scene is not a condition to be criminally liable as an accomplice. But the accused (Abdullah Kathem) was present at the crime scene at least on the first day of the incident.

The accused Abdullah Kathem was aware that his criminal acts were part of a wide and systematic attack against civilian residents. This is clear because he witnessed the incident himself on the first day which he described as a wide attack (Judgment Day) during his trial. The accused Abdullah Kathem saw senior government and party officials, and among them was Barzan Ibrahim, Sa'adoun Shaker and others on that day in al-Dujail hours after the incident. He met with them and saw the military, intelligence, party organization, security forces and people's army in al-Dujail hours after the incident. Those forces surrounded al-Dujail and raided houses and fields to arrest people of different ages and both genders. Moreover, the accused Abdullah Kathem himself was one of the contributors who pointed out the victims and arrested at least one of them, according to his confession, therefore he must have known about the wide attack and knew that his actions were part of that attack. He also knew that the victims were residents of al-Dujail because he was one of the residents of the same area and knew its residents since he was one of the tribe's Sheikhs and one of the high-ranking party leaders. Taking into consideration that al-Dujail has a small area and the number of its residents is very limited, and therefore he clearly knew that those victims were civilian residents. Therefore, the accused Abdullah Kathem was aware that his actions were part of a wide attack and he also was aware that the attacks were directed at the civilian residents.

The accused Abdullah Kathem could have easily predicted the consequences of the immense reaction caused by the agencies of the former regime (referred to before) and those belonging to those agencies on the civilian residents in al-Dujail for a limited and failed assassination attempt. He witnessed the incident and participated from the beginning of the reaction in committing some of its actions, and that is in addition to being a division member in the Ba'ath party, and thus he knew the nature of that party, especially if it had to do with its existence, authority, and the leadership of its accused president Saddam Hussein. Also, Abdullah Kathem's report included the names of a large number of family members in al-Dujail. It is asserted that the accused Abdullah Kathem did not only expect but was surely aware that the reaction was going to be that big since he witnessed the attack from the beginning during the first day and at least in the following day.

Although it is the nature of each individual to be innocent, and although that this court deeply believes in the innocence of any accused, it cannot assume his good intent, based on the evidence found in the case, especially what was mentioned in the report belonging to the accused

Abdullah Kathem. Surely the accused Abdullah Kathem had bad intention when he wrote that report in which he mentioned the names of women and children and elderly men and women and families, provoking their arrests and deportation because according to him they all belonged to (a dirty organization) and contributed to the shooting at his president, who is his role model ((the hope of the Arab nation and its pioneer and hero of Arab nationalism and general secretary of the party)), according to what was stated verbatim. The accused Abdullah Kathem had bad intentions when he requested-provoking- the arrest of those victims and carried procedures against them and deporting them from al-Dujail, as he considered them hostile to the party and the revolution and are affiliated with the Da'wa party.

This provocative request includes inciting of arrest and imprisonment crimes and even torture and killing under a regime whose nature and brutality are well-known to the accused Abdullah Kathem who was aware of its nature and brutality since he was one of the advocates of that party in al-Dujail area. That regime, party, and president were free to do whatever they pleased, no matter how brutal, as long as they stay in power. The accused Abdullah Kathem asked for, provoked and assisted in committing these crimes. Therefore, he surely was aware that if a person wanted something then he must have known what he wanted beforehand.

The actions committed by the accused Abdullah Kathem were confirmed through his writing of that report and pointing out the victims and contributing to the arrest of at least one of them. This is factual based on the large number of arrests of victims whose names were present in the party report that was proven to have belonged to him. As a result, this led to the arrest of those victims and their imprisonment and then they were jailed in Al-Hakemiah prison and Abu Ghreib prison, where they were tortured and some of them were even killed. The concept of deliberate killing is a crime against humanity, and it does not only include the person who played a primary role in committing the crime or the accomplice in crime as an assistant or provoker, but also includes those who led to the causation of criminal results as embodied in the death of the victim or victims of criminal intent (knowledge of the elements of the criminal act and desire to accomplish it). Whether that intent was direct or indirect when the criminal behavior was performed, the accused Abdullah Kathem had at least an indirect criminal intent to accomplish killing, and this was referred to before and was proven to the court. The behavior of the accused Abdullah Kathem led to the killing of nine persons, and among them were two juveniles who were identified as Mazhar Jameel Ayoub and Mahmoud Hassan Mohammed. This court is completely convinced that these are factual and proven events.

This court distinguishes between the criminal contribution of a group of individuals who unanimously committed a certain crime, and therefore the contributors become the actual perpetrators, and between provoking another person to committing a crime, where the contributor who provoked or assisted or agreed with another person (partner) of the actual perpetrator who committed the murder.

The actual contribution to the murder is performing a primary role in executing the crime. The legislator names the actual contributor to the murder as "perpetrator", thus the actual contributor is the person who commits an action that results in a material effect by which natural

laws move it and which create a result. As for the subordinate contributor, who the legislator names "partner", he is the one who (assists, provokes, conducts or agrees) and causes a psychological effect on others and creates criminal intentions or provides more daring to commit the crime or to continue in following through with it.

The accused Adullah Kathem was an actual perpetrator when Yacoub Al-Kharbatli, Batool Mohamed Hassan, and Fadilah Mohammed Jassem were arrested, since he was during that time a partner (subordinate contributor) in assisting and provoking such a crime, and perhaps by agreeing with others in committing arrest and imprisonment crimes against (49) victims from al-Dujail residents, and thereafter torturing and killing nine of them as a result of the assistance he provided through the security and information report and the crimes he provoked directly or indirectly that were actually conducted by the actual primary contributors to these crimes. In addition, the meaning behind the interference in crime, and it is the psychological element that should be present for execution and which is based on the free will of the partner in interfering with the behavior that makes up the crime. And in addition to the knowledge of the actions that is contributed and the direction of ones intent in creating a result, which the perpetrator wants, and this was all displayed by the accused Abdullah Kathem. In addition to that, the causation contribution behind the participation of the accused Abdullah Kathem in committing the crime (the criminal behavior in provoking or assisting or agreeing to committing a crime) is linked or connected to the crimes committed by others with a link to a material causation link.

It should be said after that that a set time in committing a crime or choosing a certain place to committing it by the actual primary perpetrator is not considered a basis for the commitment of that crime and the responsibility of the person who aided in that crime, if it actually happened, as long as a causation relation between that provocation or that assistance or between the criminal result that was performed by the actual primary perpetrator when the crime was committed.

In another sense, if the provocation or assistance occurred in a certain time or place, it does not matter if the murder committed by the perpetrator occurred in the same day or afterwards in a short or longer period, or in a place other than where the provocation or assistance behavior was committed, as long as there is a sure causation relation between the actions of provocation and assistance and the criminal results which occurred, and without there being an outside factor that cuts that causation relation between that committed criminal behavior of the partner and that criminal result that was incurred by the criminal behavior of the primary perpetrator.

It is apparent to this court that there was a sure causation relation between the criminal behavior of the accused Abdullah Kathem through his provocation and assistance in committing crimes against humanity he is accused of committing, and between the criminal results that occurred by imprisonment, torture, and killing of several al-Dujail victims committed by the primary perpetrators who were officers, members of the intelligence service, and others for imprisoning, torturing and killing, the accused Awad Bandar and Saddam Hussein and others about the deliberate killing of nine victims of al-Dujail residents whom the accused Abdullah Ali provoked and assisted in their killings.

The criminal intent is being aware of the factual criminal factors that incite and assist in committing crime and wanted to implement it, as shown previously, in the case of accused Abdullah Kathem when he committed the criminal acts involving incitement and assistance, and the criminal results that he wanted were achieved or at least anticipated. Moreover, he acted on the incitement and assistance in the crimes accepting all risks involved. And it is not important whether that the criminal consequences were achieved later, one month, or one year or in another place other than the place where the incitement and assistance took place, as long as the causation relationship between the criminal behavior of the accomplice (and here it is the behavior of the accused Abdullah Kathem) and between the criminal consequences were not interrupted by other factors. Also the criminal intent of the accused Abdullah Kathem existed the moment he committed the criminal acts (assisting and inciting) and continued until criminal results were achieved and for the criminal behavior for the actual perpetrators.

Court Verdict:

In the case of the accused Abdullah Kathem Ruwaid:

- 1- Criminally liable for the deliberate killing as a crime against humanity under Article 12/First/A of the court law and based on Article 15/Second/C of the same law.
- 2- He is also criminally liable for the imprisonment or extreme prohibition in any respect to physical freedom as a crime against humanity under Article 12/first/E of that court law and based on Article 15/Second/A,C of the same law.
- 3- Criminally liable for the torture as a crime against humanity under Article 12/first/E of the court law and based on Article 15/Second/C of the same law.

All this is based on Article 34/B and Article 53 of the penal code No. 111 for the year 1969 and indicated by Articles 47 and 48 of the same law (penal Law).

- 4- No liability for the accused Abdullah Kathem Ruwaid for the forcible concealment of individuals as a crime against humanity due to unavailability of one factor for the crime. Therefore, it did not exist, based on Article 132/B of the basic criminal procedural law No. 23 for the year 1971. In reference to Article 182 of the amended basic criminal procedural law No. 23 of the year 1971, the court decided unanimously to convict the accused Abdullah Kathem Ruwaid under Article 12 first paragraph (1-E-F) and in reference to Article (15) of Iraqi higher criminal court law No. 10 for the year 2005 and Articles (34, 37, 38, 53) of penal code No. (111) for the year 1969 and setting his punishment accordingly. The verdict is declared in his presence and understood publicly on November 5, 2006.

Signed      Signed      Signed      Signed      Signed

Member    Member    Member    Member                    Judge  
 Raouf Rasheed Abdel-Rahman

The Accused Ali Dayeh Ali  
Accusations against the accused Ali Dayeh Ali

On May 15, 2006 the court brought against Ali Dayeh Ali several accusations pertaining to crimes he committed against humanity. These accusations were based on Article 12/First/A,F,E,I of the court law, which are deliberate killing, imprisonment, and extreme prohibition from physical freedom, torture, and forcible concealment of people as crimes against humanity.

Summary of plaintiff statements and prosecution witnesses with regards to Ali Dayeh Ali

A number of plaintiffs were asked in the course of investigation, the complaint against the accused Ali Dayeh Ali, And among these plaintiffs was one plaintiff who appeared before the investigating judge on February 3, 2005, claiming that the accused Ali Dayeh Ali visited their house and took her brother (Musallam Abd al-Ameer Lateef) after 9 days of al-Dujail incident, and her brother never returned. It became evident later that her brother was executed after being charged with attempting to assassinate Saddam Hussein.

Another female plaintiff (protected) known as (A) testified before the court on January 29,2006, that the accused Ali Dayeh Ali was an official in the people's army and that he came with them and "he arrested us personally" with security officer (Abu Nabeel).

Another witness aged 7 years at the time of the incident complained before the court on January 29, 2006 that the accused Ali Dayeh Ali (arrested my family and was wearing olive green clothes and all of al-Dujail residents can testify to that) and when the court asked him what he meant by olive green clothes he said he is (a party member) and that he came and arrested my parents and brothers.

The age of the witness at the time of the incident in 1982 was brought up during the trial several times, and in defense of the accused and time of testimony after 20 years of the incident. The court sees that the age of the witness is not at the time of the incident but rather at the time of the testimony. A 7 or 10-year old at that time has a clearer vision of catastrophic scenes than a



30 or 40-year old at that time. Anyway, the court decides the value of the testimony of any witness.

A (protected) female plaintiff known as (A) testified before the court on February 1, 2006 that (Ali Dayeh Ali came to our house wearing military uniform and arrested my brother) “He knocked at the door, and I opened the door for him and the accused Ali dayeh Ali told me that he was just going to casually question my brother for a few hours and that he will come back to us. The accused Ali Dayeh Ali arrested my brother twenty days after the incident”.

In response to the assigned lawyer, the plaintiff stated that she knew the accused Ali Dayeh Ali because he was from her area and that he works in a party division. And in response to another question the plaintiff stated that the accused Ali Dayeh Ali was carrying a gun and was alone when he came to take her brother. In a comment by the accused Ali Dayeh Ali, he confessed that he went with the secretary of the party division to the house of the plaintiff to arrest her brother.

### Summary of statements for the accused Ali Dayeh Ali in the course of Investigation and Trial

#### First: Summary of statements for the accused Ali Dayeh in the course of investigation

The statements of the accused Ali Dayeh were noted by the investigating commission on May 25, 2005 and in the presence of his lawyer Ahmad Jihad Al-Jouri and in the presence of the court’s district attorney. The following was mentioned in these statements:

- 1- He was a resident of al-Dujail and worked for the Ministry of Education, and in the year 1982 was pursuing a higher education, and his party rank at that time was a trainee member.
- 2- Came back to al-Dujail from Baghdad on the afternoon of the day of the incident, and found the city surrounded with military and security forces, and intelligence personnel and other government agencies. He went home first and then he joined the party division where the party division existed, and the party leader at that time Ahmad Ibrahim Hassoun Al-Samurai (Abu Nabeel) was there. Also the accused Abdullah Al-Ruwaid and his son Mizhar were there. And he knew about the presence of Barzan, but he did not meet him.
- 3- He used to go to the party division every day after an official work day according to party assignments.
- 4- On July 8, 1982 the arrest of a group of families from al-Dujail took place and the families included women, men and children. And after their arrest and depositing them to the party division in al-Dujail, window-shaded cars that looked like buses came and these families were loaded into these cars and moved them to unknown destinations. And his duty at that time was protecting the party division. The orders were to transport the detainees, based on the orders given by the accused Barzan Ibrahim, as he recalls.

- 5- A group of people and families were tortured inside the party division and in particular inside the room that was occupied by the accused Barzan Ibrahim and Ahmad Ibrahim and a group of other leaders. And according to his claim he didn't participate in the tortures.
- 6- He continues to state that he did not take part in the arrests of people and the participation in inspection arrest check points that were created to arrest families of al-Dujail, but that he participated in two or more house inspections for weapons. At one point I went with the accused (fugitive) Ahmad Ibrahim Al-Samurai, who was a supervisor at that time for the party area, to a house near the post office to arrest someone because he did not know the house location. He and I were alone, and I showed him the location of the house and it belonged to Aziz Lateef Al-Salami, where one of his sons was arrested. I can't remember his name exactly and was brought by us to the party division headquarters. The accused Ahmad Ibrahim Hassoun Al-Samurai sent him to an unknown destination and he never came back since. I think that man who was arrested by me and the accused (fugitive) Ahmad Ibrahim was executed or killed because he never came back till now and his fate was never known. And I never took part in any other arrest afterwards.

