

Judgment of the Dujail Trial at the Iraqi High Tribunal

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[PART 1]

In the Name of God, most Gracious, most Merciful

God Almighty said:

“And when you judge between man and man, judge with
justice.”

God Almighty speaks the truth.

Case No. 1/C 1/2005
Dujail Case

Introduction

Tribunal Ruling Introduction

Legal Framework

Final Outcome

Introduction

Before taking into account the huge volume of documents and papers that were submitted to the Tribunal in an uncoordinated manner, and the fact that any penalty with respect to any of the defendants shall be based on specific and established evidence, this Tribunal shall take into consideration how relevant freedom of action and of choice were with respect to rendering the verdict, balancing thus the realization of justice with the protection of human rights as an important and complementary aspect of the litigation's stages.

The Tribunal Panel has examined the legal scope of penalties stated in law in light of legal justification and considerations regarding the evidence presented to the Tribunal.

Certainly, in conformity with Paragraph No. 1 of Article 24 of the Supreme Iraqi Criminal Tribunal (SICT) Law No. 10, dated 2005, in accordance with the rules, procedures and evidence gathering appended to the Law, and pursuant to the Code of Criminal Procedure No. 23 of 1971, the penalties that this Tribunal rules on are those penalties that are set forth in Penal Code No. 111 of 1969.

Whereas this Tribunal takes notice also of Resolution No. 5 of the Coalition Provisional Authority (CPA), dated 2005, Section 3 therein, which stipulates the suspension of capital punishment in each case in which capital punishment is the only penalty laid down for punishing the person who has perpetrated a crime, the said Tribunal may replace it by sentencing the defendant to life imprisonment or by imposing a lighter sentence instead pursuant to the Penal Code.

Whereas the activities of the Coalition Provisional Authority, as an interim authority in Iraq, shall continue until the achievement of full sovereignty, and in accordance with Article 43 of the Hague Convention, 1907, Regulation No. 1 of the Coalition Provisional Authority shall be the regulatory basis for the period that follows the overthrow of the previous regime.

In accordance with Section 2 of the Regulation, the laws that were in force in Iraq effective April 16, 2003, shall remain in force and effect beyond that date, unless the Coalition Provisional Authority resolves to suspend them or replace them with others, or if they are revoked and other legislations have been resolved to replace them,

Judge
Ra'uf Rashid Abdel Rahman

Judge
Ra'uf Rashid

[Seal: First Criminal Tribunal
Presidency; Iraqi High Tribunal]

which legislations are enacted by Iraqi democratic institutions. These laws shall remain in force and effect because they do not hinder the Coalition Provisional Authority in the exercise of its rights and the fulfillment of its obligations, or as long as they are not inconsistent with this Regulation or with any other Regulation promulgated by the Coalition Provisional Authority.

Moreover, with respect to Directive No. 7 issued by the Coalition Provisional Authority, and more specifically Section 3 of the Directive pertaining to the Penal Code, Clause 2 of said Directive “provides” that capital punishment shall be suspended in each case where capital punishment is the only penalty laid down for punishing the perpetrator. The Tribunal may replace it with a sentence of life imprisonment or by imposing a lighter sentence instead pursuant to the Penal Code.

We are well aware that the Coalition Provisional Authority is considered an interim authority in Iraq until full sovereignty takes place, and in accordance with Article 43 of the Hague Convention, 1907, it is natural for the occupying authority to respect the language, mores and traditions of the occupied country. Whereas the Coalition Authority was legally empowered to amend domestic Iraqi law pursuant to the provisions of Clause 64 of the Geneva Conventions pertaining to the protection of citizens, and pursuant with Security Council Resolution 1483; whereas the head of the Coalition Authority has suspended capital punishment but did not abolish it, which punishment is set forth in Iraqi Penal Code No. 111 of 1969, that is, whereas the Coalition Authority stipulated in its text the suspension of capital punishment but did not abolish it, and whereas said punishment is specified in the Iraqi Penal Code since 1919, thus the First Criminal Chamber of the Iraqi Criminal Tribunal believes unanimously that it is able to render a verdict with respect to any defendant in this case and impose the appropriate sentence relative to the gravity of the crime or offense perpetrated, including capital punishment pursuant to the provisions of Article 24 of Law No. 10 of the Supreme Iraqi Criminal Tribunal (SICT), 2005, and pursuant to the amended Iraqi Penal Code No. 111 of 1969.

In line with Article 1 (Second) of SICT Law No. 10 of 2005, the Tribunal shall have jurisdiction over every natural or artificial person, whether that person is Iraqi or non-Iraqi residing in Iraq and accused of committing any of the crimes stipulated in Articles 11, 12, 13, and 14 of this Law, and which crimes were committed from July 17, 1968 until May 1, 2003 in the Republic of Iraq or elsewhere, including the following crimes:

- a. Genocide;
- b. Crimes against humanity;
- c. War crimes; and
- d. Violations of Iraqi laws listed in Article 14 of this Law.

In accordance with Article 12

First: of the law in effect in this case and consistent with the charges filed against the defendants (Saddam Hussein Majid; Barazan Ibrahim Hassan; Taha Yassin Ramadan; ‘Awwad Hamad al-Bandar; Mizher ‘Abdullah Kadhim Ruwayid; ‘‘Abdullah Kadhim Ruwayid; ‘Ali Dayeh ‘Ali; Muhammad ‘Azzawi ‘Ali al-Marsumi)

And in conformity with the provisions of Article One of the bill of indictment against the defendants, comprising:

- a. Willful killing;
- b. Extermination;
- c. Enslavement;
- d. Displacement or forcible transfer of population;
- e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental norms of international law;
- f. Torture;
- g. Rape, sexual enslavement;¹ forced pregnancy; enforced prostitution; or any other form of sexual violence of comparable gravity;
- h. Persecution against any specific party or population on political, racial, national, ethnic, cultural, religious, gender or other grounds that are impermissible under international law, in connection with any act referred to as a form of sexual violence of comparable gravity;
- i. Enforced disappearance of persons;
- j. Other inhumane acts of a similar character intentionally causing great suffering or serious injury to the body or to mental or physical health.

Second: For the purposes of implementing the provisions of paragraph First of this Article:

- a. "Attack directed against any civilian population" means a course of conduct involving the multiple panel of acts referred to in paragraph First of this Article against any civilian population, pursuant to or in furtherance of a state or organizational policy to commit such attack;
- b. "Extermination" means the intentional infliction of living conditions, such as the deprivation of access to food and medicine, with the intent to bring about the destruction of part of the population;
- c. "Enslavement" means the exercise of any or all of the powers entailed by the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, particularly women and children;
- d. "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- e. "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising from, or related to legal punishments;
- f. "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or population; and

¹ The Arabic text reads استبعاد جنسي [istiba'ad jinsi] which would have meant "sexual removal"; this seems, however, a typo for استعباد جنسي [istaabaad jinsi] or sexual enslavement.

g. “Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, the State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

Article 17:

First: In the absence of provisions in this Law and the rules made thereunder, the general principles of criminal law contained in the following laws shall be applicable in connection with the prosecution and trial of any accused persons:

- a. For the period 7/17/1968 to 12/14/1969, the Baghdadi Penal Code of 1919
- b. For the period 12/15/1969 to 5/1/2003, the Penal Code No. 111 of 1969, which was in force in 1985
- c. The Military Penal Code No.13 of 1940, and the Code of Military Procedure No. 44 of 1941.

Second: In interpreting Articles 11, 12 and 13 of this Law, the Trial Chamber and Appeals Chamber may resort to the [relevant] decisions of international criminal tribunals.

Third: Grounds for exclusion of criminal responsibility under the Penal Code shall be implemented in a manner consistent with this Law and with international legal obligations concerning crimes within the jurisdiction of the Tribunal

Fourth: The crimes stipulated in Articles 11, 12, 13, and 14 of this Law shall not be subject to any statute of limitations.

Whereas the aforementioned actions are considered crimes against humanity in Article 12 of the SICT Statute, the Tribunal considers that there are criminal acts that were defined in the amended Penal Code No. 111 of 1969 and which correspond to the basic acts included in the notion of crimes against humanity, which are stipulated to occur within the context of a broad organized assault against a civilian group – civil society – and the term “killing” has been defined pursuant to Articles 405 and 406 of the Penal Code to be: Willful killing of another person; this description of killing corresponds to crimes against humanity as set forth in Article 12 (First) of the Supreme Criminal Tribunal Law. Further, Articles 325, 322, 333, 393 and 421 of the Iraqi Penal Code criminalize displacement, imprisonment, torture, rape, and enforced disappearance, and considers them as crimes against humanity, which crimes are set forth in Article 12 (First) in paragraphs c, e, f, g, h.

Further, the Iraqi Penal Code includes criminal acts that bear the mark of crimes against humanity. Articles 190 to 222 of Anti-State Internal Security Criminal Actions Law, comprising the criminal acts mentioned in Article 12 and in Article 194, sentences to capital punishment any person who organizes or directs or leads an armed group that attacks any group of people, or whose objectives were to prevent the application of the rule of law. Moreover, Articles 334, 335 and 342 criminalize the seizure or destruction of third-party property, while Articles 412 and 439 criminalize transgressing or stealing third-party assets.

Fundamental Bases for Establishing the Tribunal

The early formation of the First Criminal Chamber was under the presidency of the Honorable Judge Rizgar Muhammad Amin and four other member judges. Following the resignation of the presiding judge and the dismissal of one of the Criminal Chamber members, the First Criminal Chamber was reestablished under the presidency of the Honorable Judge Ra'uf Rashid Abdel Rahman, who began exercising his judicial duties during the court hearing of 1/23/2006, following Administrative Order No. 13 of 1/22/2006 issued by SICT presidency. And on February 17, the defense panel submitted a request for the withdrawal of the new Chamber President, Ra'uf Rashid Abdel Rahman, alleging the he was biased with respect to the defendant Saddam Hussein, given that he was born in the city of Halabja on one hand, and on the other he participated in the creation of a human rights organization in Kurdistan in 1992, which organization opposed the Iraqi government. Moreover, he was formerly convicted and pardoned by Saddam Hussein.

These gratuitous allegations aim essentially to disrupt the work of the Tribunal following the resignation of the former judge. While the new judge is from Halabja, as was pointed out to defendant Saddam Hussein in the courtroom, this fact does not undermine his judicial duties as he is under oath. If he feels uneasy in this regard, he would request to be removed in accordance with law. Moreover, he was not detained under Saddam Hussein's regime, as he used to exercise his profession as lawyer and had a law office in Baghdad. However, he was detained under 'Abdel Salam 'Arif's regime in 1963-1964, at a time when Saddam Hussein and a group of Ba'th members were under arrest. Further, membership in the human rights organization in Kurdistan, and even participation in the creation of said organization, were based on humane motives that had nothing to do with any political viewpoint. The establishment of the organization in 1991 was part of the Kurdish administrations that were outside the authority of the central government. Inferring that there is evidence of bias by the judge with respect to Saddam Hussein comes in two different forms. First: All Iraqi citizens, if not directly, had relatives, friends, and people in their regions that had to endure hardships during the era of Saddam Hussein. This statistical fact will lead all judges in Iraq to remove themselves from any trial involving elements from the former regime. Procedurally, this judge and the other judges have a long experience of independence and objectivity, in which case they will have to remove themselves from any case that is presented to them and that will make them feel uneasy, especially that they are, along with Judge Ra'uf Rashid, under oath, a fact that cannot be overlooked when trying Saddam Hussein. That is why the First Criminal Chamber rejects the request to impugn the competence of Ra'uf Rashid in terms of bias with respect to Saddam Hussein or any of the other defendants.

Judge
Ra'uf Rashid Abdel Rahman

[Stamp: First Criminal Tribunal Presidency; Iraqi High Tribunal]

Introduction to the Tribunal's Ruling

First: The defendants (Saddam Hussein Majid; Barazan Ibrahim Hassan; Taha Yassin Ramadan, aka Tah al-Jazrawi; 'Awwad Hamad al-Bandar al-Saadoun; 'Ali Dayeh 'Ali al-Zubaidi; 'Abdullah Kadhim Ruwayid al-Mashaikh; Mizher 'Abdullah Kadhim Ruwayid al-Mashaikh) are referred to this Tribunal and charged with crimes against humanity pursuant to the provisions of Article 12 First, Paragraphs a, d, e, f, and pursuant to Iraqi Criminal Tribunal Law No. 10 of 2005, Article No. 15, Paragraphs First and Second of the Iraqi Criminal Tribunal Law, by virtue of Article 406 of the Penal Code No. 11 [sic] of 1969, for the killing and the mass arrest of al-Dujail residents and families. As a result, there were 149 victims and destruction of property, including homes, furniture, cars, water pumps, as well as aqueducts for the water drawn from Tigris river and used to irrigate orchards. Then a presidential order was promulgated directing the dredging of the orchards and to seize the town's farmlands pursuant to Resolution No. 1283 of 10/14/1984 by the Revolutionary Command Council. This was part of a general, planned and organized assault in response to firing some 10 to 12 rounds with a Kalashnikov at the president's convoy from behind one of the orchards' fences in the town of al-Dujail on July 8, 1982. This quiet town was akin to a fruit basket and is irrigated from a brook flowing from the Tigris river by means of aqueducts and water pumps that bring the water to the orchards. Furthermore, the income and living conditions of its inhabitants prior to the incident were considered above average. Many family members attended school while others were involved in the ruling Ba'th party organization training. The inhabitants comprised also a mixture of Shiite al-Jaafari and Sunni. Prior to 1982, the town was a county that was part of al-Aaed district, which belonged to the governorate of Tikrit, the birthplace of defendant Saddam Hussein al-Majid. Then it became a district where tribal ties were very strong. Moreover, it is among the most developed urban areas, given that it belongs to Tikrit governorate, which is called Salah el-Din and it is linked to Baghdad via a paved and modern roadway. In addition to the administrative center and the police association, we find in the city several governmental departments. The municipality services are considered good relative to other urban areas. A center for the ruling Ba'th party section was located in the town, and such center used to manage organizational affairs. The officials who used to manage the ruling Ba'th party office were from the Sunni Samara town and from Mosul.

The town was of much import to the Ba'th party, and officials used to visit it often. The last visit was that of defendant Saddam Hussein al-Majid, the head of state, on July 8, 1982, which occurred during the Ramadan fasting month. The town had religious and rural qualities, and its resident families were conservative. There are also cases of intermarriages between the two sects in the town, which town was the center of control and supervision of a security official who was looking for secret cells belonging to the Shiite religious Dawa Party. During the visit on the aforementioned date, the incident happened and there were various accounts circulating about what actually occurred. According to reports received from senior regime officials, based on public statements, the gunshots were an attempt made against the president's convoy when it was passing through one of the old town streets which are surrounded by orchards with high mud walls. With those gunshots a state of extreme emergency was declared in the town. It was placed under the control of military forces which came directly from Baghdad, and these forces comprised a special Republican Guard company. The mission was entrusted to the head of the Intelligence Service,

defendant Barazan Ibrahim Hassan, the brother of defendant and then President Saddam Hussein. The army, special security forces, intelligence groups, popular army forces and the town's party members encircled the town. Warplanes and helicopter gunships began firing at the orchards and some of the interior streets. In the first few minutes of aircraft bombing, nine people who were inside one orchard were killed, in addition to other people who were inside the town. The judicial investigative body was given free rein to investigate the matter. Defendant Taha Yassin Ramadan, commander of the popular army and the deputy prime minister who is one of the closest aides of defendant Saddam Hussein al-Majid, arrived the same day in the town. He had met with the latter in Baghdad before reaching al-Dujail. At the same time, Interior Minister Saadoun Shaker made a short visit during which he returned without the intervention of the interior ministry outfit. Defendant Barazan Ibrahim, the head of the intelligence apparatus, assumed early on the functions of operational commander. Moreover, presidential orders were issued instructing that all sections and forces must receive their orders from him. He established his operating and control office in the main bureau of the Ba'th party company, and soon after Intelligence Service commanders arrived from Baghdad. The head of the Inquiry and Investigation Bureau within that organization began managing the different interrogation and investigation steps. Said organization set out also to examine the location of the incident and submitted its preliminary report without reaching any conclusion as to whether the shots were targeting the convoy of defendant Saddam Hussein or not. The report mentioned that the shots were inside the orchard and were not directed at a location outside the orchard. This finding is based on the fact that empty shells were found deep in the orchard and that the mud wall was two meters high, which makes it impossible for one or several persons there to know what is happening on the street behind the orchard. Moreover, no one was injured or harmed. However, defendant Saddam Hussein, set on revenge and on inflicting harm on the greatest number of the town's residents, commissioned his brother Barazan Ibrahim, the Intelligence Service chief, with the task of disciplining the citizens as a result of these gunshots whose origin was unknown.

Second: The investigative file concerning the subject is a complex and multidimensional file that taxes the investigator and anyone who is reviewing the matter. The case was not confined to the arrest of individuals accused personally in the shooting, but it extended to family members and others who are related in the fifth or sixth degree, and even individuals who were not present in al-Dujail, simply because they were relatives to one of the accused or to some family members. The arrests and executions included also members of the armed forces who were on the frontlines when the incident occurred and who had no knowledge of what happened in al-Dujail. They also included individuals who were at the time employees in places located within Masfa Biji, which is outside the town. These odd and extraordinary measures created problems for the investigators and for the Tribunal, as is stated in the trial's papers and in the court's hearings.

Third: There is not just one file pertaining to the case, but many. In addition, there are scores of papers, resolutions, and orders that are to begin with not coordinated or connected in scope or topics. This created a problem for the investigation, and this problem affected the Tribunal's proceedings, since the case took much time and required additional and exhausting efforts. Furthermore, the Public Prosecution Panel, despite its continued and serious efforts, was affected one way or another by this problem in terms of presenting to the Tribunal the documents, the CDs, and the successive documents from one hearing

session to another. This is due to the accumulation of scattered papers and documents that were not on hand or available in order to be studied and examined in the first place. Another reason stems from the circumstances that took place following the stupendous and dramatic fall of the regime and of its institutions at the beginning of the war, something that was not predicted by those who planned the war.

Fourth: Given the great number of security and intelligence centers under the former regime and the existence of stacks of documents at any of these institutions, the examination, classification and the inspection of these documents took longer than would normally be the case for proper presentation to the Tribunal. Actually, there were documents and evidences that it was not possible to submit to the Tribunal. They were thus kept away from the Tribunal and were not accounted for as evidence to be discussed during the hearings.

Fifth: The Tribunal has noticed during the trial's hearings that the defense panel has more than once set out to create confusion and disorder inside the courtroom, even inciting the defendants to create disturbances and be insubordinate by addressing the defendants with high names and titles at the beginning of each session as if these defendants were in the seat of power and not charged with perpetrating the most serious crimes according to international and domestic criminal law. Even the findings that those attorneys submitted were all prefaced with Mr. the President of the Republic in reference to defendant Saddam Hussein, even though the person mentioned is charged and does not have any authority or titular status within the framework of this trial. Whereas the Iraqi people, by means of free and direct voting, have elected a National Assembly and have chosen a President with full authority to be head of state, with the existence of a legitimate government constitutionally recognized by a parliament freely and directly elected, and whereas defendant Saddam Hussein's only quality before this Tribunal is that of defendant, thus the Tribunal has resolved to not acknowledge the requests submitted to it with this title and this quality, and even to not mention them in the Tribunal's ruling given that they are improper. It is better for these attorneys to comply with the provisions of the law and what the legal profession's ethics and traditions prescribe pursuant to the provisions of Article 39 and 50 of Law No. 173 of 1965. Moreover, some of the powers of attorney of the foreign lawyers are not validated and are not in conformity with the stipulations of Article 3, Clauses a, b of Legal Practice Law No. 173 of 1965.

Sixth: The Tribunal has with regret and alarm noticed the obvious perjury of some of the defense's witnesses and the possible collusion for violating the law and procedural rules between some of the defense attorneys and those witnesses in the trial session of 5/31/2006. Some of these witnesses stated later on that upon the instigation of the defense lawyers they have given inaccurate testimonies against the chief of the Prosecution Panel, Mr. Jaafar al-Musawi, stating that he met with them during a commemorative gathering in the town of al-Dujail in July 2004. They went even further by mentioning that the Public Prosecutor offered them cash amounts in order for them to provide testimonies against Saddam Hussein. Following these statements, the defense attorneys put on a show with speeches and requested vehemently that the CDs pertaining to the aforementioned commemorative gathering be shown. There was an individual they claimed was the Public Prosecutor, Mr. Jaafar al-Musawi. The latter, however, stated that he never visited al-Dujail. Moreover, given that the trial was open to the public and was displayed on television screens, the person concerned presented himself when he saw this fabrication. He

contacted the Tribunal and the Prosecution Panel and stated that he was ready to appear before the Tribunal in order to reveal the truth. The concerned person, Mr. Abdul Aziz Muhammad al-Bandar, appeared before the Tribunal and next to the Prosecutor in order to invalidate this fabrication!!!

In another attempt made by the defense attorneys to alter facts, they brought one person with an important testimony alleging that some of the individuals whose names appeared in the official lists issued by the Revolutionary Tribunal and who were executed before the defendant 'Awwad Hamad al-Bandar in 1983 are actually alive. Said witness alleged that 23 of those individuals are still alive and that he had eaten with them. When said witness was asked the names of the victims whom he claims are alive, he began reading the names from a piece of paper in which the names were written. When the Tribunal asked if he can list the names without using the aforesaid paper he was not able to remember the names on that paper. Worse than that, it appeared that the handwriting on that paper was different from the witness's own handwriting. When the Tribunal asked the witness about that fact, the latter admitted that the names were handed to him by an unknown source.

In view of the above, the Tribunal decided to refer this witness along with the three mentioned previously to the Court of Inquiry because of perjury by virtue of Articles 251 and 252 of Penal Code No. 111 of 1969. Those witnesses were interrogated by one of the judges that the Tribunal Panel commissioned for this case on June 1, 2006, following the public investigation of the topic. Following the interrogations, which was conducted in the presence of an attorney from the defense office and the Tribunal's legal consultant, it appeared that two of those witnesses are not al-Dujail residents and never visited the town. One of them was from Baghdad and the second one was from the town of Taji, which is located near Baghdad. They openly declared that the defense lawyers ordered them to affirm that they were from al-Dujail and to testify against the Public Prosecutor, Mr. Jaafar al-Musawi, stating that the defense team offered them homes in Damascus, Syria, and job opportunities with a contractor from Tikrit. One of the witnesses stated that defense team hirelings kidnapped his son and threatened that if he does not testify in favor of Saddam Hussein and against the Public Prosecutor they would kill his son. The witnesses claimed that they were ordered to go to Syria where they joined Saddam Hussein's personal bodyguard, named Abu Omar, and the head of the defense panel, Counsel Khalil al-Dulaymi, and were instructed about this testimony. After the hearing, the Tribunal resolved to create a panel for interrogating the four witnesses. Once the investigation was completed, they were transferred to al-Kirkh's Court of Inquiry in Baghdad, and later on the four witnesses were released on bail. These events reveal the ability and readiness of the defense attorneys to undermine integrity by directing their efforts towards defaming the Tribunal instead of channeling their efforts to defend their clients.

Legal Framework (For Responding to Shots Fired at Saddam Hussein's Convoy on July 8, 1982, with Large-Scale Methodical Assault on al-Dujail's Residents)

Iraqi Penal Code defines "assault" as a "type of behavior entailing carrying out several acts incorporated in the ten penal offenses set forth in Section First of Article 12 of the Supreme Iraqi Criminal Tribunal Law regarding crimes against humanity." This includes attacks against any civilians based on state policy and methodical planning to commit such assault. Although it is not necessary that the assault be based on the state's systematic policy or on

state planning, nevertheless the existence of a practical policy and consecutive acts represent relevant evidence that the assault is deliberate and directed in a sweeping fashion against civilians. Yet, in accordance with the judicial framework governing similar trials, there is no need for the officially adopted policy to be the official policy of the state, and the existence of such preplanned program or policy shall be sufficient, even though the meaning of the term “assault” differs pursuant to the laws of war. With respect to crimes against humanity, enemy armed forces need not be targeted. Actions against civilians, including against residents of an attacked town, shall give the sufficient meaning for the definition. Whereas the use of armed forces and violence does not necessarily presage an assault; whereas any harm done to civilian inhabitants would represent an assault as long as it is carried out on a wide-scale basis against a group of residents, resulting in penal offenses such as killing, rapes, and forcible transfers, it is necessary that civilians be the main target of the assault and not accidental victims, which means that the personal intention of the defendant regarding the objective of the assault shall have no bearing whatsoever on his individual responsibility. Although the expression civilian inhabitants does not mean all residents of a geographical area or a region, for in the town of al-Dujail a large group of people – relative to the number of residents in the small town – were attacked, and those people belonged largely to the Shiite religious confession, a fact that made them a target of the assault. This occurred without any ground or any procedural investigation, as all of them were accused of being “agents and saboteurs” as was stated in the ruling promulgated by the Revolutionary Tribunal in Dawa File No. 944/c/984. The text of the ruling provided that they belonged to the traitorous Dawa party and took part in distributing hostile publications that exacerbate sectarian and confessional trends as well as help establish a disordered system similar to the hireling regime in Qom and Tehran. It added that the execution of their criminal plan was under instructions from their Persian master. Confirming the statements of the chairman of the Revolutionary Tribunal, defendant Awad Hamad al-Badr, most of the Arab Iraqi residents of the town of al-Dujail were Shiites with Sunnis living amongst them. Based on the names of the officials who had to gather whole families in order to drive them out of al-Dujail, we find that most of those officials in the party, security and state administration carried Samrra’i or al-Mushahidi nicknames, and were Sunnis from outside the town of al-Dujail. The identification of the defendant as belonging to the “traitorous Dawa party,” as “agents of their Persian masters,” and as “exacerbating sectarian and confessional trends,” indicates clearly and strongly that a specific group of town residents were pre-selected. There was a strong tendency to aggress and harm them even before the shooting against the president’s convoy occurred. The close relations that existed between Shiite and Sunni town residents and the existence of intermarriage among them were irrelevant in this case. What is important is to see how the authorities and the officials who administered the small town viewed the situation, and how the ruling party viewed those who were considered always guilty until proven innocent. Even those amongst them who belonged to the Ba’th party organizations were secretly monitored. Moreover, whole families, including infants, were taken to Baghdad for interrogation, and military members of those families who were positioned on the frontline as well as their other members employed outside the town were arrested. The upshot was that they, along with 148 individuals, were executed or tortured to death, according to the discovery documents comprising their written names and included in this trial’s papers.

Based on rulings, on documents submitted, and on statements made by plaintiffs and victims, the Tribunal noticed that the assault on these families, given its organization and

planning, was “methodical.” This is evidenced by the preplanning carried out in order to arrest the families and bring the remaining family members who were living outside al-Dujail town, whether because of military service, employment or because they were residing in Baghdad, to the town of al-Kazimiya. The arrest of individuals and families, in addition to aggressing them, was organized and methodical. It is not possible that these actions could occur in a haphazard way or based on personal information. This is based on procedural intervention. In terms of substantive law, the interrogation and arrest orders directed against members of the families that were accused of firing shots at the president’s convoy was authorized by the head of the highest and most prominent security apparatus in the state, the “Intelligence Service,” which is concerned with the state’s foreign security. In the context of a full examination of the case’s documents, the Tribunal did not find anything that indicates the intervention of party members or of a judicial inquiry panel or even of a security body in the order to pursue and arrest those family members. The order was that of the Intelligence Service under the personal command of the Intelligence head. It bears mentioning that in an Intelligence Service internal memo, we find sharp criticism of the General Security Directorate, which is the organization responsible for internal state security, given that this organization did not take the necessary steps against one Burhan Yakub Majid. Criticism was also addressed at the “party organization in al-Dujail” insofar as some of the party members in that town did not take part in identifying those who were killed after the incident when aircraft bombed the orchards. Thus the issue of arresting the families, of investigation and interrogation, and of those arrested became the purview of the Intelligence Service, at the exclusion of all other security bodies. Based on the facts gleaned from the case’s documents, and in light of the comments made by defendants Saddam Hussein and Barazan Ibrahim during the investigation and in the course of the trial hearings, the large-scale systematic assault which targeted a great number of victims was planned and organized, and became frequent beginning July 8, 1982. An indication of such systematic assaults was the fact that the assault and the steps taken represented the implementation of a prior and organized policy and planning and was not haphazard when it came to arresting family members from all walks of life, and then destroying their homes, looting their properties, and passing presidential resolutions to seize and destroy the orchards under the pretext of rezoning and rebuilding the small town. This Tribunal believes that the former regime has committed wide-scale assault offenses against al-Dujail’s town residents in retaliation for the attempt to assassinate the then head of state, defendant Saddam Hussein, on July 8, 1982. Further, said regime has assigned the supervision and execution of the plan to the Intelligence Service to the exclusion of the other security bodies. The head of the Intelligence Service, defendant Barazan Ibrahim, had met with his aides in order to coordinate the way to retaliate for the attempt. Coordination with the local security, police and party organizations took place under the control of the Intelligence Service. Defendant Barazan went immediately to the town on the day of the event and met with the local security organization’s chief, and afterward a formation of helicopter gunships and warplanes started shelling the town’s orchards and public places. Local security and party informers began pointing out homes and individuals to have the those individuals arrested. Soon after measures were taken to transfer the detained families in the Intelligence Service cars that came from Baghdad, driven by people who were not from al-Dujail. It bears noting that these orders were given verbally and directly by Barazan Ibrahim. An order was also issued by Saddam Hussein to dredge the orchards under the supervision of defendant Taha Yassin Ramadan. These speedy measures and events, which took place within 24 hours, did not occur by chance or randomly. The assault targeted in the first place the town’s civilian

population, which did not have any connection with any military or civil authority. When we consider the number of the small town's inhabitants at the time the incident occurred relative to the number of individuals and families arrested, we see that the number of detainees following the incident stood at more than one thousand. With the release of some, and according to official statistics, 399 individuals remained in detention while 143 were killed.