Second: Summary of Statements for Ali Dayeh in the course of the trial

The court listened to the statements of the accused Ali Dayeh Ali in the hearing that took place on March 12, 2006 and from what was stated are the following:

- 1- At the time of the incident I was in Baghdad and went back to al-Dujail at 6:00 pm and heard about the incident from the people of al-Dujail and afterwards went to the party division. I saw guards from the Republican forces and others from the military and saw window- shaded cars outside the party division, and I asked about these cars and was told they are cars to transport the families. As for me, I did not take part in any party groups to arrest families, but there was one event that took place a month and a half after al-Dujail incident. My father was sick and old (born in 1904) and was mayor of the al-Dujail area at that time for 47 years.... On that day the secretary of the party division called my father and told him that he wants to inspect a house close to al-Dujail post office. My father told him that he was sick and will send me with him, and I actually went with the secretary of the party division as a substitute for my dad. We went to inspect (Al-Tufi) house which I did not really know and therefore we asked about the house and after we arrived at the house we found a man. The secretary asked for his name and he told him my name is (Musallam Abd al-Amir). And then the secretary of the party division said that there is no need to enter the house because he is the wanted man. I then told him that this family is of good reputation and I begged him to let him go and not arrest him, but he refused to do so because he had information that made it necessary to interrogate him. Other than this event I never went to any house for any arrest or inspection.

- 2- I gained a the rank of party member after 13 years of being enlisted in the Ba'ath party and that was on April 30, 1982, which was two and a half months before the incident. I joined the people's army 20 days after al-Dujail incident.
- 3- The testimonies that the court heard are malicious testimonies and I have never participated in any party group arrests and that they want to only fabricate allegations against me.
- 4- I did not write any report because it is not my role to do so, but that of the security service. I have no enemies and there is no need to write these reports and on the day of the incident dated July 8,1982, I was not there at al-Dujail... I never carried a gun ever or participated in any party group arrest other than Al-Tuffi house.
- 5- In response to a question from the court, the accused Ali Dayeh stated (I did not read my testimony in full before the investigating judge) due to my poor eyesight. As for the accused Barzan, I did not see him, but I heard from people that he was there and that he tortured people.
- 6- I used to go every day to the university and then to the party division, just to record my attendance. The party supervisor was lenient with me because of my studies. On the day of the incident I was not present in al-Dujail but came back at 6:00 p.m. and afterwards went to the party division headquarter.
- 7- I was in the city and saw window-shaded cars transporting families to Baghdad and saw the spread of the security forces and heard that planes bombed the fields.
- 8- My house is half a kilometer from the party division. I saw people terrified and some in their houses and most of the people were close to the party division headquarters, due to the headquarters' large area and also because special guards and army forces were present there.
- 9- A question from the district attorney (was your lawyer present when you were interrogated) the accused Ali Dayeh replied yes my lawyer was present. In response to another question from the district attorney, the accused Ali Dayeh stated ( I did not read my testimony in full).
- 10- I remained in the party division till 7:30 pm and saw window-shaded cars transporting families that looked like coasters and belonged to the government. I don't know whether they belonged to the security, intelligence, or people's army.
- 11- When the party groups went to arrest someone, they would go in more than one person (several persons). I did not see any arrest warrant issued by the court or investigating judge. No arrest warrants were shown or court order, and that during

that time we feared for ourselves since the person executed could be a cousin or a relative...”.

- 12- A question from the public prosecutor, did you ever conduct inspection operations on homes during the period from July 8, 1982 onward? the accused Ali Dayeh replied (no I did not participate but I visited one or two homes while I accompanied party organizations in inspection raids, searching homes for unlicensed weapons and confiscating unlicensed weapons if found and then completely making sure that there are no unlicensed weapons in the homes after we left them).
- 13- In response to the public prosecutor’s question, the accused Ali Dayeh said “we heard of the arrest of the house or (family) of Fakhri Sabri Assad and also Hassan Haji Mohammed...the women, children, and elderly returned but the youth did not come back”.
- 14- A question from the public prosecutor, what is the fate of (Musallam Abd Al-Ameer)? Did you see him? How old was he? Did he return to his family?” The accused answered that the division’s secretary is the one who arrested this person and I don’t know his fate and I did not see him and he was (sixteen or seventeen years old) and he did not return to his family”.
- 15- “The arrests of families were conducted randomly and included women and children”.

#### Summary of the depositions of the defense witnesses for the accused Ali Dayeh Ali

- One of the defense witnesses for the accused Ali Dayeh and who was referred to as (1) testified in the hearing held on May 15, 2006 that Ali Dayeh was a party member, but never heard that he ever took part in any arrests of families or people, and that he is an educator and generation caretaker...and did not participate in any party group.
- Another defense witness, referred to as No. (2) testified in the same hearing of May 15, 2006) (the day of the incident, the accused was in Baghdad and returned to al-Dujail in the afternoon around 7:00 o’clock and did not take part in the arrest of any person, and I live with him... he is a member of the Ba’ath party and after he returned home he directly went to the party division’s headquarters for an hour or half an hour... his home is 500 meters away from the party division’s headquarters...he had no time for the party since he was studying...he remained a day or two in Baghdad...He could not attend the meeting and was forced to join the people’s army... and took part in the arrest of Musallam Abd Al-Ameer after

forty days and it was then learned that he was among the (148) individuals on the list of (those that were executed).

- On the same day May 15, 2006, the court heard from a third witness who testified that the accused Ali Dayeh (he was not present the day of the incident, and was in Baghdad because he was a student...he did not take part in the party groups...he is not bound by the working hours of the party...he is a supporting party member ...he was expelled from the university because he joined squads of the people's army...he went to arrest Ali Musallam Abd al-Ameer, the secretary of the division came to him and told him that it was necessary for him to inspect one of the homes, and as they neared Musallam Abd Al-Ameer's home he was ordered there to arrest...and told him they were nice people... and the division's secretary told him that they had a 15- minute job...and that (the accused Ali Dayeh) did not know the reason behind going there...Ali Dayeh has no relation with Sa'adoun Shaker and did not write any reports.
- Another defense witness for the accused Ali Dayeh stated on May 15, 2006 before the court that the accused Ali Dayeh "town dignitaries and prominent members of good manners...during the incident he was taking graduate studies...joined the people's army r two months after the incident and was expelled from the university due to the execution of his cousin...he did not take part in the arrest of any person or raid any home or dredged fields".
- In the same above-mentioned hearing, the court heard from another defense witness for the accused Ali Dayeh who was referred to as No. (5). "This witness mentioned that the accused Ali Dayeh was a role model of manners...he was assigned to the people's army and then joined the people's army after two or three months (from the day of the incident) and because he stopped studying he was then expelled as a result...he was not committed to the party and did not attend the party's meetings...was sent to the people's army division... his cousin was executed and the other fled Iraq...I never saw him take part in the groups that arrested families and individuals...he does not write reports because his father is a sheikh and mayor...if an order of arrest came, his father used to accompany the groups to implement them and if he was not present he used to let his son the accused (Ali Dayeh) accompany these groups and if he was not present he would assign his younger son to do that...on the day of the incident, I did not see the accused Ali Dayeh take part with the security forces because they did not need a mayor...he did not benefit from the party and was labeled by a question mark because his cousin was executed.
- On June 5, 2006 the court heard from another defense witness for the accused Ali Dayeh who testified that on the day of the incident the accused arrived at al-Dujail at six o'clock and went to sleep...the accused Ali Dayeh was present in al-Dujail in the day following the incident...he was not wearing military uniform and did

not carry any weapons...he even used to hand in the people's army weapon to the division...the accused used to replace his father whenever he got sick because his father was the mayor.

- On the same above-mentioned day, the court heard from another defense witness for the accused Ali Dayeh, who testified "the accused Ali Dayeh came to the party division at six o'clock and stood with us in front of the party division... the accused (Ali) was present the second day of the incident, where the witness went to him and sat with him in his home...they used to seek aid from the accused when his father was absent...".

#### Available indicators and evidence in the case against the accused Ali Dayeh Ali

- 1- The depositions of numerous plaintiffs and prosecution witnesses in the trial and investigation sessions mentioned that the accused Ali Dayeh Ali arrested them and their families in different periods after the incident.
- 2- The frank confession of the accused Ali Dayeh Ali (construed) in the trial and investigation sessions that he was present at the party division in al-Dujail at six o'clock p.m. on the first day of the incident and the following days and the presence of the accused Barzan Ibrahim and Ahmad Ibrahim, and group of leaders in the party division's headquarters during the first day of the incident and heard about the torture of a group of people and families, and witnessing the government shaded-cars returning after carrying them and transporting them to an unknown location. He also confessed that he accompanied the accused Ahmad Ibrahim Al-Samurai (secretary of the party division) to the home of the victim (Musallam Abd al-Ameer) and took part in his arrest and aided in transporting him to the party division's headquarters where he was then sent to an unknown location and then was killed and he was one of those who were executed and his name was listed in Awad Bandar's court order and he was (16) years old.
- 3- The security information report (party) dated July 8, 1982 which was presented by the accused Ali Dayeh Ali to Sa'adoun Shaker, the Ba'ath party's regional command member and interior minister during that time. Shaker was present the first day of the incident in the party division's headquarters in al-Dujail and was accompanied by the accused Barzan Ibrahim and other party and government leaders.
- 4- The conviction of the accused leader- Reports of the criminal evidence experts in the three-member committee and the five-member committee

showed that eight experts agreed unanimously that the signature and writing mentioned in the report above belonged to the accused Ali Dayeh Ali. The first report (the three-member committee report dated April 13, 2006 (paragraph (4) from the exam result) the second report (the five-member committee report dated April 23, 2006 (paragraph (3) from the examination result).

- 5- The conviction and verdict sentences number 944/C/1984 on June 14, 1984 issued by Awad Al-Bandar trial (the dissolved revolutionary court) and the republic decree No.778 dated June 16, 1984 where the victim's name was listed (Musallam Abd al-Ameer) and the proceeding of carrying out the execution in 1985.

The extent of the criminal responsibility of Ali Dayeh Ali regarding the accusations against him in pursuant to the accusation paper

It is clear from the case documents and the evidence and indications found in them that the accused Ali Dayeh Ali was present the day of the incident in Baghdad since he returned to his home in al-Dujail after the failed assassination attempt during the afternoon of that day, and in addition to being a trainee member of the Ba'ath party (dissolved), afterwards he directly went to the party division's headquarters in al-Dujail around six o'clock and therefore this court concludes that the accused Ali Dayeh Ali met with the accused Barzan Ibrahim who was overseeing the arrests. He also met the member of the party division's regional command and former interior minister Sa'adoun Shaker and provided him with the information and security report referred to in the indications and evidence found in the case against the accused Ali Dayeh. This is the only reasonable conclusion from all the depositions in the case and the documented evidence attached to the case documents. It was proven to this court that the accused Ali Dayeh assisted security and party officials in the arrest of Musallam Abd al-Ameer Latif who was executed later, and Jassem Mohammed Lateef and his family in addition to a number of individuals and other families where the names of (14) families were listed in the report that he gave to Sa'adoun Shaker.

This court asserts that the accused Ali Dayeh was told to assist security, party, and intelligence officials when people were arrested in al-Dujail by assisting these officials in those arrests. The court also asserts that the accused Ali Dayeh was a trainee member of the Ba'ath party at the time of the incident, and he also suffered due to the execution of his cousin (Ala'a Abed Al-Hussein Saleh) who was accused of belonging to the Da'wa party. The court also concludes that the accused Ali Dayeh was asked to join the people's army during the months that followed those events.

This court is convinced that the written and signed security and information party report belonged to Ali Dayeh dated July 8, 1982 and submitted to Sa'adoun Shaker and includes information on and provocation against (14) families from al-Dujail. It was proven by the unanimous agreement of eight criminal evidence experts that the handwriting and signature in the report exclusively belonged to Ali Dayeh, and in fact this court does not have any reasonable doubt in approving the opinions of those independent and neutral experts that were carefully

chosen by the court, by taking into consideration several factors we previously referred to when we examined this subject regarding identifying the responsibility of the accused Abdullah Kathem Al Ruweid.

In addition, this court has no reasonable doubt that the accused Ali Dayeh Ali presented this report to Sa'adoun Shaker who during that time was present at the party division's headquarters in al-Dujail hours after the incident, where the accused Ali Dayeh also went there. And from there, it is clear that the accused Ali Dayeh gave information about a large number of members of (14) families from al-Dujail, provoking their arrest by accusing them of being hostile to the party and the revolution and that they belonged to Da'wa party (agent). Presenting the report which included information during that time is considered providing assistance to the security, party and intelligence forces in committing crimes against humanity. It was also apparent to this court that the accused Ali Dayeh took part in the arrest of a number of people in al-Dujail in July 1982.

The actions of the accused Ali Dayeh in assisting these officials by presenting that report and provoking them to arrest those people and families whose names were listed in it and led to their imprisonment and torture and to the killing of some of them, where (eight) persons were executed from al-Dujail victims. Three of them were children Abbas Habib, Mazhar Jameel Ayoub, Musallam Abd al-Ameer Lateef, in addition to Mohammed Lateef and Naji Kathem Jafar and Salman Abdul Wahab Jafar, Jassem Abdul Hassan Jafar and Hussein Abbas Mohammed. The accused Ali Dayeh's actions in assisting and provoking led to the arrest and torture of an additional number of victims in al-Dujail. The accused Ali Dayeh bears full criminal responsibility for all the prison actions, torture and deliberate killing as crimes against humanity.

Although the presence of the accused at the crime scene is not important in the case of the causation contribution (participation), where the partner should not be questioned on a criminal basis (if he assisted, provoked or agreed with others) for the commitment of the murder where it is irrelevant for the partner to be present at the murder scene if it was committed by the primary perpetrators (verdict issued in Zulatko Alkosofski case) (paragraph 62) that was referred to previously, it was proven to this court that the accused Ali Dayeh was present on the first day of the incident and the following days at the crime scene and that he presented on the first day of the incident a report to Sa'adoun Shaker who was present at the party division headquarters and also took part in the arrests of al-Dujail victims.

The accused Ali Dayeh assisted and provoked the commitment of crimes against humanity, as he assisted and provoked the initiation of the arrest and imprisonment of civilians from al-Dujail. The court believes that the accused Ali Dayeh Ali committed those criminal acts and the imprisonment of these victims led to their torture, and this is a sure thing and expected in light of the hold of the former Ba'ath regime on the authority, especially if the accusation was an attempt to kill the party and regime leader during that period (the accused Saddam Hussein) and members of D'awa party or other parties hostile to the former regime, thereby threatening their presence in authority. In addition, article 34 from the penal code No.111 of the year 1969 stipulates (the crime is deliberate if criminal causation intent was displayed by its committer and the crime is considered deliberate.... if the perpetrator expected criminal results for his actions



then he should accept that it will occur). The accused Ali Dayeh Ali was a primary perpetrator in committing arrest and jail crimes under Article (49) of the same law and not only a partner just because he was present during the crime, or took part in committing the actions leading to these crimes (see Article 49 of the penal law).