Based on facts and official documents under review, the First Criminal Chamber at the Iraqi Criminal Tribunal considers that the campaign waged against al-Dujail residents was systematic and large-scale. The town remained under the control of forces led by the senior official of the Intelligence Service for more than two months. According to the statistics available to the Tribunal, and to official documents, many of its population were arrested and detained. Further, eviction and expulsion sentences were executed against individuals and whole families following a deliberate and systematic operation that required the mobilization of large forces by the regime. It is clear, based on actual facts and on official records gleaned from the former regime's archives and those of the Intelligence Service, as well as from Revolutionary Tribunal resolutions, that the assault on al-Dujail targeted in the first place civilian residents, since most of the victims and their families had nothing to do with the shooting attempt on defendant Saddam Hussein's convoy. Contrary to what the defendants stated, the assaults were directed at the residents, most of whom were civilians, since those who attacked Saddam Hussein's convoy were from the town. The disciplinary actions surpassed by far the small number of attackers or those who fired the shots. Overall, roughly 543 individuals were killed, evicted or displaced as a result of the assassination attempt. The large number of detainees exceeded the limited number of 7 or 8 individuals who took part in the attempt. A former intelligence officer described it as "an opportunistic crime."

The Final Outcome of the Trial's Proceedings

There are facts and evidence gleaned from the former regime's documents pertaining to senior decision-makers at the presidency office, resolutions signed by the President and the Commander-in-Chief of the Armed Forces, official records stemming from the head of the Intelligence Service, the most important and powerful security institution in Iraq, confirmed by statements from the victims' families and witness testimonies, and the defendants' confirmation of the horrible events following the investigations and the trial, and we see little concern for these written records signed by officials and whose truth is beyond doubt. These official records confirm the statements of the plaintiffs and witnesses, while the government entrusted the Intelligence Service, the security body whose purview are state foreign security, for the so-called "disciplinary measures against al-Dujail residents" so that they become an example for others. This is the cost of a few gunshots fired by some youths at the president's convoy inside al-Dujail on July 8, 1982. Yet there are no written or oral record confirming that these gunshots targeted the convoy. Rather it was this sheer coincidence that inspired defendant Saddam Hussein, as the country's Head of State and Commander-in-Chief of the Armed Forces, and as the one who was in control of all security institutions in the country, to launch this assault under the command of his brother, defendant Barazan Ibrahim Hasan, the chief of the Intelligence Service, with the help of the

Popular Army, which provided support for the regime and for the administration of the Ba'th Party and was led by Taha Yassin. The upshot was to discipline the people and the victims' families by giving them the death penalty, which applied even for those who were already deceased and buried. This was based on the "security hunch" that was customary within the ruling regime. The facts and evidence raised and revealed before the Tribunal, supported by official documents issued and signed by senior defendant Saddam Hussein, confirm the so-called disciplinary operation of al-Dujail residents and which aimed to instill terror and fear among the Iraqi people in general. This was a systematic and deliberate strategy used under Saddam Hussein's regime against anyone who would be tempted to even think about such things. The final official toll for the victims of this tragedy stood at 148 according to Revolutionary Tribunal's Ruling No. 942/c/982 of 6/14/1982. This was confirmed by presidential decrees promulgated with the signature of Saddam Hussein, under No. 778, dated June 16, 1994.

Moreover, dozens of people were killed in detention, whether through fear, terror, hunger, grief, or through coercive measures. This happened either at the Intelligence Service's detention center, at Abu Ghraib prison, or at the desert jail of Lea, which is hidden from people's view and where those who die are not accounted for. Moreover, psychological pressures and physical torture were carried out on hundreds of men, women and infants, while the honor and chastity of women and girls were deliberately violated in full view of their families. This is by far much worse than being killed. These events were confirmed through depositions made during the investigation and trial. Further, properties and apartments of the detained and evicted families were looted. The enchanting nature of the peaceful town fell also victim to those harsh measures, as the developed orchards and farmlands were dredged, while water pumps and irrigation equipment were destroyed. These measures, which violated the Iraqi constitution's provisions that were theoretically in force under Saddam Hussein's regime, that is to say, the destructive and methodical operation which targeted the town's produce, were referred to as operations for "cultural and urban development"!!! This was the price paid for ten to twelve shots fired inside an orchard and which did not hit anyone. No one knew their origin or their directions amongst the investigation and inquiry officials in both the town's intelligence and general security organizations, and within the Interior Ministry. This was also the case for the prominent senior official who was a close aide to Saddam Hussein at the time and who personally carried out the investigation. He stated that "these were random shots that had no specific target; it just happened that when the president's convoy was passing nearby the shots rang out." Moreover, the Tribunal did not receive any evidence, based on the investigation or trial, that any of the cars among the "leader's convoy," which to begin with comprised armored and bulletproof vehicles, was hit. In addition, the international defense attorneys of defendant Saddam Hussein and the others did not submit any proof or the slightest evidence indicating that the shots targeted the convoy. The established facts actually show that the "bad luck of those victims" had them fire the shots from inside the orchard without knowing or thinking that a presidential convoy was outside the two-meter high mud walls. Thus "bad coincidence" led to the premeditated tragedy of al-Dujail's residents on July 8, 1982, which resulted in the successive calamities that affected farmers and children, following a long-term systematic and deliberate policy targeting unfortunate family members along with their orchards and apartments. This policy extended to the whole town. Its residents were penalized for years to come, and its orchards and aqueducts, which used to irrigate the orchards and even farmlands, were destroyed. These measures, applied

methodically and continuously over a long period of time, were enacted following presidential resolutions that defendant Saddam Hussein signed. Their goal was to ensure allegiance to him and to the regime “by force and through retaliation,” even against party members who were under suspicion, as some of the defendants stated during the trial, including ‘Ali Dayeh ‘Ali, ‘Abdullah Kadhim Ruwaid and Muhammad Azzawi Ali, who happened to be related to some of the families that were marked for security reasons.

In view of all these facts and calamitous events that followed the gunshots of July 8, 1982, the Tribunal discussed at length and objectively the accusation against defendant Saddam Hussein and the other defendants. This was pursuant to a bill of indictment ensuing from the trial’s hearing of 5/15/2006, in accordance with the provisions of Article 12 First, and by virtue of Article 15, Paragraphs First, Second, Third and Fourth of SICT Law No. 10 of 2005. The indictment comprises the direct orders given by the defendant as Head of State, as President of the Revolutionary Command Council, and as the Commander-in-Chief of the Armed Forces. Said orders specify besieging the town and immediately attacking it following a large-scale and long-term methodical plan, using to this end different types of weapons, including warplanes and helicopter gunships, and placing the entry and exit points of the town under severe military and security control. These measures started in the middle of the day on July 8, 1982, and continued without interruption the following days in order to inflict collective punishment on the town’s inhabitants, alleging that some of the residents are “agents of neighboring countries” with which Iraq was engaged in fierce battles. This sweeping and systematic military operation was entrusted to defendant Barazan Ibrahim, in his capacity as the field and security commander responsible for supervising the encirclement operation and the assault on the town. He was also entrusted with the command of a Republican Guard’s brigade, and the command of forces belonging to the party, the popular army, and to the local security outfit and police. The town was militarily cordoned off and all entry and exit points were closed. The object of these measures was retaliatory and disciplinary. Defendant Barazan Ibrahim Hassan’s actions were guided by his brother, defendant Saddam Hussein. He went at once to the town and stayed there for three days in order to effectively supervise the large-scale and continuous and systematic attack against anyone whose loyalty to the regime was under suspicion. Local informers were used to turn in individuals and families. All members of those families were then arrested and transferred in groups to the intelligence center in Baghdad. The orders issued by Barazan Ibrahim were verbal and carried out immediately, without any discussion. The collective transport measures were taken immediately and carried out by a driver from out of town. These were an important part of the plan. Thus, during his three-day presence in al-Dujail, mass arrests were carried out and marks were placed on the properties and assets of the targeted families. Given the great number of individuals and families arrested, they were first placed in schools until the gathering operation was done. Then they were transported in special cars driven by people from outside al-Dujail to the “intelligence building” in Baghdad. The number of family members detained in the intelligence interrogation command center reached 399, including a great number of children, sheikhs and elderly. The interrogations and the brutal tortures were particularly humiliating and dishonoring to women and young girls. These tortures included passing electric current to sensitive parts of the body, striking the heads of detainees, creating a horrible psychological atmosphere by placing the arrested families in rooms whose ceilings and walls were painted in red, and which were lit with red light in order to inflict psychological torture. A number of detainees died in the course of being tortured. The deceased were Yaakoub Yousef Hussein al-Obaydi,

Jassem Muhammad Latif al-Salami, Saleh Muhammad Jassem, Kassem Ali Asad al-Haydari, and Alwan Hassan Hussein al-Salami. The families were then taken to the prison of Abu Ghraib – the section that belonged to the intelligence outfit. Torture continued unabated, while women and unmarried girls were disgraced. More detainees died in the prison of Abu Ghraib as a result of dishonoring treatment. The deceased in Abu Ghraib prison were Mujbil Hussein Aziz, Yassin Hassan Hitto al-Salami, Noufa Hassan Agha al-Zubaydi, and the children Hisham Fakhri Assad al-Haydari, Zayna Muhammad Hassan al-Haydari, and Ali Majid Yaakoub al-Kharbatli. The remaining detainees were taken to a remote area in a barren desert and kept there for four years. During that cruel period, they had to put up with extreme heat, sand, bitter water and hunger. Harsh treatments were also meted out by prison guards and wardens. More detainees died in the desert, including Hamid Mehdi al-Khaz Ali, Abdul Wahab Jaafar Habib al-Obaydi, Sabriya Abbas Ahmad al-Obaydi, Sabri Assad ‘Abdullah al-Haydari. There were also children who passed away, including Muthanna Majid Yaakoub and Thabet Assad Ali al-Haydari. The bodies of those victims were eaten by hyenas and other wild animals. The worst part is that members of the regime and their agents kept badgering these families, at times asking the families to send their afflicted members for military draft given that they had reached the military service age. The goal was to turn them into human fodder on the battlefield with Iran. Other times, those afflicted families were contacted for donations in support of the so-called sanctity of Saddam’s war with Iran!!!

On 5/27/1984, in a classified letter referenced 6/762, issued by the presidency bureau and signed by defendant Saddam Hussein, the Head of State, 148 persons, starting with the name Taleb Abdul Jawad, and ending with the name Ayyad Rashid Kazem, were taken to the Revolutionary Tribunal for trial. They were accused of “sabotage and of undermining the regime.” The Revolutionary Tribunal, presided by defendant ‘Awwad Hamad al-Bandar, ruled in favor of capital punishment just seventeen days after the resolution was passed to transfer those persons before the Tribunal. This ruling took place after just one court session, and the reference no. of the corresponding file was 944M984, dated 6/14/1984. In the course of that session a decision was passed to execute 148 persons without checking the names of those persons present before the court, and without examining the ages of the accused, as twenty-two defendants were not even eighteen years old, starting with the name Youssef Abd Ali and ending with the name Ahmad Jassem Abdul Mohsen. The texts or bills of indictment were rather alien to the framework of trials and judicial tradition in Iraq, as they were mixed with words that were not an intrinsic part of judicial mores and did not belong to legal professionals. We read thus in the bill of indictment the following: “They openly confessed to the charges against them. They also revealed that they belonged to the traitorous Dawa party, that they attended party meeting and disbursed monthly donations. In addition, they offered financial and moral aid to fugitives and others who were hidden in al-Dujail’s orchards and who used them in order to carry out assassinations and sabotage. They also confessed that they have attacked the convoy of the President, the Commander-in-Chief, may God protect him, in the region of al-Dujail, trying thus to kill His Excellency – God forbid – in order to overthrow the country’s national and revolutionary regime and establish an anarchic regime similar to the traitorous regime in Kom and Tehran. Their criminal plan was guided by their Persian rulers and was carried out once they received assistance, weapons and explosive from agents on the payroll of the treacherous Iranian regime.”

With such expressions that are quite foreign to the framework of the judiciary and of justice, which are more akin to poetic eulogy by some uneducated person standing before the

authorities, the Revolutionary Tribunal, presided by defendant ‘Awwad Hamad al-Bandar, justified all of the indictment rulings in the course of one session, with respect to 148 individuals. Yet 46 of those individuals were already buried, for according to official records stemming from senior authority officials they were “eliminated” – meaning they were killed – during interrogations, as was established in the documents pertaining to the case.

Oddly enough, defendant ‘Awwad Hamad al-Bandar made himself a tool of mass murder with regard to a group of persons he had never met before and whose identities he did not even examine. This was based on a premeditated criminal outlook and intent to kill those victims, and this was part of a methodical mass murder plan targeting a group of people. He became the execution tool in this collective killing under the title of “justice and law” and the main participant in the collective killing operation. As the Arab adage says, this was done with the “worst intent” and resorted to the cruelest kinds of mass murder, something that is akin to the notion of crimes against humanity. The defendant was part of a premeditated, systematic and organized plan to kill a group or several groups of civilians following a practical, methodical and large-scale planning. Otherwise, how are we to understand that the defendant, as a judge, did not examine the names, identities and ages of those who were present before him, and the reason he overlooked the number of accused who appeared before him? Further, how long did the court’s proceedings, depositions, indictment charges, research presentations by the defense attorneys, discussions of individual rights, and the statements of the accused last? And what was the preamble of the indictment resolution and ruling?!!! No doubt, the defendant was aware of the plan to kill those victims under the cover of the law and of a trial? He was prepared psychologically and was aware that he had to overlook proper trial rules and litigation procedures before the court. He knew in advance what the fate of those wretched people brought before him would be, since he was part of the murderous plan and involved in the premeditated, methodical and hostile plan, aware of what the consequences of the representative’s actions would be by passing a collective death penalty judgment against those victims, which judgment had no basis in law and no shred of evidence in support of the condemnation. Defendant ‘Awwad Hamad al-Bandar was thus intent on carrying out mass murder as part of the regime’s plan to eliminate a group of people who happened to be al-Dujail residents. This was done for vengeful reasons and in order to collectively discipline the peaceful civilian inhabitants living within the confines of their small town.

Case’s File:

On 7/31/2005, the head of SICT’s Investigation Judges Panel transferred the Dujail’s file, referenced 1/c First/2005, encompassing 1,120 pages, in order to try the following defendants:

Saddam Hussein	Born 1937	Former President of the Republic
Barzan Ibrahim Hassan	Born 1951	Former Head of the Intelligence Service
Taha Yassin Ramadan	Born 1939	Former Deputy Prime Minister and Member of the Ba’th Party State Command
‘Awwad Hamad Badr al-Bandar	Born 1944	President of the cancelled Revolutionary Tribunal
‘Abdullah Kadhim Ruwayid	Born 1925	Member farmer in the Ba’th Party – al-Dujail

Mizher ‘Abudllah Kadhim	Born 1952	Member employee in the Ba’th Party – al-Dujail
‘Ali Dayeh ‘Ali	Born 1940	Member employee in the Ba’th Party – al-Dujail
Muhammad ‘Azzawi ‘Ali	Born 1923	Member farmer in the Ba’th Party – al-Dujail

The indictment pertains to the perpetration of crimes against humanity pursuant to Article 12 First, Paragraphs a, b, d, e, and f, by virtue of Article 15, Paragraphs First and Second of SICT law, and in line with Article 406 of Penal Code No. 111 of 1969 in force.

The case’s papers were supplemented with a complete appendix of supporting documents. These pertain to the transfer ruling with respect to confronting the so-called “wicked conspiracy in al-Dujail” and carrying out collective punishment against the town’s residents. The Tribunal examined the transfer papers, which included appellate intervention referenced no. 6/intervention request/2005. Counsel Khalil al-Dulaymi, the attorney of defendant Saddam Hussein, appealed the transfer ruling and registered the request under no. 8/b/2005. Furthermore, the attorney of defendant Taha Yassin Ramadan, appealed also the transfer ruling and registered the appeal under no. 9/c/2005 on October 9, 2005. The Appellate Chamber at the presidency of the Supreme Criminal Tribunal resolved to reject the appellate requests concerning the transfer ruling. With respect to the appeal submitted by counsel Khalil al-Dulaymi, the rejection of the appellate challenge was resolved because it was submitted after the legal period. This was also the case for the appeal presented by Taha Yassin Ramadan’s attorney. A ruling rejecting the appellate intervention request concerning “the transfer ruling submitted by the Tribunal deciding on the case at hand,” was passed by majority vote on August 5, 2005.

When the Tribunal received the file regarding the case, and following appellate ruling no. 6/c/2005 dated August 4, 2005, the Tribunal Panel distributed complete document copies to the judges for review in preparation for setting a trial date. Upon the return of the case’s file, the defense attorneys were provided with copies of that file. However, given that some of the defense attorneys were not present in Iraq and did not show up except during the trial hearings’ dates, they did not receive their copies by the set deadline, despite the statements by those attorneys regarding “delays in delivering the file.” Actually, the file was delivered to their office sixty days prior to the start of the trial on August 10, 2005, or August 15, 2005.

At the beginning of the trial hearings a number of powers of attorney were submitted to the Tribunal by the defense lawyers. After examining those powers of attorney, it appeared that most of the lawyers were not Iraqis, and amongst those lawyers there were a few who were Arabs.

The Tribunal took notice of the texts of the amended Legal Profession Law No. 173 of 1965, Article Third, concerning the law governing pleadings before Iraqi tribunals by Arabs and foreigners. Article Third F1 of the Law authorized “the attorney who is a member of one of the legal associations in Arab countries to plead in specific cases before Iraqi courts at levels that are similar to his, once it is established that he is still practicing the legal profession, provided there is reciprocity and following the agreement of the association’s president.” Paragraph (b) stipulates that the Iraqi lawyer may bring as an associate in a specific case an attorney who is not a member of any lawyers associations in the Arab countries, pursuant to an authorization of the association’s president and the approval of the Justice Minister, and after establishing that he is still a practicing attorney in his own

country and establishing his qualifications. This Tribunal is confronted by an irregular and improper situation with respect to the lawyers appearing before it from different countries without giving said Tribunal the opportunity to examine the legality of their presence. This happened in the midst of a chaotic flurry of hostile speeches and unjustified accusations that have no basis in law. Those muddled presentations were then coupled with political appeals and with national or nationalistic causes, such as “fighting occupation” and the like. This Tribunal faced difficulties with respect to Arab and foreign lawyers. This was the case with the Jordanian attorney al-Aramouti, the Lebanese Bashra al-Khalil, as well as with the American attorneys Ramsey Clark and Curtis Doebbler. During the last court hearings the attorneys boycotted the sessions under false pretexts that have no basis in law. The goal thereto was nothing but publicity. The Tribunal has turned to a full team of experienced lawyers from within the Defense Bureau’s vested lawyers. They have fulfilled their roles and still do until the other legal representatives appear before the Tribunal. The Tribunal is acting in accord with law in using vested lawyers, pursuant to the provisions of Article 144, Paragraphs (a) and (b), of Criminal Procedures Law No. 23 of 1971. Further, this Tribunal is sorry to learn that the attorney Khamis al-Ubaydi was assassinated. As soon as the news was received, the Panel’s President declared that the Tribunal and the Panel’s members were saddened to hear about that incident, and condemned openly any operation hostile to lawyers or any member of the judicial team.

However, despite all those behaviors that violate and harm the rules and principles of court proceedings, they do not affect the transparency of the Tribunal’s proceedings or the Tribunal’s credibility in pursuing the trial in conformity with fair procedural principles. The Tribunal will overlook this “disorderly” behavior, and in the final analysis the ruling in the case will certainly be made on the basis of evidence available in the trial documents only. Moreover, despite the claims of the defense lawyers and their press conferences in Amman, this Tribunal has early on allowed the defendants’ attorney, in each of their trips to Baghdad, to meet with their clients for indefinite times. In addition, the Tribunal authorizes face-to-face visits without any interference by the judicial panel members, and it authorizes visits outside trial periods, that is, during the “adjournment periods.” Furthermore, the Tribunal, under direct instructions from its President, has permitted the attorneys at the end of each hearing to meet with their clients without any interference by security guards, at which time they would exchange documents and papers. The Tribunal is enclosing with this ruling a full and detailed file, with exhaustive tables, for all the requests that the defense attorneys submitted to this Tribunal, and it has provided an index for the recent requests presented by the attorney of each defendant. There is also another file encompassing the requests of individual rights lawyers, although many of these requests incorporate texts and expressions that reflect a “systematic hostile pattern” against the Tribunal and its panel, the intent of which is “provocation.” Moreover, these texts comprise terms that “belittle individuals” working with the Tribunal’s panel, and in any case associating the issue with occupation, as if the Tribunal along with its President and its members are guided by others! At any rate, these are “improper” attacks against judicial persons. However, the Tribunal panel president and members are patient and forbearing, even if they feel pained and sorry for that. Yet, in order for the Tribunal to adhere to the Iraqi independent judiciary program and realize the sought-after justice, it has chosen to overlook all of these defamations and attacks, and is attaching to the trial documents this file of requests so that it becomes part of the hearings.

The defendants protested after Judge Ra'uf Rashid became the President of the Criminal Chamber. As soon as the new Judge appeared, defendants Saddam Hussein and Barazan Ibrahim created pandemonium inside the courtroom. This undermined the discipline and order that should prevail in courtrooms. Defendant Saddam Hussein interrupted several times the hearings with comments and speeches that had nothing to do with the subject of the trial. During the session of 1/29/2006, he threatened witnesses who were present, while Barazan Ibrahim spouted improper words to the judicial panel and described the Tribunal as a "whorehouse"!! He even spit at one of the courtroom attendants. His facial expression and movements betrayed some "crazed emotions."

For the sake of order, the Tribunal decided to expel him from the courtroom pursuant to the provisions of Article 158 of Criminal Procedures Law No. 23 of 1971, and Rule 52 of Procedural and Evidence Gathering Rules. It was also resolved to evict the Jordanian lawyer from the courtroom, by virtue of Rule 52 of Article 153 of Criminal Procedures Law, because he was making a ruckus, giving provocative speeches and heckling against the Tribunal and the Iraqi people in general,.

From the outset, the Tribunal provided television screens to display the court proceedings in the lateral rooms that pertain to the defendants, thereby enabling them to follow directly the trial proceedings through those television screens and to communicate with their attorneys through these screens also. Yet, at the following hearing, the Tribunal had to explain to them what occurred during the session as they were expelled from the main courtroom. Another time, on July 29, 2006, defendant Saddam Hussein shouted "down with the Americans, down with the traitors" without court authorization and in a state of excitement. He was joined afterward by the defense lawyers. As a result, the Tribunal had to expel him from the courtroom pursuant to the provisions of Article 158 of the Criminal Procedures Law.

Security Aspects for the Defense Attorneys

The defendants' attorneys requested several times on December 5 to stop the trial proceedings in light of the security situation.

At the beginning of the trial proceedings, the Tribunal panel, in coordination with those concerned in the trial, provided secure housing for all of the defense and individual rights lawyers as well as for the court-appointed attorneys throughout the trial and even adjournment periods. The Tribunal also provided secure means of transportation to the attorneys who attended the trial proceedings and who had to come from Amman. However, even though they were aware of the security situation and of the secure transport put at their disposal, the defense attorneys did not adhere to the procedures and instructions in this regard. Security personnel were continuously baffled. While they were at the ready to drive the lawyers safely and take them to their residence within the green zone, said lawyers would come alone and sometimes without notifying the security party in charge of transport and security. This disconcerted security personnel and created much greater difficulties in terms of waiting and individual transportation. The result was that time, efforts and energy were wasted, and much hardship ensued because the defense attorneys refused deliberately to adhere to security protocols. Moreover, the Tribunal's administration

provided similar housing solutions to the defense attorneys as those pertaining to the judges, the defense bureau's attorneys, and the prosecutors, setting up permanent housing in the green zone. Unfortunately, none of the defense attorneys accepted this proposal. Despite the protests of the Tribunal's administration, they accepted a less strict security system. The Tribunal notes that the defense attorneys have refused to abide by the security procedures. They continued to appear on television, despite the protestations of the Tribunal. Moreover, they have undermined the safety and endangered the life of the court-vested defense lawyers by disclosing their identities and names on the Internet and lodging accusations against them. In the course of the trial, three defense lawyers were killed, two of whom were from the court-vested defense bureau. The Tribunal expressed its regrets and sadness for the families of the three slain attorneys. The Iraqi government security authorities are continuing to investigate the murder of each of those lawyers and are keen on bringing those who perpetrated these crimes to justice. Despite the fact that the attorneys continue to boycott the court proceedings and do not show up before the Tribunal, yet never during the al-Dujail case trial were any charges proclaimed without the presence of one or more of the defense attorneys among the court-vested lawyers. By continuing their boycott of the trial sessions and the final hearings, and by not appearing before the Tribunal to present their final findings, the defense lawyers' timing is not helpful to their clients. The Tribunal, in accord with law and in order to bolster the rights of the defendants, asked the defense bureau's attorneys to present complete and thorough defense findings in conformity with the law.

Moreover, the defense lawyers have submitted requests and findings in the name of "His Excellency the President of the Republic," "His Excellency the President of the Revolutionary Command Council," "Mr. the President of the Intelligence Service," "Mr. the President of the Revolutionary Tribunal," so on, although the legal and judicial context entails stating that "there are defendants standing before the Tribunal," mentioning thus their names without any attendant titles or privileges. The lawyers were told several times that if those defendants did indeed have these titles at the present time they would not have been brought before this Tribunal, and there would be no need for submitting the aforementioned findings and statements!!! These findings would not be judicially satisfactory, whether in form or substance, because these lawyers appeared before the Tribunal as attorneys for the defendants. If these defendants kept their former qualities, they would not have given these lawyers the powers of attorney to defend them, and the reason for their presence before the Tribunal would not exist. With respect to law, those attorneys, as defense lawyers, had to submit these final findings to the Tribunal fifteen days at least prior to the set date for presenting them. Said lawyers did not adhere to that provision set forth in Clause Three of Rule 41 of Procedural and Evidence Gathering Rules governing the Criminal Tribunal.

Defense Attorneys' Requests

The Tribunal noted that it has received four preliminary petitions from the defense panel in the course of the trial. The first petition was submitted on January 5, 2005, requesting that the Supreme Iraqi Tribunal take extraordinary measures to protect the members of the defense team, their families, and the defense witnesses, or suspend the trial proceedings until such time when such protection is ensured, that is to say, requesting "invalidation in

order to stop the Tribunal's proceedings"!! The second petition, dated January 21, 2005, pertained to the legality of the Supreme Iraqi Tribunal, requesting "invalidation as regards the Tribunal's legality."

The third petition was submitted on January 29, 2006, requesting suspending all hearings of SICT until six conditions are fulfilled, requesting thus "invalidation leading to extraordinary suspension of the Tribunal's proceedings."

The fourth petition was presented on February 17, 2006, requesting that the Criminal Tribunal's Judge, Ra'uf Rashid, withdraw from the presidency of the Criminal Chamber given his bias, challenging thus the Judge's competence.

Moreover, Saddam Hussein's defense team alleged what Saddam himself repeated, pertaining to "the immunity of the President Saddam Hussein with respect to litigation for any putative actions against al-Dujail residents."

The Tribunal noted also the petitions of the defense attorney for 'Awwad Hamad al-Bandar and that of the defense attorney for 'Abdullah Kadhim Rwaid on July 6, 2006. They discussed the crimes listed in Article 12 of the Iraqi Criminal Tribunal Law, whereby the crimes set forth in that Article were not included previously in the Iraqi Penal Code, specifying that the Iraqi Criminal Tribunal cannot indict the defendants because crimes against humanity were not considered a crime pursuant to domestic law when the alleged acts mentioned earlier were committed. Although the Tribunal has previously discussed these repeated petitions, yet it does not see any issue with respect to the legality and jurisdiction of SICT in trying the defendants and issuing a judgment in light of the court transfer articles. Once the former regime fell, following the war between Saddam Hussein, who was the regime's President, and the coalition forces, which comprised several countries, and following the dramatic overthrow of the previous regime, replaced by the Ruling Council, the International Security Council enacted several resolutions concerning the situation in Iraq, including Resolution 203/1483, which was passed during the session of May 22, 2003, under No. 4761. Said Resolution stressed the right of the Iraqi people to freely determine their political future, while welcoming the commitment of all parties to freely determine the political future of Iraq, and encouraging the efforts made by the Iraqi people in order to establish a government that would represent them on the basis of the rule of law that will ensure equality of rights and permanent justice for all citizens, without consideration of Iraqi origin, of religion, or gender. Furthermore, it stressed the determination of the United Nations to play a vital role in providing humanitarian relief, rebuilding Iraq, and reestablishing national and local institutions which would represent the people. It also emphasized the need to have accountability for the crimes and outrageous acts perpetrated by the former Iraqi regime.

As for the competence and liabilities of the "occupying authority" the Council took note of the letter dated May 8, 2003, addressed to the Chairman of the Security Council, which includes permanent representatives from the United States, the United Kingdom (Great Britain and Northern Ireland) (S2003/378). It also acknowledged the responsibilities and commitments specified pursuant to international law governing these two occupying countries under one unified command. It also stated acting pursuant to Chapter 7 of the United Nations Charter and called upon member states and concerned organizations to

provide aid to the Iraqi people in their efforts to reform its institutions and rebuild the country, as well as in contributing to bolster stability and security in Iraq in line with this Resolution. Paragraph 9 of said Resolution states: “(The Resolution) encourages the Iraqi people, with the assistance of the Authority, to cooperate with the special representative in order to set up an interim Iraqi administration which as a transitional administration will be directed by the Iraqis until such time when the Iraqi people will establish a government that represents it, is recognized internationally, and will assume the Authority’s responsibilities.”

Paragraph 22 of the Resolution stresses the “importance of establishing an Iraqi government that is representative of the people and recognized internationally.”

This Tribunal noted Security Council Resolution No. 1546/2004, enacted during Session 4987 which convened on June 8, 2004.

The Security Council welcomes the beginning of the new phase on the way to the transfer in Iraq to a government that is elected democratically; it looks forward to the realization of this objective in order to end the occupation and for the interim Iraqi government to be autonomous and fully sovereign, as well as fully responsible and in control, by June 30, 2004.

The Council also stated that it “welcomes the commitment of the interim Iraqi government to work on establishing a united, democratic, pluralist and unified Iraq which fully respects political and human rights.”

This was in light of the two Security Council resolutions concerning reestablishing state institutions and a foundation for governance in Iraq after the total collapse of government institutions.

The Tribunal points to Resolution No. 1 of the Coalition Provisional Authority established pursuant to the aforementioned Security Council Resolution. In Section 1 pertaining to the Coalition Provisional Authority, we read the following:

1. The Coalition Provisional Authority shall exercise temporarily government powers in order to manage effectively Iraqi affairs during the transitory period, to restore security and stability, and to create the conditions that will enable the Iraqi people to freely determine their political future. Further, it shall enhance and bolster the efforts made for rebuilding and setting up national and local institutions to represent the people and facilitate the efforts made for the revival of the economic system, for reconstruction and for realizing sustainable development.

Paragraph 9 of the Resolution states that it supports the Iraqi people in helping the Authority by working with the special representative for the formation of an interim Iraqi administration which will be transitory in nature. The Coalition Provisional Authority was supposed to be a transitory Authority until full sovereignty is obtained. In light of the relevant Security Council resolutions and the establishment of an Authority in coordination with Iraqi public figures on December 10, 2003, the formation of a Ruling Council in Iraq was proclaimed, comprising national Iraqi notables. The Security Council recognized the Ruling Council by virtue of Resolution 2031511 dated October 16, 2003. In line with the

forementioned Security Council Resolution, the Ruling Council promulgated on March 8, 2004, an interim Constitution. Pursuant to said Constitution, “a road map was created in order to establish a permanent Iraqi government.” The Clauses therein stipulated the creation of an Iraqi Criminal Tribunal that shall govern crimes against humanity perpetrated under the former regime, following many complaints submitted to the Ruling Council in this regard. Pursuant to the enactment of Law No. 1 of 2002 for the creation of the Iraqi Criminal Tribunal governing crimes against humanity, and of procedural rules pursuant to the provisions of Article 16 thereto, this Tribunal’s judicial and administrative staff was formed. On June 28, the occupation of Iraq ended and a “sovereign Iraqi government” took over power in Iraq in line with the powers it was granted pursuant to the interim Constitution. On May 3, 2005, a new elected government replaced the interim government with full powers in line with the pertinent Security Council resolutions mentioned in the preamble of this Resolution. On October 18, 2005, Law No. 10 of 2005 was proclaimed SICT Law. The motive for said Law was “to disclose the crimes that were perpetrated in Iraq from July 7, 1968 until May 1, 2003 in order to set up the rules and penalties condemning the perpetrators of these crimes before a fair tribunal, and in order to establish a supreme Iraqi national criminal tribunal comprising competent judges to apply this law.”

Pursuant to the provisions of Article 16 of the Law, rules of procedure and gathering of evidence pertaining to the Supreme Iraqi Criminal Tribunal were enacted.

In light of the above and in order to prevent any suspicions or additional allegations in this regard, the Tribunal would like to explain that on December 10, 2003, the Iraqi Ruling Council, which was recognized pursuant to Security Council Resolution No. 1511, in its capacity “for embodying the sovereignty of Iraq during the transitory period until the formation of a representative government recognized internationally that will assume governance responsibilities,” said Council promulgated the Special Iraqi Tribunal Law which preceded the Supreme Iraqi Tribunal, which has the judicial power to try any Iraqi citizen or any resident of Iraq charged of perpetrating genocides, war crimes, crimes against humanity and other crimes, from July 17, 1968 until May 1, 2003, and which will be independent from the other tribunals in Iraq and from any government authority.

On March 8, 2004, the Iraqi Ruling Council promulgated an interim Constitution which was called TAL. Said Constitution created – among other things – a road map for the establishment of a permanent Iraqi government. It also stressed the enactment of the Special Iraqi Tribunal Law. On June 28, 2004, the occupation of Iraq ended, and a “sovereign Iraqi government” took power in line with the powers granted pursuant to the interim Constitution and Security Council Resolution No. 1483, 1511 and 1546. The interim government remained in power until May 3, 2005. During that period, it financed, supported and authorized the Iraqi tribunal to function. It thus appointed judges, established a budget for said tribunal, and supplied it with resources so it will be able to function. On May 3, 2005, an interim government elected by more than 60% of the Iraqi people replaced the first interim government. Further, interim government powers were established. The Iraqi interim government was recognized as an independent Iraqi government with full authority pursuant to International Security Council Resolution No. 1546. The interim government kept financing and supporting the Special Criminal Tribunal until such time when an elected permanent Iraqi government took power on May 20, 2006. And on October 18, 2005, the Special Iraqi Tribunal Law was revoked and Law No. 10 of 2005, SICT Law, was promulgated,

while all of the Tribunal staff remained, including the judges and the public prosecutors. It was stressed that every resolution or instruction passed by the “Special Iraqi Tribunal” in accordance with its law shall be legally binding and must thus be complied with, and the Supreme Iraqi Tribunal shall enforce it. Thus, in its rebuttal of the request of the attorney of defendant ‘Awwad Hamad al-Bandar regarding the legitimacy of this Tribunal and the law passed pursuant to that, the Tribunal letimitaly rejects this objection, given that Law No. 10 of 2005 was passed by a legitimate and elected government, and that 78% of the Iraqis approved the Iraqi Constitution in a national referendum three days before the enactment of Law No. 10 of 2005. Pursuant to Article 131 of said Constitution, the Tribunal “shall continue its activities as an independent judicial body and shall examine the crimes of the former regime and of its main public figures.” Hence, based on existing constitutional and legal facts, the objection of the attorney Badr Awad al-Badr regarding the Tribunal and its legitimacy is an invalid and inadmissible objection that has no basis in law.

As for the requests and objections of the defendants’ attorneys with respect to the Tribunal’s jurisdiction for examining crimes with international features, this Tribunal is Iraqi pursuant to Law No. 10 of 2005 and the procedural rules enacted in accordance with this Law. That jurisdiction includes the Tribunal’s administration, judges and judicial procedures therein, in line with Criminal Procedure Law No. 23 of 1971, and judicial practice in Iraq, with respect to examining crimes perpetrated by members of the former regime from June 7, 1968 until May 1, 2003.

This Tribunal takes notice of the academic study titled “International Criminal Law,” which describes, with respect to states, that change is gradual for rules and legal provisions that are relevant for national trials. Pursuant to the “Iraqi Penal Code” the national courts shall examine “criminal behavior allegations,” including those comprised in international legal practice. The concept of public tribunals, as described in Rome Statute of the International Criminal Court, provides clearly that “national courts have priority over international courts in ruling on such crimes.” The Supreme Iraqi Tribunal was founded on a self-evident and valid truth, which is that states preserve judicial power over crimes specified and recognized in international criminal law, as is the case for the crimes indicated and promulgated in accordance with national legislations.

Further, the Iraqi government came into power on May 20, 2006. It approved the Ruling Council resolution to establish an Iraqi tribunal that will have jurisdiction to try Iraqi citizens and non-Iraqis residing in Iraq who are charged with perpetrating war crimes, crimes against humanity, ethnic cleansing or any other crimes specified pursuant to Iraqi national law.

With respect to the objection pertaining to the immunity of the former head of state, defendant Saddam Hussein, and the findings submitted by the following attorneys, Khalil al-Dulaymi, the American Curtis Doebbler, the Qatari Najib al-Nouaymi, the Jordanian Ziyad Najdawi and the Egyptian Amin al-Dib, it was noted that the aforementioned person was the President of the Republic and Chairman of the Revolutionary Command Council enjoying immunity from any accountability for any action he has carried out, as such actions are considered to be those pertaining to the exercise of power functions. Yet all those attorneys and others who have brought up this objection during oral pleadings did not provide the Tribunal panel with any written “legal argument that is persuasive and effective, insofar as this will satisfy the requirements for bolstering the substance of this allegation.” Pursuant

to Clause 4 of the Interim Iraqi Constitution of 1970, Article 240 thereto, the Chairman of the Revolutionary Command Council, along with his deputy and Council members enjoy full immunity, and no legal proceedings may be instituted against any of them before obtaining the prior authorization of the Council, meaning the “Revolutionary Command Council.” Whereas this statement was made at a time in the past when the person in interest was influential and held the reins of power, no one would have dared request lifting the immunity thereto. This objection is thus unsound and without merit. The Tribunal panel rejects this objection based on two legal reasons. First: The crimes that this trial is concerned with are crimes against humanity, and anyone who has perpetrated such crimes may not claim immunity. Second: Assuming this claim for immunity exists, the actual Iraqi government has eliminated it with the fall of the regime, and the Judiciary has transferred the aforementioned individual, defendant Saddam Hussein, to this Tribunal under the charge of perpetrating such crimes.

According to the law and judicial criminal practice in effect or in conformity with international humanitarian law, this Tribunal is based on judicial precedents, namely the Nuremberg trials, whereby it is stipulated that “crimes against international law are perpetrated by individuals and not legal institutions.” Furthermore, the Constitution of the “International Military Tribunal” does not recognize “the immunity enjoyed at any time by public figures who are criminals.”

The Tribunal takes notice of the report of the UN Secretary General during the discussion of Article 7 of the International Criminal Tribunal for the former Yugoslavia. The international organization’s Secretary General remarked that “no individual may claim presidential immunity as a head of state if said individual has perpetrated common crimes, war crimes, or crimes against humanity.” The Secretary General stated that he believes “that any individual who has taken part in the planning, preparation or implementation of grave violations of international humanitarian law in former Yugoslavia or contributed in the perpetration of violations shall be personally liable.” The Secretary General recommended that “the law must include provisions that the allegation of immunity by the head of state or the claim that the actions committed by the defendant were in his official capacity shall not represent rebuttals and shall not reduce the sentence.”

These statements reflect the generally prevailing consensus that international standards have significantly revised the immunities that were formerly enjoyed by heads of state or senior government officials.

It is clear that since the Second World War, the sweeping immunities that formerly protected senior officials from “bills of indictment” are not automatically granted when they are charged with committing international crimes, including crimes against humanity.

SICT Law No. 10 of 2005 provides in Article 15 Third that “the official position of any accused person, whether as president of the State, chairman or member of the Revolution Command Council, prime minister or member of the cabinet, or a member of the leadership of the Ba’th Party, shall not relieve such person of criminal responsibility nor mitigate punishment. No person is entitled to any immunity with respect to any of the crimes stipulated in Articles 11, 12, 13 and 14 of this Law.

Fourth: A superior is not relieved of the criminal responsibility for crimes committed by his subordinates, if he knew or had reason to know that the subordinate had committed, or was about to commit such acts, and the superior failed to take the necessary and reasonable measures to prevent such acts or to refer the matter to the competent authorities for investigation and prosecution.

Fifth: The fact that an accused person acted pursuant to an order of the Government or of his superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

Sixth: Amnesty decrees issued prior to this Law coming into force do not apply to persons accused of committing any of the crimes stipulated in it.

Hence, the Supreme Iraqi Criminal Tribunal (SICT) shall be the national Tribunal and the international crimes shall be included within its jurisdiction in compliance with a principle that is firmly established in criminal law scholarship, which provides that “crimes perpetrated within the territory of a state shall be prosecuted within that state in confirmation of the territorial sovereignty of states.”

Moreover, there are well-established judicial principles which entail that “the territory where a crime was perpetrated is overall the best place for uncovering evidence.” In addition, “the legal system therein is known by the resident, citizen or defendant because he comprehends the language used; psychologically also, and given the gravity of these crimes which may have important repercussions on society where said crimes have occurred, the trial and legal proceedings will be conducted within view of the domestic community and under its protection. Moreover, it has the means of control thereto, and that may have a deterrence effect with respect to future or potential crimes.

As for the repeated requests by the defense lawyers regarding transferring the Tribunal outside Iraq, there is a deep-rooted principle in legal scholarship which states that “crimes committed inside a country must be tried within that country. This is based on the need to affirm territorial sovereignty.”

In accordance with international criminal law, the former president of the International Criminal Tribunal for the former Yugoslavia has stated this principle, which has important and practical implications. First: The country where a crime was perpetrated is in general better for finding evidence, and the legal system is known in general by the citizen, resident and defendant, because normally a language he understands is used; this also applies to the parties in interest at the trial. There is also a psychological reason, given the gravity of these crimes which may have serious repercussions on the society where these crimes have occurred. Furthermore, the court [sic; TN: This may be a typo for “trial” (“mahkamat” instead of “mohakamat”) as per above where the term “trial” is used in the same context] and legal proceedings will be within view of the domestic community and under its protection also. Moreover, it has the means of control thereto. Thus, the trial or any sentence arising from conducting said trial within the territory of the country that is affected by the crime will have a psychological and administrative impact, and such impact stemming from the trial proceedings may help society to comprehend what happened, in addition to understanding

the refutation elements with respect to the others; this may have a deterrence role with regard to crimes that may occur in the future.

In light of the above, the Tribunal panel confirms that Article 15, Paragraph 3, of SICT Law is unequivocal and is consistent with international common law which does not admit that a defendant may keep any kind of immunity, whether said immunity is based on the nature of the case in which it comes up, or whether it is based on the function of the person in interest when charged with any of these crimes, such as war crime, ethnic cleansing or crimes against humanity. Hence, with respect to this “al-Dujail case” trial, the allegations of defendant Saddam Hussein that he has immunity as head of state are inadmissible in fact. This is also the case as a matter of law, given that the current sovereign Iraqi government has revoked all immunities for the defendants before the Supreme Iraqi Tribunal.

Judge
Ra’uf Rashid Abdel Rahman

[Seal: First Criminal Tribunal Presidency;
Iraqi High Tribunal]

Judge
Ra’uf Rashid
President of the First Criminal Tribunal

Principle of Criminal and Penal Legality

(No Crime and No Punishment Without Written Law)

[TN: This seems to be the Arabic version of the Latin:

Nullum Crimen, Nulla Poena Sine Lege Scripta]

[TN: “Nass” نص in this context is translated as “written law”]

The defense lawyers, in particular the attorneys of defendants Saddam Hussein, Barazan Ibrahim, Taha Yassin and ‘Awwad al-Bandar, have raised objections with respect to violations by SICT Law of the basic principles that criminal law has established in most international countries, including Iraq.

The reasons that the defense team has mentioned in this respect are based on the principle of criminal and penal legality (no crime and no punishment without written law), and based on the principle of no retroactivity with respect to criminal law, which in reality ensues from the first principle.

Pursuant to the principle of criminal and penal legality, a person cannot be held criminally accountable for committing an act if the law does not stipulate that such an act is a crime. Moreover, said person cannot be imposed a sentence if such sentence was not specified already for said crime.

Further, the non-retroactivity of the criminal law means that criminal law does not have a retroactive effect. Its provisions solely govern the future. A person may not be penalized for an act for which no criminalizing or sentencing provisions existed when it was committed. In addition, said person may not be sentenced to a penalty that is more severe than the one that was resolved when the act occurred. In fact, the principle of criminal and penal legality (no crime and no punishment without written law), or what is sometimes called criminal legitimacy or criminal and penalties lawfulness, is one of the most important principles existing in the criminal law of many countries. It was recognized by most legal systems and was ratified in their constitutions given that it represents a guarantee for individual rights and one of the limitations to the power of the state. We may say that the enforcement of the principle of criminal and penal legality is contiguous to the principle of the rule of law governing the state.

The succeeding Iraqi constitutions, the last of which was the Permanent Iraqi Constitution of 2005, have incorporated that principle. Similarly, the Iraqi Penal Code No. 111 of 1969 has also stipulated that principle.

Pursuant to said principle, the source of criminal rule shall be legislation, that is to say, the legislative authority, which is the only authority that determines the actions or omissions that are considered criminal, and specifies the penalties thereto. In accordance with that, the written provisions that the legislative authority passes are the source of criminalization and punishment.

The defense team has argued that SICT Law violates this basic principle (no crime and no punishment without written law), and violates also the principle of non-retroactivity of criminal law, given that the acts for which their clients are charged in al-Dujail's case and that are set forth in Article 12 of the Tribunal's law, were not set forth as crimes in Iraqi law, and thus they may not be tried for these acts. Moreover, they questioned their criminal status, since the law that criminalized them was enacted in 2003 while the acts for which the defendants are accused to have committed go back to 1982. Articles 11, 12 and 13 of the Tribunal's Law have incorporated crimes of ethnic cleansing, crimes against humanity and war crimes. Said Law stipulated the competence of the Tribunal for trying the persons charged with perpetrating such crimes, whether they are Iraqis or residents in Iraq, during the period extending from 7/17/1968 to 5/1/2003. This Tribunal's Law has thus criminalized and penalized acts that did not represent crimes and were not penalized; such acts were prior to its entry into force, and that fact is inconsistent with basic criminal law principles.

These objections would have been very significant were they true. It is a fact that as individuals we have heard and, for some of us, saw perhaps a little or a lot about what said defendants have been charged with in terms of their non-compliance with the law and their neglect of the law when they were in power. Even if the judge is certain of what he heard or saw in terms of acts the defendants have been charged with, he cannot rule on the basis of his personal knowledge. Moreover, the defendant is innocent until proven guilty following a lawful trial. In addition, we cannot follow the same methods those prosecuted defendants are said to have resorted to.

Does the Tribunal's Law actually incorporate crimes that were not penalized? Is that Law in breach of the non-retroactive criminal law principle?

The answer to these two questions require that we answer another question, which is: Were the actions for which those defendants are accused, namely the killing, torture and detention of civilians without rightful cause, the expropriation of their lands, dredging their orchards and similar acts specified by the Tribunal's Law, legitimate prior to the enactment of said Law?

The answer to this question is quite obvious. These acts always constituted crimes pursuant to the laws of most, if not all, countries of the world, including Iraq. The Tribunal's Law, more specifically in this regard, did not make up crimes that constituted legitimate acts when the crimes of which the defendants are charged, those of killing, torturing and the like, occurred.

Nevertheless, there are other questions that remain without answer, namely: Were these acts set forth in law as international crimes (ethnic cleansing, crimes against humanity, war crimes) or crimes in Iraqi law and national laws of different countries only?

Is the principle of criminal legitimacy (no crime and no punishment without written law) applicable in international criminal law as is the case in the domestic law of each country? Is it not permissible in international law to punish only acts that international law has stipulated as a crime at the time these acts were committed?

The answer to these questions requires that we make more efforts in order to get to the issue's actual legality. In 1948, and more specifically on September 10 of that year, the Universal Declaration of Human Rights was promulgated. It was approved and proclaimed before the whole world pursuant to UN General Assembly Resolution No. 217 A (d-3). Article 11 (2) thereto provides that "No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offense was committed."

Said Universal Declaration is of the utmost importance for adopting and identifying the concept pertaining to the principle of criminal and penal legality and the principle of non-retroactivity of criminal law in international criminal law. The understanding of these principles pursuant to this Declaration is not limited to what the domestic laws of different countries prescribe as necessary, which is that the national laws of their countries must stipulate that the act is a crime and punishable at the time it was committed. The understanding of this principle in international criminal law extends to include also international crimes. The act or omission must represent an international crime and entails a penalty pursuant to international law. Further, such act or omission must also be considered an international crime at the time it was perpetrated, whether the root of this criminalization and penalization existed in international custom or in international treaties and agreements.

Our Tribunal believes that what was provided in said Universal Declaration is binding at least on the countries that are members of the United Nations. Iraq is a founding member of this international organization. For this reason, it is legally bound by the provisions and principles of said Declaration and there is no need for domestic laws to incorporate them.

This opinion is upheld by Article 15 of the International Covenant on Civil and Political Rights, which was adopted and submitted for signature, ratification and membership by virtue of UN General Assembly Resolution 2200A dated December 16, 1966, which entered into force on March 23, 1976. It was ratified by Iraq in 1971.

The aforementioned Article prescribed that:

1. "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.
2. "Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations."

It goes without saying that the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights are international in nature, and Iraq is bound by what was provided therein for the reasons we have mentioned earlier.

Nevertheless, we see in international criminal law that acts that are considered international crimes are apparently different from what is present in domestic law. The reason is that the basis of international law is the (unwritten) common law, while the principle of criminal and penal legality and what follow thereto did not arise and develop except in written law and following the logical outcome thereto. This principle does not cohere with common law. According to this principle, the act shall be subject to punishment if it is written in legislation. It is based solely on written law. Thus it is not possible to apply this principle to common law.

However, this does not mean that it is not at all possible to apply this principle in criminal international law. It is true that this law is originally common law (based on custom). Nevertheless, it is possible to implement it in this law in a way that is different from the one by which national laws are implemented. It is hard to imagine that international law comprises previous provisions by which crimes and penalties are described in the same way as domestic law, meaning that it is hard to have legal models identified with definite formulas in international criminal law because it differs in many ways from the internal law of various countries.

It is true that international criminal law and international humanitarian law have evolved towards codification, and great efforts have been made in that direction, especially following the Geneva Conventions and the Convention against Genocide, and recently after the ratification of the main statutes of the International Criminal Court (Rome Statute). Yet, the reality indicates that until now and to a large degree, namely with respect to crimes against humanity, ascribing criminal quality to the acts that are international crimes is done in the same way in which positive regulations of international law arise and develop in general, that is to say, by means of international custom. Moreover, determining crimes in international law is not as precise as what we find in the description of crimes in the national laws of different countries.

In order to know which acts are considered crimes in international criminal law, we have to rely on international custom, which is the main source of international law. On that basis, we are able to reveal the nature of the act and criminalize it.

On the other hand, particularly with respect to recent decades, we may see that the criminal nature of an act is described in writing in international criminal law. This is the case of crimes set forth in conventions, in particular the ones that it was agreed to call as enacted and binding conventions, even with respect to countries that did not sign them, ratify them or become members thereto, taking into account that the clauses of these conventions are originally international customary regulations known prior to their written formulation.

It bears noting that with respect to international crimes and others, conventional international law does not establish all international law regulations, as there are other international regulations whose basis is in enforceable international convention. Furthermore, customary international law establishes only legal regulations which were present and established pursuant to international convention [TN: “Oorf” عرف in Arabic, which can be translated as custom, practice, usage or convention; the term has been

translated interchangeably as “custom” or “convention,” especially in this section of the document].

It follows from the above that in order to consider some penal offenses punishable by international law it is not enough to refer to international conventions and agreements. We ought rather to rely in the first place on international common law. There is a class of acts whose criminal quality is derived directly from international custom, that is, without the intervention of conventional international law. Thus they are international crimes even though they are not written in a treaty or convention. An example thereto is piracy. For a long time, it has been considered an international crime according to international convention, even though prior to 1958 there was no agreement establishing its criminal nature. Similarly, there are transgressions committed against humanity which were considered international crimes before the conventional international law established its quality in the London Convention of 1945.

Once more, the question that comes to mind is the following: If the principle of criminal and penal legality is closely linked with legislation (written statute), does that mean that it does not apply in international criminal law, which is originally common law? Does that mean that what ensues from that principle, such as non-retroactivity of criminal law, the adherence to narrow interpretation, and disallowing comparison, does not apply to crimes of international nature?

This Tribunal believes that even though international law is originally common law, and despite the fact that the principle of no crime and no punishment without written law is closely connected to legislation, yet the requirements of justice, preventing injustice, and guaranteeing individual freedom all entail applying it in the context of international crimes.

However, does that principle apply in the international criminal area in the same way it is applied in the criminalization and penalization area in the (written) domestic penal code?

The answer to that question is clearly no. The reason is that the basic assumptions of both areas (international and domestic) are different. The idea of international crime and its definition differ in many ways from the idea of crime in national law. That does not mean that they are completely different. But they are surely different in some aspects we have mentioned earlier. Moreover, there is no legislative authority in the international community in the way it exists within a country. And the main source of international law is custom, while the sole origin of criminal law is legislation (written statute), except for the Anglo-Saxon system, which was and still is, to a great extent, based on judicial precedents. In other words, the concept of law is not similar in the national and international areas. Nationally, the law consists of acts passed by the legislative authority. Internationally, where there is no legislative authority concerned with enacting binding regulations, it is general and special agreements between countries that form the legal rules, besides the well-established international customary rules.

What is then the method by which we apply this principle in the area of international crimes? We apply it by establishing that the act or omission represents an international crime whose origin is not necessarily international treaties and conventions, given that the origin of most of these crimes is international custom. We have thus to make sure that there is an

international customary legal rule that criminalizes this act or omission given that it is an international crime, at the time when someone has been charged with committing it, or that (a legal basis) exists in an (enacted) general international treaty or in a particular international treaty in which Iraq is party.

Based on the above, we conclude that the principle of criminal and penal legality applies also to international criminal law. In international law, punishment may not apply except for acts which under international law were qualified as crimes at the time they were committed.

This issue has taken root, especially after the growing trend towards the codification of international law, in particular following Second World War, and continues to develop until now. One noticeable example thereto, as aforementioned, is what has been set forth in Article 11/2 of the Universal Declaration of Human Rights, as well under Article 15 of the International Covenant on Civilian and Political Rights, which was ratified by Iraq in 1971.

The broad interpretation of the principle of criminal and penal legality in international criminal law enables us to say that it is possible to hold to account and then punish anyone who perpetrates international crimes, even if they are not written down or if they are not promulgated as international crimes in domestic law. It is sufficient for the state to ratify an international agreement that provides that criminalization. This reasoning may validly apply to war crimes and ethnic cleansing crimes which were perpetrated in Iraq. Moreover, the punishment for these crimes, namely crimes against humanity, has its legal basis in international custom, which is elevated to the status of governing rule, and which is executed in various countries of the world without the need to have it written down in their national laws.

Whereas the charges lodged against the defendants in the case reflect the fact that they perpetrated crimes against humanity, our Tribunal stresses hereby that most if not all of the acts or omissions that are crimes against humanity are mainly crimes under public law. Furthermore, the Penal Code or domestic criminal legislation in all countries, including Iraq, prescribes their criminalization and penalization. They have been simply transferred from the domestic domain to the international one, with the need for having more basic elements for establishing them, given their universality, their nature and the fact that the protected interest thereto is not limited to the life, security, freedom, dignity and properties of human beings, so on, in a specific country. But this (protected) interest comprises all of the aforementioned elements for each human being in all countries that form the international community all over the world. These are crimes against man and humanity everywhere in the world.

It is true that before London Convention in 1945 there were no texts that tackled this class of international crimes, and there were no agreements to penalize crimes against humanity. However, international custom used to criminalize these. This was also the case for national laws, which criminalized them because they were domestic (internal) and not international crimes. Some of these countries began criminalizing them in their domestic laws given that they were international crimes (with the same specifications, bases and stipulations as found in international law). Besides, the trend in international law was towards the codification of those crimes.

Crimes against humanity, which are attributed to the defendants in al-Dujail's case are crimes that are known in international criminal law. Thus, the text providing for these crimes in SICT Law of 2005, and prior to that in the Special Criminal Tribunal Law of 2003, did not modify the nature of these crimes, which existed and still exist in international custom. Further, besides existing in the Iraqi law as domestic crimes, they were incorporated in the Baghdadi Penal Code and are incorporated in the Iraqi Penal Code No. 111 of 1969 as well as in the Military Penal Code No. 13 of 1940.