Article 53 of the penal code No.111 for 1969 punishes the person who contributes to a crime, whether he was perpetrator or partner with a punishment for the crime that actually occurred even if it was not the intended one during the time of the crime while it is a possible result of the contribution that occurred.

In spite of that, when the accused Ali Dayeh took part in committing that criminal behavior, he expected and accepted the criminal results- according to what we will explain later in detail- which resulted in the criminal behavior and its contribution that actually occurred.

Being imprisoned in the prisons of the former party regime, using brutal torture methods being practiced against victims of the former regime by groups affiliated with the suppressive former regime would naturally lead to the killing of those victims, either through torture or by referring them to the kangaroo courts for the purpose of adding some phony legal form to justify the killing of those victims or covering up the killings of those who died during their torture.. This is what actually happened to a large number of victims from al-Dujail who included the names of eight victims whose names were listed in the report that was presented by the accused Ali Dayeh to Sa'adoun Shaker. Those victims were arrested, imprisoned, tortured and then their names were referred Awad Al-Bandar court that issued an execution order regarding them and which was then implemented after the accused Saddam Hussein approved that order.

Taking into consideration the exceptional circumstances at that time, it was not necessary for the accused report writer (Ali Dayeh) to submit his report to member of the Ba'ath party's regional command and former interior minister Sa'adoun Shaker who was present in al-Dujail during those circumstances on the day of the incident. Considering that it was necessary- according to the regime and party- it was crucial to present that report or others directly to the member of the party's regional command and minister of interior without wasting time during that important period without following routine procedures in passing the reports through the party hierarchy under circumstances that required a fast movement commensurate with the huge reaction by the regime and party groups to the limited and failed attempt.

Although it is not necessary for the assistance or the incitement in committing a murder to be physically driven, it is enough for it to be in the form of encouragement for the primary perpetrators in committing the murder (look at the resolution issued in the case of Anto Frendeja (paragraph 199) which was mentioned previously). The accused Ali Dayeh Ali provided that physical assistance through the report he submitted to Sa'adoun Shaker and through his physical contribution in the arrest of a number of al-Dujail victims and among them was (Musallam Abd al-Ameer), and that is in addition to what was stated by a number of plaintiffs who testified that he took part in their arrests and the arrest of their families.

The General principles of crimes against humanity and criminal intent of the accused Ali Dayeh Ali regarding imprisonment, torture and deliberate killing as crimes against humanity

As we mentioned before, it was proven to this court that a wide and systematic attack was raged against civilians in al-Dujail. This attack was organized by a large number of intelligence, party, and security forces, in addition to the participation of members of the people's army and party organization. The accused Ali Dayeh Ali was among those party members and the wide and systematic attack begun directly after the limited and failed assassination attempt.

Criminal intent of the accused Ali Dayeh Ali in his imprisonment, torture and deliberate killing actions as crimes against humanity was present on the day of the incident, where he submitted the security information report to Sa'adoun Shaker who was present at the party's headquarters in al-Dujail upon the arrival of the accused Ali Dayeh Ali to the location at 6:00 pm. Therefore, the participation of the accused Ali Dayeh Ali in those crimes is factual, even though the torture and killings took place later on, where it is not a rule that the accomplice is criminally liable based on his presence at the crime scene. In addition the accused Ali Dayeh Ali was present at the crime scene during his participation in the arrest of one of the victims (Musallam Abd Al-Amir Lateef), and despite the general opinion with regards to criminal studies concerning the time of the crime, where time is when the criminal act taken place and not the time of the criminal result. It is the agreed on theory compared to others with regards to criminal rule. Considering it a rule of people which requires them to act a certain way or abstain from doing so. At the time of the criminal behavior is committed, the issue making up the criminal rule is of great importance for the psychological element, which based on it, describes the behavior as illegal. Any action is considered a complete crime at the time the criminal act is committed and accomplished by taking into consideration the rule of Article 34 B of the penal code regarding indirect criminal intent (probability) that we referred to earlier. The accused Ali Dayeh committed that criminal behavior when he wrote the provocative report, which he then presented and therefore assisted in committing these crimes against humanity. In addition, he displayed this behavior by participating in the arrest of victims from al-Dujail residents. And he had that indirect criminal intent when he anticipated the criminal results of his actions (Arrest) in which he committed that action by accepting the risks entailed concerning the criminal results represented by torture and killing.

In addition, the accused Ali Dayeh was aware that his criminal behavior was part of a wide and systematic attack against town civilians, because he witnessed that wide attack on the first day of the incident. The accused Ali Dayeh Ali witnessed government and party officials, among them the accused Barzan Ibrahim and Sa'adoun Shaker and others, who came to al-Dujail hours after the incident. The accused also witnessed the security, intelligence and party divisions and military groups and people's army when they surrounded al-Dujail and arrested and tortured the residents of al-Dujail at the party division headquarters and transported them in their cars. The accused Ali Dayeh Ali was one of the participants in pointing out those victims and the arrest of some of them. Therefore, it is normal to say that he knew of that wide attack and was aware that his behavior was part of that attack..

In addition to that, he knew that those victims were civilian residents of al-Dujail because he is from the same limited small area and that is very clear from the content of the report he

submitted to Sa'adoun Shaker. The accused Ali Dayeh Ali could have easily predicted the size of the wide and horrible response by the former regime and its affiliates against the civilian population of al-Dujail in response to the failed and limited assassination attempt of Saddam Hussein on July 8, 1982, because he witnessed that response from the beginning and took part in some of the its actions, added to that that he was a member of the Ba'ath party, and he knew the nature of that party, especially when the subject concerned its existence, authority and the leadership of its accused president Saddam Hussein, since his cousin was executed because he belonged to the opposing party of the authority and of Saddam Hussein, and which was Da'wa party. The information and the names of family members in al-Dujail listed in Ali Dayeh's arrest report that the accused Ali Dayeh Ali did not only predict but was aware that the response would be that huge since he witnessed the beginnings of that attack from the first day of the incident. The accused Ali Dayeh Ali had bad intent when he wrote that report which mentioned the names of victims from 14 al-Dujail families, and accused them of being hostile to the party and the revolution, and that they were members of the Da'wa party (agents) leading to their arrests. This provocative request mentioned in the report includes encouragement of arrest crimes, imprisonment, torture and even killing in light of that regime, as the accused Ali Dayeh knows its nature and the extent of its brutality for being a member of that party since 1969, and his cousin was executed earlier because he belonged to the Da'wa party. This means that the accused Ali Dayeh Ali was fully aware that the regime, party, and Saddam Hussein in particular would do anything, even if it was brutal, to insure their presence in authority, so you can imagine if the matter pertained to the assassination attempt of Saddam Hussein, regardless of the size of that attempt.

The accused Ali Dayeh Ali requested, provoked and assisted in those crimes and personally committed some of them (beginning with arrests), therefore he must have known. When a person wants something he must have known about it beforehand. The actions committed by the accused Ali Dayeh Ali through writing the report, pointing out the victims, and personally taking part in some, actually happened. These are established facts to the court through the arrest of a large number of victims whose names were mentioned in the party report which was proven to have belonged to him. As a result, this led to the arrest of those victims and their imprisonment in (Hakimiah prison) and (Abu Ghreib), which led to the torture and killing of some of them. The concept of deliberate killing as a crime against humanity does not only include the perpetrator who performs the primary role in the execution of the crime, or the accomplice of the crime as an assistant or someone who provokes it but also includes the person who caused the criminal result of the death of victims if he proved to have criminal intent (knowledge of criminal elements and the desire to achieve it) regardless of whether that intent was direct or indirect at the moment the behavior is displayed.

The accused Ali Dayeh Ali had at least an indirect criminal intent in achieving the killing incidents and torture when he committed the criminal behavior and this is what we referred to previously and proved its existence to this court. The accused Ali Dayeh Ali's behavior in writing that report and his participation in the arrest campaign led to the killing of eight victims, including three juveniles. This court is convinced that these are established facts without any reasonable doubt.

The accused Ali Dayeh Ali was the original perpetrator when he took part in the arrest of Musallam Abd al-Amir Lateef and other victims referred to previously while he took part in the assistance, provocation, and maybe agreement with others in committing arrest crimes and in the jailing of a number of al-Dujail victims and thereafter torturing them and thus eight of them were killed based on the security and information report he submitted as an assistance which provoked directly and indirectly the commitments of these crimes by primary perpetrators.

In addition, the intent behind interference in crime is the psychological element that should be present for one to participate and is based on the will of the accomplice to interfere in achieving criminal behavior and being aware of the brutality of his actions and the direction of his will in creating the result the perpetrator wants, and this was all displayed by the accused Ali Dayeh. The causation contribution behind the participation of the accused Ali Dayeh Ali in committing the crime (the criminal behavior of the accused in provoking, agreeing, assisting) was linked to the crimes committed by others based on physical causation link. A specific time for the crime or specific place for committing it by the primary perpetrator is not considered a basis for holding the person who assisted or provoked those crimes if occurred as long as there is a causation relationship between provocation or that assistance and between the criminal result caused by the primary perpetrator during the execution of the crime. If it was proven that the provocation and assistance occurred at any given time and place then they are irrelevant after that if the crime by the perpetrator on the same day that behavior was displayed by the partner or a short or long period after that and in another place other than the location the crime was committed as long as there is a certain causation relationship between the provocation and assistance actions and between the criminal results caused without there being an outside factor breaking that causation relationship between the criminal behavior by the partner or criminal result incurred by the direct criminal behavior of the primary perpetrator.

This court is completely convinced and without any reasonable doubt that there was a sure causation relationship between the criminal behavior of the accused Ali Dayeh Ali through his provoking and assistance in crimes against humanity of which he was accused and between the criminal results caused by imprisonment, torture, and the killing of a number of al-Dujail victims by primary perpetrators from officers, intelligent forces and others who committed the act of imprisonment, torture and killing, and the accused Awad Al-Bandar and the accused Saddam Hussein and others who deliberately killed eight victims from al-Dujail residents in which the accused Ali Dayeh Ali provoked and assisted their killings.

The criminal inherent in the knowledge of criminal incident elements that he assisted in provoking and committing willingly - as we explained earlier when the accused Ali Dayeh Ali portrayed such intent when he displayed criminal behavior by provoking and assisting and accomplishing the criminal results he wanted or - at least - that he predicted. Despite that, he followed through with his actions of assisting and provoking and therefore accepting the risk in its occurrence. It doesn't matter after that if the criminal results were accomplished at another time, after a month or a year or in another location other than where the provocation or assistance took place as long as the causation relationship between the criminal behavior of the partner, in this case the behavior of the accused Ali Dayeh Ali, and the criminal results caused were not interrupted by other factors. Also, criminal intent of Ali Dayeh Ali was clear the moment the criminal behavior was displayed (assistance and provocation) and continued until the criminal

results incurred were accomplished by him and by the criminal behavior of the primary perpetrators.

**Court Verdict:**

In the case of the accused Ali Dayeh Ali is:

- 1- Criminally liable for the deliberate killing as a crime against humanity under Article 12/First/A of the court law and that in reference to Article 15/Second/C of the same law.
- 2- He is also criminally liable for the imprisonment or extreme deprivation in any respect to physical freedom as a crime against humanity under Article 12/First/E of the court law and that in reference to Article 15/Second/A,C of the same law.
- 3- Criminally liable for the torture as a crime against humanity under article 12/First/F of the court law and that in reference to Article 15/Second/C of the same law. All that in reference to Article 34/B and Article 53 of the penal code No. 111 for the year 1969 and indicated by Articles 47 and 48 of the same law (Penal Law).

No liability for the accused Abdullah Kathem Ruwaid for the concealment of individuals as a crime against humanity due to unavailability of one element for the crime, therefore it never existed based on Article 132/B of the basic criminal procedural law No. 23 for the year 1971. In reference to Article 182 of the amended basic criminal procedural law No. 23 for the year 1971, the court decided unanimously to convict the accused Ali Dayeh Ali under provision of Article 12/F/ paragraphs (A-E-F) and in reference to Article (15) of Iraqi higher criminal court law No. 10 for the year 2005 and Articles (34, 47, 48, 53) of penal code No. (111) for the year 1969 and setting his punishment accordingly. The verdict is given in his presence and understood publicly on November 5, 2006.

Signed      Signed      Signed      Signed                      Signed

Member      Member      Member      Member

Judge Raouf Rashid AbdulRahman (seal & signature)  
Seal of the Iraqi High Court

The accused Mizhar Abdullah Kathem  
The accusations against the accused Mizhar Abdullah Kathem

The court convicted the accused Mizhar Abdullah Kathem on May 15, 2006 in four charges of committing crimes against humanity under Article 12/First/A, F, E, G of the court law. They are deliberate killing, imprisonment, and extreme deprivation in terms of any other form of physical freedom, torture, and forcible disappearance of individuals as crimes against humanity.

Summary of the depositions of plaintiffs and prosecution witnesses regarding the accused Mizhar Abdullah Kathem

- Plaintiff (protected) testified before the investigating judge on December 11, 2004 (that the accused Mizhar Abdullah Kathem was among the arrest groups that arrested his father and cousin and transported them to an unknown destination and did not know anything about their fate until the fall of the regime when it was learned that they were executed).
- A second plaintiff (protected) testified in the investigation session on December 12, 2004 that the accused Mizhar Abdullah Kathem was among the arrest group that arrested her.
- Another plaintiff (protected) testified before the investigating judge on January 2, 2005 (the accused Mizhar Abdullah Kathem took part in the arrests and in her arrest).
- A fourth plaintiff (protected) stated before the investigating judge on June 7, 2005 that the accused Mizhar Abdullah Kathem came to their home and arrested him and took him to the police precinct.
- Another plaintiff (protected) testified before the investigating judge on November 30, 2004 (she was arrested by Mizhar Abdullah Kathem and Ali Dayeh who lived in al-Dujail and were working for the party).
- On the same day November 30, 2004 another plaintiff (protected) testified before the investigation judge (I want to file a complaint against Mizhar Abdullah Kathem because he arrested me and my family).

In the court session the plaintiff referred to as (A) testified before the court on January 29, 2006 in response to a question regarding the accused Mizhar Abdullah Kathem and stated that the accused Mizhar (he is the one that came to her home and pushed her when she opened the door and came with the arrest group and was accompanied by a security officer and found my cousin sleeping and beat him up and told him to (wake up) and then went to the roof of the house, where my brother and his son were sleeping, and he is the one who reported them and beat me – and he did so with (Abu Ahmad) who was a party official (branch or division member).