Anyone who is proven to have perpetrated an international crime, whether ethnic cleansing, war crimes, such as killing, torture, illegitimate detention, rape, theft, sabotage, destruction of properties, or issuing an order to others in order to commit a crime or to steal the assets of detainees, wounded and dead persons, or to overlook crimes that are stipulated in the Iraqi Penal Code, shall be guilty of perpetrating a crime set forth in Iraqi law, notwithstanding the fact that these acts are considered crimes pursuant to international common or conventional law.

In fact, most international crimes are considered concurrently as domestic crimes in the national laws of most, if not all, countries in the world. There is no country whose Penal Code does not criminalize the crime of murder, torture, kidnapping, illegitimate detention of persons, so on. For these crimes to move from the domestic realm to the international realm, and thus earn the quality of international crimes, all that is needed is the presence of additional elements relative to what the domestic law requires to become domestic crimes.

The acts for which the defendants are accused in al-Dujail case, if they are proven, shall be concurrently deemed international crimes and domestic crimes. Committing these acts shall be considered a violation of international criminal law and international humanitarian law. They shall also be considered a violation of Iraqi law (Penal Code No. 111 of 1969 and Military Penal Code No. 13 of 1940). In addition, these acts are considered a breach of SICT Law.

The prosecution of those who perpetrated crimes such as murder, torture, illegitimate detention, so on, given that these represent international crimes, including crimes against humanity, with respect to the defendants, will require the availability of additional elements than what the Iraqi Penal Code stipulates.

The specific competence of this Tribunal, pursuant to Article 1 (Second) and Article 14 of its Law, comprises in addition to its jurisdiction (competence) in prosecuting the defendants for committing international crimes stipulated in Articles 11, 12 and 13 of the Tribunal's Law, prosecuting the defendants for perpetrating crimes set forth in the following: Baghdadi Penal Code; Penal Code No. 111 of 1969; Law No. 7 of 1958 for sentencing those plotting against the security of the state and those who corrupt the regime; Military Penal Code No. 13 of 1940, and any other Penal Code that was in effect when the crimes attributed to the defendants were perpetrated.

Based on the above, the claim made by the defendants' defense attorneys stating that the Tribunal's Law violates the principle of no crime and no punishment without written law is legally invalid.

Even though our Tribunal is national and not international, it is entitled to look into international crimes, not because the Tribunal's Law, which is domestic, stipulated that, but also because either Iraq ratified international conventions incorporating international crimes as is the case with war crimes set forth in the Geneva Conventions of 1949 and the following appended protocols, and as is the case with ethnic cleansing crimes provided for in the Convention against Genocide of 1948, or because the rules of international criminal law do not only apply in Iraq but also in all international countries, and thus there is no need for their stipulation in the national laws of these countries. So there is no need to promulgate them as is the case for crimes against humanity, and even in the case of war crimes and ethnic cleansing, which are prohibited to begin with pursuant to international customary rules before being incorporated and criminalized by international convention texts.

Criminal international law may be applied through one of two methods, either by means of international courts, as was the case in the Nuremberg Tribunal, Tokyo Tribunal, the International Criminal Tribunal for the former Yugoslavia, and the International Criminal Tribunal for Rwanda, or by means of national tribunals, as is happening now in Iraq, and has occurred in England, Australia, France, Italy and Canada, and as has occurred also in Belgium when individuals charged with ethnic cleansing in Rwanda were prosecuted.

Furthermore, when we apply the principle of criminal and penal legitimacy we ought not to think from the perspective of a Penal Code specialist with a national viewpoint only. But we have to think along the lines of what coheres with international criminal law, which are originally international customary rules. These international crimes exist in international law, and criminal accountability thereto has become part of binding international custom, that is to say, has become international law.

This Tribunal believes that many crimes against humanity were considered that way prior to London Convention of 1945. International custom, since the Hague Convention of 1907, and perhaps before, used to consider some acts committed in war as crimes against humanity. Then the term "crimes against humanity" began to gain increasing prominence with the establishment of the International Military Tribunal in Nuremberg (Article 6/c of the Tribunal's Charter), and with the creation of the International Military Tribunal in Tokyo (Article 5/c of the Tribunal's Charter).

Prosecutions, especially those regarding Nazi German officers for the outrageous acts they committed during the Second World War, left a strong and important mark in legal thinking and in international criminal law. The UN Secretary General requested in October 1947, in a report he presented to the UN General Assembly, that the principles that were established in the prosecution and punishment of German war criminals be incorporated in international law. Moreover, the United States presented in November of the same year a draft to the UN General Assembly requesting the creation of an international organization that will adopt the Nuremberg principles and will formulate them in a code that will specify punishable crimes that interfere with peace and the security of humanity. This draft was unanimously approved.

In 1948, the Convention against Genocide was ratified, and penalties thereto were adopted, even though genocide had been incorporated in the definition of crimes against humanity earlier on. The criminalization of genocide, according to this Convention of 1948, means that the crime has become part of written international law since then.

In 1950, a report by the UN International Law Commission stated that crimes against humanity are crimes pursuant to international law, whether in time of war or in time of peace. Despite the report's important points, we agree with those who are of the opinion that this is not sufficient to create an international conventional basis that criminalizes acts that constitute crimes against humanity during a time of peace.

This Tribunal believes that crimes against humanity during a time of peace have become part of international customary law after the entry in effect on November 11, 1970, of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (See Article 2 of this Convention). This is also the case for the Principles of International Cooperation in the Detection, Arrest, Extradition, and Punishment of Persons Guilty of War Crimes and Crimes against Humanity, 1973. We see in the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, and in the Principles of International Cooperation in the Detection, Arrest, Extradition, and Punishment of Persons Guilty of War Crimes and Crimes against Humanity, and in previous agreements, stable positions and the fact that domestic and international authorities are guided by them. These are used frequently, which shows that these principles are taken into consideration and have become akin to binding legal rules and form an implicit agreement involving countries in general. For a great number of countries and international organizations, they have become actually explicit agreements which are embodied in the form of conventions, treaties, and adopted legal principles prescribing certain behaviors, pursuant to these principles and the initiative of those countries that accept such principles without objection. This confirms the stability of the regime which stems from the customary rule that is founded on implicit or compulsory assent... Following these points, the Tribunal is confident with respect to international convention, which considers crimes against humanity in time of peace, and which has become binding international conventional rules prior to the nineteen seventies.

The fact that international custom has criminalized acts that constitute crimes against humanity during a time of peace prior to 1973 can be seen on the basis of material and moral international convention elements. The material element was available through repeated precedents which constitute the continuing stand of countries, international judiciary and the UN. This was embodied in Nuremberg and Tokyo trials, as well as in the efforts of the United Nations and the report of the International Law Commission therein. Similarly there is the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, and the adoption by the UN General Assembly of the Principles of International Cooperation in the Detection, Arrest, Extradition, and Punishment of Persons Guilty of War Crimes and Crimes against Humanity. This reflects, on one hand, the existence of stable international positions, and thus the available material element concerning the convention. On the other hand, this shows that states, the international judiciary, the international organization, and international law jurists have become more convinced that during these three decades these principles have become binding. They represent henceforth international legal rules that must be complied with in the criminalization of acts representing crimes against humanity. The proof of that is that states, international tribunals and international organizations, have each time during that time period found themselves bound to comply with these principles that criminalize these acts in time of

peace, and find it necessary to abide by them. This conviction has become well-established with the successive precedents and events throughout those years.

This Tribunal believes also that international convention with respect to crimes against humanity during the time of peace has become established later on with the enactment of the Statute of the International Criminal Tribunal for the former Yugoslavia in 1993, of the Statute of the International Criminal Tribunal for Rwanda in 1994, and of the International Criminal Court Statute (Rome Statute) of 1998, as well as recently the enactment in 2003 of the Iraqi Criminal Tribunal Law which oversees crimes against humanity, and the Supreme Iraqi Criminal Tribunal Law of 2005.

We may say now with full confidence that crimes against humanity have become part of international law, whether in time of peace or in time of war.

The question that comes to mind now is whether there was international convention in 1982 which prescribes the criminalization of acts and omissions that are considered crimes against humanity in time of peace. In the opinion of this Tribunal, the answer is affirmative. Such international convention existed at that time. Nevertheless, Article one of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 1968 has settled that issue when it stipulated: "No statutory limitation shall apply to the following crimes, irrespective of the date of their commission." And in Article 2/b of the same Convention, we have the following:

[PART 2]

“Crimes against humanity whether committed in time of war or in time of peace as they are defined in the Charter of the International Military Tribunal, Nuremberg, of 8 August 1945, etc.” [TN: This is from Article 1/b of the Convention]

There was some disagreement with regard to considering the statutory limitations on past crimes part of international customary law, although most jurists are of the opinion that those crimes have become connected with the peremptory norms of international law (*Jus Cogens*), and thus statutory limitation does not apply thereto. Rather, any state may resort to the idea of international competence in order to prosecute those crimes, irrespective of the place and time when these crimes were perpetrated. The Iraqi Criminal Tribunal Law has affirmed this viewpoint, as Article 17 (First) provided that statutory limitation shall not apply to invalidate the criminal trial and punishment for crimes that fall under the Tribunal’s jurisdiction and set forth in Articles 11, 12 and 13 of this Law.

We recognize that Iraq did not ratify the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity prior to 1982, nor afterward, and that the text of Article 17 (First) had been enacted first with the promulgation of the Special Iraqi Tribunal Law in 2003, and then of the Supreme Iraqi Criminal Tribunal (SICT) Law of 2005. However, we still believe that most international conventions, namely the ones legislated (general international conventions) were actually a codification of a prior binding international custom. Thus we see that Iraq is bound thereto. If they are not considered a (legislated) general international convention, they comprise at the very least binding customary rules. The first Article of the aforesaid Convention is clear and explicit in ways that do not require jurisprudence with respect to the invalidation of statutory limitations concerning international crimes, including crimes against humanity, regardless of when these were committed. In other words, crimes against humanity in time of peace existed in international custom prior to 1982, and exist also as written provisions in the aforesaid Convention of 1968. These written provisions are in fact the codification of prior international custom.

To summarize the preceding discussion, we can say that the war crimes set forth in The Hague Conventions of 1907, and the legal norms that criminalize them, are originally international customary norms. This is also the case for the war crimes provided for in the Geneva Conventions of 1949. And Iraq has ratified these Conventions on February 14, 1956. As for ethnic cleansing crimes, they have become part of the (written) international treaty law pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, and Iraq has ratified said Convention on January 20, 1959. Further, crimes against humanity have become well-established and part of international customary law, whether in time of war or peace. In 1971, Iraq ratified the International Covenant on Civil and Political Rights of 1966, which came into effect on March 23, 1976. Article 15 (2) of said Covenant stipulates that “Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.” In conformity with Article 38 of the Charter of the International Court of Justice, we see a complementary source that is derived from international law sources.

Principle of Penal Legality

With respect to the objection stating that the Tribunal's Law violates the principle of penal legality because a punishment may not be meted out unless it is written in law, the same rebuttal regarding the legality of crimes may be stated with regard to penal legality. International crimes, including acts that constitute crimes against humanity are for the most part crimes that are originally punishable in the Iraqi Penal Code No. 111 of 1969 and in other penal codes. Anyone who reviews the texts of these laws will realize that these crimes, such as murder, torture, so on, are penalized in the same legal texts that criminalized such acts.

Article 24 of SICT Law referred to Penal Code articles in order to select the penalties that are appropriate for each crime set forth in the Tribunal's Law. This confirms the principle of criminal legality, given that these are originally crimes, most if not all of which constitute acts that are criminalized in Iraqi national law and in the Penal Code of 1969. The indication of the penalty for those crimes in that Code and in other penal codes is an application of the principle of penal legality, since there is nothing that prevents a law from imposing penalties set forth in another law, if the law that criminalizes such acts stipulates that. The examples thereto are many, even in national penal codes.

Moreover, Article 24 (Fifth) of the Tribunal's Law, guided by judicial precedents and international tribunals' rulings regarding punishments imposed on those accused of perpetrating the crimes set forth in the Tribunal's Law, confirms also that said Tribunal's Law does not violate criminal legality. The reason is that the imposition of punishments for international crimes by international courts, in case international custom elements are present, may constitute a binding international custom that can be enforced in national courts that oversee international crimes.

The absence of provisions in international treaties and conventions as well as in the statutes and laws of international criminal tribunals with respect to punishments imposed on those who perpetrated international crimes does not mean that there is no binding international custom for international criminal tribunals to impose punishments on those who perpetrated these crimes. Otherwise, what would be the benefit of having a legal text criminalizing these acts and considering them international crimes if they are not penalized?

The application of the criminal legality principle does not mean necessarily that the legal text concerning the punishment is correlated with the legal text pertaining to the crime in the same legal text. Even within national law we find some laws that contain provisions criminalizing specific acts. We also find the punishment for such a crime in another legal text, either in the same law or in another law. It seems logical that penalties contained in the national Penal Code be imposed on perpetrators of international crimes, especially that the same crimes or most of them are provided for in national law and are criminalized in international law.

This is what has been done by many international criminal tribunals' laws, and what has been stipulated in Article 24 of SICT Law.

Most of the crimes for which German leaders were judged in Nuremberg are penalized in the Penal Code of every civilized nation. They are also penalized in international criminal law pursuant to the provisions resolved in international treaties and conventions, besides international custom.

International criminal courts have imposed penalties set forth in national penal codes on the perpetrators of international crimes. If these courts believe that they must be followed and become binding, one may consider that as a binding international penal custom. Moreover, most often the laws or charters of international criminal courts stipulate the imposition of penalties set forth in national laws against the perpetrators of international crimes. This is supported by many examples.

The development of international criminal law gives legitimacy to the supreme criminal court law because that represents the final outcome of the peremptory situation pertaining to international penal legislation and its application, not only by international criminal tribunals but also by national criminal courts, which also examine international crimes. This state of affairs has become well-established in confronting those who have been proven guilty in committing international crimes and who want to escape criminal liability under the pretext that the Tribunal's Law violates the principle of penal legality.

The objection that the Tribunal's Law is in breach of the principle of penal legality, based on concepts and procedures provided for in national penal codes, in order to apply this principle and avoid the punishment of international crimes' perpetrators, said objection clashes with the spirit and letter of the Tribunal's Law.

We mention here what has been stated before, which is that we ought not to reason along the lines of a penal code expert on the basis of national considerations only. Our Tribunal applies in the first place a law that includes international crimes. It also incorporates some (domestic) crimes set forth in the Iraqi Penal Code before the enactment of this Tribunal's Law.

Principle of Non-Retroactivity of Criminal Law

The defense team has challenged also the Tribunal's Law of 2003, and that of 2005, which incorporates provisions that criminalize and penalize ethnic cleansing crimes, crimes against humanity, and war crimes, stating that this violates the principle of non-retroactivity of criminal law, considering said Law subsequent to al-Dujail's events of 1982. This objection is unsound. The reason is that the criminalization of these acts was established before the enactment of the Tribunal's Law in 2003. It was established pursuant to international custom and by virtue of international treaties ratified by Iraq. It was also established pursuant to the Baghdadi Penal Code, the Penal Code No. 111 of 1969, the Military Penal Code No. 13 of 1940, as well as other Iraqi penal codes. We may thus say that the Tribunal's Law is only revealing the criminal quality of these acts and not created thereto. It transferred these crimes from the international arena, where it existed and still exists, to the national domain. In other words, it has incorporated what exists in international criminal law, which law criminalizes such acts that constitute international crimes. Domestic law has

provided for these crimes based on the theory of reception which is well-known in international law.

The principle of non-retroactivity for criminal law is complied with in order to prevent injustice and protect the innocent. However, resorting to it without valid legal reason in order to exonerate perpetrators of international crimes from any criminal liability is a denial of justice and consecration of injustice.

What the Tribunal's Law has stipulated by criminalizing acts constituting ethnic cleansing crimes, crimes against humanity and war crimes, does not mean that said Law violates the principle of criminal law's non-retroactivity. Notwithstanding the fact that these acts are criminalized in the Iraqi Penal Code No. 111 of 1969, the Military Penal Code No. 13 of 1940, as well as other penal codes and domestic laws, international custom and international treaties, which Iraq ratified or those it did not, consider said acts international crimes punishable by international law. Said acts existed in international law before being ascribed to the defendants in the case of al-Dujail in 1982. The provisions of Article 11 (2) of the Universal Declaration of Human Rights and Article 15 (2) of the International Covenant on Civil and Political Rights of 1966, support that opinion. Iraq is obligated pursuant to international customary law, international treaty law, international criminal law, as one of international law divisions, international humanitarian law, and the Tribunal's Law, to prosecute the defendants for the perpetration of crimes against humanity in al-Dujail's case, and to hold them criminally liable thereto in case it is proven that they have committed such crimes. The prosecution of said defendants pursuant to Articles 11, 12 and 13 of the Tribunal's Law does not contradict the principle of non-retroactivity of criminal law, because the crimes for which they are charged existed in international criminal law prior to 1982.

Concerning the formation of the Supreme Iraqi Criminal Tribunal (SICT), the procedures adopted therein, and the fact that it is based on SICT's Law passed first in 2003 and then in 2005, and the fact that the crimes for which the defendants are accused go back to 1982, we may say that this argument pertains to formal or procedural aspects that have no relevance to the principle of non-retroactivity of criminal law. Procedural provisions, on the day they are promulgated, shall in principle become valid for events that occurred before or that occur after they come into force, until such time they are amended or revoked, replaced by new procedural provisions. Criminal procedural laws are laws that outline the formal rules for organizing investigative and trial measures in order to eventually reach an objective judgment, either punishing the offender, releasing the defendant or ruling in favor of his or her innocence. Punishment, discharge and innocence belong to substantive rulings, while the methods and procedures that lead to that belong to formal principles.

The principle of non-retroactivity of criminal law relates to the substantive aspect of criminal law, which is criminalization and punishment, and is not relevant to the formal or procedural aspect. The creation of the tribunals, including SICT, and the procedures adopted therein, relate to that procedural aspect. The legislator may at any time establish tribunals he believes are necessary to achieve justice and assert state sovereignty, or to [TN: most likely a typo; the Arabic word in the text is "haffaha" حففها which means "rub" or "surround" or "scrape off" and doesn't make sense in this context; the context implies "using" those tribunals] use these tribunals for punishing those who have perpetrated these crimes, whether they are provided for in national law or in international law. Further, the legislator

may at any time modify the formation of the tribunals or amend the procedures adopted in the investigation and prosecution in ways that would provide guarantees and rights for the defendant, as well as guarantees and rights for the remaining lawsuit parties, including the establishment and elimination of tribunals, the modification of their formation, and changes with regard to their specific jurisdiction, as well as to their competence in terms of location and time. All of these procedural provisions, starting from the day they are promulgated, shall be valid with respect to prior and subsequent events, until they are amended or revoked.

Conclusion

The conclusion we have reached is that while we ought to recognize the principle of non-retroactivity of (substantive) criminal law, and while we believe that punishment in accordance with international criminal law does not apply except on acts whose commission or omission are considered crimes at the time they are perpetrated, the source of the description pertaining to those acts is absolutely irrelevant afterward, whether it was resolved by international treaties and conventions, or by international customary law. What is important in international criminal law is that the act be criminalized in that law at the time it was committed. It is irrelevant afterward that the description of the international crime be resolved pursuant to a written legal rule by means of international treaty law or resolved by virtue of international customary legal rule.

It follows that if international treaty law has provided for criminalizing an act after it was committed, the text pertaining to the criminalization in that case reveals the formation long time ago of international custom regarding what has been provided in that text. Hence, this international custom shall be in force for acts that were incorporated in the aforesaid text. Nothing in this contradicts in any way the principle of non-retroactivity of criminal law, because in this case the act was described as criminal in international law at the time it was committed. This is what happened when the Tribunal's Law was passed. The criminal acts it incorporated were described as criminal according to international law when they were committed in 1982, and actually much earlier. These were criminal acts since 1907, 1945, 1948 and 1949 as regards war crimes and ethnic cleansing, and from the mid-nineteen-seventies, if not earlier, for crimes against humanity in time of peace. And certainly that occurred earlier in the case of crimes against humanity in time of war.

Based on the above, the argument that the Tribunal's Law violates the principle of criminal and penal legality and the principle of non-retroactivity of criminal law represents an objection that has no valid basis in law. Thus the Tribunal rejects it entirely and categorically.

Discussion of the Evidence Available in the Lawsuit before the Defendants and Tribunal's Decision

First off, we have to point out that the members of the Tribunal's Panel have agreed to convict the defendants who have been charged, although the opinions of some members differed from those of others with regard to grounds of conviction and the legal reasons thereto, even if the outcome is the same. Thus, given the absence of any legal obstacle, the Tribunal will mention all opinions pertaining to basis of judgment.

Before examining and discussing the available evidence concerning the crimes that any of the defendants have been charged with in this case, we ought to mention that we will be following a uniform approach for all defendants with respect to the terminology required by the review of available evidence against each one of them. This shall take the following form:

1. Disclosing the type of charge or charges that the Tribunal has leveled against the defendant, and disclosing the elements of the crime or crimes that the defendant is charged with committing.
2. A summary of the statements given by complainants and witnesses who have testified against the defendant in the course of the investigation and trial.
3. A summary of the defendant's objections during the investigation and trial.
4. A summary of the statements given by the defense witnesses for the defendant.
5. The questions that were raised in the above paragraphs and which require the Tribunal's answers and arguments thereto.
6. Establishing whether there is available evidence against the defendant, and showing this evidence in case it is available.
7. Determining the legal quality of the act or acts for which the defendant ought to be convicted in case there is sufficient evidence to convict him; determining the reasons that require discharging the defendant if there is no sufficient evidence to convict him; or determining the reasons for ruling that he is innocent if it cannot be proven that the defendant has committed any crime that falls under the jurisdiction of the Tribunal, or if there is no evidence or presumption that he has perpetrated any crime.

We will now discuss the available evidence, whether it is confirming or refuting the evidence for each of the respective defendants in this case:

[TN: Three illegible signatures, with the word "member" under each]

[Seal: Iraqi High Tribunal; First Criminal Tribunal Presidency]

First: Defendant ‘Awwad Hamad al-Bandar

Charge Against Defendant ‘Awwad Hamad al-Bandar

On May 15, 2006, this Tribunal has charged defendant ‘Awwad Hamad al-Bandar with willful killing as a crime against humanity, which agrees with the provisions of Clause (a) of Paragraph (First), Article 12, of SICT Law No. 10 of 2005, and is in line with Article 15 (First, Second, Third), and Article 24 of said Law.

Legal Requirements for the Crime of Willful Killing Becoming a Crime Against Humanity

For the crime of deliberate murder to constitute a crime against humanity the following elements must be present:

1. The offender must have killed one person or more.
2. The behavior must be part of a large-scale or systematic assault against civilian residents.
3. The offender must know that the behavior is part of a large-scale or systematic assault directed against civilian residents, or must have in mind that such behavior is part of said assault.

For the first element to exist (the killing of one or several persons by the offender, and his causing that) the criminal element of (aggravated) deliberate murder must exist, coupled with premeditation or circumstances where there are several victims or both. Thus there must be a criminal behavior that the actor or partner commits. This behavior constitutes murder or causes murder. A criminal outcome must also be present, reflected in the death of the person(s) wronged, as well as a causal relation between the criminal result that occurred and the criminal behavior reflected in the act of killing or causing the killing. If these elements are present, the material element of murder will be established. However, that is not sufficient for the presence of deliberate murder. We must also have the mental element for deliberate killing, which implies that the offender must have criminal intent. This requires the presence of two elements in the offender, those of knowledge and volition, given that criminal intent is the will to realize the criminal event coupled with the knowledge of the constituting elements thereto.

The presence of premeditation in international crimes is established in general on the basis of joint preparation and preplanning for the sake of committing the crime (planning, agreement and preceding period), and through self-composure, which can be recognized from several facts, such as the length of the period separating preparation and planning from the perpetration of the crime.

For the second element of willful killing to constitute a crime against humanity the offender’s behavior must be part of a large-scale or methodical assault against civilian residents. This demands that the behavior of the offender (concerning murder) be part of a large-scale assault or part of a methodical assault or both, and that the proving elements regarding the large-scale or methodical assault be many, including the accumulation of violent acts that

may vary in nature and gravity, or that officials be directly implicated in perpetrating several crimes, or that a well-known policy targeting a specific community exist and that senior political or military officials be involved, so on. Further, an assault directed against a group of civilian residents means pursuant to Article 12 (Second/a) a planned conduct that involves the repeated perpetration of acts stipulated in Clause (First) of said Article, entailing herein an act of murder that targets any group of civilian residents following a policy by the state or an organization that requires carrying out such an assault or bolstering such a policy.

For the third criminal element of deliberate murder to constitute a crime against humanity, the offender (concerning murder) must know that his behavior is part of a large-scale or methodical assault directed against civilian residents, or the offender must intend this behavior to be part of said assault. What is meant by “intend” here is that the offender must have the volition that his behavior be the execution of the act of killing, given that it is part of this assault. In this case, the presence of volition in the actor requires first the presence of the element of knowledge, as the element of volition is subsequent to the element of knowledge. At any rate, the killer’s knowledge or intent requires that his behavior be part of a large-scale or methodical assault against a group of civilian residents. This fact must be present and proven. Similarly, the killer’s criminal intent must also be present and proven. This demands the existence of both elements, those of knowledge and volition, in carrying out the criminal event constituting the killing.

In this regard, this Tribunal adopts the standards and concepts that the international court has endorsed in prosecuting people who are responsible for committing grave violations of international humanitarian law in former Yugoslavia, as in the case of Milorad Krnojelac, for which a ruling was issued on March 15, 2005. In line with this ruling, the following elements comprise the general conditions that must exist in order to effectively have a crime against humanity:

1. An assault must take place.
2. The offender’s actions must be part of the assault.
3. The assault must be directed against a civilian community.
4. The assault must be widespread (large-scale) or organized (methodical).
5. The principal actor must be aware (know) the general context in which his acts are occurring, and be aware (know) that his acts are part of the assault.

This Tribunal has defined assault to be a manner of behavior that comprises carrying out violent acts. Further, the notion of assault is distinct and independent from the notion of armed conflict. In practical terms, assault may continue after the armed conflict, or it may precede it, or it may accompany it. It is not necessarily part of it.

Moreover, the defendant’s acts must materially be part of the assault against the civilian community, even if they were not carried out at the height of the assault. In addition, these acts must not be isolated, but must represent part of the assault. Nevertheless, it is possible to take into consideration a crime that was carried out a few months later or at a distance of several kilometers from the location of the main assault against the civilian community, when there is a close relationship that makes it part of said assault.

Further, the defendant's acts must have caused civilian victims, and the assault must target the civilian community. The community will be considered civilian even if there are non-civilians in its midst. Simply put, the community must for the most part be civilian. The definition of civilian is a broad one, since it comprises persons who at one point have carried out resistance actions, as well as persons who were not involved in combat during the perpetration of the crime.

Additionally, the acts that are part of the assault must be either widespread or organized (methodical). The widespread feature includes the nature of a large-scale assault and the number of victims, while the systematic (methodical) assault points to the deliberate nature of the violent acts, and the non-likelihood of their spontaneous occurrence.

This Tribunal further agrees with what was set forth in the ruling of the International Tribunal for the former Yugoslavia promulgated on 3/15/2005, whereby there is no clause in international custom that indicates that the acts of the defendant and "the acts of those who are criminally liable thereto" must be connected with a policy or a plan. Nevertheless, this plan or policy may be related to the stipulation requiring that the assault be large-scale or organized (methodical), and for the defendants' acts to be part of the said assault. This is what Article 12 (Second/a) of SICT Law No. 10 of 2005 has specified, whereby the expression of assault targeting any group of civilian residents means a behavior pattern involving the repeated commission of acts set forth in Clause (First) of said Article against any group of civilian residents following the policy of a state or organization instructing the execution of such an assault or shoring up such a policy.

This Tribunal is convinced that in accordance with the aforesaid Court's ruling, in addition to the existence of criminal intent for perpetrating the crime, the defendant must be aware that the assault targeted a civilian community, and he must also know that his acts are part of said assault, or at least assume the responsibility that it is part thereof. At any rate, this does not mean that he must know the details of the assault. It is sufficient that, through the acts or the duty that he accepted willingly, he knows that he will be liable for taking part in carrying out said assault.

Naturally, the argument for the existence of these elements and factors following these concepts and standards requires examining whether these were present in the case of the defendant who is charged of committing the crime. This entails examining the extent to which there is corroborating evidence that perpetrating the crime constitutes a crime against humanity for the defendant responsible for committing such a crime. In other words, we ought to find out whether there is evidence or inference that establishes that the defendant has committed the crime(s) attributed to him. If there is evidence thereto, will that be sufficient to convict him according to the charge that is attributed to him? If the evidence is not sufficient to convict him for the charge attributed to him, will it be sufficient to convict him for another crime?

Summary of Witness Statements Against Defendant 'Awwad Hamad al-Bandar

One of the (protected) complainants stated before the Tribunal, during the sixth hearing session which took place on 12/21/2005, that he was not tried before the (abolished) Revolutionary Court, and that he did not appear before any court. Yet, his name was included among those against whom the (abolished) Revolutionary Court had issued a capital punishment ruling on 6/14/1984. At that time he was detained in the desert complex of Lea. This same complainant had given the same testimony in his written deposition before the Investigative Panel on February 3, 2005.

Another (protected) complainant testified before the Investigative Panel on May 26, 2005, that he did not see the (abolished) Revolutionary Court, and did not appear before it. He stated also that he was not prosecuted by said Court. Nevertheless, his name appeared also with that of persons against whom the said Court promulgated the death penalty, while he too was detained in the desert complex of Lea when Case 944/c/1984 was heard and when the ruling was issued on 6/14/1984.

Yet another (protected) complainant stated in his written deposition before the Investigation Judge at SICT on 2/6/2005 that “my son (...) was with me in 1986 and was not sentenced to death, while the capital punishment ruling promulgated in the trial referenced 944/c/1984 indicates that my son... was listed among those who were sentenced to death, although he was not executed and was with me; in 1987 he was drafted for military service and was killed in the war in 1988.”

Summary of the Objections of Defendant ‘Awwad Hamad al-Bandar and his Attorneys during the Investigative and Trial Stages

Defendant ‘Awwad al-Bandar denied the charges this Tribunal leveled against him. He stated that he only did what any judge in a court of law would do when evidence is available against suspects. As the president of the (abolished) Revolutionary Court, he stated that he complied with all legal procedures when said Court prosecuted 148 suspects transferred before his Court from the National Security Department at the Office of the Presidency in order to be tried for the attempt to assassinate the former President of the Republic, defendant Saddam Hussein, in 1982, during the Iraq-Iran war. He stated that he had assigned a defense attorney on their behalf, and after a two-week trial, the Tribunal reached a verdict sentencing all of them to death because it was established that they attempted to assassinate a former head of state and they belonged to the Dawa party. This was part of the trial referenced 944/c/1984. The conviction ruling and the verdict were promulgated on 6/14/1984. He added that he returned the case’s records to the Office of the Presidency (National Security Department), which submitted the verdict to the former President of the Republic, defendant Saddam Hussein, who in turn ratified the judgment. A presidential decree thereto was issued on 6/16/1984, after which the death sentence with respect to the civilians was carried out. Further, defendant ‘Awwad al-Bandar testified also before the Investigative Panel on 1/25/2005 and on 2/28/2005, as well as before this Tribunal on 3/13-14/2006 that he conducted the trial of the suspects together, who comprised 148 al-Dujail residents, by placing them inside and outside the dock. Defendant ‘Awwad al-Bandar and his attorneys denied handing down the death sentence for minors present among the suspects that he prosecuted. He affirmed that the trial was for suspects who were adults,

based on their appearance. He asserted also that he prosecuted all of the suspects (148 persons) and not 96 suspects. He also challenged the documents that were submitted to the Tribunal and which confirm that about 50 persons were eliminated (killed) in the hands of the intelligence outfits, and that their names were submitted to the Court as part of the arraignment procedure and were mentioned also in the conviction ruling and the verdict.

Defendant 'Awwad al-Bandar did not deny that he was the president of the (abolished) Revolutionary Court in 1984, and that his Court oversaw Case 944/c/1984, handing down its verdict against all 148 suspects who were al-Dujail residents by sentencing them to death by hanging. He also admitted that the two signatures that are placed on the original of the conviction ruling and the verdict were his.

Afterward, defendant 'Awwad al-Bandar, along with his attorneys, claimed in the last sessions of the Tribunal, in written petitions submitted to the Tribunal and orally before the Tribunal, that a number of those against whom it is alleged that a death sentence was handed down are still alive, and that should have a substantive effect on the trial proceedings. The defendant and his attorneys stressed also the need to bring the file for the trial numbered 944/c/1984, which comprises 361 pages. Defendant 'Awwad al-Bandar requested also before the Investigative Panel and before the Tribunal that the circumstances in which he was present be taken into consideration when the (abolished) Revolutionary Court delivered its verdict, especially that the incident (the attempt to assassinate the former President of the Republic) occurred when the war between Iraq and Iran was raging.

Summary of Defense Witness Statements for Defendant 'Awwad al-Bandar

Defendant 'Awwad Hamad al-Bandar brought five defense witnesses and the Tribunal heard their testimonies. They were: (...) who testified before the Tribunal during session 27 on 5/22/2006; (...) who testified before the Tribunal during session 29 on 5/29/2006; the fifth witness for 'Awwad al-Bandar (...) testified before the Tribunal during session 33 on 6/12/2006. Not all of those witnesses had eyewitness testimonies related to al-Dujail's incident or to al-Dujail's Case No. 944/c/1984. Most of those witness statements pertained to general information about the (abolished) Revolutionary Court and the proceedings therein, as well as about the biographical background and conduct of defendant 'Awwad Hamad al-Bandar when he was its president. The statements of witness (...) were untrue. He mentioned that he saw defendant 'Awwad al-Bandar when he was the president of the Revolutionary Court in the third month of 1982, when he tried him for a case in which he was accused, adding that he was addressing him as "my son," while defendant 'Awwad al-Bandar had affirmed more than once during the investigation and before this Tribunal that he became the president of the Revolutionary Court in 1983. This shows that the aforementioned witness was not present at the (abolished) Revolutionary Court and that he did not see defendant 'Awwad al-Bandar when he was the president of that Court. Witness (...) answered the question of the Tribunal regarding the surface area of the Revolutionary Court, given that he was present daily inside said Court, and that witness answered "that the Court's chamber is in the shape of a square and its area reaches the end of that door in the Tribunal's chamber," meaning this Tribunal's chamber.

Real or Sham Trial?

In order for the Tribunal to be thoroughly and beyond any reasonable doubt convinced about the charge against defendant 'Awwad al-Bandar, it needs to examine and discuss a number of questions raised during the investigation and the trial. This fact requires highlighting these questions so that the Tribunal will have the persuasive answers that the evidence is sufficient for conviction.

This Tribunal believes that the principal or essential question with regard to the accusation against defendant 'Awwad al-Bandar is the following: Was the trial of 148 al-Dujail residents by the (abolished) Revolutionary Court in the first half of June 1984 real or a sham? The answer to this principal or central question requires first answering several secondary questions that pertain to or surround the events that happened at the (abolished) Revolutionary Court when the case was transferred to it towards the end of May 1984. By answering these secondary questions we will get the important answer to the principal question mentioned earlier. Yet, despite the importance of answering these questions which we described as secondary in order to reach the certain and persuasive answer to the main question, the answer to these questions will establish other features that pertain to the available evidence regarding defendant 'Awwad al-Bandar.

These questions are the following:

1. When did the decision to bring al-Dujail suspects (victims) to the (abolished) Revolutionary Court occur? When did this alleged trial commence? How long did it take? When was the verdict handed down?
2. How many people were brought before the aforesaid Court pursuant to the arraignment? And what is the number of those for whom a conviction ruling and verdict were issued?
3. Were some of al-Dujail residents whose names were in the arraignment order already dead because they had been eliminated (killed) by intelligence outfits?
4. What is the surface area of the Revolutionary Court's chamber? Was that chamber large enough to try together all of al-Dujail suspects brought before the aforesaid Court?
5. Were lawyers assigned to defend al-Dujail suspects (victims)? Were these lawyers paid for their services? If the answer is affirmative, why was that fact not mentioned in the conviction ruling and the verdict?
6. Were there any crime exhibits attached to the documents of Case 944/c/1944? If the answer is that there were such exhibits, why was that not mentioned in the conviction ruling and the verdict?
7. Were any of al-Dujail suspects (victims) sent to the court's medical clinic in order to assess their age?

8. Did the Court prosecute minors (less than 18 years of age) or youths who are not yet 20 years of age? Did the Court sentence minors (less than 18 years of age) or those who are less than twenty years of age to death by hanging?

9. Are there official documents (records) that establish the ages of those who are sentenced to death?

10. Did the names of al-Dujail residents appear in the arraignment order and in the conviction ruling and verdict, and were they in another location during the alleged trial? If that is the case, who are they?

11. What is the verdict that was handed down against al-Dujail victims (suspects)?

12. Was the death sentence verdict actually carried out for the 148 al-Dujail residents, and when did that occur?

13. Are there documents or reports pertaining to the execution of the death sentence, to causes of death, to death certificates, or copies of records that establish the death?

14. Were there persons against whom a death sentence was issued who are still alive? If that is the case, which party shall bear the burden of proof?

15. Are there actually other documents pertaining to Case 944/c/1984?

16. Was defendant 'Awwad Hamad al-Bandar ordered or pressured by defendant Saddam Hussein to deliver the capital punishment verdict against 148 al-Dujail residents whose names came up in the arraignment order?

17. Who signed the conviction ruling and the verdict? Were the decisions taken unanimously or by majority vote?

The answer to these questions and having the Tribunal convinced without any reasonable doubt thereto will determine whether the trial of al-Dujail residents was real or bogus, and thus will determine whether the evidence available against defendant 'Awwad al-Bandar in the perpetration of the crime of murder represents a crime against humanity or not. Indeed, the answer to these questions will have other consequences that are no less important concerning other defendants in this case.

Answers to the Previous Questions

1. The arraignment order from the National Security Affairs Department at the Office of the Presidency, which was sent to the (abolished) Revolutionary Court, was issued on May 27, 1984. During the prosecution, defendant 'Awwad al-Bandar alleged that he received this order the next day. He also claimed that the trial commenced immediately after and lasted two weeks. Then the conviction ruling and the verdict were delivered on June 14, 1984.

2. The number of al-Dujail residents brought before the (abolished) Revolutionary Court pursuant to the aforesaid arraignment order stood at 148. The conviction ruling, issued by that Court on 6/14/1984 and referenced 944/c/1984, included 145 names. However, the verdict handed down by the said Court with the same aforementioned reference number and date, included 147 names. The name of Ali Kabsoun Muhammad was not listed. It was added later on pursuant to a classified and personal letter referenced 6231, dated 11/12/1984, from the (abolished) Revolutionary Court, addressed to the Office of the Presidency (Legal Department). The letter includes a request for adding the aforesaid name to the presidential decree handed down against the other civilians in the aforesaid Case 944/c/1984.

3. A great number of documents (official records and resolutions passed by committees established with regard to al-Dujail's case) attached to this trial's records and that were submitted to this Tribunal, indicates that roughly fifty of al-Dujail residents whose names were mentioned in the arraignment order as well as in the conviction ruling and verdict, had been actually eliminated (killed) while they were in the custody of intelligence outfits. This was prior to the promulgation of the arraignment order. Further, 96 persons only were still alive when said order was issued. At any rate, there was no trial even for those remaining 96 persons. Only a verdict was delivered convicting them and sentencing those who had been killed earlier by hanging without any trial except on paper. The memo that was sent by the Legal Affairs Department to defendant Saddam Hussein when he was head of state, dated April 4, 1984, and specifically paragraph 1 thereto, indicates the "conviction of 148 persons which the Revolutionary Court sentenced to death; the sentence was carried out against the remaining civilians, as some of them had died during interrogation." We can refer also to Paragraphs 2 and 3 of Resolution No. 560 passed on February 3, 1987, by the five-member committee established within the Intelligence Service. Paragraph 2 of this Resolution indicates "it was resolved to bring 148 persons before the Revolutionary Court and to sentence them to death." Paragraph 3 of said Resolution specifies that "there were 46 individuals among the civilians who received a death who had been eliminated or died during interrogation." Moreover, Paragraph 3 of a top-secret and personal Intelligence Service letter, referenced 1282 and dated March 31, 1987, indicates that the remaining civilians had been executed, and some of them died while being interrogated. We also have the conviction ruling delivered on 9/23/1987 by the Intelligence Court, which belongs to the Intelligence Service, with respect to the trial of its member, Hikmat Abdul Wahab, for not carrying out the death sentence against two persons whose names were mentioned in the Revolutionary Court's verdict, to wit, Habib Jaafar and Jassem Muhammad al-Hitto. We read verbatim therein: "Given time constraints, the remaining number of those who were sentenced is 96, as a result of the elimination of others during interrogation." These records and documents, whose truth is soundly established by the Tribunal, confirms that the trial was a sham, which means that there was no trial for al-Dujail residents who were still alive out of the total 148 ones when the arraignment order was delivered. These records show that 46 individuals whose names were mentioned in the verdict had been eliminated (killed) during interrogation and their names were sent along with the others' names in order to prosecute them or, more specifically, to deliver the death sentence against them while they were dead already. In fact, a death sentence by hanging was handed down against them and against the others!

4. The estimate for the area of the (abolished) Revolutionary Court's chamber, was given by a defense witness for 'Awwad al-Bandar, whose name is (...), when he testified before the Tribunal in session thirty-three on 6/12/2006. He used to work at the (abolished) Revolutionary Court as a bodyguard to the then Court's president, defendant 'Awwad al-Bandar, from 1983 until 6/1/1986. He stated that "the Revolutionary Court's chamber has a square shape and its surface area goes to the end of that door in this Tribunal's chamber," by which he meant SICT's chamber. Given that this Tribunal's chamber is estimated to be 10 meters long and 10 meters wide, it would not be larger than 100 square meters. Defendant 'Awwad al-Bandar had testified in the course of his answer to a question during the trial, that he placed some of al-Dujail suspects (victims) inside the defendants' dock while others were placed outside. This Tribunal believes that it is impossible to prosecute 148 persons together in a chamber whose area does not exceed one hundred square meters, especially when the court's platform, the prosecution's stand and that of the attorneys take up a large portion of the chamber's area. Thus the remaining area, which is estimated to be half of the chamber's area, cannot hold in any case, whether standing or sitting, 148 persons, or even 96 persons.

5. Despite the insistence of defendant 'Awwad al-Bandar, during the investigation and trial, that he had assigned a defense attorney for the suspects in Case 944/c/1984, he did not mention the name of that attorney. Further, the conviction ruling and verdict delivered on 6/14/1984 did not include any indication about assigning an attorney to defend al-Dujail residents, and did not include either any indication regarding legal fee disbursements for any assigned attorney. In addition, the verdict and conviction ruling did not show any defense list submitted by any attorney, whether one was assigned or not.

6. The conviction ruling and the verdict did not refer also to any criminal exhibits, even though defendant 'Awwad al-Bandar and a number of defense witnesses for the defendants claimed that weapons were seized in al-Dujail at the time the incident occurred.

7. It was not established, whether through the investigation or trial, that the (abolished) Revolutionary Court took any decision to send any of al-Dujaili residents who were arraigned to the judiciary clinic in order to estimate his or her age. The verdict did not mention that, while such measure needed to be taken by the Court in case there were no official documents that prove the age of the suspect, especially if it was apparent that the suspect's age is not higher than twelve or fifteen years of age.

8. Following the arraignment order regarding the aforesaid Court, which order included 148 names, and following the conviction ruling which included 145 names, as well as the verdict which listed 147 names, to which was added later on the name of Ali Kabsoun Muhammad, and pursuant to Letter No. 365 of 4/3/2006 of al-Dujail's Department of Nationality and Personal Records, which was addressed to the Public Prosecution Panel of this Tribunal, and pursuant to Letter No. 414 of 4/17/2006 of al-Dujail's Department of Nationality and Personal Records, there were 39 persons who were not yet 18 years of age, and 15 persons who were older than eighteen but not yet twenty years of age.

9. Attached to this lawsuit are civilian status cards that belonged to al-Dujail residents arraigned before the Revolutionary Court. Based on these official documents (personal identity cards) which indicate the birthdates of the documents' owners who were among al-

Dujail victims arraigned before the (abolished) Revolutionary Court, we notice that there were many who were sentenced to death even though they were not even 18 years of age at the time of the incident. There were fewer persons who were sentenced to death and who were older than eighteen of age but had not yet completed their twentieth birthday at the time of the incident on 7/8/1982.

10. One of the (protected) complainants whose written testimony was taken by the Investigative Panel on 2/23/2005, and who was heard by the Tribunal in Session 6 of 12/21/2005, confirmed that he was not brought before the (abolished) Revolutionary Court, and stated that he was not aware that a death sentence was delivered against him. Further, another (protected) complainant whose written testimony was taken by the Investigative Judge on 5/26/2005 stated that he had not been brought to any court and did not see any judge. He was interrogated in the prison of Abu Ghraib, and later on he was taken to the Lea detention center in Samawa desert until he was released in April 1986. Another (protected) complainant, whose written testimony was taken by the Investigative Judge on 2/6/2005, stated the following: "My son (...) was accompanying me in 1986 and he was not executed, while the death sentence verdict delivered for the trial referenced 944/c/1984 indicates that my son (...) was listed with the names of those who were executed. However, he was not executed and was with me. In 1987, he was drafted for military service and was killed during the war in 1988." All of these statements confirm that the persons who had been convicted by the (abolished) Revolutionary Court and whose names were listed in the arraignment orders, the conviction ruling and the verdict, and who were tried in the presence of the parties in interest were not actually present at the aforementioned Court either in the fifth or the sixth month of 1984 because they were detained at that time at the desert prison of Lea at the governorate of Samawa.

11. The verdict that was handed down for 147 al-Dujail residents, to which another name was added (as was mentioned earlier) by the (abolished) Revolutionary Court under No. 944/c/1984 on 6/14/1984, sentenced to hang all of those who were mentioned in the verdict. These represent all those who were mentioned in the arraignment order and who numbered 148 persons. Moreover, the verdict instructed the confiscation of all fixed and mobile assets of those people.

12. The death sentence was not carried out against the 148 al-Dujail residents, by virtue of the verdict delivered by the aforementioned Revolutionary Court and that was ratified by defendant Saddam Hussein in his capacity of President of the Republic at that time, two days after it was delivered. Said verdict was handed down on 6/14/1984, and it was approved on 6/16/1984. The report for implementing the verdict, which was drawn up at the Long-Term Sentence Section at Abu Ghraib prison on 3/23/1985, was signed by the deputy director of said Section and a member of the Revolutionary Court, Colonel Tarek Hadi Shaker, by the Public Prosecutor of the Revolutionary Court, Major Hashem Tah Hamad, the supervisor of the Social Reform Police Center, the Interior Ministry's Commissioner, Police Captain Ali Saleh Mahal, and by Dr. Maher Damen, a physician at Nour Presidential Hospital. The latter confirmed the death on 3/23/1985 of the aforementioned civilians, numbering 148, who were listed in the death sentence implementation report, and who were the same ones listed in the arraignment order as well as in the conviction ruling. Yet, what has been established through the investigation and the trial is that many persons whose names were mentioned in the death sentence implementation report and who were executed and died on

3/23/1985 had not in fact been executed because some of them were in the desert complex of Lea at the time. Those were Jassem Muhammad Rida al-Hitto, Ali Jaafar Habib, and Nabil Baker Jassem, in addition to Ali Hussein Ahmad, who was confirmed to be alive until now, by reason of letter referenced 1020 of 6/11/2006 sent by the Administrative District of al-Dujail to SICT's Public Prosecution Panel. Moreover, the death sentence implementation report dated 1/16/1989 and signed by the Execution Board, headed by Radi Saad Ahmed, and which comprises three members, as well as Dr. Faleh Ahmed Flayh, endorsed the implementation of the death penalty by hanging on 1/16/1986 at the Kibar Reform Section in Abu Ghraib prison, with regard to dozens of individuals whose names were listed in the aforementioned death sentence implementation report. Those individuals were: Falah Muhammad Ibis, Abboud Najem Abboud, Birhan Yaacoub, Thamer Jasoum, Kazem Ahmed Muhammad Hadi, Maan Abbas Hassoun, Hamid Ibis Hassoun, Muhammad Jassem Abdul Hassan, and Kassem Muhammad Jassem. One notices in the second death sentence implementation report that Kassem Muhammad Jassem was 12 years and four months of age when al-Dujail's incident occurred on 7/8/1982. He was executed on 1/16/1989, close to his nineteenth birthday. The other minors were executed in 1985 or perhaps were not even alive to begin with in 1984, at the time of the alleged trial.

13. Besides the death sentence implementation reports, which we mentioned in the previous paragraph, there are copies of records pertaining to al-Dujail's victims whose names appeared in the death sentence implementation report dated 3/23/1985. The copies of these records indicated the death of the victims mentioned therein. Further, death certificates concerning al-Dujail's victims whose names appeared in the death sentence implementation report were attached to the trial's records, along with the causes of death pertaining to those whose names appeared in the Court's verdict dated 6/14/1984.

14. Based on the above, we can see that following the implementation of the death penalty in 1985, there were at least four to fourteen persons against whom the death penalty was handed down who were still alive, including Nabil Baker Jassem, as was established to the Tribunal by means of the aforementioned testimony of (...). Furthermore, his death certificate, issued on the fourth month of 1988, establishes his death in 1988, at the end of the Iraq-Iran war. Also, after the implementation of the second death sentence on 1/16/1989 with regard to ten al-Dujail residents pursuant to the second death sentence implementation report, three of the fourteen individuals remained alive. They were Jassem Muhammad Rida al-Hitto, Ali Habib Jaafar, and Ali Hussein Ahmed. The defense lawyers of defendant 'Awwad al-Bandar stressed during the last trial sessions and in written petitions to the Tribunal on 6/19/2006, and defendant 'Awwad al-Bandar claimed at the same time during those last sessions, that there were 26 individuals mentioned in his requests and whose names were listed in the arraignment order. Among those were the four persons mentioned in the previous paragraph, who are currently alive and most of whom live outside Iraq. He added that some were dead before or after al-Dujail's incident in 1982, and asked the Tribunal to investigate this matter, which according to them constitutes a substantive objection. Even though the burden of proof in this case falls on the defense, this allegation contradicts the contents of official documents that have been taken into account. The proof that those persons he mentioned are still alive and live outside Iraq, or that they died before or after al-Dujail's incident for reasons that have nothing to do with al-Dujail's incident, contrary to what transpired in the death sentence implementation reports, death certificates, causes of death, and copies of records issued by official departments which cannot be

impugned unless they were forged, such proof is the responsibility of anyone who claims that the originals are different. Defendant 'Awwad al-Bandar has confirmed more than once during the Tribunal's sessions and during the investigation that he has prosecuted 148 al-Dujail residents and delivered the death penalty against them, and there are reports for the implementation of the death sentence. Nevertheless, the Tribunal's Public Prosecution Panel has corresponded with al-Dujail's Administrative District in this regard, which District responded with Letter No. 1020 of 6/11/2006 stating that the information available concerning 17 persons indicates that 15 of them are dead and there is no information about one of them, Abdul Latif Abdul Amir, adding that the only person among those 17 who is still alive is Ali Hussein Ahmed. In fact, defendant 'Awwad al-Bandar and his lawyers have shown blatant inconsistencies when they confirmed in more than one session and in more than one petition submitted by the defendant's attorney that said defendant prosecuted 148 al-Dujail residents at the (abolished) Revolutionary Court, and has delivered a ruling signed by the defendant and the remaining Court members, which includes the death sentence of 6/14/1984 for all those who had been arraigned before said Court. Further, defendant 'Awwad al-Bandar did not deny during the investigation and trial phases, and in the written sample proceeding which took place on 4/5/2006, his signing the conviction ruling and the verdict. He admitted that the signatures were authentic, alleging that the said Court held several hearings and then reached the above decisions. Afterward, defendant 'Awwad al-Bandar and his lawyers retract to say that more than twenty persons among the 148 ones are still alive and most of them are outside Iraq, without submitting any evidence or documents supporting that, except for what the four witnesses testified. But it was established to the Tribunal, after instituting an independent lawsuit against them, and interviewing them, that their statements were untrue. They admitted that they had been instructed by some of the defense lawyers to make these statements. What defendant 'Awwad al-Bandar and his attorneys have stated, besides contradicting what the defendant testified earlier, is simply an allegation that contradicts the facts established before this Tribunal and that are supported by documents that prove the execution of those people and their death, except for the four persons mentioned earlier. Let us assume that what defendant 'Awwad and his lawyers have said is true, this supports and confirms the truth, which is that no trial was held for those 148 persons. That means that they were not tried to begin with. The judgment which defendant 'Awwad al-Bandar signed and which he admitted several times was his is actually an order to kill and not a judicial decision. Defendant 'Awwad, even when the defendants were asked for a written sample on 4/5/2006 in order to compare the handwritings and signatures found in documents and their handwritings and signatures, refused to provide samples of his signatures, while confirming once more that the signatures subscribed to the conviction ruling and verdict were his. This Tribunal considers this to be one of the proofs that the trial was not real and that no session was held to try those who were to be arraigned before it in al-Dujail's Case No. 944/c/1984. Thus the trial was a sham and did not take place.

15. Defendant 'Awwad al-Bandar and his attorneys requested several times during the trial sessions, especially in Session 19 on 4/6/2006, and the defendant's attorney submitted written petitions to the Tribunal, to subpoena the remaining documents for Trial No. 944/c/1984, given that the number of sheets for that trial were 361. The burden of proof for the allegation that there are missing records in the aforementioned trial, copies of which were provided by the Public Prosecution Panel to the defense lawyers and to the Tribunal, such burden falls on the defense. The reason is that it behooves anyone who claims that

there is some evidence to submit it to the Tribunal or to make an attempt thereto. This does not mean that the Tribunal will not provide the necessary assistance to obtain any evidence that might exist, whether this evidence is akin to confirmation or refutation. By saying that the burden of proof falls on the party that claims that there is evidence this Tribunal points to a legal principle that is well known in all countries of the world. Nevertheless, this does not mean that the Tribunal imposes on the defendant and his defense the responsibility for proving his innocence. Originally, a person is innocent until it is proven otherwise. And the defendant is innocent until proven guilty at a court of law. At any rate, the Tribunal has worked speedily in this regard and obtained all of the 361 pages concerning Case No. 944/c/1984, and it provided the defense attorneys, including the attorney for defendant 'Awwad al-Bandar, with the copies of all those pages. This was done according to a notice of receipt accompanying the trial's records and dated 6/19/2006. The Tribunal noticed that the 361 pages of the records did not contain any of the proceedings of the alleged Court. There were no testimonies by the victims (suspects) before the (abolished) Revolutionary Tribunal in that case.

16. Defendant 'Awwad al-Bandar confirmed throughout the investigative and trial phase that he had not been ordered or subjected to pressures by defendant Saddam Hussein when he was head of state, or by other state officials, for handing down the aforesaid judgment which entailed the death penalty for all of those who were referred to the (abolished) Revolutionary Court pursuant to the arraignment order received by the Court on 5/28/1984 according to the defendant's claims. However, he asserted more than once, during the investigative and trial phases, that he was in a difficult position and asked the Tribunal to consider that fact, especially that al-Dujail's incident occurred during the Iraq-Iran war.

17. Those who signed the conviction ruling and the verdict are defendant 'Awwad Hamad al-Bandar, who was the president of the Revolutionary Court, Judicial Colonel Daoud Salman Shehab, and Judicial Colonel Tarek Hadi Shakar, given that they were members of the said Court. These two judgments were passed unanimously on 6/14/1984.

Evidence and Presumptions Available in the Trial of Defendant 'Awwad Hama al-Bandar

To answer these questions on the basis of what we have observed, we see that the evidence shows that there was no trial for al-Dujail's residents whose names appeared in the arraignment order or in the conviction ruling and verdict, and thus the trial was bogus and not real. The promulgation of the conviction ruling and of the verdict was simply to fulfill legal formalities. The evidence and presumptions pertaining to that are many:

1. The Report, dated 7/5/1987, of the Investigative Committee formed under the command of Hussein Kamel, whose members were the Judge Abdul Aziz Daoud, Legal Affairs Commissioner at the (eliminated) Office of the Presidency, and Ibrahim Jawad, Special Security Agency Commissioner, indicated that the statements of those two persons – meaning Ali Jaafar Habib and Jassem Muhammad Rida al-Hitto – along with those of others civilians were taken down in a bogus way; the same procedure applied to their pleadings and those of the other suspects in the case. The Revolutionary Court handed down a death

sentence by hanging against them, recorded in the case's documents without any pleadings. The report confirms also the case of the detainees with regard to Habib Jaafar and Jassem Muhammad al-Hitto whose names appeared in the arraignment order, the ruling and the death sentence implementation report, while they were detained in the prison of Lea in Samawa desert prior to the arraignment date and the ruling, and then afterward. The said committee indicated that "it was resolved to detain those individuals at al-Muthanna governorate. They were sent according to three lists with different dates. The second list was dated 7/10/1983 and concerned the two detainees who were sent and who are under investigation, Ali Habib Jaafar and Jassem Muhammad al-Hitto. The statements of these two persons, along with those of others, were taken down in a bogus fashion."