Another plaintiff (protected) testified before the court on January 29, 2006 that the accused Mizhar Abdullah Kathem is the one who arrested his family and before the fall of the regime I asked the accused Abdullah Kathem about the phone line we owned and he replied you are from the Da'wa party and you owe (forty thousand Dinars).

Another plaintiff referred to as (A) testified before the court on February 1, 2006 that (on the day of the incident we were sleeping on the roof of the house when the accused Mizhar Abdulla Kathem appeared and arrested us and arrested my husband and my nephew who was an orphan and it was 4:00 am. The accused Mizhar Abdullah Kathem assaulted me and he was wearing military uniform and pulled me down from the room with my child by my side who was 3 months old). She added that the accused Mizhar Abdullah Kathem took her husband to an unknown location while she remained with her children and uncle in the house.

Another plaintiff testified in the investigation session on December 12, 2004 (I want to file a complaint against Mizhar Abdullah Kathem who lived in al-Dujail since he is the one who arrested us and with him were Ali Dayeh and Younis Ghazal and Omran Hassan Omran, as I learned after the fall of the regime that my sons were executed after their arrest by the security and party division).

Summary of the depositions by the accused Mizhar Abdullah Kathem in the trial investigation sessions:

First: summary of the depositions by the accused Mizhar Abdullah Kathem

The depositions of Mizhar Abdullah Kathem were filed on February 21, 2005 and these depositions can be summarized as follows:

1. I am from al-Dujail and have been living there since birth. I served in the police force and then worked at al-Dujail post office and was a member of the Ba'ath party.
2. On the day of the incident in 1982, I don't remember the day of month exactly, the accused Saddam Hussein visited the area and during that time I was in the neighborhood and heard gun shots where I was standing next to the party division and I recall the number of gun shots to be six or seven and then gun shots were heard from Saddam Hussein's security, I heard that Saddam Hussein returned to Mosul and I remained in the party division and after an hour or less the army force came and surrounded the area, in addition to helicopters hovering over the area and firing at the fields. During this period I remained in the party division and then I sat in the fields where people were killed and tried to identify them but couldn't and afterwards didn't know where they were taken.
3. During this time I saw security forces driving their cars towards the fields and among them was the accused Barzan Ibrahim al-Takrity who at that time was chief of intelligence and I was at that time standing in front of the party division's door.

4. Therefore, I did not take part in the arrest operations of al-Dujail residents.
5. In the case of dredging the fields and cutting the trees I was assigned by an order from the party organization and an order from the accused Barzan Ibrahim Al-Hassan to accompany the tractors and other machinery for the purpose of dredging the fields, and I actually went with the tractors.
6. I was ordered by party officials according to directions from high-ranking officials, and I executed the order (dredging the fields) because I feared not executing it, despite the fact that I knew that this was illegal, but I executed the order because I feared punishment.
7. I was not assigned to arrest residents of al-Dujail by the party organization, but if I were assigned to do so I would have executed the order issued to me, but I did not take part since I was not ordered to do so.
8. I did not have any knowledge about the families that were arrested and executed, and I have no idea if they were released.

When asked by the investigative commission, the area of al-Dujail is a suburb in terms of administrative division, and rural in nature and its inhabitants are very few. "Most of them know each other and what happened in 1982 from arrest campaigns and imprisonment of families, women and children was known" throughout the country, so how was it possible to not know about the imprisonment of families and their arrests when you are from the area? He answered "I mentioned that I had no knowledge of the subject and I don't know anything about that". I work in the post office in al-Dujail where I have been living there since birth and till this day.

On February 28, 2003 the investigative commission recorded the annex of the accused Mizhar Abdullah Kathem's testimony and in it was: (I don't know the number and size of families that were arrested). I remember that among the families that were arrested was the family of Hassan Al-Haj Mohammed and Mahmoud Majeed Al-Kharbatly and Kathem Al-Jafar and Haji Jassem Al-Hatou and Abbas Hassoun, and those are the individuals I knew of their arrest and don't know of any others. Then I found out that Lateef Sa'ad and Hikmat Abed were also arrested. As for the children and women, I wasn't aware of their arrest).

Second: Summary of the depositions by the accused Mizhar Abdullah Kathem in the court Session:

The court heard the testimony of the accused Mizhar Abdullah Kathem in the session on March 12, 2006 and which included the following:

1. I hid people who were chased by security forces in 1982 and among them (Bassem Hamid Mahdi) and (Ahmad Yassin Al-Haj Mahmoud) and helped (Adel Fayeq Yahya) and (Amer Zaidan) who were arrested in 1985.



2. My party rank was (supporter) at the time of the incident. I was in the department (work) because there were emergency cases and the official working hours were 24 hours.
3. The testimony of (female plaintiff...) and her sister (...) and (...) was false and incorrect, and was a result of personal animosity since they had a disconnected phone because they did not pay the bills and they thought that I was the reason behind the disconnection and they badmouthed me.
4. In response to the court's question regarding the party report submitted to the minister Sa'adoun Shaker and attributed to the accused Mizhar Abdullah, the accused said (that report is not in my handwriting and does not carry my signature).
5. He denied his depositions before the investigating commission related to him as witnessing security forces driving their cars towards the fields and among them the accused Barzan..... Saying I don't remember that.
6. A question from the court (how did you not know of the incident while you were inside the town?) the accused Mizhar Abdullah replied: I knew of it only two months after the incident.
7. In response to the question by the general prosecution, the accused Mizhar Abdullah said (the gun shots were immense for a clash to have occurred or a confrontation between the two sides, and also I said the number of shots were seven shots and after half an hour planes came to al-Dujail and I heard them fire at the fields.
8. In response to the question by the plaintiffs' attorney (personal) the accused Mizhar Abdullah said I was on duty in the party division.

Summary of the depositions by the defense witnesses for the accused Mizhar Abdullah Kathem

The court listened to a number of defense witnesses for the accused Mizhar Abdullah Kathem in the session on May 16, 2006 and their depositions could be summarized as follows:

The defense witness referred to as No. (1) said:

1. The accused Mizhar was not present in al-Dujail, but was on duty in his department.
2. He did not perform any party duty because his party rank is (supporter).

3. On the day of the incident I did not see him take part in any arrest... the department was in an emergency state for fifteen days and the accused was in his department where they sent him food.

Another defense female witness (protected) who was heard by the court on the same day said the accused was present “in the post office and the department was in a state of emergency for fifteen days”. I used to bring him food everyday.

Another defense witness (protected) testified before the court on May 16, 2006 (the accused Mizhar present in the department and we called him and he is in the department)... He is a supporter in the party... He did not participate in the arrest operations because he was present at the department.

Another defense witness (protected) testified on the above-mentioned same day (the accused Mizhar was present “in the post office and we used to call him everyday”) and that he did not take part in any investigation, arrest or inspection operations, and what was mentioned by one of the female plaintiffs against (Mizhar) was because of the phone line.

Another defense witness (protected) testified on the same day before the court ( the accused Mizhar is a support in the party.... I was not present during the incident and during my presence at Abdullah al-Mashaykhi’s home (accused Abdullah Kathem Ruwaid father of accused Mizhar) the accused Mizhar was present at the post office.... the accused Mizhar is a supporter in the party and does not have any authority... he did not take part in arrest operations because he was present in the post office.... but word was mentioned before by one of the female plaintiffs against (Mizhar) due to the phone line disconnection.

Another defense witness (protected) testified on the same day before the court (I saw Mizhar at the door of (the telephone operator)...I did not see Mizhar arrest anybody. He had a problem with a house (family) because of a disconnected phone line that they filed a complaint against him ... I did not hear that he went with security forces).

Available evidence in the case against the accused Mizhar Abdullah Kathem

1. Depositions of a number of plaintiffs and prosecution witnesses noted by the investigative judge, and what the court heard concerning the accused Mizhar Abdullah Kathem about his participation with the security and party organization in arresting and detaining a number of victims from several al-Dujail families.
2. Indictment and issued verdict by the revolutionary court (dissolved) on June 14, 1984 and Republican decree issued on June 16, 1984 and which includes names of the victims of al-Dujail which the said court ordered their killing (execution), and among number of victims are the sons of one of the female plaintiffs, whom the accused Mizhar Abdullah Kathem helped to getting them arrested.
3. Execution decree on March 23, 1985 including the names mentioned in paragraph (2) above.

Extent of Criminal Liability of the accused Mizhar Abdullah Kathem for the accusations against him in the course of the accusation statement

It is clear from the available evidence in the case that the accused Mizhar Abdullah Kathem took part in the security and party systems in raiding homes and arresting no less than nine victims from al-Dujail and also some were beaten up during the arrests and four of the victims were killed or were executed, and their names were listed in the referral decision issued by the National Safety Affairs Department to the Revolutionary Court (dissolved) No. 762 on May, 27, 1984 and in the verdict and conviction decisions issued by the mentioned court number No. 944/C/1984 and in the Republican Decree No. 778 on June 16, 1984, and in the execution file on March 23, 1985. Those four victims are Ibrahim Hassan Lateef Al-Salami and Ali Anwar Hassan and Jassem Mohammed Lateef and Hashem Mohammed Lateef.

The victim Jassem Mohammed Lateef was killed as a result of torture in Al-Hakimiah prison according to plaintiff Ahmad Hassan Al-Dujaili who testified before the court on December 5, 2005. In addition, his name was mentioned in the decisions referred to above (verdicts and convictions and referral decisions) in the republican decree and in the execution file. When inspecting the depositions of plaintiffs and prosecution witnesses against the accused Mizhar Abdullah who at the time of the incident was a member in the Ba'ath party and was affiliated with the people's army, it is clear that he was present at the party division in al-Dujail from the first day of the incident and the following day in which the arrest occurred and actually took part in those arrests, and that it is impossible that the disconnection of the phone line is the reason behind the large number of complaints by plaintiffs against him. The case is bigger than that; it has to do with their sons, fathers, families in which the accused Mizhar Abdullah took part in their arrest and therefore led to their imprisonment in (Al-Hakimiah prison) and (Abu Ghreib prison) and to their torture, where Jassem Mohammed Lateef was killed by members of the inspection investigation department –intelligence service - (Al-Hakimiah) subsidiary, and the deportation of some of them to (Lia) desert complex, and to the killing of others in accordance to the order issued by the accused Awad Al-Bandar and approved by the accused Saddam Hussein.

As for the security report (party) attributed to the accused Mizhar Abdullah who submitted it to Sa'adoun Shaker and dated July 8, 1988, and which included the names of (37) victims (they were described as murderers) from the Da'wa party who attempted to attack the leader...etc. The divisions secretary comrade Saddam Hussein... we raise the names of the families opposing the party and the revolution...etc. the three-member committee and five-member committee from the criminal evidence experts examined this document and compared the signature and writing to other samples containing the handwriting of the accused Mizhar Abdualah. Those two committees could not specify that this writing and signature belonged to the accused Mizhar Abdullah and therefore the court cannot use this document as evidence against the accused Mizhar Abdullah.

The important question to be asked now is: After proving the role of the accused Mizhar Abdullah in the arrest of those victims can those actions make him criminally responsible for their torture and the killing of some of them?

The fact is that if some of the plaintiffs testified that they were beaten up by the accused Mizhar Abdullah during their arrest or the arrest of their families, then one of the victims did not mention that he witnessed the accused Mizhar Abdullah kill in his own hands one of the victims, but does that mean that he is not criminally responsible for the torture of those victims during their stay in the jail or for their killings?

This court is completely convinced without any reasonable doubt that the accused Mizhar Abdullah assisted in committing crimes against humanity, and assisted in the arrest and imprisonment of the civilian residents from al-Dujail. The court is also convinced that the accused Mizhar Abdullah committed those criminal actions, and that the imprisonment of those victims led to their torture and this was expected in light of the control of the former Ba'ath regime of the authority in Iraq, and especially if the accusation is attempting to kill the head of the party and regime (the accused Saddam Hussein) even if that meant shooting a few gun shots or belonging to Da'wa party or another party which the former regime considered hostile and threatening to its existence in authority. Article (34) No. 111 for the year 1969 stipulates (the crime is deliberate if A- Criminal intent was displayed by the perpetrator and therefore is considered a crime....B- If the perpetrator predicted criminal results for his actions but followed through with it, accepting the risk of it happening). The accused Mizhar Abdullah was a primary perpetrator in the arrest and imprisonment crime under Article (49) of the same law and not just because he was a partner present during the crime or because he took part in the actions constituting the crime (see Article (49) of the penal law).

Article (53) of the penal code No. 111 for the year 1969 punishes the participant in a crime, whether he committed it or participated in it with the punishment of the crime that occurred even if it was not the one intended once a crime occurs as a result of possible participation.

In addition, when the accused Mizhar Abdullah took part in that criminal behavior he expected and accepted the criminal results-based on what we will explain later in detail - which was based on that behavior and participation that occurred.

Imprisonment in the former Ba'ath regime jails and torture in brutal ways that were practiced against victims by members of the formers regime's suppressive agencies lead naturally to the killing of those victims either during the torture, as what happened to the victim Jassem Mohammed Lateef, or when referring the prisoners to phony courts for the purpose of giving some false legal pretext for the killing of those victims (as is the case for the rest of the victims who were alive and among them are Ibrahim Hassan Lateef Al-Salami and Hashem Mohammed Lateef and Ali Anwar Hassan when their names were referred to the Revolutionary Court in order to issue an execution order without any trial (phony trial) or covering up the killings of those tortured before the phony trial. This is what actually happened to several al-Dujail victims, and among them were four victims who were among the victims that the accused Mizhar Abdullah contributed to their arrest and imprisonment. Those victims were arrested, imprisoned, and tortured and at least one of them was killed during the torture thereafter. The names of the remaining prisoners alive (a total of 141 names) were referred to Awad Al-Bandar court which issued an order to execute them and this was implemented later after the accused Saddam Hussein approved it and who issued an order to that effect. In addition to what was presented,

assistance and temptation in committing a crime should not only be physical and tangible, and it is enough for it to be in a moral support form or encouragement to the primary perpetrators committing it. (see the verdict issued in the case of Anto Ferdenji paragraph 199 referred to previously). The accused presented this physical assistance through his actual contribution in the arrest of a number of al-Dujail victims, and among them four victims who were mentioned earlier.

General principles for crimes against humanity and criminal intent of the accused Mizhar Abdullah Ruwaid in committing the imprisonment and deliberate imprisonment, torture and killings as crimes against humanity.