2. The complainant (...) confirmed on his own cognizance before this Tribunal, and prior to that, in the course of the investigation, asserting that he did not appear before the Revolutionary Court and that he was not aware that a death penalty was handed down against him. Also, (...) gave similar statements during the investigation. This was confirmed by the statements of complainant (...) during the investigation, whereby his son (...) whose name also appeared in the arraignment order, the conviction ruling, the verdict and the death sentence implementation report, was detained with him in the desert prison of Lea from 1983 until April 1986. He was afterward drafted for military service in 1987 because he completed his eighteen years of age that year and was killed during the Iraq-Iran war in 1988.

3. The conviction ruling and the verdict delivered by the Revolutionary Court on 6/14/1984, wherein there was no indication that a lawyer was assigned to defend the suspects and no indication that fees were disbursed to any assigned lawyers; in addition, there is no mention of any hired or assigned attorney.

4. The contents of the aforementioned memo sent by the Legal Affairs Department to defendant Saddam Hussein in April 1987.

5. The contents of Resolution No. 560 of 2/3/1987 of the aforesaid Intelligence Service Committee, which comprised five members.

6. The conviction ruling delivered on 9/23/1987 by the Intelligence Court, which belongs to the Intelligence Service, with regard to the prosecution of its member Hikmat Abdul Wahab, stating: "Given time constraints, the remaining number of those who were sentenced is 96; this is due to the elimination of the others during interrogation, and to the fact of relying on those who were responsible for inspecting the names of the convicts who were placed in a location designed for those who were sentenced to death only; the object is to conceal from the Execution Board members the full number of those who will be executed; this way they will not be able to find out that some of them had been eliminated earlier; the inspection of the convicts' names prior to implementation was overlooked, which caused the execution of four other persons who were not included in the lists. That means that the ruling was not implemented with regard to four other persons, two of whom are the subject of this case, while the fate of the two others is unknown."

7. The verdict of the abolished Revolutionary Court does not mention sending any of the persons referred to it to the medical board in order to estimate their ages, even though there were many minors, some of whom were 12, 13, or 14 years of age.

8. The death penalty was handed down against a group of minors, some of whom were underage when the incident occurred; there were 39 youths whose ages ranged between 12 and 17 when the incident took place in 1982. Furthermore, the death penalty was delivered against individuals whose ages ranged between 18 and 20 when al-Dujail's incident happened in 1982. This represents a clear violation of international constitutions and treaties, including the International Covenant for Civil and Political Rights, which Iraq ratified in the early nineteen seventies. This contradicts also the provisions of Article 79 of the Iraqi Penal Code No. 111 of 1969, and Juvenile Law No. 76 of 1983. This is another indication that the trial was a sham and not real.

9. In response to what defendant 'Awwad al-Bandar and his attorneys mentioned, coupled with the testimony of the defense witnesses, four of whom gave false statements, as has been shown, following which the Tribunal decided to invalidate their testimonies, thus what was mentioned, namely that there was a number of persons whose names were included in the arraignment order, conviction ruling, and verdict, and who are still alive until now, and that 10 are outside Iraq at the present time, so in response to these facts the Tribunal has confirmed and established, with full conviction, that these allegations are untrue. This conclusion is based on the declarations of the four persons whose names are mentioned above, and who had shown up on the basis that they were defense witnesses, and who have stated that what they had testified to before the Tribunal on 5/30/2006 was false. These declarations were set down with their own handwriting and were also recorded by the Tribunal-assigned judge in the presence of a Prosecutor delegated by the Tribunal but who was not Prosecutor Jaafar al-Musawi. This took place also in the presence of an attorney who was assigned from this Tribunal's defense bureau to defend them. The inaccuracy of those allegations was also established following Letter No. 1020 of 6/11/2006 from the al-Dujail's Administrative District, which confirmed that the individuals whose names are contained in the petitions and objections of defendant 'Awwad al-Bandar and his attorneys, and which were mentioned orally by the aforementioned defense witnesses, are dead save for one Ali Hussein Ahmed. This confirms and reinforces the evidence and records that the trial of those who were referred to the Revolutionary Court pursuant to the arraignment order was bogus, since none of those victims appeared before said Court. Further, the verdict was issued on the case's records on 6/14/1984 without any trial proceedings.

10. The area of the Revolutionary Court's chamber, which did not exceed in any case 100 square meters, and the impossibility of holding a trial therein concurrently for all 148 individuals.

11. There is no mention in the conviction ruling and in the verdict of any criminal exhibits seized in the case. This contradicts what some of the defense witnesses stated before the Tribunal, whereby various types of weapons were seized in al-Dujail on the day of the incident and the following days.

12. The arraignment order was issued on 5/27/1984, while the conviction ruling and verdict 944/c/1984 were delivered on 6/14/1984. Defendant Saddam Hussein, who was head of state then, endorsed the verdict at that time and Presidential Decree No. 778 was issued thereon on 6/16/1984. This fact confirms the tacit, if not express, agreement between defendant 'Awwad al-Bandar, the members of his Court, and the Office of the Presidency,

which was under the control of defendant Saddam Hussein, for handing down the death penalty for all victims without any trial proceedings therefor. This strengthens the evidence and presumptions that confirm that the trial was a sham. In addition, there was no inspection of the trial's records and of the Court's judgment delivered on 6/14/1984, which judgment was endorsed and pursuant to which a Presidential Decree was promulgated two days later, namely on 6/16/1984.

13. The conviction ruling included 145 names belonging to al-Dujail's residents, while the verdict contained 147 names, to which one other name was added several months later. This fact shall be considered a presumption to be added to the other evidence and presumptions regarding the trial constituting a sham.

14. Although the Tribunal received all documents concerning Trial 944/c/1984, which contained 361 pages, it did not find any depositions given by the victims before the (abolished) Revolutionary Court. These documents did not also contain any proceedings regarding the alleged trial.

15. The two-week period, interspersed with official holidays, during which defendant 'Awwad al-Bandar claims to have conducted the trial of 148 persons, is not sufficient in any case to hold a trial for so many people. The testimonies of defendant 'Awwad al-Bandar before the Investigative Panel and before the Tribunal, stating that the Revolutionary Court may, pursuant to Article 181/d of Criminal Procedures Law, settle the lawsuit in one day, may be true and acceptable for minor lawsuits and inconsequential cases where the number of suspects is tiny, but not in a grave case such as al-Dujail's then, where there were 148 suspects.

16. If we admit that what happened on 7/8/1982 was an attempt to assassinate the former President, the number of those who participated in that attempt was very limited and did not exceed a few persons. This is backed by the testimony of defendant Saddam Hussein before the Investigative Panel on 6/12/2005. He stated verbatim: "During my visit to Dujail, the convoy I was traveling in was the target of gunshots which I believe were fired by roughly two rifles. I am not sure because it has been a while since this happened. Afterward, I mean after the gunshots, I got out of the car." He continued by saying that "when the gunshots rang I got out of my car and began walking into the town, until I reached a platform... the roof of a residential house..." There were few shots that were fired at the car convoy of defendant Saddam Hussein, and these were fired from roughly two rifles according to the statements of Saddam Hussein himself. Further, the witness Waddah al-Sheikh, who was director of the Investigation and Inquiry Department, and who came at noon on 7/8/1982 to the spot where the incident occurred, estimated in his written deposition to this Tribunal on 10/23/2005, a few days before his death, that the number of persons who fired the gunshots, based on the magazines clips found at the orchard's wall from which the gunshots were fired, and based on the empty cartridges strewn on the ground of the orchard, ranged between seven and twelve persons. These well-established facts do not justify at all the death sentence by hanging which was passed against 148 al-Dujail residents. In addition, they do not warrant the arrest, detention and torture of women, children and elderly for four years in jails and prisons, including the desert jail of Lea.

Tribunal's Conclusions and Convictions

Based on the above discussion, we conclude that the (abolished) Revolutionary Court did not hold a trial for al-Dujail victims. The evidence and presumptions that this Tribunal reached on the basis of responses to questions and of issues raised during the lawsuit by all parties, confirm beyond any reasonable doubt that the trial was bogus. The acknowledgment by defendant 'Awwad al-Bandar that he was the president of the (abolished) Revolutionary Court which delivered the death sentence for 148 al-Dujail residents on 6/14/1984, and his acknowledgment that the signatures subscribed to the conviction ruling and verdict 944/c/1984 are his, or the evidence and presumptions that we have addressed earlier, these facts confirm that defendant 'Awwad al-Bandar issued an order to murder al-Dujail's victims, who numbered 96. This issue constitutes a criminal behavior, which is one of the substantive elements of murder. The implementation of that order occurred in fact by virtue of the death sentence implementation reports of 3/23/1985 and 1/16/1989. Anyone who was still alive and whose name was listed in the arraignment order and verdict, except for four persons, were killed. This represents the criminal outcome realized with the death of those who were wronged (the victims). Whereas the execution of the death sentence (the cause of death) was in accordance with 'Awwad al-Bandar's order and the endorsement of the former head of state, defendant Saddam Hussein, the causative link between the criminal outcome and defendant 'Awwad al-Bandar's criminal behavior is present. Further, the evidence that shows the presence of premeditation stems from temporal and psychological elements, as well as from the joint preparation and planning to perpetrate this act before and after issuing that order. The great number of people aggrieved means that the condition of multiplicity is present. The criminal intent of defendant 'Awwad al-Bandar existed also through the presence of knowledge and volition. Defendant 'Awwad was cognizant of all of the elements of this criminal event, and he wanted to accomplish it. The fact that the trial is bogus and not real demonstrates that defendant 'Awwad al-Bandar, along with anyone who signed the promulgation of the verdict or what was called verdict decision, had criminal intent. This criminal intent also applied to those who contributed to the commission of this act or those acts leading to the murder of those victims who were still alive. Article 47 of Penal Code No. 111 of 1969 stipulates that "the person who commits a crime shall be (1) anyone who has committed it alone or with others; (2) anyone who has participated in the perpetration of the crime if it comprises a number of acts and a person has during its commission deliberately carried out an act among the acts thereof, etc."

The action that defendant 'Awwad al-Bandar had carried out was part of the large-scale and methodical assault against al-Dujail residents since 7/8/1982. Such action was in fact on among a series of actions constituting that continuing large-scale and systematic assault which has expanded and had various repercussions and forms in terms of its nature and gravity. The civilian status of the victims demonstrates that most of those who were arrested, tortured and killed were owners of orchards and farmers as well as their children and wives who were al-Dujail residents.

The Tribunal Panel is convinced that there was a large-scale and methodical assault that was carried out early on by the military forces, and by intelligence and security agencies, as well as by the popular army. This execution of the wide-scale and organized (methodical) assault by these forces and agencies against al-Dujail's civilian society continued. Other Iraqi

government institutions took part afterward in that assault. They were led by the then Ba'th Party, and were headed and controlled by a number of individuals, the first one being defendant Saddam Hussein. Among these institutions, we find the (abolished) Revolutionary Court, which was led by defendant 'Awwad al-Bandar and which played a role in that assault against the civilian al-Dujail residents in line with a state and Ba'th Party policy which instructed that such assault be carried out or to bolster such policy. This Tribunal is convinced that this sweeping assault comprised organized gathering, the imprisonment and torture of al-Dujail residents, in addition to mistreating and executing them.

Besides what was stated above, this Tribunal must establish the existence or absence of the third element for killing to be a crime against humanity. This consists of the extent to which defendant 'Awwad al-Bandar was cognizant that his action was part of that wide-scale and methodical assault or intended his action to be part of said assault against al-Dujail civilian residents. It was already established and shown that he was cognizant that those against whom he delivered a death sentence were civilians. However, did defendant 'Awwad al-Bandar know that his behavior was part of that large-scale or methodical assault or did he have an intention thereto? This Tribunal believes that this knowledge or this intention cannot be known except through external manifestations, since it is not possible to delve into someone's mind. If a defendant denies his act or intention, we have to resort to external evidence and manifestations in order to know whether that defendant was indeed cognizant of something or intended to carry out one act or another. Hence, this Tribunal sees that the evidence regarding the knowledge of defendant 'Awwad al-Bandar and his intent, whereby his behavior is part of a large-scale and methodical assault against civilian residents, ensues from the joint preparation for committing the crime. Defendant 'Awwad al-Bandar contributed greatly to that criminal project. Defendant 'Awwad's participation was reflected in his delivering the death sentence, which is one of the acts constituting this crime. More to the point, if we consider the Dujail's victims killed, whether executed on the day of the incident, or in the hands of the intelligence agencies, or at Abu-Ghraib prison, or in the Lea desert, or after the promulgation of the death sentence by the Revolutionary Court, we can see that each of these criminal measures represents a crime against humanity. The participation of defendant 'Awwad al-Bandar in the perpetration of this act represented part of this large-scale and methodical assault against civilian citizens which entailed unlawfully killing them, torturing them and imprisoning them.

The evidence regarding defendant 'Awwad al-Bandar's knowledge or intent, whereby his act represents part of a large-scale or methodical assault, stems also from the position which defendant 'Awwad occupied, in his capacity as president of the Revolutionary Court when that sentence was handed down. This position enabled him to know and provided him with the ground for intending and in fact delivering the death sentence under a legal cover, whereby that sentence was delivered as a verdict issued by the Court. This death penalty is in itself considered a proof of the intent to contribute in the execution of part of and an action or one act among many that constitute the crime, taking into account the aforementioned viewpoint.

Defendant 'Awwad al-Bandar was a judge and the president of the Revolutionary Court in 1984. He was a law university graduate. This shows that he had qualifications that others among the common people who contribute in the perpetration of a crime may not have.

Further, based on his position, he had power that others did not have. The other evidence for defendant 'Awwad al-Bandar's knowledge and intention stems from the fact that his delivering the death penalty constitutes part of a large-scale and methodical assault ensuing also from the proof that the trial was bogus, and that no proceedings took place to try the victims in accordance with law.

This knowledge and this intent may be inferred from the statements of defendant 'Awwad al-Bandar during the investigative and trial stages, especially that defendant 'Awwad stated in his testimony before the Investigative Panel: "I handed down the verdict, and the case has a specific feature; I ask the Tribunal to take into consideration my position during that period and the position of the Court too." He also stated: "I ask the Tribunal to understand my position, since this was a special case taking place under special circumstances."

Other evidentiary facts regarding 'Awwad al-Bandar's cognizance that his behavior in perpetrating the crime was part of a large-scale or methodical assault against civilian residents is the gravity of the acts perpetrated or the methodical (organized) nature of these acts prior to sending the records to the Revolutionary Court, and the public as well as private knowledge available to someone occupying the position of the defendant, namely as president of the Revolutionary Court. This cognizance was confirmed in the arraignment order concerning 148 individuals who were all convicted through a sham trial and sentenced to death by hanging. We may also infer the cognizance of defendant 'Awwad al-Bandar from the fact that the number of those who attempted to assassinate Saddam Hussein was very small while the number of those referred to the Court presided by defendant 'Awwad, even if theoretically, stood at 148. 'Awwad al-Bandar's testimony, in which he stated that he was enforcing the law by handing down the death penalty by hanging for so many residents, is inadmissible. What he did is illegal by all standards, and criminal intent was obvious therein.

This Tribunal is convinced that defendant al-Bandar was aware (cognizant) of the existence of a large-scale assault against a civilian community in al-Dujail. His position as the president of the Revolutionary Court, and perforce his membership in the (disbanded) Ba'th Party, plus his frequent contacts with top party and state officials, including defendant Saddam Hussein, lead us to conclude that defendant 'Awwad actually was cognizant that there was an organized plan against al-Dujail's civilian community, which community was mistreated in several ways, including killing. Defendant 'Awwad also admitted that al-Dujail's incident was well-known and was broadcast in foreign media outlets. Moreover, he was cognizant that those persons whose names were referred to the Court had been arrested and imprisoned and then were referred to him.

Types of Criminal Participation for Defendant 'Awwad Hamad al-Bandar and His Liability Thereto

Article 15 (Second) of SICT Law specifies that:

A person shall be liable in accordance to the provisions of this Law and the provisions of the Penal Code if he does the following:

- a. If he perpetrates a crime in his personal capacity as a participant or by means of another person, irrespective whether said person is criminally liable.
- b. Order the commitment of a crime that actually occurs; or attempt to commit a crime; or instigate or incite to commit a crime.
- c. Aid and abet or incite others in any other way possible in order to facilitate the commitment of a crime or in the attempt to commit crime, including providing the means to perpetrate the crime.
- d. Participate in any other ways with a group of individuals while harboring joint criminal intent to commit a crime or attempt to commit said crime, provided this participation is deliberate and takes place:
 1. In order to bolster criminal activities or the criminal object of the group, if these activities or this object entail the commitment of an offense that is under the Tribunal's jurisdiction; or
 2. While being aware of the intent of this group to commit the crime.

This Tribunal believes that Paragraphs (b) and (d) of the aforementioned Article's second clause apply to the act that defendant 'Awwad al-Bandar has carried out. On one hand, he ordered to commit the murder, which indeed occurred when the death penalty by hanging was handed down. On the other hand, this murder was actually accomplished when the death sentence (to kill) the victims was carried out. Further, he participated in a joint criminal act with a group of people from inside and outside the Revolutionary Court for the joint criminal purpose of carrying out a joint criminal act. The deliberate participation of defendant 'Awwad al-Bandar was aimed to bolster criminal activities and the criminal objective of a number of state and Ba'th Party institutions, including the Intelligence Service, which defendant Barazan Ibrahim headed when the incident occurred in 1982, and the criminal objective of the Office of the Presidency under the control of defendant Saddam Hussein, who used also to head the Ba'th Party, which in turn controlled all government units. The criminal activities that defendant 'Awwad al-Bandar boosted, and the criminal purpose of the institutions that were headed by some of the defendants in this case, entailed the perpetration of a crime that is under the jurisdiction of this Tribunal, that is, a crime against humanity.

The fact that 'Awwad was cognizant of the intent of those who headed these institutions to commit the murder stems from various factors, including that he was the head of one of those institutions, which was the (abolished) Revolutionary Court. Its name indicates not only that it was part of the state but also of the Ba'th Party whose leaders frequently reiterated that they were guiding the revolution. This knowledge ensues also from the nature of the joint criminal act which presupposes that the person who participates in it must know the intent of the group in which he is member to commit the crime. That does not mean that the cognizance of 'Awwad al-Bandar was presumed, since the nature of defendant 'Awwad's position and occupation, as president of the Revolutionary Court, and his handing down the Court's death penalty for all of the victims based on the facts already mentioned, imply naturally that he was aware of the intent to commit the crime by the

aforementioned institutions which were under the control of a number of this case's defendants.

This criminal intent was confirmed by defendant 'Awwad al-Bandar who, during one of the Tribunal's sessions, stated: "Is it so strange that someone dies during an interrogation?"

Paragraph 1 of Article 15 of this Tribunal's Law stipulates that the person who commits a crime that falls under the jurisdiction of the Tribunal must be considered personally liable thereto and punished in accordance with the provisions of this Law. Hence, defendant 'Awwad al-Bandar, who gave the order and participated with a group of people in joint criminal intent to commit a crime against humanity, shall be considered personally liable thereto. Even though defendant 'Awwad did not materially commit the crime or carry out the criminal behavior which in this offense entails the act of killing, yet the fact that he subscribed his own signature to the death penalty decision means that he gave the order to commit this crime. The gravity and importance of such contribution is no less grave and important than the contribution of others in carrying out materially the act. In reality, it is no different from the contribution undertaken by those who execute such acts. Both are original actors in committing the crime.

The judgment that defendant 'Awwad al-Bandar has delivered and to which the members of the so-called Revolutionary Court contributed on 6/14/1984, is actually an order, and in fact it is an order to kill, and not a verdict issued in accordance with law. This order was indeed carried out, and more than ninety al-Dujail residents were killed in the execution of the death sentence by hanging enacted against them by this Tribunal.

The ratification by the former President of the Republic, defendant Saddam Hussein, of the death penalty verdict against al-Dujail residents, and the promulgation of Presidential Decree No. 778 two days after the delivery of the verdict on 6/14/1984, does not alter the fact that said order was issued by defendant 'Awwad al-Bandar and the remaining members of his Court. By issuing said Decree, defendant Saddam Hussein has participated in this joint criminal act by confirming this order or "the killing" so that it is carried out by others. This was done to give a legal formality to a judgment which in reality is nothing but an order to kill.

The International Criminal Tribunal for the former Yugoslavia, in its aforementioned verdict in the Milorad Krnojelac case, held the view that "the charge of participation by any person accused of perpetrating a joint criminal act may be inferred from his membership in such criminal organizations. By virtue of the same verdict concerning the Tadic case and in accordance with the appellate verdict thereto, criminal liability for a joint criminal act according to the appellate verdict in the Tadic case applies to a situation where all participants take part with common intent to commit criminal acts wherein the original actor operates outside the scope of the joint criminal act, although it is a natural or probable outcome of the joint criminal act it was agreed upon."

The same aforesaid verdict states also that there is a joint crime when there is an understanding or an agreement that is akin to an agreement between two or more persons to commit a crime. The agreement need not be made public, but one can infer that such an agreement exists from the surrounding circumstances. Our Tribunal concurs with this

opinion and adds that the agreement could be public or private and can be inferred from the surrounding circumstances. Further, this agreement may be explicit or implicit. Thus the agreement could be public and explicit, public and implicit, or private but explicit, or private and implicit. On the other hand, an agreement need not be obtained at a certain time prior to committing the offense. Circumstances in which two or more persons take part for committing a specific offense can establish that the private agreement is equivalent to an agreement made among the different parties at the time said offense was perpetrated.

This seems clear in the case of defendant 'Awwad al-Bandar on the basis of several issues. These included the arraignment order for al-Dujail residents to be brought before the Revolutionary Court was dated 5/27/1984. Then the conviction ruling and the verdict to sentence them to death by hanging were delivered approximately two weeks after the arraignment order (the conviction ruling and the verdict were handed down on 6/14/1984). Afterward, this verdict was immediately sent to the Office of the Presidency, and the Presidential Decree came out ratifying the death penalty for all victims two days only after the verdict, namely on 6/16/1984. The astonishing haste in which the formal legal cover was undertaken for promulgating the order to execute the al-Dujail victims indicates that there was collusion, an understanding, and an implicit, if not explicit, agreement to commit this joint criminal act.

As for the International Criminal Tribunal for the former Yugoslavia, in its verdict concerning the Milorad Krnojelac's case, which was handed down on March 15, 2005, Paragraph 81 thereof specifies the situations wherein the person will be taking part in a joint crime. This occurs either through direct participation in perpetrating an offense agreed upon, in his capacity as original actor, or through his presence at the time the crime was committed (while being cognizant that the crime was committed or will be committed), and he deliberately aids and abets or incites another participant in the joint criminal act to perpetrate said crime. Or he can be a participant by means of an act by which he supports a specific regime [TN: "specific system" or "specific arrangement" are an alternate translation for "nizaam mooaayyan", as the word "nizaam" نظام in Arabic is somewhat ambiguous without sufficient context] under which the crime is committed. This occurs through the position of the defendant in the ruling establishment [TN: Arabic word is "sooltat"] or through his profession, while being aware of the nature of that regime and intending to support it [TN: Given this added context, the term "nizaam" seems to mean "regime" in this instance].

It is clear that the third case at least applies to what defendant 'Awwad al-Bandar has done when he issued the death penalty for 148 al-Dujail residents by means of a trial that turned out to be a sham. This took place on the basis of the defendant's position within the ruling establishment, and also on the basis of his position as the president of the abolished Revolutionary Court, while being cognizant of the nature of that regime and intended to support it as a member of the disbanded Ba'th Party, and while he was the president of one of the state's institutions, the so-called Revolutionary Court, when the state was led by the disbanded Ba'th Party. The fact that defendant 'Awwad al-Bandar was a high-ranking member of the then Ba'th Party is undeniable, since it was not possible for 'Awwad al-Bandar to hold the position that he held at the presidency of the Revolutionary Court unless he was a senior member of said Party. If the crime that was agreed upon (whether the agreement was public or private, explicit or implicit) was committed by one or more

participants in this joint crime, then all participants in that act are criminally liable for that crime, irrespective of the role each one of them played in perpetrating the crime.

Legal Description of the Act Attributed to Defendant ‘Awwad al-Bandar

This Tribunal firmly believes that the existing evidence and presumptions against defendant ‘Awwad al-Bandar are sufficient to convict him pursuant to Article 12 (First/a) of SICT Law No. 10 of 2005, given that he has committed as an original actor and by participating with others a joint criminal act that constitutes a deliberate murder considered to be among the crimes against humanity. The Tribunal has established that when defendant ‘Awwad al-Bandar issued the verdict for a great number of al-Dujail residents, sentencing them to death by hanging, he had issued an order to murder those people. This order was carried out afterward as is indicated in the death sentence execution reports, death certificates and causes of death attached to the records of this lawsuit. All elements of deliberate murder and the general conditions for crimes against humanity applied to the said defendant. He is thus considered criminally liable thereto and bears their legal consequences. The Tribunal has established beyond any reasonable doubt that the (abolished) Revolutionary Court, which was presided by defendant ‘Awwad al-Bandar, did not conduct any hearing to try those victims among al-Dujail residents whose names were listed in the arraignment order. Further, the behavior of the said defendant was part of a large-scale and methodical assault directed against the civilian residents, and he knew that said behavior constitutes part of that assault. He wanted to cause a criminal outcome, which outcome occurred with the death of the wronged persons (the victims) when he committed with others such joint criminal act.

Whereas this Tribunal has established beyond any reasonable doubt that the Revolutionary Court did not conduct any hearing to try the victims among al-Dujail residents in Case 944/c/1984, and yet handed down its verdict sentencing all of them to death by hanging on 6/14/1984, the only logical and reasonable conclusion that follows from these facts and from all other available evidence and presumptions against defendant ‘Awwad al-Bandar, is that he committed through participation with others a joint criminal act that falls under the provisions of Article 12 (First/a) of SICT Law.

Verdict

The Tribunal has resolved to convict defendant ‘Awwad al-Bandar for deliberate murder as a crime against humanity, pursuant to Article 12 (First/a), in line with Article 15 (Second b, d) of the Tribunal’s Law, and by virtue of Article 182 (a) of the Law on Criminal Proceedings No. 23 of 1971. The verdict was issued unanimously in the presence of the parties and was explained publicly on 11/5/2006.

Signature
Member

Signature
Member

Signature
Member

Verdict Against ‘Awwad Hamad al-Bandar

We have taken notice of the facts as well as the exhibited and checked records that pertain to the investigation and the trial. We have also considered the statements made by defendant ‘Awwad Hamad al-Bandar during the trial and his repeated requests and objections. When his testimony was taken before the Tribunal during the session of 3/13/2006 he stated that when he became the president of the Revolutionary Court the records of the 168 [sic] suspects in al-Dujail’s case were transferred to him pursuant to Arraignment Order No. 762, dated 5/27/1984, issued by the Office of the Presidency (Department of National Security Affairs). The object thereto was to prosecute the suspects in line with Article 156 and 157 of the Penal Code, and by virtue of Articles 49, 50 and 53 of the said Code. They were brought before the Revolutionary Court on the basis of Paragraph First of the Revolutionary Command Council’s Resolution No. 565, dated 4/30/1979, and Paragraph Third of Article No. 8 of amended Law No. 7 of 1985, which governs the punishment of plotters against the security of the nation and corrupters of the regime.

He testified that those who prepared the suspects’ records were the General Intelligence Service. He also explained candidly to the Tribunal that “I did not have the investigation records and I did not examine them.” This means that the suspects were referred to the Court following the above-mentioned arraignment order without any records, depositions or material evidence. Moreover, the arraignment order did not have any attached depositions recorded by the Intelligence Service, because there were no deposition records to begin with. According to his testimony, the Court was required to deliver a judgment because “the situation was not normal.” He added: “The situation was unusual and I did not have freedom of action because the situation was not normal.”

It bears noting that the defendant repeated similar statements in this context during the investigation, as he testified in one of the investigative sessions: “Please understand my position. I had no other choice.” Another time he said: “I was coerced.”

When reviewing the verdict delivered by the Revolutionary Court regarding the persons referred to them, we see that the Tribunal did not “inspect the names of the persons referred to it nor their number” but relied on the arraignment order without inspection or close examination. Further, there were no “investigation records or testimonies taken and sanctioned by a judicially authorized party or by judicial control members in accordance with the clauses and articles of the Law on Criminal Proceedings, Article 51 et seq., in order to refer the case to the Revolutionary Court pursuant to a “thorough and causal” decision in accordance with Articles 130 and 131 of said Law. However, the defendant has stated in his own words before the Tribunal that he did not inspect the arraignment sheets or even the number of individuals sent directly to the interrogation center of the Revolutionary Court on the “pretext” of unusual circumstances. According to his testimony, “I had no freedom of choice.”

Hence, there was no inspection or close examination, no “basic indictment and testimony elements,” no “disclosure of facts pertaining to the investigation and trial,” no suspects brought even before the Court for what was alleged the trial’s session convened on

6/14/1984. Furthermore, no lawyer showed up, even as a matter of formality, to represent the suspects, since there was no mention of any name for an original lawyer or one assigned for the trial, as is stipulated by law. The defendant explained the reason for not having any mention of a defense lawyer by stating that this was due to “the typist’s oversight”!! He also explained that the fees for the concerned lawyers “will be addressed at a later time...”!!

Hence, defendant ‘Awwad al-Bandar, “in the name of the judiciary and the law, and in the name of justice,” handed down a verdict for the execution of “one hundred and forty-eight” people – victims of the leader’s wrath – among al-Dujail’s residents. This occurred in the course of “one session” without abiding by the principles of litigation and trials!!! This was contrary to all legal and judicial principles and practices, whether past or present, which incontrovertibly implies that the defendant was motivated in advance to discriminate against the suspects, even without counting them or knowing their identities, since there were 46 betrayed “suspects” who, according to the case’s records, did not appear at all before the Court because they “were dead and buried,” or as members of the Intelligence Service said, referring to the operation, “They were eliminated during the interrogation.”

The odd thing is that the defendant, when interviewed about this case, and in an answer to a question posed by the Public Prosecutor regarding those deceased, stated: “It is natural and normal that some people die during interrogation.”

This Tribunal has noticed that the Department of National Security Affairs, which belonged to the eliminated Office of the Presidency, referred 148 indicted persons to the Revolutionary Court on May 27, 1984. Some of those persons “died during the interrogations” they were subjected to by intelligence officers at the Directory of Investigation and Inquiry of the Intelligence Service, which was headed by defendant Barazan Ibrahim. Others died at Abu Ghraib’s prison. Those who died as a result of torture were Yaacoub Yousef Hassan al-Ubaydi, Jassem Muhammad Latif al-Salami, Saleh Muhammad Jassem, Kassem Ali Assad al-Haydari, and Alwan Hassan Hussein al-Salami.

In addition, there were minors who had not yet reached their eighteenth birthday who were the object of the death penalty, contrary to what governing laws in force prescribe, and contrary to legislative and judicial guidelines. These were, according to the verdict’s sequential order, the following: Mahmoud Hassan Muhammad al-Haydari (verdict’s sequential number 118, and age according to the day, month and year: 14 years 6 months and 7 days, ie, 14/6/7); Abbas Habib Kazem al-Musawi (65; 12/7/7); Mehdi Hussein Ali al-Marsumi (107; age 14/4/7); Habib Jassem Jawad al-Zubaydi (sequential number 2); Muhammad Abd Jawad al-Zubaydi, Muhammad Hassan Mehdi al-Aswadi (sequential number 108, age 15/1/8); Fouda Hassan Mehdi al-Aswadi (age 12/7/15); sequential number 126: Khamis Kazem Jaafar al-Ubaydi (age 15/3/19); sequential number 48: Hussein Ali Habib al-Ubaydi (age 15/3/19); sequential number 117: Hadi Abdul Wahab Jaafar al-Ubaydi (age 16/6/7); sequential number 24: Maytham Mehdi Abbas al-Salami (age [TN: missing figures in Arabic text]; sequential number 85: Ali Anwar Hussein al-Salami (age [missing]; sequential number 11: Jaafar Ali Hussein al-Musawi, sequential number 88: Muayed Salim Majid al-Haydari; sequential number 106: Nasser Abdul Aziz Jawwad al-Zubaydi; sequential number 122: Ahmed Hatem Muhammad Rida; sequential number 123): Jassem Naji Abdul Aswadi; sequential number 133: Hussein Salman Moslem al-Khazarji; sequential number 134: Hassan Daham Sultan al-Salami; sequential number 22: Youssef Abd Ali Hassan al-Ubaydin;

sequential number 68: Mahmoud Jassem Abdul Hassan; sequential number 27: hafez Muhammad Hadi al-Kalabi; sequential number 14: Ibrahim Saleh Kazem al-Musawi; sequential number 87: Moslem Abd Ali Hassan al-Ubaydi; sequential number 17: Hasehm Muhammad Latif al-Salami; sequential number 56: Mezher Jamil Ayoub al-Khazarji; sequential number 44: Hassan Suhail Nejm al-Salami; sequential number 124: Ali Nejm Abboud al-Salami; sequential number 99: Ahmed Jassem Abdul Hassan; sequential number 105: Mehdi Saeed Abboud; sequential number 109: Kassem Muhammad Jassem al-Zandah; sequential number 142: Salem Abd Abbas Ali; sequential number 31: Haydar Jassem Hussein al-Salami.

It bears mentioning that the verdict handed down was enforceable, incontrovertible, and not subject to appeal. Defendant Saddam Hussein ratified the verdict as soon as it was delivered by virtue of Presidential Decree No. 778 on June 16, 1984, that is, two days after the ruling came out sentencing to death those victims. The verdict was implemented against those who were still alive in line with a death sentence implementation report on 3/23/1985 at the Long-Term Sentences Section at Abu Ghraib prison.

The promulgation of the death sentence and the enforcement of that sentence represents a direct violation of the provisions of Article 79 of the Iraqi Penal Code No. 111 of 1969, wherein we have “the death penalty shall not apply against anyone who at the time the crime was perpetrated had completed his eighteen years of age but had not yet completed his twenty years of age; in this case, life sentence shall apply instead of the death penalty.”

Whereas 22 of those victims were under “eighteen years of age” or were “minors” the provisions of the laws passed by Saddam Hussein’s authorities or in his name are inconsistent with the Revolutionary Command Council’s Resolution No. 1203 dated 9/20/1978;

Whereas the Revolutionary Court originally was not competent to oversee this case and the matter of the trial;

Whereas in accordance with the said Resolution “the offenses committed by youths shall not fall under the Revolutionary Court’s jurisdiction set forth by reason of the Revolutionary Command Council’s Resolution No. 1016 on 8/1/1978;”

Now, therefore, the promulgation and the formalities of the verdict are in breach of the terms of Article Six, Paragraph 5, of the first Covenant on Civil and Political Rights of 1961, which was in effect on March 23, 1976, and which was ratified by the Iraqi government on February 18, 1969.

Furthermore, this trial was hastily conducted and in ways that violated Iraqi laws in effect and international statutes recognized by the then Iraqi authorities, and represents “a complementary part to the methodical and large-scale assault against civilian residents in the town of al-Dujail” with the purpose of killing the greatest number of its inhabitants and then destroy their properties;

Also, and according to individuals whose names were mentioned in the death sentence verdict, there were “twenty-two persons” who died in interrogation before the arraignment

order even came out instructing their appearance before the Revolutionary Court. There were two other persons, one of them being Kassem Muhammad Jassem Zanda. A death certificate was issued against the latter after the implementation of the death sentence pursuant to the Revolutionary Command's resolution on 3/23/1985. However, he was never brought before the Revolutionary Court, as he was kept in the desert of Lea, and did not yet reach his fourteenth birthday. When the matter became known, he was sentenced to death afterward, on December 18, 1989.

There are other indications pertaining to the confusion and non-compliance even with procedural rules, such as acknowledging the name and identity of the suspect appearing before the Court. When the verdict came out there were two persons whose names were mentioned therein, along with other names, and who were detained in the desert of Lea in Samawa. This transpires from official documents and from the report of Kamel Hussein. Defendant Saddam Hussein had appointed the latter with the task of handling the execution of four persons who were in a prison run by intelligence units instead of other persons. This followed the report of a four-member committee, including a judge, which report was submitted to Saddam Hussein on July 5, 1987. The report contained the names of Jassem Muhammad Rida al-Hitto and Ali Habib Jaafar. Their names were mentioned in the Revolutionary Court's verdict issued by the president of the Court, 'Awwad Hamad al-Bandar, indicating that they were alive at that time and there was nothing incriminating against them. The report of July 5, 1985, states that "there are four persons who have been executed by mistake, while the two above-mentioned persons, who had also been mistakenly convicted, were released." In response to this report, classified Directive No. 35023, dated 7/13/1987, was issued by the Office of the Presidency. It was sent to the Intelligence Service, and was titled: "Directive: Let it be known that Hassan Abdul Amir al-Hamoudi, Mehdi Abdul Amir al-Hamoudi, Falah Mehdi Abdul Emir, and Salah Mehdi Abdul Amir have died in detention."

The facts and well-established evidence which stem from higher decision-making centers and authorities show how those betrayed individuals were tried by the Revolutionary Court under the presidency of defendant 'Awwad Hamad al-Bandar, and how the death penalty was carried out against innocent people without trial. They also show how the abolished Revolutionary Court, headed by the defendant in this case, was guided and presided zealously by defendant 'Awwad Hamad al-Bandar who considered himself a government employee and not a judge (!!!), and who was following the wishes and whims of those who were his higher-ups. Further, the said defendant delivered the death penalty verdict without any corroborative evidence, without examining the charge sheets and the available evidence, and without giving the suspects the right to defend themselves pursuant to the laws that were in force and that apply to that case. In addition, rules of justice and the mission of the judiciary were not heeded, not even in part, while he was ruling in the name of right and justice, and was, according to the Sharia rules, "God's custodian in His land." The defendant did not abide either by all legal and factual considerations when promulgating the harsh verdict against 148 betrayed al-Dujail residents, and did not adhere to judicial proceedings as well as to governing legal principles and rules stipulated in the Criminal Proceedings Law No. 23 of 1972 and in the Penal Code No. 11 [sic] of 1969. Whereas the Court placed the defendant in a unique position as a judge, and assuming that the other defendants, including Saddam Hussein and the Intelligence Service chief, had referred the matter to the Court, and that all of the suspects were arraigned before the Court, yet the defendant did not, in the first place, examine the number of persons arraigned and abide by

the minimum arraignment requirements with regard to all of them, nor did he sort out the facts of the matter that apply to each of the suspects, even if the matter was “urgent and expeditious” and “was special” as was stated in his testimony before the Tribunal.

Moreover, the suspects were not given the time or opportunity to prepare their defense, even if pro se, and were stripped of the simplest proceeding rules that apply to any proper court in conformity with the Iraqi procedural laws in effect. Further, the identities and names of those who had been referred were not examined, not even briefly. Forty-six of those arraigned were not among the present suspects. This confirms that the judicial or administrative records had not checked the names of the persons referred to the Court.

Moreover, no Court clerk was assigned to tabulate the names and persons present in order to know the number of suspects and whether they are legally and judicially fit to appear before a Court prior to charging them in accord with law. Hence, a verdict was issued for two persons who, in the first place, did not appear before the Court. And in a grave precedent, the suspects were not authorized to appoint a lawyer to defend them. As a result, legal and practical rights, which are part of the enshrined right of defense, were revoked for those suspects, even though this is one of the basic requisites for any judicial or legal body. The fact that the names were not examined led to “judicial disaster,” whereby four persons who had nothing to do with the events of al-Dujail were executed while they were detained for other reasons that had nothing to do with these events. There were also two persons who did not appear before the Court and against whom the death penalty was delivered. This can only be described as “the misery of the judiciary and justice.” As for the objections of the defendant before the Tribunal, and his repeating that he was “coerced to perform such work,” one can say that if the defendant were an ordinary administrative employee, that kind of talk would have been easier to digest, but as a judge and the president of a Court, that on its face is inadmissible.

In the final analysis, the defendant was motivated and mentally prepared to commit murder on a group of victims within the framework of a coordinated working program and a large-scale methodical plan starting with the arrests. This is indicated in the underlined phrases of the conviction ruling and the verdict issued by the Court against the above-mentioned convicts within the framework of this ruling.

Therefore, given the sufficient evidence available against defendant ‘Awwad Hamad al-Bandar, who was motivated and mentally prepared to commit murder on a group of al-Djuail residents as part of a systematic working plan and large-scale assault against al-Dujail residents, which was hastily implemented;

And given the incriminating evidence against defendant ‘Awwad Hamad al-Bandar;

The Tribunal has unanimously ruled to convict him pursuant to Article 12 (First), Paragraph 2 (Second a), in line with Article 15 (First, Third, Fifth and Sixth) of SICT Law No. 1 of 2005, and by virtue Article 406 of the Penal Code No. 11 [sic] of 1982 [sic], and this was explained to him publicly on 11/5/2006.

[Handwritten: 11/5/2006]

[Seal: Iraqi High Tribunal; First Criminal Tribunal Presidency]

[Signature]
Judge
Ra'uf [illegible]

[Signature]
Member

Defendant Saddam Hussein al-Majid

Charges Against Defendant Saddam Hussein

On 5/15/2006, this Tribunal has charged defendant Saddam Hussein with perpetrating a number of crimes against humanity, consistent with the provisions of Article 12 (First, a, d, e, f, i, j) of SICT Law No. 10 of 2005, which stipulates:

First: For the purposes of this Law, “crimes against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

- a. Willful killing.
- d. Deportation or forcible transfer of population.
- e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental norms of international law.
- f. Torture.
- i. Enforced disappearance of persons.
- j. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to mental or physical health.

These charges were leveled in line with Article 15 (First, Second, Third, Fourth) of the Tribunal’s Law, wherein it is stipulated:

First: Any person who commits a crime within the jurisdiction of this Tribunal shall be individually responsible and liable for punishment in accordance with this Law.

Second: In accordance with the provisions of this Law and the provisions of the Penal Code, a person shall be criminally responsible if he does the following:

- a. Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that [other] person is criminally responsible;
- b. Orders, solicits or induces the commission of such a crime, which has occurred or has been attempted;
- c. For the purpose of facilitating the commission of such a crime, aids, abets or by any other means assists in its commission or its attempted commission, including providing the means for its commission;
- d. Contributing by any other means, together with a group of persons with a common criminal intent, to the commission or attempted commission of such a crime provided such contribution is intentional and is either:

1. Made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Tribunal;

2. Made with the knowledge of the intention of the group to commit the crime;

e. In respect of the crime of genocide, directly and publicly incites others to commit this crime;

f. Attempts to commit such a crime by taking action with the intention of committing it, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who takes an action that precludes the commission or completion of the crime shall not be liable for punishment, nor will he be liable for punishment under this Law if he completely and voluntarily abandons his criminal purpose.

Third: The official position of any accused person, whether as president of the State, chairman or member of the Revolution Command Council, prime minister or member of the cabinet, or a member of the leadership of the Ba'ath Party, shall not relieve such person of criminal responsibility nor mitigate punishment. No person is entitled to any immunity with respect to any of the crimes stipulated in Articles 11, 12, 13 and 14 of this Law.

Fourth: A superior is not relieved of the criminal responsibility for crimes committed by his subordinates, if he knew or had reason to know that the subordinate had committed, or was about to commit such acts, and the superior failed to take the necessary and reasonable measures to prevent such acts or to refer the matter to the competent authorities for investigation and prosecution.

Fifth: The fact that an accused person acted pursuant to an order of the Government or of his superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

Sixth: Amnesty decrees issued prior to this Law coming into force do not apply to persons accused of committing any of the crimes stipulated in it.

Summary of the Statements of Complainants and Corroborating Witnesses Against Defendant Saddam Hussein

Most of the complainants whose statements were recorded during the investigative and trial stages, and who filed a complaint against defendant Saddam Hussein did not witness Saddam Hussein ordering the arrest or imprisonment or torture or murder of any of al-Dujail residents, neither did they witness defendant Saddam Hussein personally doing that.

Nevertheless, there are some complainants and witnesses who have testified that they have heard and seen or heard from others that Saddam Hussein instructed his subordinates and followers to carry out these acts, and even carrying out some of these acts. This is in addition to his instigating their occurrence, or overlooking them, or not taking the measures

that would prevent them when he knew that they were about to happen, or not taking the appropriate measures to call to account those who committed such acts.

Furthermore, most of the complainants justified filing a complaint against defendant Saddam Hussein as follows:

Because he was “the shepherd who was in charge of his flock as head of state with everything in his hands” (statements of protected complainant (...) before the Tribunal on 12/7/2005); “because Saddam was the head of state and of government, and was the one in charge” (statements of (...) before the Tribunal on 12/21/2005); “because they are the decision-makers, whereby the President of the Republic is the first and last decision-maker, and the intelligence chief Barazan is the one who carries out these orders” (statements of (...) before the Tribunal on 12/22/2005); “party members have arrested my family following orders issued by Saddam Hussein, and Saddam was aware of the acts that party members were carrying out” (statements of Hadiya (...) before the Tribunal on 2/1/2006); “Saddam was the one who ordered the death sentence, and the intelligence chief, Barazan, is the one who was in charge at al-Dujail; that is why he is with Saddam before the Tribunal on 2/1/2006;” “he was the President of the Republic then, and whatever happened at the time was done under his orders” (statements by Ms. (...) before the Tribunal on 12/6/2005).

Moreover, the (protected) complainant (...) who at the time of the incident in 1982 was twenty-three years old and was a member of the popular army, stated in his testimony before the Tribunal on 2/1/2006: “We heard about 15 gunshots; then Saddam Hussein went back to the town and went up to the clinic’s roof. He then said that there are five or six bad people and that we will teach them a lesson.” He added: “(Barazan) was the one who was overseeing the arrests conducted by intelligence and army members; (Barazan) was the one who was issuing the orders and supervising the communications.”

Witness Waddah al-Sheikh stated in his testimony, which was recorded by the Tribunal on 10/23/2005, that a number of intelligence officers were honored by the then President of the Republic (defendant Saddam Hussein) and he was (witness Waddah) among them; they were given a one-year seniority promotion for the efforts they made in al-Dujail’s investigations. He also stated that (defendant Barzan) was the one who used to directly issue the orders in the investigations that were conducted by the Intelligence Service’s Investigation and Inquiry Department. Further, witness Waddah al-Sheikh indicated that he heard from Judge Abdul Aziz, who used to work at the Presidential Palace, that (Saddam Hussein) ordered the arraignment before the Court of any al-Dujail residents who could bear arms. Witness Waddah al-Sheikh stated also that there were no more than twelve people who fired the shots at the convoy, and he mentioned that information in his report which he submitted to defendant (Barzan). He does not understand why such a great number of citizens were arrested. He also stated that most of those arraigned before the (abolished) Revolutionary Court repudiated the shooting incident and did not know why they were brought before the Court.

Complainant Ahmed Hassan Muhammad al-Dujaili stated before the Tribunal on 12/5/2005 that when he was detained in the building of the Intelligence Service’s Investigation and Inquiry Department, he saw Khamis Kazem Jaafar (the brother of Karim Kazem, who was killed the day of the incident). The latter told him that he had been arrested on 7/8/1982

(one day before the arrest of the complainant), and that when they brought him to the Party's section he saw Saddam Hussein sitting there. Security agents had told Saddam that Khamis came from a family that opposed the regime. Saddam asked him: Do you know me? He answered: You are Saddam. He repeated the question three times, and his answer was: You are Saddam. At the time, he was still a child and did not know the rules of decorum. Saddam stood up and hit him on the head with an ashtray. This was recounted to him by Khamis Kazem Jaafar.

Another (protected) complainant (...) whose statements were taken down by the Investigative Judge on 7/13/2004 indicated that "one detained person whose name was Jassem Muhammad Latoufi passed away as a result of the interrogation. I saw defendant Saddam supervising these operations."

Witness Ahmed Hussein Khudair al-Samra'ee, who for a long period of time (from 1984 until 1991, and from 1995 until 2003) was the head of the Office of the Presidency, confirmed that the handwriting and signatures shown on documents, letters and books, and which are attributed to Saddam Hussein, are indeed his (testimony of witness Ahmed Hussein before the Tribunal on 2/13/2006).

Based on the above, it seems that not enough eyewitnesses saw defendant Saddam Hussein perpetrate personally these crimes, or even issue the orders to perpetrate them. However, does that mean that there are no other evidence and presumptions concerning his responsibility for such crimes, taking into account the types of personal criminal liability set forth in Article 15 of the Tribunal's Law and the criminal participation provisions provided in Articles 45 to 54 of the Penal Code No. 111 of 1969? Does that mean that Saddam Hussein did not issue these orders, either directly or indirectly? Does that also mean that he is not criminally liable as President of the Republic for these acts that represent crimes against humanity and that were committed by others?

This is what we will discuss in the following paragraphs of this verdict.

Summary of the Statements Made by Defendant Saddam Hussein during the Investigative and Trial Stages

Defendant Saddam Hussein indicated in his testimony, which was recorded by a panel of investigative judges at SICT on 6/12/2005, that on the basis of his position as head of state during the period when al-Dujail incident occurred, he was visiting various cities and villages in Iraq. In the course of his visit to the town of al-Dujail, the convoy that was accompanying the car he was riding became the target of gunshots fired from perhaps two rifles. However, he was not sure of that, because this happened some time ago. While the shooting was going on he got out of his car and walked towards the town, and then climbed onto a platform which happened to be the roof of a house. He spoke with the citizens once more and then got back into one of the convoy's cars and returned to Baghdad. He added that as far as he knew, no one was wounded as a result of the incident, and no one knew in advance of the time the visit would take place.

When defendant Saddam Hussein was asked about the organization that was in charge of the investigation with respect to al-Dujail's incident, he answered that there were various intelligence and security organs as well as military intelligence outfits which had their own power structure, and which carried out their work according to set plans. He added that he did not ask them to do any investigation on the matter. However, when he was told that defendant Barazan Ibrahim, who used to be the Intelligence Service's chief at that time, stated in his testimony during the inquiry that he visited him immediately after the incident at al-Radwan, and that (Saddam) asked him to go to al-Dujail in order to investigate the matter, he answered "I have no exact recollection of what Barazan said. However, if Barazan said that I asked him to go to al-Dujail after the incident and to conduct an investigation or do some fact-finding he must be saying the truth." When defendant Saddam was asked about Resolution No. 982, dated 7/31/1982, of the (disbanded) Revolutionary Command Council, which included granting a number of intelligence agents one year seniority for their effective participation in the arrest of those who were charged for the al-Dujail incident, and about the signatures on that Resolution which are attributed to him, he answered that he has no recollection of that. Yet he added that "if it is my signature and my handwriting, which are known, then I bear the responsibility. If after matching different signatures, it is proved that it is mine, then it is mine." Oftentimes, defendant Saddam Hussein's replies to the question of the investigative judges were that he has no recollection. When he was asked about his failing memory and the fact that he does not have much recollection in the course of the investigation, he replied: "I remember when I want to remember, and I don't remember when I don't want to remember."

Replying to the fact that defendant Taha Yassin Ramadan stated during the investigation that he (Saddam) had contacted him by phone and asked him to meet with the security organs that are in charge of the investigation the day after the incident, to monitor the developments of the operations, to provide recommendations and consultation services, and to explain how the investigation was proceeding in the town, defendant Saddam Hussein stated that if comrade Taha Hussein said that, he must be stating the truth.

Moreover, defendant Saddam Hussein denied that he knew anything about the officials who ordered the arrest and detention of whole families, including women, children, elderly and youths, and to detain them in the Lea desert prison of al-Samawa. He answered that he did not know who released those detained families from the prison of Lea on 4/12/1986. When he was reminded of the Investigative Committee's Report presented to him on 7/2/1987 regarding what happened in al-Dujail, and that the said families were released from detention on the basis of a noble deed on his part, which means that he was fully aware of this case and with the developments of the investigation, since he issued an order to free the detainees in 1986, he answered: "I have honored the detainees and set them free, but I don't recall that I paid much attention to the subject at the time; but I believe that I must have appointed someone, I don't remember who, to take care of the matter."

When asked about Paragraph Five of the aforementioned Report, defendant Saddam Hussein recalled that many of al-Dujail's residents were arrested. He was told also that some of them died during the interrogation, that the investigations were a sham, that the verdicts concerning some were proclaimed by the Revolutionary Court in the case docket only and without any trial, since the Report mentioned the words "without pleadings." He was also told that no measures took place in this regard because the space assigned to him

at the end of the Report does not mention that any action was taken with respect to the persons who caused the death of citizens during the interrogation, or with respect to the Court's members who conducted sham trials on paper without any legal pleadings. At this, defendant Saddam responded that if there are comments in the Report that indicate that he did not take any action against the wrongdoers, that does not mean that he was not concerned with the issue; he added that he may have looked at the Report and taken some action without this being reflected in the Report.

When defendant Saddam Hussein was asked whether he issued orders to defendant Barazan in order to interrogate and arrest al-Dujail's residents, and whether he issued orders to the armed forces to shoot at al-Dujail's civilian residents, he answered that he did not issue and will not issue any order to kill civilian residents. He also denied having issued orders to defendant Taha Yassin Ramadan regarding dredging the orchards and farmlands in al-Dujail, stating that he has no recollection of that.

Defendant Saddam Hussein denied any organization and planning for all those who have conducted the arrests of al-Dujail residents, who detained their families, dredged their farmlands, and persecuted the inhabitants. He said that he has no answers for this question.

When asked about the (abolished) Revolutionary Court's ruling which sentenced to death a great number of al-Dujail's residents and the non-compliance of the said ruling with the legal guarantees provided for suspects, and when asked about his endorsing the ruling despite these issues, he answered that the ruling was passed and there is nothing in the Iraqi Constitution which stipulates that the President of the Republic, prior to ratifying a death sentence ruling, has to verify the proceedings of the courts and whether they have fulfilled their judicial duties.

When asked about how much he was cognizant of the movements of the armed forces as well as intelligence and party personnel to a region close to Baghdad and carrying out security maneuvers over three days or more, he answered that as a Commander-in-Chief of the armed forces, these forces do not move from one place to another without receiving their orders from him in general. However, in rare circumstances, it is possible that they move from one place to another in the context of some operations undertaken for security reasons.

These statements were recorded by the Investigative Panel, which comprises three judges, in the presence of one of the Tribunal's public prosecutors and in the presence of the attorney of defendant Saddam, Khalil al-Dulaymi. Everyone signed the deposition report.

Further, defendant Saddam Hussein's statements before the Tribunal, for which the hearing of 3/15/2006 had been reserved, amounted for the most part to a political harangue interspersed here and there with issues pertaining to al-Dujail's case. In general, these issues focused on the right of the President of the Republic, pursuant to the Constitution, to arrest those who attempted to assassinate him, to interrogate them, to arraign them before the Court, and to endorse the verdicts. Defendant Saddam justified dredging al-Dujail's orchards by saying that al-Dujail's residents would not feel safe and crime would not recede unless these orchards were removed. This was done in order to uncover weapons depots in the orchards and expose weapons training rooms. As it were, a training locale belonging to the banned party (meaning the Dawa party) was discovered, along with storehouses for

various types of weapons. Defendant Saddam reiterated his immunity resolved pursuant to the Constitution and challenged the legitimacy of the Tribunal.

Defendant Saddam Hussein was given another opportunity to defend himself and to testify about al-Dujail's case during the session of 4/5/2006, during which he impugned his deposition recorded by the investigative judges. He also objected that the corroborating witnesses who testified against him were false witnesses. Defendant Saddam Hussein objected also that this Tribunal is not legitimate. He stated, among other things, that after the incident helicopters were dispatched to al-Dujail and a military force was sent in order to inspect the orchards, because the latter overlap and it was not possible to control them without military force.

When he was reminded about what he stated before the Investigative Committee on 6/12/2005, namely that the shots fired at the convoy accompanying his car came from perhaps two rifles, defendant Saddam replied that this deposition is not accurate and that some phrases were intentionally inserted therein. Defendant Saddam emphasized that there was an attempt to assassinate him. He gave the example of what he and others had done in their attempt to assassinate the former Iraqi Prime Minister, Abdul Karim Kassem, in 1959. Overall, he said that the said deposition is inaccurate and asked the Tribunal to not rely on it save for what he testifies in this session. When the Tribunal asked him whether, when recording his deposition, which was taken in the presence of his attorneys, they did not examine it and whether he read it, he answered that he did not review it, and as far as the lawyers are concerned, he has no idea whether they reviewed it or not. Further, defendant Saddam stated that a number of his bodyguards were killed and wounded during the incident, although he does not know how many exactly.

Defendant Saddam Hussein indicated that if it is established that any comment or signature belongs to Saddam, he bears full responsibility. This includes the letters issued on behalf of the Revolutionary Command Council. He said he bears sole responsibility thereto, without the implication of any Revolutionary Command Council members.

As for dredging the orchards, defendant Saddam Hussein admitted that if that were the case no shots perhaps would have been fired at the head of state, and the felons would not have imagined that they could escape. The other aspect ensuing from that measure is the town's razing. When defendant Saddam was reminded of the statement he gave in the previous session, namely that al-Dujail's orchards harbored depots for different types of weapons, including a four-barrel anti-aircraft machine gun, and that a weapons training site was found, and was then asked how he knew that, the defendant responded that he just knew. He also responded that the aircraft that were attacked in al-Dujail were helicopters and that there was a resistance. When asked if it was possible for any military unit to travel without his orders, the defendant replied yes and no: "Yes when there are operations taking place that undermine security; the closest unit may take the initiative, and this is its legal duty. Legally speaking, the head of state may prevent anyone from doing anything unless he receives orders from him. So if I had any qualms about having al-Dujail's orchards inspected or chasing the perpetrators, I could have picked the phone and called the Minister of Defense or the head of the Republican Guard and told them that no one should go; the same would apply to the Interior Minister or the General Security Director."