It was made evident to the court that a wide and systematic attack took place at that time by a large number of military, intelligence, and security forces belonging to the government. Members of the people's army and party organization also contributed to these attacks against the civilians of al-Dujail. The accused Mizhar Abdullah Ruwaid was a party member in al-Dujail. The wide and systematic attack took place immediately after the limited and failed assassination attempt.

Criminal Intent of the accused Mizhar Abdullah Ruwaid was displayed when he committed imprisonment, torture and killing actions as crimes against humanity on the same day he participated in the arrest of al-Dujail families. Therefore the participation of Mizhar Abdullah Ruwaid is factual even if torture and killing occurred later, where it is not necessary for the partner to be present at the crime scene in order for him to be criminally responsible. The accused Mizhar Abdullah Ruwaid was present at the crime scene when he took part of the arrest of the victims, despite the general opinion with regards to criminal studies concerning the time of the crime, where time is when the criminal act takes place and not the time of the criminal result. It is the agreed on theory compared to others with regard to criminal rules. Considering it a rule of individuals which requires them to act a certain way or abstain from doing so. At the time the criminal behavior is committed, the issue making up the criminal rule is of great importance for the psychological element, which based on it, describes the behavior as illegal. Any action is considered a complete crime the time the criminal act is committed and accomplished by taking into consideration the rule of Article 34/B of the penal code No. 111 regarding indirect criminal intent (probability) that we referred to earlier.

The accused Mizhar Adbuallah Ruwaid committed that criminal behavior when he took part in the arrest of the victims of al-Dujail residents, and he portrayed indirect criminal intent when he predicted the criminal results of his actions (arrest) and followed through with that by accepting the risk of the occurrence of the criminal results represented by imprisonment, torture, and killings.

The accused Mizhar Abdullah Ruwaid was aware that his criminal behavior was part of the wide and systematic attack directed against the civilian residents since he witnessed that attack from the first day of the incident. In addition, the accused Mizhar saw party and government officials, and among them the accused Barzan Ibrahim and others, who arrived to al-Dujail hours after the incident, and he also saw the people's army, security, intelligence and party units and military units surrounding al-Dujail and arresting its families. The accused Mizhar Abdullah

Ruwait was one of the contributors who pointed out those victims and arrested some of them. Therefore, it is natural to say that he knew of that attack and knew that his behavior was part of it. He also knew that those victims were civilian residents because he was from the same small limited area and admitted that he lived in it since his birth.

The accused Mizhar Abdullah Ruwait could have easily predicted the size of that horrible reaction performed by the former regime systems and its members against the civilian residents in al-Dujail due to the failed limited attempt committed by a few individuals in the assassination of Saddam Hussein on July 8, 1982 because he admitted during the trial and investigation that the number of gun shots directed at the convoy of cars was around seven gun shots and because he also witnessed from the beginning that reaction and contributed to it by committing parts of it, in addition to being a member of the Ba'ath party and he knew its nature and especially if it had to do with the existence, authority and leadership of its accused president Saddam Hussein, especially that he asserted that he was subjected to harassments just because his wife belonged to a specific sect.

Therefore, the accused Mizhar Abdullah Ruwait did not only predict but was aware that the reaction was going to be that big since he witnessed himself the beginnings of that attack from the first day of the incident.

The actions committed by the accused Mizhar Abdullah Ruwait through arresting several victims from al-Dujail and assaulting some of them during that arrest include incitement of committing torture and imprisonment crimes and even killing in light of that regime which the accused Mizhar Abdullah Ruwait knew its nature and the extent of its brutality since he was a member of that party which came to power in 1968. This means that the accused Mizhar Abdullah Ruwait was aware that the regime, party, and in particular Saddam Hussein would do anything regardless of the extent of its brutality in order to insure their hold on to power, so one can imagine if the case had to do with the assassination attempt of Saddam Hussein, even if that attempt was very limited.

The accused Mizhar Abdullah Ruwait assisted in committing those crimes, and he personally committed some of them himself (beginning with arrests) therefore he must have known. If a person wants something then he surely must have known beforehand what he wanted.

The actions committed by the accused Mizhar Abdullah Ruwait by pointing out the victims and personally taking part in the arrest of some of them actually occurred. These are established facts for the court through the arrest of several victims who testified during the investigation and the trial that the accused took part in their arrests and the arrest of their families, among them their sons who were later killed. Those arrests led to the imprisonment of those victims in (Al-Hakimiah) prison and (Abu Ghareeb) prison, where they were tortured and some of them were killed.

The concept of deliberate killing as a crime against humanity does not only include the perpetrator who performed the primary role in the execution of the crime or the partner in crime as an assistant or someone who provokes the committing of a crime, but also includes the person behind the criminal result that occurs which is represented in death of the victims if he portrayed

criminal intent (knowledge of the elements of crime and the desire to perform it) whether that intent was direct or indirect at that time the behavior was performed. The accused Mizhar Abdullah Ruwaid had at least an indirect criminal intent in achieving the imprisonment, torture and killing actions when he displayed criminal behavior, and this is what we referred to earlier and its occurrence was proven to this court.

The accused Mizhar Abdullah Ruwaid's behavior in taking part in the arrest campaign led to the killing of four victims, and among them was (Ali Anwar Hassan) who at the time was under the age of twenty. This court is completely convinced that these are established facts and are beyond any reasonable doubt. The accused Mizhar Abdullah Ruwaid was the original perpetrator when he took part in the arrest and imprisonment of al-Dujail victims referred to previously, while he took part in assisting, and may have agreed with others in the torture of those victims and in the killing of four of them since the assistance he provided led to the commitment of those crimes by primary perpetrators. In addition, the intent behind interference in crime is the psychological element that should be present for one to participate and is based on the will of the accomplice's interference in achieving criminal behavior, constituting the crime, and being aware of the brutality of his actions and the direction of his will in creating the result the perpetrator wants. This was all displayed by the accused Mizhar Abdullah Ruwaid. The causation contribution behind the participation of the accused Mizhar Abdullah Ruwaid in committing the crime (the criminal behavior of the accused in assisting) the crime was linked to the crimes committed by others based on physical causation link.

A specific time of the crime or specific place for committing it by the primary perpetrator is not considered a basis for holding the person who assisted or provoked these crimes if they occur as long as there is a causation relationship between provocation or that assistance and between the criminal result caused by the primary perpetrator during the execution of the crime. If it was proven that the provocation and assistance occurred at any given time and place then they are irrelevant after that if the crime by the perpetrator on the same day that behavior was displayed by the partner or after that in a short or long period and in another place other than the location the crime was committed as long as there is a certain causation relationship between the provocation and assistance actions and between the criminal results caused without there being an outside factor interrupting that causation relationship between the criminal behavior by the partner or criminal result incurred by the direct criminal behavior of the primary perpetrator.

This court is completely convinced and without any reasonable doubt that there was a sure causation relationship between the criminal behavior of the accused Mizhar Abdullah through his assistance in crimes against humanity of which he was accused and between the criminal results caused by imprisonment, torture, and the killing of a number of al-Dujail victims by primary perpetrators from officers, members of the intelligent forces and others who committed the act of imprisonment, torture, and killing and the accused Awad Al-Bandar and the accused Saddam Hussein and others who deliberately killed four victims from al-Dujail families in which the accused Mizhar Abdullah assisted their killings. The criminal intent inherent in the knowledge of elements of criminal acts that he assisted in provoking and committing willingly - as we explained earlier when the accused Mizhar Abdullah portrayed such intent when he displayed criminal behavior by provoking and assisting and accomplishing the criminal results he wanted or - at least - that he predicted. Despite that, he followed through with his actions of assistance

and therefore accepting the risk in its occurrence. It does not matter after that if the criminal results were accomplished at another time after a month or a year or in another location other than where the assistance took place as long as the causation relationship between the criminal behavior of the partner, in this case the behavior of the accused Mizhar Abdullah Ruwaid, and the criminal results caused were not interrupted by other factors. Also, criminal intent of Mizhar Abdullah Ruwaid was clear the moment the criminal behavior was displayed (assistance) and continued until the criminal results incurred were accomplished by him and by the criminal behavior of the primary perpetrators.

### **Court Verdict:**

In the case of the accused Mizhar Abdullah Ruwaid:

- 1- Criminally liable for the deliberate killing as a crime against humanity under Article 12/First/A of the court law and that in reference to Article 15/Second/C of the same law.
- 2- The accused Mizhar Abdullah Ruwaid is criminally liable for the imprisonment or extreme deprivation in any respect to physical freedom as a crime against humanity under Article 12/First/E of the court law and that in reference to article 15/Second/A,C of the same law.
- 3- The accused Mizhar Abdullah Ruwaid is criminally liable for torture as a crime against humanity under Article 12/First/F of the court law and that in reference to Article 15/Second/A,C of the same law. All that in reference to Article 34/B and Article 53 of the penal code No. 111 for the year 1969 and indicated by Articles 47 and 48 of the same law (Penal Law).
- 4- No liability for the accused Mizhar Abdullah Ruwaid for the forcible disappearance of individuals as a crime against humanity due to unavailability of one element for the crime, therefore it never existed based on article 132/B of the basic criminal procedural law No. 23 for the year 1971. In reference to article 182 of the amended basic criminal procedural law No. 23 for the year 1971.

Based on the above, and under Article (182) of the amended procedural criminal penal code No. (23) for the year 1971, the court decided unanimously to convict the accused Mizhar Abdullah Kathem under provision of the Article 12 first paragraph (A-E-F) and in reference to Article (15) of Iraqi Supreme Criminal Court law No.10 for the year 2005 and Articles (34, 47, 48, 53) of the penal code No. (111) for year 1969 and setting his punishment accordingly. The verdict is given in his presence and declared publicly on November 5, 2006.

Signed

Signed

Signed

Signed

Signed



Member      Member      Member      Member

Judge Raouf Rashid AbdulRahman (seal & signature)  
Seal of the Iraqi High Court

### **Release Sentence for the accused Mohammed Azzawi Ali Al-Marsoumi**

In light of the indictment document dated May, 15, 2006, and in light of the ongoing trial of the accused Mohammed Azzawi Ali, the evidence collected and the trial and, by comparing the depositions of plaintiffs, defense witnesses, and facts attained from the lawsuit against the accused Mohammed Azzawi Ali, the court rules that the accused is illiterate and is known in the town and was a supporter of the Ba'ath ruling party, but not a member and he did not come forth because he was a suspect - according to security indications against his aunt's husband and their children. The person charged was not present in the town on the day of the incident, and upon returning home in the afternoon, he directly went to the party division's headquarters because of the bad indications directed against him, and during that period Barazan Ibrahim was present at the party division's headquarters and who released him along with others, according to his testimony before the court on April 27, 2005, that in accordance with "orders made by party heads and after brutally being beaten up, he was ordered to accompany a party division in to his aunt's husband Mijbel Hassan Aziz who was not present at his home, and therefore his aunt was arrested instead. "Eventually his aunt's husband died in jail. The plaintiff Abdul Sattar Majeed Hameed testified before the court that during his arrest by the special units, and as he left his home he saw Mohammed Azzawi standing outside. Based on the depositions and trial, and documents submitted which indicated that the role of the accused Mohammed Azzawi Ali was confined to the arrest of his aunt and her husband and that amounted to adding insult to injury, in light of general customs observed in the area and by the Iraqi people in general.

There was a negative attitude by the party and the security forces towards him in this regard. In conclusion, based on the investigation and trial, the role of the accused was confined to accompanying the party division in limited arrests of only two individuals and no more from his relatives, resulting in additional psychological and social harm to his person. In addition, it was

not proven from the context of documents and depositions that he actually killed anyone in al-Dujail and did not deliberately assault or hurt anyone during his group arrest raids or what was named -Alkurf- according to the popular general saying and this case. The role of the accused is confined to taking part in the arrest of a relative - aunt's husband - and due to his absence, his aunt was arrested and that has no doubt hurt and embarrassed him. This action does not fall under the voluntary procedural work with regard to the arrests, and has nothing to do with the organized group arrests and was not aware of the legitimacy of these arrests which were illegal, and in addition there was no evidence before the court to prove that.

By taking part in the arrest of one of his relatives - aunt's husband - the accused intended to take part or participate in the wide and systematic attack regarding the arrest of individuals and families in al-Dujail. The director of the inspection and investigation office in the intelligence service Waddah Al-Sheikh explained in his testimony before the court on November 28, 2005 "I did not know anything about Mohammed Azzawi Ali and I did not know whether he was a member of any party group".

In addition, Barazan Ibrahim testified in the court session held on December 20, 2005. "I saw the accused Mohammed Azzawi. He was released from custody" at the party's headquarters on the afternoon of the incident on July, 8, 1982."

Based on the above and on evidence and facts mentioned and presented before the court, there was not enough to convict "according to the referral accusation" for the violation committed by the accused of article 12/First and its paragraphs 2- E-F-I-J. Accordingly, the court commission unanimously dismissed the accusation against Mohammed Azzawi Ali Al-Marsoumi and discharged and released him from custody if he was not wanted or arrested for another case and that is in pursuant to the provision of Article 182 paragraph C of the criminal court procedural law No. 23 for the year 1971 and was announced on November 5, 2006.

Member    Member

Judge Raouf Rashid  
President of the first criminal court

In The Name of God, Most Gracious, Most Merciful

The Iraqi Supreme Criminal Court

No. 1/C/First 2005

First Criminal Court

Date: Nov. 5, 2006

Shawal 13, 1427 Hijri

"Sentence Ruling"

The First Criminal Court of the Iraqi Supreme Criminal Court was established on November 5, 2006 (Shawal 13, 1427 Hijri), headed by Judge (Raouf Rashid Abdul-Rahman) and member judges: ( ) and issued its following verdict in the name of the people:

First:

1.a- Sentencing the convicted Saddam Hussein Al-Majeed and Barzan Ibrahim Al-Hassan and Awad Hamad Al-Bandar to be hanged until death for committing deliberate killings as a crime against humanity under provisions of Article (12) First/A, and indication of Article 15/First, Second, Third, Fourth, of the Iraqi Supreme Criminal Court law No. 10 for the year 2005, and the punishment was passed under provisions of Article/406/1/A of the amended penal code No. (111) for the year 1969 in pursuant to Article 24 of the Iraqi Supreme Criminal Court law No.10 for the year 2005, decision by consensus.

b- Sentencing the convicted Taha Yassin Ramadan to imprisonment for life for committing deliberate killing as a crime against humanity under article 12/First/A in pursuant to Article 15/First, Second, Third, Fourth, Fifth of the Iraqi Supreme Criminal Court law No.10 for the year 2005 and set the punishment based on provisions of Article 406/1/A of the amended penal code No. (111) for the year 1969 in pursuant to Article 24 of the Iraqi Supreme Criminal Court law, decision by consensus.

c- Sentencing of the convicted (Abdullah Kathem Ruwaid and Ali Dayeh Ali and Mizhar Abdullah Kathem) to fifteen years imprisonment for committing deliberate killing as a crime against humanity under provisions of Article 12/First/A in pursuant to Article 15/First, Second, Fifth of the Iraqi supreme Criminal Court law No.10 for the year 2005 and set the punishment based on provisions of Article 406/1/A for the amended penal code No. (111) for the year 1969 in pursuant to Article 24 of the Iraqi Supreme Criminal Court law, decision by consensus.

2. Sentencing the convicted (Saddam Hussein Al-Majeed) and (Barzan Ibrahim Al-Hassan) and (Taha Yassin Ramadan) to ten years imprisonment for deporting residents and forcibly

transporting them as a crime against humanity under article 12/First/D in pursuant to Article 15/First, Second, Third, Fourth of the Iraqi Supreme Criminal Court law No.10 for the year 2005 and set the punishment based on provisions of Article (421/B) of the amended penal code No.(111) for the year 1969 in pursuant to Article 24 of the Iraqi Supreme Criminal Court law for the year 2005, decision by consensus.

3. Sentencing the convicted (Saddam Hussein Al-Majeed, Barzan Ibrahim Al-Hassan, Abdullah Kathem Ruwaid, Taha Yassin Ramadan, Mizhar Abdullah Kathem Ruwaid and Ali Dayeh Ali) to five years imprisonment for committing extreme deprivation and imprisonment in any form on physical freedom as a crime against humanity under article 12/First/J in pursuant to article 15/First, Second, Third, Fourth of the Iraqi Supreme Criminal Court law No.10 for the year 2005 and set the punishment based on provisions of Article (421/B,C,D) of the amended penal code No. (111) for the year 1969 in pursuant to Article 24 of the Iraqi Supreme Criminal Court law No.10 for the year 2005, decision by consensus.

4.a- Sentencing the convicted (Saddam Hussein Al-Majeed and Barzan Ibrahim Al-Hassan) to ten years imprisonment for committing torture as a crime against humanity under Article 12/First/F in pursuant to Article 15/First, Second, Third, Fourth of the Iraqi Supreme Criminal Court law No.10 for the year 2005 and set the punishment based on provisions of Article (333) of the amended penal code No. (111) for the year 1969 in pursuant to Article 24 of the Iraqi Supreme Criminal Court law No.10 for the year 2005, decision by consensus.

b- Sentencing the convicted (Taha Yassin Ramadan, Mizhar Abdullah Kathem, Ali Dayeh Ali, Abdullah Kathem Ruwaid) to four years imprisonment for committing torture as a crime against humanity under article 12/First/F, in pursuant to article 15/First, Second, Third, Fourth of the Iraqi Supreme Criminal Court law No.10 for the year 2005 and set the punishment based on provisions of article (333) of the amended penal code No (111) for the year 1969 in pursuant to Article 24 of the Iraqi Supreme Criminal Court law No. 10 for the year 2005, decision by consensus.

5. Sentencing the convicted (Saddam Hussein Al-Majeed, Barzan Ibrahim, Taha Yassin Ramadan) to seven years imprisonment for committing other inhuman acts as a crime against humanity under article 12/First/J, in pursuant to Article 15/First, Second, Third, Fourth of the Iraqi Supreme Criminal Court law No.10 for the year 2005 and set the punishment based on provisions of article (479/2) of the amended penal code No. (111) for the year 1969 in pursuant to Article 24 of the Iraqi Supreme Criminal Court law No.10 for the year 2005, decision by consensus.

6. Due to the lack of elements for the crime of forcible disappearance of people as a crime against humanity, the court decided to dismiss the accusations made against the accused (Saddam Hussein Al-Majeed, Barzan Ibrahim Al-Hassan, Taha Yassin Ramadan, Abdullah Kathem Ruwaid, Mizhar Abdullah Kathem, Mohammed Azzawi Ali, and Ali Dayeh Ali) for this

act and their innocence of this accusation under article (182/B) of the amended procedural criminal court law No.23 for the year 1971, decision by consensus.

7. Due to insufficient evidence against the accused (Mohammed Azzawi Ali), the court decided to dismiss the accusations filed against him and releases him in pursuant to article 182/C of the amended procedural criminal court law No. 23 for the year 1971 on condition that he is not charged in another case or arrested for it, decision by consensus.

Second:

1. The execution of the severest punishment against the convicted under provisions of Article 142 of the amended criminal law No. (111) for the year 1969.

2. The convicts' detention period is counted (Barazan Ibrahim Al- Hassan, Awad Hamad Al-Bandar, Ali Dayeh Ali, Abdullah Kathem Ruwaid, and Mizhar Abdullah Kathem.).

3. The convicts detention period is not counted for (Saddam Hussein Al-Majeed and Taha Yassin Ramadan) since their fate is still to be determined through this case and because they are detained for the purpose of other cases.

Third:

Under provisions of Article 224 paragraph (d) of the procedural criminal law No. (23) for the year 1971, the convicted were informed that the lawsuit documents will be sent automatically to the cassation committee in the Iraqi Supreme Criminal Court in order to review the sentence discretely, and that they have the right to appeal the sentence issued against at the cassation committee in the Iraqi Supreme Criminal Court within 30 days beginning with the following day of their sentence verdict on November 5, 2006.

Fourth:

1. The court decided to confiscate the movable and immovable money belonging to the convicted under Article 24/Sixth of the Iraqi Supreme Criminal Court law No.10 - 2005.

2. Civil right plaintiffs should resort to civil courts in order to claim compensation for damages incurred as a result of crimes committed against them.

Fifth:

Putting the criminal case in motion and notifying the Iraqi Supreme Criminal Court investigating judge in order to take legal procedures against the persons whose names are listed in the documents, investigation, and trial, and they are:

1. Sa'adoun Shaker Mahmoud.
2. Hasseib Saber Abdul-Aziz.
3. Ali Mahmoud Hashem.
4. Mohammed Alewi Hamad.
5. Ni'mah Ali Hassoun.
6. Issam Khader Abbas.
7. Hikmat Abdul-Wahab Khalil.
8. Kamel Hassan.
9. Nouri Abdullah.
10. Hamed Dahed.
11. Dhahi Ahmad.
12. Mihsen Obeid.
13. Faisal Shahin.
14. Shamel Al-Fayad.
15. Abdul-Aljabbar Hameed.
16. Colonel Tareq Hadi Shaker.
17. Daoud Salman Shihab.
18. Major Hashem Taha Hamad.

Sixth:

The fees of the prosecution attorneys representing the accused are determined in accordance with the criteria agreed upon with the (Defense Office). The judgment was issued in the presence of the accused and agreement, and is subject to cassation or appeal and was announced publicly on November 5, 2006 (Shawal 13, 1427 Hijri).

Member    Member    Member    Member    President

Judge Raouf Rashid AbdulRahman (seal & signature)  
Seal of the Iraqi High Court

**APPENDIX III**  
**THE APPEALS CHAMBER DECISION**

**Iraqi High Tribunal**  
Baghdad, Iraq

Number: 29/c/2006

Date: December 26, 2006

The appeals commission of the Iraqi High Tribunal was formed on December 12, 2006, comprising of judges authorized to adjudicate in the name of the people and issued the following verdict:

Appellants:

- 1- Public prosecutor in the High Iraqi Court.
- 2- Complainants and those claiming personal right/ represented by the attorneys Salam Abdil Wadoud Al Lamy, Mohammad Abdil Nabi Al Jawhar, Abdil Wahab Abdil Rida Al Okaili, Ali Shalham Al Hmaidawi, Mohammad Ali Al Lamy and Abid Hassan Al Kinany.
- 3- The convicted Saddam Hussein Al Majeed/ represented by attorneys Khalil Ad Dulaimy, Wadoud Fawzi, Issam Azzawi, Ramsey Clark, Bushra Al Khalil, Ahmed As Siddiq, Mohammad Tayyib, Ziad An Najdawi and Curtiss Dubilz.
- 4- The Convicted Barzan Ibrahim Al Hassan/ represented by attorney Wadoud Fawzi Shams Ed Deen.
- 5- The Convicted Taha Yassin Ramadan/represented by attorneys Sulaiman Abbas Al Jabbouri, Bushra Al Khalil and Mohammad Mounib.
- 6- The Convicted Abdallah Kathem Rowayid/represented by attorneys Tamer Al Mashhadani, Hisham al Fitian and Mohammad Harbi Al Jinabi.
- 7- The Convicted Mizhir Abdallah Kathem/ represented by Tamer Al Mashhadani, Hisham al Fitian and Mohammad Harbi Al Jinabi.
- 8- The Convicted Ali Dayeh Ali/ represented by assigned attorney Najah Az Zaidi.
- 9- The Convicted Awwad Hamad Al Bandar/ represented by attorney Bader Awwad Hamad Al Bandar.

Appeal against: The verdict by the First Criminal Court in the High Iraqi Criminal Tribunal number 1/E first/2005 on November 5, 2006.

The file was received according to a letter from the First Criminal Court number 1/E/2005, on 11/14/2006 to consider it as an appeal according to rule (68/B) of Procedural Rules and (254/A) of Criminal Procedures. The First Criminal Tribunal in the Iraqi High Tribunal issued its verdict number 1/E first/2005 on 11/5/2006, containing the sentences of the convicted Saddam Hussein Al Majeed, Barzan Ibrahim al Hassan, Awwad Hamad Al Bandar of death by hanging for



committing deliberate killing as a crime against humanity according to provisions of article (12/first/a) and as indicated by article (15 first, second, third and fourth) of the Iraqi High Tribunal number (10), year 2005.

The penalty was determined according to provisions of article (406/1/A) of the penal code number (111), year 1969 as amended and as indicated by article (25) of the law of the High Iraqi Tribunal number (10), year 2005. The penalty was determined according to provisions of article (406/1/A) of the penal code number (111) year 1969 as amended and as indicated by article (24) of the code of the Iraqi High Tribunal. It sentenced the convicted Abdallah Kathem Rowayid, Ali Dayeh Ali, Mizher Abdallah Kathem, to 15 years in jail for committing the crime of deliberate killing as a crime against humanity in accordance with provisions of article (12/first A) and as indicated by article (15/first, second and fifth) of the code of the Iraqi High Tribunal number (10) year 2005. The penalty was determined according to provisions of article (406/1/a) of penal code number (10) year 2005.

The penalty was determined according to provisions of article (406/1/a) of the penal code number (111) year 1969 as amended and as indicated by article (24) of the code of the Iraqi High Tribunal. It also sentenced the convicted Abdallah Kathem Rowayid, Ali Dayeh Ali and Mizhir Abdallah Kathem to 15 years in jail for committing deliberate killing as a crime against humanity according to provisions of article (12/first/A) and as indicated by article (15/first, second and fifth) of the code of the High Iraqi Tribunal number (10), year 2005. The penalty was determined according to provisions of article (406/1/A) of the penal code number (111), year 1969 as amended and as indicated by article (24) of the code of the Iraqi High Tribunal. It also sentenced the convicted Saddam Hussein Al Majeed, Barzan Ibrahim al Hassan, and Taha Yassin Ramadan to 10 years imprisonment for committing expulsion or forced transfer of people as a crime against humanity according to provisions of article (12/first/H) and as indicated by article (15/first, second, third and fourth) of the code of the Iraqi High Tribunal number (10), year 2005.

The penalty was determined according to provisions of article (421b) of penal code number (111) year 1969 as amended and as indicated by article (24) of the code of the Iraqi High Tribunal number (10) year 2005. It also sentenced the convicted Saddam Hussein Al Majeed, Barzan Ibrahim Al Hassan, Abdallah Kathem Rowayid, Taha Yassin Ramadan, Mizhir Abdallah Kathem and Ali Dayeh Ali to 15 years in jail for committing imprisonment and severe deprivation of physical freedom as a crime against humanity in accordance with provisions of article (21/first /z) as indicated by article (15/first/second/third and fourth) of the code of the Iraqi High Tribunal number (10) year 2005. Their penalty was determined in accordance with provisions of article (421 B, E, H) of the penal code number (111) year 1969 and as indicated by article (24) of the code of the Iraqi High Tribunal number (10) year 2005.

The Court also sentenced the convicted Saddam Hussein Al Majeed and Barzan Ibrahim Al Hassan to ten years in jail for committing torture as a crime against humanity in accordance with provisions of article (12/first) and as indicated by article (15/first/second/third and fourth) of the code of the Iraqi High Tribunal number (10) year 2005. The penalty was determined in accordance with provisions of article (333) of the penal code number (111) year 1969 as amended as indicated by article (24) of the code of the Iraqi High Tribunal number (10) year

2005. It sentenced the convicted Taha Yassin Ramadan, Mizhir Abdallah Kathem, Ali Dayeh Ali and Abdallah Kathem Rowayid to seven years in jail for committing torture as a crime against humanity in accordance with provisions of article (12/first) and as indicated by article (15/first/second, third and fourth) of the code of the Iraqi High Tribunal number (10) year, 2005. The penalty was determined in accordance with provisions of article (333) of penal code number (111), year 1969 as amended and as indicated by article (24) of the code of the Iraqi High Tribunal number (10), year 2005.

The Court sentenced the convicted Saddam Hussein Al Majeed, Barzan Ibrahim and Taha Yassin Ramadan to a seven-year jail term for committing other inhumane acts as a crime against humanity in accordance with provisions of article (12/first U) and as indicated by article (15/first/second/third and fourth) of the code of the Iraqi High Tribunal number (10), year 2005. The penalty was determined in accordance with provisions of article (2/479) of the penal code number (111), year 1969 as amended and as indicated by article (24) of the code of the Iraqi High Tribunal number (10), year 2005.

The Court decided to throw out the charge against each of the following: Saddam Hussein Al Majeed, Barzan Ibrahim Al Hassan, Taha Yassin Ramadan, Abdallah Kathem Rowayid, Mizhir Abdallah Kathem, Mohammad Azzawi and Ali Dayeh Ali for the crime they were accused of, namely forced disappearance of persons as a crime against humanity for lack of evidence and basis; it has also decided to acquit them of the said charge in accordance with provisions of article (182/B) of the Criminal Procedure Law number (23), year 1971 as amended.

The Court decided to acquit the accused Mohammad Azzawi and throw out the charge against him according to provisions of article (182 E) of the Criminal Procedure Law number (23) year 1971) as amended. The court has decided to apply the harsher penalty against the convicted according to provisions of article (142) of the penal code number (111), year 1969 as amended. The decision was concluded by consensus. The first appellant, the chairmanship of public prosecution in this tribunal, appealed to this court the sentencing paragraph with regard to the penalty levied against the convicted Taha Yassin Ramadan, demanding that it be harsher to the limit consistent with the act he committed against the people of Dujail. Also, the complaining appellants and claimants of personal right challenged the said verdict, demanding the penalty be harsher against the convicted Taha Yassin Ramadan, Abdallah Kathem Rowayid, Ali Dayeh Ali and Mizhir Abdallah Kathem, making the penalty death by hanging. They also appealed the sentencing paragraph against the convicted Mohammad Azzawi. They also asked that the court rule to compensate the complainants for being unable to take their case to the civil courts to demand such compensation.

The appellant Barzan Ibrahim Al Hassan also challenged the said verdict, demanding that it be declared null and void to for reasons he had cited in his document dated 12/3/2006, claiming that the verdict was in violation of the law and it was erroneously interpreted, the verdict was in contravention of procedures and there were substantial faults in facts which led to injustice. Appellant Abdallah Kathem Rowayid also challenged the said verdict for the reasons he included in his document dated 12/3/2006, demanding that he be absolved of responsibility in the case, and asking for mercy and to have the penalty against him commuted.

Appellant Taha Yassin Ramadan also challenged the said verdict, demanding to have it declared null and void for reasons he included in his document dated 12/3/2006. These reasons are: the existence of substantial faults in procedures, violation of law and substantial faults in procedures by failing to apply rule (58), first paragraph of procedural rules and collecting evidence of the Iraqi High Tribunal and substantial fault in procedures by not respecting the principle of transparency of trial and a substantial fault in procedures by contravening the law, particularly provisions of article (212) of the Criminal Procedure Law and a substantial fault in procedures by contravening the law and violating the right of defense by not respecting the principle of comprehensive publicity through closing the doors of the court and preventing people from entering the rooms of the court during sessions.

Moreover, Ramadan argues that there was a substantial fault in procedures by contravening the law and violating the principle of publicity by holding the session in secrecy as a result of an unannounced decision and contravention of the law, especially article (19) (B & D) of law number (10) of year 2005; and violation of the right of defense by excluding the attorney selected by the accused by his own free will in court and contravention of the law, particularly article (19/fourth) of code number (10), year 2005 and article (127) of criminal procedure law and violation of the right of defense through the trial of his client appellant the presence of military officers from the American occupation forces, and contravention of article (181) of Criminal Procedure para (D, E) and violation of the right of defense by declaring the end of trial and passing verdict without hearing the defense of the accused, and violation of article (131) because the referral decision lacked the law article applying to the predicated crime and contravention of article (224) of criminal procedure due to the absence of justification and contravention of law by lack of justification and violation of the constitution and constitutional immunity by referring the Vice President to trial, and there being a substantial fault in facts which led to contravention of justice.

There was also a challenge by appellant Saddam Hussein Al Majeed of the sentence decision demanding to have it thrown out for reasons he included in his document dated 12/03/2006. These reasons are: contravention of law regarding the legitimacy of crimes, the penalty; the contravention of article (156) of the law of civil litigations number (83), year 1969; contravention of the text of article (159/F 2) of civil litigation code; contravention of the law by violating the right of defense and declaring end of trial and passing verdict without hearing the defense of the accused; contravention of law by violating the principle of innocence of the accused, the transparency of sessions and ignoring the principle of proof without any reasonable doubt; the legality of the tribunal; the direct application international agreements to Iraqi law; faults in interpreting the law by expelling some members of the defense; the immunity issue; non-conformity of the tribunal code with the penal system in Iraq, an error in procedure by violating the rules of justice through full violation of the standards of a just trial and contravention of rules (58) paragraph (first) and 7 of procedural rules and collection of evidence.

Also, appellant Awwad Hamad al Bandar, challenged the court verdict demanding its reversal for reasons he included in his document dated 12/03/2006. These reasons are: the passing of verdict was in violation of law and faulty in its interpretation; the decision was erroneous in procedures; it contained a substantial fault in facts which led to breach of justice; non legitimacy of the court; violations and faults registered in the conviction and sentence ruling.

The file was submitted to the chief public prosecutor of the court which requested in its indictment of December 13, 2006, number 52A and requested the ratification of all rulings pertaining to those who were convicted and those who were acquitted, i.e. Mohammad Azzawi, with the exception of the verdict against the convicted Taha Yassin Ramadan, whose sentence was deemed not severe enough and rejected the other appeals and placed the file under examination and discussion.

Upon examination, the appeals were found to be submitted within the legal period and were accepted formally, since they dealt with the same subject, and a decision was taken to consider them together. Upon considering the appealed decision, the evidence used by the court to issue its conviction of the accused Saddam Hussein al-Majeed, as being the president of the republic, the general commander of the armed forces and the chairman of the Revolutionary Command Council at the time of the event from July 8, 1982 to January 16, 1989, and that he controlled the legislative and executive branches of government, in addition to the audio-visual recordings in which the accused appeared while addressing the people of Dujail on the day of the event, informing them that the number of persons who did the shooting was two or three and wouldn't exceed ten; And based upon his statements during the preliminary investigation and the trial and the orders he issued to security departments officials directly connected to him, in addition to hundreds of official documents attached to the file, which were verified by the accused. This is in addition to the order he issued to compensate farm owners whose lands were dredged.

Therefore, the convicted (Saddam Hussein) is responsible for the systematic and large-scale attack against civilian residents in Dujail of which he was aware. Consequently, he had the requisite intent of murder as a crime against humanity. The material basis of criminal conduct (the act of killing) and the criminal outcome, which is the death of the victims among the people of Dujail. The causal relationship in that conduct is all there. Since crimes against humanity are defined by law as acts listed in article (12) of law number (10) for the year 2005, when committed in a large-scale or systematic attack against any group of civilian population with awareness of this attack. Therefore, most crimes may occur as a result of an act by a state or policy and are executed by perpetrators in authority. However, it is clear that if such crimes were committed and directed against civilian population, then it is necessary that that results from the policy of a state that commits its acts through executors in authority, or might result from perpetrators who are not in authority.

Whereas the convicted Saddam Hussein was in authority, as former president of the republic, and whereas he directed his crimes against the civilian population of Dujail with the purpose of killing them, then the intent to kill is present. Therefore, he is responsible for them as a crime against humanity. Therefore, the appeals presented by the convict's attorneys are rejected.

The convicted (Saddam Hussein) cannot hide behind legality, because the main purpose of the legality principle is to pinpoint the person responsible for the act, and a person who commits a crime of misusing authority cannot claim that he is not aware of this act. The order issued by the administrator of the Coalition Authority number (48) on December 10, 2003, which authorized the Governing Council to establish a special Iraqi tribunal to try Iraqis and other residents of Iraq who are accused of committing mass murders and crimes against humanity or war crimes or

violations of specific Iraqi laws is consistent with United Nations Security Council resolutions numbers (1483, 1500 and 1511) for the year 2003.

The government has based its authority to issue such a law on U.N. Security Council resolutions, which authorized the succeeding government to issue decisions and laws consistent with the reality of Iraqi people's lives. Therefore, the creation of the court and the issuance of its laws were lawful and legal. Their legitimacy was not affected by the way the law was formulated. The creation of the court, which became, under law, independent of other Iraqi courts, was independent of any Iraqi government department. On March 8, 2004, the Iraqi constitution was issued, and it established, among other things, a road map for the creation of an Iraqi court. It also emphasized the establishment of the specialized Iraqi court law on June 28, 2004.

At the end of Iraq's occupation and the establishment of a sovereign Iraqi government which took over on the basis of authorities granted by the constitution and U.N. Security Council resolutions, and its assumption of power until May 3, 2005, it funded, supported and allowed the court to function, and in fact, it appointed court judges and created an independent budget in order to be able to work. On May 3, 2005 the transitional Iraqi government, which was elected by more than 60% of the Iraqi people, replaced the interim government. The government authority was defined according to the constitution, and it was recognized as a completely sovereign government.

The government continued to fund the court until a permanent Iraqi government assumed power on May 20, 2006. A new law for the court was then issued. It is law number (10) for the year 2005. It was named the Iraqi High Tribunal. The law was issued by an Iraqi government elected by 78% of the Iraqi people in a national referendum. Therefore, for all the reasons above stated the Iraqi High Tribunal is a legitimate court, and accordingly, the appeals on that basis are rejected.

Regarding official immunity, we say that immunity is the practical immunity which is related to the position held. Therefore, no one can claim that he committed crimes and that his acts are outside the law. Immunity is confined to the duration of occupying the position and does not continue beyond that. It is consistent with it, in presence and without it, and is not given to serve the interest of a person who holds the position, but for the welfare of society. Immunity does not violate the second part of international penal law and the constitution. Therefore, no government has the right to grant immunity from prosecution to its officials for committing crimes against humanity or ethnic massacres. If immunity constitutes a protective framework against prosecution, this principle was no longer recognized after World War II, and immunity lost its effect. The establishment of criminal courts is but an indication of the end of the immunity principle. Since the law allows the trial of any person accused of committing a crime, regardless of his official capacity, even if he was a president or a member of government or of its council, as his capacity does not excuse him from penalty and does not constitute extenuating circumstances. Since the court law included penal clauses, immunity claim for the president of the state, or that the act was committed in the official capacity of the accused, will not constitute an acceptable defense of extenuating circumstances for the penalty. Therefore, immunity does not prevent the court from exercising its jurisdiction.

Therefore, immunity should be a reason for increasing the penalty rather than its mitigation, for a person who enjoys it usually exercises power which enables him to affect a large number of people, which intensifies the damages and losses resulting from commitment of crimes. The president of the state has international responsibility for the crimes he commits against the international community, since it is not logical and just to punish subordinates who execute illegal orders issued by the president and his aides, and to excuse the president who ordered and schemed for commitment of those crimes. Therefore, he is considered the leader of a gang and not the president of a state which respects the law, and therefore, the head chief is responsible for crimes committed by his subordinates, not only because he is aware of those crimes, but also for his failure to gain that awareness. Refusal is tantamount to affirmative conduct under article (13/1) of the Third Geneva Convention of 1949, which states that any illegal action or refusal by the authority (to prevent it) which caused death or endangered the safety of prisoners of war is outlawed and a serious violation of this convention.

The responsibility of leaders and presidents for crimes committed by those who are under their command or authority is a responsibility for acts executed by forces under their command and authority, provided that the leader knows that his forces committed or were about to commit one of these crimes. Where the fact that the accused holds a high-ranking position in the government is by itself a serious situation, for it is assumed that he is aware of what goes on, and for exploiting his position in committing the crimes. Add to that that his failure to take necessary and reasonable measures within his power to prevent these crimes subjects him to legal accountability. Furthermore, condoning them is considered a signal to his subordinates to continue committing the crimes without fear of punishment. The premise is that the leader is committed to preventing his subordinates from committing international crimes.

The leader bears responsibility if he fails intentionally or due to negligence to prevent his subordinates from committing crimes without the need for proven intent of sanctioning such crimes. The act of a subordinate is considered unlawful because such an act does not serve the interest he is protecting, but makes it unlawful, by not upholding local criminal law rulings, as the subordinate is a person who possesses awareness and knowledge, and therefore he is not supposed to execute orders without thinking of the orders he received. His duty is to examine the orders and to not be committed to execute them, unless they are consistent with legal regulations. A subordinate is one of the persons who uphold the law, just like the president, and therefore, he is committed to execute all commitment imposed by the law. Upholding those commitments is direct, and therefore, pleading by immunity is rejected also.

As for pleading by not applying criminal law retroactively, we say that criminal legislations basically do not apply to the past. This is so in criminal law and is known as not applying criminal law retroactively to the past, meaning that the effect of criminal law does not extend to the past but applies to events that occurred after the law was enacted. This principle is based on the Iraqi penal law number (111) for the year 1969, and was referred to in article (2/F1), while article (1/Second) of the court law indicated the validity of the law on crimes committed since July 17, 1969 and until May 1, 2000 under laws number (1) for the year 2003 and number (10) for the year 2005.

However, the two aforementioned laws do not violate the retroactive principle, as these crimes were stated in articles (11, 12, 13 and 14), and they were stated in laws since the 1950s. They were stated in international treaties. Therefore mass murder crimes were stated in international treaties in 1948 and were ratified by Iraq on January 20, 1959. Thus, by ratifying them they became part of Iraqi laws, and Iraq is committed to the articles stated in the first and second paragraphs of the court law, and therefore they are valid and this is binding on Iraq in light of its clear ratification.

As for article (12) of the court law, which includes crimes against humanity, and although its fundamental source is international norms, as there is no international treaty governing its rules and stating them clearly, international norms presumed them to be international crimes and were accepted by international conduct. Since Iraq is part of the international community, it is also committed to them under the United Nations Charter. As for article (13) pertaining to war crimes, which represent gross violations of the Geneva Conventions of 1949, Iraq had ratified them also on February 12, 1956, and therefore it is committed to them and they are considered an integral part of its laws. Therefore, perpetrators of these laws should be held accountable.

In addition, Iraq ratified international treaties on civil and political rights, which were approved by the National Assembly on December 16, 1966. Iraq joined them under law number (193) for the year 1970, and they took effect on March 23, 1976. Therefore, and under justice principles, no criminal can escape punishment on the basis of this principle, as legal principles were made for the good of society and not for the good of criminals. The legal principle does not support, and cannot pass and be replaced by another principle, and therefore incrimination provisions have no effect regarding the past. The substance of retroactivity of the law is set before the Rome system under the same controls which specify the substance of legitimacy principle on the basis of the fact that not applying retroactivity is not a logical outcome of applying the legitimacy principle. Therefore, the incrimination principle cannot have a retroactive effect. Accordingly, if a provision is stated in an international treaty or agreement for a specific incriminating act, the application of this provision on acts perpetrated before its issuance does not mean that the provision was applied retroactively. This provision was preceded by international norms which entail non-legitimacy of the act. The provisions did no more than record and clarify the substance of previous norms and traditions for the perpetrator of the act and his presence. Therefore, the principle of legitimizing crimes and criminal penalties is consistent with justice principles since it is a fundamental principle in all laws, including international criminal law. Therefore, the appeal to reject the law's retroactivity is also rejected.

As for pleading for the inapplicability of the principle of applying the lesser of the two punishments, this commission believes that this principle states that in the event of changing the law during the period between the time of committing the criminal act attributed to the defendant and the time of sentencing him, then this principle of applying the lesser sentence against the defendant becomes applicable. The only limitation on the ability of the court to implement the capital punishment is order #7-F-3 of the Interim Coalition Authority which was announced during the coalition's occupation of Iraq. This principle, which is known as "Article #2" of the Iraqi Criminal Law #111 of 1969, aims at giving the defendant whatever opportunity available in the value judgments of the society. And because of the fact that the order of the Interim Authority #7-F3 did not stem from the Legislative Authority in Iraq, nor did it include any

standards of the public opinion, and it merely reflected the necessity that the Coalition was supposed to act according to in light of the authority entrusted in it in accordance with the occupation law being the interim sponsor during that present period in Iraq; and because that Authority had no legal sovereignty over the occupied region, and consequently, the Coalition Authority was kind of a separate legal jurisdiction; and according to well-established international laws, the Iraqi High Tribunal was not obliged to implement its rulings or its laws. The order of the Interim Coalition Authority, which suspended execution of capital punishment, was merely a temporary procedure imposed by a interim authority, and therefore, this law could not have been considered a law issued before the sentencing and consequently would have the power to make the law of capital punishment null and void and a law that would be an applicable legal choice of the of the legal judgment.

According to the international law, capital punishment is thus a legal punishment, and it is also a punishment contained in the current Iraqi Law. It is listed among the allowable punishments of the criminal acts. This punishment was mentioned in the law that came into being prior to the establishment of the Iraqi government in 1919. This capital punishment was listed in the first part of section "Five". The Iraqi law kept on using the capital punishment without any changes regarding the current issue of appeal. Additionally, the Iraqi people do have the legal and the moral right to create the legal entity for the trial of the former regime leaders. If the Iraqi High Tribunal were to achieve its objectives for which it was established, then its rulings should be in accordance with the international standards of justice and in accordance with the international law. As for the capital punishment, it is legal and it does exist in the Iraqi Law and it is in concordance with the accepted international law, if it were to be applied according to the international treaty of civil and political rights, to which Iraq was party to since January 25, 1971. There is an international resolution that the crimes of war, mass killings and crimes against humanity are among the most dangerous violations according to the law. Due to their magnitude, these crimes exceed by far the simplest requirements of civil and political international rights which states that capital punishment could not be used as punishment except for crimes that are considered very serious according to the law. Therefore, in an internal trial for committing these crimes, applying capital punishment is considered legal in light of both domestic as well as international laws, and therefore, the defense of the accused here is rejected also.

As for the other defenses, the defendants were given enough guarantees to have fair trials. Each suspect was informed of the kind of accusations filed against him. He was given ample chance to defend himself and to choose his legal advisors and attorneys in person with the assistance of legal counselors. He was given the chance to interview the defense witnesses. He used his rights to fully defend himself. He was not forced to say what he did not want to say. Then the defense he is using in this regard is rejected too.

As for the legal preliminary procedures of the defendant Barzan Ibrahim, it has been proven to this committee that he held the position of the head of the intelligence at the time of that incident. He was personally the one in charge of security. At the time the motorcade of defendant Saddam Hussein was fired on in Dujail on July 8, 1982, he met with him in his farm in Redwaniya. He asked him to go to Dujail to head the investigation of the matter and the perpetrators. He remained there for three days, staying at the headquarters of the Party to run the investigations and issue orders to all organizations, including the air force and choppers to shell the town and



neighboring orchards, to surround and search the houses, arrest people including women, children and the elderly, bring them over to the Party headquarters and then to transport them to the intelligence apparatus for further interrogations. He had mass arrests in violations of the legal investigation procedures of the law. During that period, he became a military ruler enjoying all powers. He considered people to be enemies and criminals. He actually supervised and conducted these interrogations. He held 399 persons including women and ordered his people to torture them. Many of those arrested people died under torture. There is ample evidence available against him, including the testimony of Waddah Al-Shaikh, Ahmad Hasan Mohammad Dujaili, Jawad Abdul-Aziz, and other plaintiffs and his confession before the court that the interrogations were carried out by his intelligence agency and under his supervision; collectively, these pieces of evidence are sufficient to convict him.

The commission has recognized that the convicted Awwad Hamad Al-Bandar committed, as a principal actor, a joint criminal act that represents a premeditated murder as a crime against humanity, with the help of others based on the initial and prosecutorial investigations. It was proven to the commission that the convicted Awwad Hamad Al-Bandar had issued verdicts to execute a large number of citizens of Dujail through a mock trial. This verdict was carried out later according to executions documentation log. Therefore, he is criminally responsible for those executions and will be held accountable for all legal consequences.

It was proven to this commission through the investigation that the dissolved Revolutionary Court, which the convicted presided over, did not call any sessions into order to try any of the citizens of Dujail whose names were listed in the transfer decision. Therefore, the behavior of the convicted is part of a systematic, wide ranging offensive targeting the civilian residents of the city, i.e. the citizens of Dujail. He knew that his behavior constituted a part of that offensive; and that he intended to execute the victims to achieve that criminal goal when he and others adopted that criminal behavior. The sham nature of the court [presided over by the convicted] was proven by accounts provided by the protected accusers, due to security reasons, in the trial session dated 12/21/2005 and 5/26/2005. These witnesses claimed that they did not go to the dissolved Revolutionary Court, which was headed by the convicted, and they still were sentenced to death, despite the fact that they were detained in the desert camp of Liya.

That account was corroborated by a third protected accuser on 2/6/2005. This witness claimed that his son was with him in 1986, before he was sentenced to death, even though the decision to execute him was issued in the case number 944/T/84. He said that his son joined the Armed services and was killed in 1988 during the Iran - Iraq war. All these pieces of evidence prove to this commission that most of the accused did not attend their own trials where judgments against them were passed. This proves that the court was only a show or sham. This in addition to the confession made by the convicted during the trial that he had received the transfer order on the next day after it was issued from the National Safety Department. He also said that he had started his court proceedings the next day. The trial lasted for two weeks. The final verdict was a conviction against the whole group, all the while violating the law of the principals of criminal proceedings.

It is also recognized by this court that four of the victims did die during interrogations, and despite their death, these victims were still referred to the court. And there are many people who

were arrested and were deemed accused; they are still alive. This is another proof that the trial was just a mock trial. It was also noticed that many of the people whose names were listed in the execution decision log were juveniles. It is not permissible to sentence them to death. In addition, there were many people arrested and accused; many are still alive. This is more evidence tending to show that the trial was just a mock trial. Note also that many of the people whose names were listed in the execution decision log were juveniles. It is not permissible to sentence juveniles to death. Moreover, one of the convicted confessed that he was forced to perform as a judge for those trials. This evidence supports the conclusion that he was an executive employee for the regime, carrying out the duties of his job [in the above mentioned fashion], without being an independent judge of the court deciding the fate of innocent people.

As for the convicted Taha Yassin Ramadan it was proven to this commission that he was General Commander of the Popular Army, Deputy Prime Minister, and member of the security forces for the members of the Leadership Commission of the Revolution and a leader in the regional dismantled Baath Party. Also, Ramadan is a known member of the Nationalistic Leadership. It was also proven to the commission that the members of the Popular Army and the Party in Dujail had participated in an effective manner in arresting those victims, the civilian population of Dujail city. In addition to the convicted being the General Commander for the Popular Army he enjoys wide authorities over those who are members of the Army, which contradicts his claim during the trial that his authority was much less.

Decision number 1563 dated 10/9/1980 passed by the dissolved Revolution's Leadership Council grants the Army General Commander the same authorities given to the Secretary of Defense based on the amended Basic Law for Court Marshals number 44 for the year 1941. This means that the convicted could have taken all appropriate legal measures to investigate the members of the Popular Army to reveal whether they committed a crime. He also had the authority to form investigative commissions and to delegate all authorities to the commission. Moreover, the Popular Army General Command had Chiefs of Staff under his command. This means that he was able to move the sections under his command to any location and to assign tasks; as noted that the passed decision gives the Chiefs of Staff other authorities as well. It is clear from the above mentioned that the convicted had a breadth of the legal authority to act. His failure to act is enough to hold him criminally responsible for actions committed by his subordinates. He did not stop the misconduct or neglected to take appropriate actions against the perpetrators. He did not investigate the activities of perpetrators and did not hold any perpetrators responsible. Thus, because the convicted had actual authority over his subordinates by virtue of his position, he knew of the systematic and wide ranging attacks in which his forces in the Popular Army had participated against the citizens of Dujail. His silent conduct during the meeting in which he confessed to those illegal acts; he would in this way have participated in a direct way with the purpose of reinforcing his criminal activity. Based on the aforementioned, it has been established that his subordinates who had committed the crimes against the victims of (the people) of Dujail town were subordinated to their commander, both legally and actually (i.e. in practice) and that they themselves committed one crime after another, even had they not been under his actual command, then they were at least through his implicit consent and his condoning of their acts and his control of those acts without taking the necessary and reasonable measures within his authority to prevent the commitment of the crimes, or for exposing their accountability to the legal authorities to be investigated. Moreover, he participated in the expropriation of

agricultural lands and orchards owned by the people of Dujail, which forms part of the knowingly widespread and systematic attacks directed against a civilian population. All of the aforementioned constitutes adequate evidence for his conviction.

As for the convicts Ali Dayeh Ali and Mizhir Abdallah and Abdallah Kathem, the evidence that the tribunal has relied on in convicting them was based on the testimonies of the witnesses and on what has been established through their confessions which prove their presence in the (Baath) party squad and through the fact that they had participated with the security and party apparatus in breaking into homes and arresting certain individuals of the people of Dujail. These victims were later killed or executed, and the convicts' role caused the occurrence of the criminal result. Regardless of whether their intent was direct or indirect at the time of committing these acts, which establishes that the criminal intent existed at the time of undertaking the acts of murder and torture which the victims were subjected to, and that the time established for committing the crimes or the place in which they were committed at the hands of the original perpetrator(s) does not constitute a condition for establishing the responsibility of those who aided or abetted the commitment of the aforementioned crimes in case they have actually taken place and as long as a causal relationship exists between the above mentioned instigation and the said assistance, as well as between the criminal result which occurred through the act of the original perpetrator(s) when the crime was perpetrated; and whereas the instigation and assistance has been demonstrated to have taken place through the acts of the convicts during the incident with the assistance of the security apparatus in arresting the victims; then the causal relationships between the committed criminal conduct and the result is established and the evidence upon which the tribunal has relied was adequate for their conviction.

As for the defendant Mohammed Azzawi, the tribunal in its decision to set him free has taken into consideration the stipulations of the law considering that the evidence presented was inadequate for his conviction thus rendering the tribunal decision correct. As for the defense submitted by the convicts, this has already been repeated and this Chamber has previously responded to it in detail at the outset of the decision; thus, there is no need to repeat them.

Based upon all of the above, this Court Chamber believes that all states realize that certain common bonds exist that bind all peoples and their cultures which form a common heritage and that this fabric cannot be torn apart, and that millions of women, men and children have fallen victims during the last century to unimaginable horrors which have strongly shaken the human conscience; and whereas these serious crimes threaten the peace, security and prosperity of the world and arouse the concern of the entire international community and must not be allowed to pass without punishment and prosecuting their perpetrators in an effective way through measures taken at the national level that aim to put an end to letting the perpetrators get away with these crimes. As such, it is the duty of the state to exercise its criminal jurisdiction against those responsible for committing international crimes since the crimes of which the defendants are accused of in the Dujail case form both international and domestic crimes and committing them constitutes a violation of the International Penal Code and the Law of Human Rights while at the same time violating Iraqi laws.

Based on the aforementioned, the tribunal decides to uphold the decision of conviction and punishment against the convicts Saddam Hussein al Majeed and Barzan Ibrahim Al Hassan and

Awwad Hamad Al Bandar by hanging until death for committing murder as a crime against humanity pursuant to Article (12/First A) and the dictates of Article (15/First, Second and Fourth) of the Iraqi High Tribunal law no. (10) of the year 2005, pursuant to Article (406/2/A) of the penal code no. (111) of the year 1969, as amended by the dictates of Article (24) of the Iraqi High Tribunal law no. (10) of the year 2005.

This Court also upholds the decision of conviction and punishment, as amended, against the convicts Abdallah Kathem Rowayid and Ali Dayeh Ali and Mizhir Abdallah to fifteen years imprisonment for committing murder that constitutes a crime against humanity pursuant to Article (12/First/A) by the dictates of Article (15/First, Second and Fifth) of the Iraqi High Tribunal law no. (10) of the year 2005, and pursuant to the stipulations of Article (406/1/A) of the penal code by the dictates of Article (132) thereof since the role of the aforementioned convicts is not primary in the case and does not rise to its level of magnitude; and further upholds the decision of conviction related to the convict Taha Yassin Ramadan for committing murder as a crime against humanity according to Article (12/First/A) by the dictates of Article (15/First, Second, Third, Fourth and Fifth) of the Iraqi High Tribunal law no. (10) of the year 2005 and pursuant to Article (406/1/A) of the penal code no. (111) of the year 1969 as amended by the dictates of Article (24) of the Iraqi High Tribunal law no. (10) of the year 2005

This Court further upholds the decision of conviction and punishment, as amended, against Abdullah Kathem Rowayid and Ali Dayeh Ali and Mizhir Abdullah to a prison sentence of fifteen years for committing murder as a crime against humanity according to the stipulations of Article (12/First/A) by the dictates of Article (5/First, Second and Fifth) of the of the Iraqi High Tribunal law no. (10) of the year 2005 and pursuant to the stipulations of Article (406/1/A) of the penal code by the dictates of Article (132) thereof, since the role of the convicts is not primary to the case and does not rise to its level of magnitude;

This Court further upholds the decision of conviction and punishment related to the convict Taha Yassin Ramadan for committing murder as a crime against humanity according to Article (12/First/A) by the dictates of Article (15/First, Second, Third, Fourth and Fifth) of the Iraqi High Tribunal law no. (10) of the year 2005 and pursuant to Article (406/1/A) of penal code no. (111) of the year 1969 as amended by the dictates of Article (24) of the Iraqi High Tribunal law and the repeal of the sentencing paragraph related to the punishment of life imprisonment and to return the case file to its tribunal for the purpose of strengthening the penalty against him and raising it to the appropriate legal limit. Furthermore, it has decided to uphold all the decisions of conviction and punishment and other decisions passed against the convicts and the decisions of release issued in this case since they conform to the law and to the causes they have been based on, together with the citation of the court that the phrase "the decision has been reached in consensus" is not mentioned on all of the sentencing paragraphs of the decision, but is mentioned at the end of the decision. The decision has been issued by consensus pursuant to the fundamental stipulations of Article (259) on 5 Dhu Al Hijja, 1427 H, corresponding to December 26, 2006.

#### **Judge**

**Aref Abdul Razzak Al-Shahin**

**Chairman of the Iraqi High Tribunal**

**Editors Note: Page format is in U.S. letter. Due to variations in length per page between English and Arabic, the page numbering in this document does not match that of the Arabic original.**