Moreover, concerning the role of defendant Taha Yassin Ramadan and his testimony to the investigative judge, namely that defendant Saddam contacted him by phone and told him that he had been the victim of an attack in al-Dujail, asking him to go to the National Council headquarters, and that defendant Saddam instructed security officials to be present at the National Council, he was asked: What were the instructions given to defendant Taha Yassin and to security officials? Defendant Saddam replied: "If comrade Taha said that, that is true, and ignore everything I say that is inconsistent with his statements."

In addition, defendant Saddam was skeptical about the documents and letters that he received from the Intelligence Service or that came from departments under its control. He stated: "If Barazan said that he sent this letter and that I honored those people (meaning intelligence agents), that is nothing to be ashamed of nor is that an accusation." Once more, he asserted that if it is established, upon comparing his signatures on presidential decrees with others, that these signatures were his, he will bear full responsibility.

Concerning his endorsement of the (abolished) Revolutionary Court's verdict, which sentenced to death 148 al-Dujail residents, he replied that this is part of the head of state's competence and that "I am not the one who rules but it is the law and the courts that rule. My role is to say that sentences be reduced or that the convicts be pardoned partially or fully; as far as I am concerned, I was convinced that the evidence submitted was sufficient for the ratification." He added: "In accordance to my constitutional duties, anything that is in the Constitution obligates the head of state to examine it prior to his endorsement or rejection. I am bound by that."

When defendant Saddam was asked if in general he read the mail of the Presidency Office and of the Revolutionary Command Council by himself, or if there are officials who provide him a synopsis of their contents, defendant Saddam replied: "I read my own mail." When asked why he did not act when he knew in 1987 that there were some people from al-Dujail who had been eliminated (killed) during interrogation before bringing them before the Court, and that their names were listed in the arraignment order, he admitted that "when the head of state receives information that says that a death occurred as a result of interrogation, and he is convinced that the person who informed him is telling the truth, he has to take action; but how to act depends on the circumstances surrounding each case."

Defendant Saddam also confirmed that he decided to commute the death sentence of two of those who had been charged with firing shots at him. Overall, defendant Saddam did not answer the question regarding whether he took any action when he knew that al-Dujail residents had been eliminated during interrogation, and when he knew that al-Dujail families were detained in Lea desert. When asked whether he took into account those who had been executed inadvertently (four persons), without having their actual situation truthfully disclosed, in breach of the law, the defendant replied: "They were considered martyrs. There is also another letter that says that one may not make a mistake in order to conceal another one, that the one who has made a mistake must be investigated, and that the negligent person was brought to the court and sentenced to two years in prison."

Defendant Saddam Hussein stated that he recalls his decision to set free al-Dujail families, comprising 399 persons. He added that when "this fact was presented to me I remembered it as a misfortune. As for how many people there were and what was the date, this is hard

for me to remember, because there were many applications. But when the mishap was presented to me I remembered, and I do not ask mercy from anyone nor fear anyone, but I was pained to see that they remained detained throughout that period, and I was hurt that they had been detained to begin with, so I immediately ordered their release and to let them resume their normal lives.” Generally, defendant Saddam denied that he knew in advance that those families were imprisoned, even though he admitted that he knew about it later on without taking any measure in calling to account those responsible for detaining these families.

When asked why the bodies of the 148 victims who were executed following the death sentence were not handed over, the defendant responded: “No one showed me the bodies, and I am not a graveyard warden.” With regard to the letter sent by the legal department within the Office of the Presidency, dated 12/17/1983, which states the following: “Mr. the President, Commander-in-Chief, may God protect him, upon consultation with Mr. the President, Commander-in-Chief, do not send decrees endorsing sentences to any authority; it will be sufficient to inform security authorities by phone for special cases...” the defendant was asked why the competent authorities are not provided with the death sentence decrees, except by phone as regards the security authorities. The defendant replied: “Ask the party that signed the letter.” Defendant Saddam avoided giving a candid answer when asked what is meant by “special cases,” which the letter of the Presidency Office’s legal department mentions, and why the party and officials that inquire on the fate of al-Dujail’s convicts are not notified. The defendant replied: “If you are asking about an internal memo signed by a manager to a director general and from a director general to the Office’s director, and from the Office’s director to general directors, then you should bring trucks and park them here,” referring to their great number, which would require many transport vehicles to carry them.

Further, defendant Saddam impugned the civil status cards which established that a number of those against whom the Revolutionary Court’s death penalty was delivered were minors at the time of the incident, stating that these cards are forged. He also impugned the letter issued by al-Dujail’s Civil Status Directorate, which confirmed what these cards indicated in terms of birth dates, saying that it was forged too.

Summary of Defense Witnesses Concerning Defendant Saddam Hussein

The Tribunal listened to the testimonies of 21 defense witnesses concerning defendant Saddam Hussein. Most of these witnesses’ testimonies were either general and had nothing to do with al-Dujail’s incident, were based on hearsay, or tried to establish that there was an assassination attempt against the former President of the Republic, defendant Saddam Hussein, on 7/8/1982, and that various types of weapons and materiel were found in al-Dujail’s orchards. The testimonies pertaining to the assassination attempt that purportedly was organized and planned with the weapons that were uncovered were either by eyewitnesses or based on hearsay. In addition, the statements of the defense witnesses were inconsistent with those of defendant Saddam Hussein concerning the number of rifles having fired the shots towards the car convoy of defendant Saddam Hussein, as well as concerning the number of rounds fired by these rifles.

Defense witness Sabaawi Ibrahim al-Hassan, who was heard by the Tribunal on 5/22/2006, did not recall anything that pertains to al-Dujail's incident. This was also the case with defense witness Tarek Aziz Issa, save for his statement: "I was with..."

[PART 3]

“I shared with Taha Yassin Ramadan all these responsibilities and I never heard at any time that defendant Saddam had assigned defendant Taha or anyone for the matter Dujail.”

Witness Abd Hamid Hamoud (former private secretary of the President), who was accompanying defendant Saddam Hussein during the incident, and whose testimony was heard by the Tribunal on 5/24/2006, indicated that heavy gunfire coming from the left side of the orchards targeted the motorcade. “I could not estimate the intensity of the gunfire.” The rest of his statements was for the most part built on hearsay, trying thus to establish that there was an attempt to assassinate the former President, defendant Saddam Hussein, on 7/8/1982. Witness Abd Hamid Hamoud indicated that he did not see or hear defendant Saddam Hussein ordering the arrest or detention of families, or commissioning the former intelligence chief, Barzan Ibrahim for any task when visiting him in al-Ridwaniyah.

Likewise, the statements of witness (...), a former member of defendant Saddam Hussein’s security personnel, which the Tribunal heard on 5/24/2006, indicated that there was an attempt to assassinate the former President of the Republic in al-Dujail at the time of the incident. Some of his statements were based on hearsay. When the Tribunal asked him if he was able to determine the number of shots fires at the motorcade, given that he was with the defendant at the time of the incident, he replies that there was heavy gunfire from four or five firearms. He denied that anyone was injured during the incident, stating: “No one was injured; only the cars were hit.”

Much of the testimony of witness (...), a former member of the security personnel of the former President, defendant Saddam Hussein, which the Tribunal heard on 5/24/2006, was based on hearsay. He stated, however, that “the security unit opened fire and raided the orchard from which the gunshots came; three members of the unit died, and there were six or seven who were injured.” Witness Lo’ee Kharallah Talfah, whose statements were heard by the Tribunal on 5/24/2006, had nothing to say as an eyewitness, and his whole testimony was based on hearsay.

Witness (...), who was a policeman in Dujail in 1982, was heard by the Tribunal and did not have any eyewitness account regarding the Dujail’s incident. His statements were rather based on the period preceding the incident. In general, they were designed to establish that there was a deliberate plan to assassinate Saddam Hussein, and this plan had been hatched prior to 7/8/1982.

Witness Muhammad Zamam Abdul Razzak al-Saadoun, a former member of the Regional Command of the Ba’th Party, gave his testimony to the Tribunal on 5/29/2006. Overall, these statements were broad and he was not an eyewitness to the Dujail incident on 7/8/1982. However, he discussed topics related to the destruction of Dujail’s orchards and the compensations given by the government to the orchards’ owners, adding that this was not the result of personal vendetta directed against citizens for the attempt to assassinate the President; it was not a personal vendetta but rather an institutional operation organized in accordance with law and based on specific plans.

In reply to the question put to him by defendant Saddam's attorney, Khalil al-Dulaymi, who asked him whether as an official in the government he issued orders or heard orders issued by the President or the intelligence chief for attacking Dujail, the witness answered: "I did not hear or see any of that at all."

At this point, the Tribunal would like to show that if a witness does not see or hear something (whether it is a rebuttal witness or a corroborating witness), this does not mean that others have not seen or heard something.

Defense witness Mahmoud Ahmad al-Mashhadani, whom the Tribunal heard on 5/29/2006, did not either have any eyewitness account. In reply to the question of defendant Saddam Hussein's question, he gave the same answer, namely that he did not hear the former president, defendant Saddam Hussein, order the assault on Dujail. However, he did hear about the attempt to assassinate him. Once more, we reiterate the point that whether a witness does not see or hear something does not in any way mean that this fact did not take place. It is possible for some persons to see or hear something, even though millions would not have seen or heard it.

The statements of witness (...) before the Tribunal on 5/29/2006 were based on hearsay. One shielded defense witness testified before the Tribunal on 5/30/2006, stating that there was an attempt to assassinate the former President, defendant Saddam Hussein. The said witness testified also that he was hit on the back of his right foot, even though he was on the right side of the street and the gunfire came from the left side of the street.

Another shielded defense witness testified before the Tribunal on 5/31/2006. He indicated that many weapons were uncovered inside Dujail's orchards. They were in dug-out shelters that looked like trenches. The sites were dug within the ground and were covered with wood. He added that about two tons of hand grenades, missiles, rocket launchers, 80-mm mortars, Kalashnikov assault rifles, G.C.s, and Bern rifles, which look like the Iranian-made Brno rifles as well as the Iranian-made G.C. guns, were loaded onto a truck. He stated that he felt these weapons with his own hands, and that those weapons were found in all of the orchards, and not only in one. When the said witness was asked if all those weapons were found in the orchards, why they were not used to attack the motorcade, the witness said that he has no answer for this question. Some of the statements of said witness were based on hearsay.

The statements of shielded defense witness (...), who testified before the Tribunal on 5/31/2006, indicated overall that there was an attempt to assassinate Saddam Hussein.

For the aforementioned reasons, the Tribunal resolved to invalidate the testimonies of the four shielded defense witnesses: (...) 5/30/2006, (...) 5/30/2006, (...) 5/31/2006, and (...) 5/31/2006.

Witness (...) testified before the Tribunal on 6/13/2006. He was a soldier in the security unit of defendant Saddam Hussein, when he was President of the Republic, at the time of the incident occurred. Some of his statements, which tried to prove that there was an attempt to assassinate the former President and others, were based on hearsay. However, when asked by the Tribunal if he can estimate the number of rounds that were fired at the motorcade of defendant Saddam and the type of weapons used, the witness replied: "I believe they were

about fifteen or twenty shots. However, they came from light firearms (Kalashnikov) and originated from deep in the orchards, and were aimed at the cars.” He also stated that “the distance between the orchards and the street where the cars were was roughly eight meters, and the orchard’s wall was low.” He also mentioned that some of the security personnel were killed, and he remembered the name of one of the wounded, which is Raed.

The shielded defense witness who testified before the Tribunal on 6/13/2006, indicated that there was an attempt to assassinate the former President, defendant Saddam Hussein. In response to the question of the complainants’ attorney, he indicated that shots were fired at the mock motorcade, that he was at a distance of fifty or twenty meters approximately, and that he is not able to estimate the number of rounds shot, because the gunfire was intense.

Likewise, the shielded defense witness who testified before the Tribunal on 6/13/2006, stated that he was with the unit assigned for the protection of the former President, defendant Saddam Hussein, and that many gunshots were fired from the orchards. When asked how many shots he estimates were fired, he replied: “The number of gunshots was ten, thirteen or eight, and the shots came from Kalashnikov assault rifles.” When asked if any member of the group he was with was hurt, the witness replied: “No one in my group was hurt, but three members of the other unit, I don’t know their names, were killed.” The witness stated also that “a week after the incident he heard that one Raed who was with the other unit had been hit.” When the complainants’ attorneys asked him if he saw children, women and elderly firing at the President’s motorcade, the witness answered: “No, I did not hear or see any.” Answering another question by the complainants’ lawyers as to whether the President was injured or scraped in this incident, the witness stated “No.”

Questions Raised during the Trial Concerning Primarily Defendant Saddam Hussein

Besides the questions for which the Tribunal reached convincing answers when examining the degree of responsibility of defendant ‘Awwad al-Bandar, and which we said reflect necessarily on the other defendants, including defendant Saddam Hussein, there are other questions that require answers so that we can have later on a complete picture of what really happened in Dujail on 7/8/1982. This will contribute in determining the degree of responsibility of the defendants in this case, including Saddam Hussein, even if that issue relies on other elements we will address later on. These questions are the following:

1. Was what happened on 7/8/1982 an attempt to assassinate the former President of the Republic, defendant Saddam Hussein, or was it an operation that was planned and organized by defendant Saddam and the organizations that were under his control in order to punish severely Dujail’s inhabitants? If what happened was an attempt, what was the size of that attempt? Was it planned in advance?

This will also require knowing the following:

2. The approximate number of those who took part in the incident.
3. The approximate number of rifles used in the incident.

4. Were any weapons found in Dujail's orchards, and what types were there? Why were they not used during the incident if indeed those types of weapons were found?
5. Was Saddam Hussein, any of his aides or security personnel injured in the incident?
6. Was there a large-scale assault on Dujail's residents? When? How? Who took part in the assault? Who was giving the orders? What types of weapons were used in the assault? How long did the assault last?
7. Were any Dujail's residents arrested in 1982? When? How many? How? Who gave the orders? Who conducted the arrests? What is the gender of those arrested and what is their age range?
8. Was anyone of Dujail's residents imprisoned? When? How many? How? Where? Following the orders of whom? By whom?
9. Were the residents of Dujail who were detained subject to torture at intelligence or general security locales, at Abu-Ghraib prison, at the Lea desert complex or at any other place?
10. What types of torture were carried out against the detainees? Who ordered that? Who applied these tortures?
11. Were any Dujail residents killed in their detention centers? Who was killed? Who did or ordered the killing? Or who did instigate or abet the killing?
12. Was the death of Dujail residents in their detention centers the result of maltreatment, malnutrition or bad food? Was it because there was little medical care and a shortage of medications? Who died? Who was the cause of that?
13. Were the orchards razed [TN: Literal translation would, among others, be "dredged"], and were the farmlands and orchards in Dujail confiscated? Who ordered that? Who supervised this process? Who carried it out? Who abetted it?

The answer to most of these questions is contained in much detail in the indictment brought against defendant Saddam Hussein on 5/15/2006. Nevertheless, these and other issues will be examined by the Tribunal in order to reach convincing confirmation thereto by means of discussing any evidence available in the trial.

The indictment brought against defendant Saddam Hussein on 5/15/2006 states: "Saddam Hussein, you are hereby charged, during your tenure as President of Iraq, as Commander-in-Chief of the Armed Forces, and as Chairman of the (former) Revolutionary Command Council, when you visited the town of Dujail, which belongs administratively to the governorate of Salahiddin on 7/8/1982, and on the pretext that shots were fired at the cars that were traveling with your motorcade, with issuing the orders to military and security organs, to the Intelligence Service, to the Popular Army and to the Ba'th Party organization in Dujail, to stage a systematic and large-scale assault by using firearms and all types of weapons, including helicopters, to kill, arrest, detain, and torture a great number of Dujail's residents (men, women and children), and then issuing orders to raze the orchards and destroy dwellings appurtenant to them; pursuant to said orders, these agencies and armed forces killed nine persons on that day and the day after; those killed were the following: Abbas Jassem Muhammad Rida al-Hitto al-Salami, Karim Kazem Jaafar al-Zubaydi, Imad Hassan Mehdi Jaafar al-Aswadi, Raad, al-Karbala'ee, Muhammad Abd Jawad al-Zubaydi, Mahrouz Moahmmed Hadi al-Kalabi, Hashem Adnan Jassem al-Khozali, Sadek Majid hamid al-Khozali, and Sattar Toufic Yahya al-Khafaji. Further, 399 family members were arrested and detained at the Investigative and Inquiry Department (Hakimiya), which belongs to the Intelligence Service Directorate (disbanded), and which was under the control of defendant Barzan Ibrahim al-Hassan, according to the documents attached to the trial's documents. The

detainees were then tortured by intelligence officers. In the course of interrogation and torture, electric current was switched on, detainees were struck on the head with iron sticks and deprived of sleep, and other torture methods were applied. As a result of the torture, a number of detainees died. They are: Yacoub Hussein al-Ubaydi, Jassem Muhammad Latif al-Salami, Saleh Muhammad Jassem, Kassem Ali Assad al-Haydari, and Alwan Hassan Hussein al-Salami. The others were sent to Abu Ghraib prison, which was under the control of the Intelligence Service (disbanded). There, torture resumed and more detainees were killed, some through the use of the aforementioned methods. They are: Mijbil Hassan Aziz al-Marsumi, Yassin Hassan Hitto al-Salami, Nawfah Hassan Agha al-Zubaydi, and the children Hisham Fakhri Assad al-Haydari, Zayna Muhammad Hassan al-haydari, and Ali Majid Yacoub al-Kharbatli. Other detainees, including men, women and children, were taken to the desert complex of Lea, which is designed to house traveling nomads and their livestock in Samawa region. They were kept there for four years during which they were deliberately subjected to torture and wretched hygienic and living conditions, to malnutrition, lack of medication, and to high desert temperatures. This caused the death of Hamid Mehdi al-Khazali along with a number of other detained family members, namely Abdul Wahab Jaafar, Habib al-Ubaydi, Sabriya Abbas Ahmad al-Ubaydi, Sabri Assad 'Abdullah al-Haydari, and the two kids, Muthna Majid Yacoub and Tahbet Assad Ali al-Haydari. Afterward, the National Security Affairs Department at the (disbanded) Office of the Presidency, and under direct orders from you, referred to the (abolished) Revolutionary Court, headed by defendant 'Awwad Hamad al-Bandar, 148 persons, including the names of persons who already died because of torture during interrogations at the Investigation and Inquiry Department (Hakimiya) and at Abu Ghraib prison. Among those people were minors who are less than eighteen years of age. They are: Mahmoud Hassam Muhammad al-Haydari, abbas Kazem Habib al-Marsumi, Mehdi Hussein Ali al-Musawi, Habib Jassem Jawad, Hashem Ali Lafta al-Zubaydi, Ahmed Abd Jawad al-Zubaydi, Muhammad Abd Jawad al-Zubaydi, Muhammad Hassan Mehdi al-Aswadi, Foudad Hassan Mehdi al-Aswadi, Khamis Kazem Jaafar al-Ubaydi, Hussein Ali Habib al-Ubaydi, Hadi Abdul Wahab, Jaafar al-Ubaydi, Maytham Mehdi Abbas al-Salami, Ali Anwar Hassan al-Salami, Jaafar Ali Hussein al-Musawi, Mouayed Salem Majid al-Haydari, Imad Abbas Haswan al-Haydari, Nasser Abdul Aziz Jawad al-Zubaydi, Ahmed Jassem Muhammad Rida al-Hitto, Jassem Naji Abdul Aswadi, Hussein Salman Mosleh al-Khazarji, Hussein Duham Sultan al-Salami, Amer Daham Sultan al-Salami, Yousef Abd Ali Hassan al-Ubaydi, Mahmoud Jassem Abdul Hassan al-Jumayli, Hafez Muhammad hadi al-Kalabi, Ibrahim Saleh Kazem al-Musawi, Moslem Abd Ali Nejm Abboud al-Salami, Ahmed Jassem Abdul Hassan, Mehdi Saeed Abboud, Kassem Muhammad Jassem al-Zanda al-Zubaydi, Salem Abbas Ali, and Haydar Jassem Hussein al-Salami. As a result, defendant 'Awwad Hamad al-Bandar issued an irrevocable verdict sentencing all of them to death by hanging in a summary trial which lasted one session, pursuant to Resolution No. 944/c/1984 on 6/14/1984.

Likewise, people were convicted without even being tried, since they died during interrogation in the hands of intelligence outfits as a result of torture. There were also a few youngsters, who had not yet completed their eighteenth birthday, against whom the death sentence was proclaimed and carried out, in contravention of the provisions of Article 79 of the revised Penal Code No. 111 of 1969, and the Youths Protection Law in effect, as well as in contravention of Article 6, Paragraph 5 of the International Covenant for Civilian and Political Rights of January 16, 1966, which came into effect on March 23, 1976, and was ratified by the Iraqi Republic on 2/18/1968. Said Covenant stipulates that "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age." You have

immediately ratified the aforesaid collective death penalty verdict pursuant to Presidential Decree No. 778 of June 16, 1984, which you signed. Then you promulgated Resolution No. 1283 on 10/24/1982 of the (disbanded) Revolutionary Command Council, instructing the confiscation and razing of farmlands and orchards belonging to Dujail residents. Further, the bodies of those killed were concealed and not brought to their families, and the fate of some detainees, including six youngsters, remains unknown. They were: Muhammad Hassan Muhammad al-Haydari, Muhammad Jamil Ayoub al-Khazarji, Nejm al-Din Abd Jawad al-Zubaydi, Isma'eel Abbas al-Khazali, Talal Yacoub Majid al-Kharbatli, and Taleb Jamil Ayoub al-Kharzaji.

Evidence and Presumptions Available Against Defendant Saddam Hussein al-Majid

Based on the above we can see that the evidence and presumptions available against defendant Saddam Hussein concerning deeds attributed to him pursuant to the indictment brought against him on 5/15/2006, are as follows:

1. At the time of the incident (from 7/8/1982 until 1/16/1989) defendant Saddam Hussein held the post of President of the Republic, Commander-in-Chief of the Armed Forces, and Chairman of the Revolutionary Command Council. Further, the executive and legislative powers were for all intents and purposes concentrated in his hands, since he was able to enact any law or resolution that has force of law at any time he wished. Likewise, judicial power was under the control of the Minister of Justice, who in turn was subordinate to the head of the executive power.
2. The filmed and audio recording of defendant Saddam Hussein, which was projected before the Tribunal and which shows defendant Saddam Hussein giving a speech to Dujail's residents on 7/8/1982, indicating that those who fired the shots were two or three, and were no more than ten.
3. His statements before the Investigative Panel, which comprises three judges, in the presence of his attorney, Khalil al-Dulaymi, and in the presence of one of the public prosecutors, at the Tribunal, on 6/12/2005. He stated therein: "The motorcade I was riding in was the target of gunshots coming from two or more rifles, but I am not sure as this happened a long time ago." Then he remarks: "I would like to add that, as far as I know, no one was injured in the incident." It is irrelevant that afterward he testified before the Tribunal at different sessions in this regard, whereby he stated that his deposition before the Investigative Panel was not accurate; said deposition is legally valid because it was recorded by three of the investigative judges in the presence of the public prosecutor and the defendant's lawyer, Khalil al-Dulaymi. Moreover, the judiciary at Iraq's Court of Cassation is of the opinion that a deposition recorded by an Investigative Judge is the closest to the truth and facts. There are dozens of rulings handed down by the said Court over many decades which confirm this interpretation and the stability of this principle in Iraqi judiciary, on top of which is the Court of Cassation's judiciary. Moreover, this Tribunal does not lend much credibility to what some of the defense witnesses mentioned, namely the existence of many types of weapons in Dujail's orchards on the day the incident occurred

and the following days. There are many reasons for the Tribunal's conviction, namely that if these weapons indeed existed, some of them would have been used, especially those that are characterized by greater firepower and greater impact with respect to the assassination attempt. In addition, many of the defense witnesses for defendant Saddam Hussein have stated that the number of shots fired at the motorcade cars was limited and did not exceed fifteen gunshots. And the number of Kalashnikov assault rifles was limited and was no greater than a few rifles. This is what witness Waddah al-Sheikh confirmed also in his testimony before the Tribunal on 10/23/2005.

These facts lead us to say that the statements of the complainants and witnesses in general, whether they were corroborating witnesses, rebuttal witnesses or inquiry witnesses, as regards the motive of Dujail's events in 1982, can be broken down into three interpretations:

First interpretation: This interpretation implies that there was an attempt to assassinate the former President, defendant Saddam Hussein, on 7/8/1982. This interpretation branches out in turn into two versions, whereby some, especially defense witnesses and defendants, in particular Saddam, Barzan, Taha and 'Awwad, during the trial's period, assert that it was an operation that had been planned by the Dawa Party and carried out by Dujail residents who were members of that party, and in which the said party took part, using all its resources, which were bolstered by Iran at a time when it was in war with Iraq. This included supplying the members of the Dawa Party among Dujail's residents with light arms and medium weapons as well as rocket launchers, mortars and the attendant ammunitions, so on, in addition to a Racal-type transmission set.

The second version, which concerns the statements that pertain in particular to the defendants during the investigation stages and some complainants, implies that there was an attempt to assassinate the former President, but it was an individual and isolated attempt carried out by a few persons, and that the weapons used in this attempt were also few. Likewise, very few shots were fired at the motorcade. This reading is backed by witness Waddah al-Sheikh and a few defense witnesses for defendant Saddam Hussein.

The second interpretation, which was adopted by a number of corroborating witnesses, implies that there was no assassination attempt and that the operation was organized and planned by the former regime, headed by defendant Saddam Hussein, in order to justify attacking and harassing Dujail's residents, especially that an increasing number of these townspeople, who belonged to a specific religious group, opposed the regime. So the Ba'th Party along with intelligence and security organizations made up this incident in order to achieve their desired objectives, taking advantage of the circumstances surrounding the Iraq-Iran war.

The third interpretation, which is reflected by a number of corroborating witnesses, is that there was no attempt to assassinate the former President, and that the operation was not organized and planned by the former regime. Rather, the matter consists in no more than a few gunshots fired by some party members and a few popular army personnel celebrating the arrival of the former President, defendant Saddam Hussein, to Dujail. Saddam Hussein, along with his security staff and outfits, believed it was an attempt to assassinate him. They used the opportunity to carry out their designs to eliminate anyone suspected of not being loyal to the Ba'th Party, or suspected of being loyal to the Dawa Party, giving thus to the

Iraqis in general, and to Dujail's residents in particular, a telling lesson of obeisance to the Ba'th Party regime under the leadership of Saddam Hussein.

This Tribunal, based on the information available from the overall evidence and presumptions, including statements of parties in the case, corroborating and rebuttal witnesses, considers it more likely in fact that there was an attempt to assassinate the former President, but that attempt was very limited and the number of individuals who carried it out was no more than a handful, that it was not planned but ad hoc. This is corroborated by the fact that defendant Saddam Hussein affirmed during the investigation and in the course of the trial that no one knew the time of his visits to Iraqi towns and villages, and by the fact that a tiny number of elements took part in this attempt, as well as the light arms (Kalashnikov assault rifles) that were used, besides the few gunshots fired towards the motorcade vehicles. Defendant Saddam Hussein along with his regime and his intelligence, security, military and party organs exploited this individual and isolated attempt in order to punish severely Dujail's residents, especially that most of them were not loyal to the Ba'th Party and to Saddam Hussein.

4. The orders that defendant Saddam Hussein, upon returning to Baghdad from Dujail, gave to officials of security organs directly under his control, to meet at the National Council, and the order he gave to defendant Taha Yassin Ramadan to preside this meeting in order to draw up the appropriate plan to deal with the situation and to begin arresting, detaining and interrogating Dujail's residents. This is what in fact happened on the day of the incident and the following days and weeks.

5. Defendant Saddam Hussein instructed at Radwaniya defendant Barzan Ibrahim, who was the Intelligence Service chief and the senior official responsible for the protection of the former President, defendant Saddam Hussein, to lead the operations in Dujail. In fact, he went there on the day of the incident and the next day. The arrests that happened then and later on were in breach of law, as Dujail's residents, including women, children, elderly and youths, were arrested by the hundreds and sent to the Party division in Dujail and afterward to the building of the Investigative and Inquiry Directorate (Hakimiya), which is under the control of the Intelligence Service, to be detained there. Those people were afterward subjected to interrogations, torture, murder and forcible displacement.

7. Official documents which establish the cognizance of defendant Saddam Hussein and his instructions regarding what was happening in Dujail, namely the perpetration of acts that constitute crimes against humanity.

a. The report submitted by defendant Barzan Ibrahim to defendant Saddam Hussein, dated 7/13/1982, with regard to rewarding intelligence members for their "exceptional" efforts in the arrest and interrogation of Dujail's residents.

b. Resolution No. 982 of 7/31/1982 of the (disbanded) Revolutionary Command Council by which defendant Saddam Hussein rewarded intelligence members for their role in the aforementioned acts.

c. Resolution No. 100 of 1/23/1985 of the Revolutionary Command Council, and prior to that Resolution No. 1283 of 10/14/1982 of the Revolutionary Command Council, regarding

transferring the ownership of farmlands belonging to Dujail residents (confiscation of those lands).

d. The arraignment order pertaining to 148 Dujail residents for appearing before the (abolished) Revolutionary Court, and the ratification of the verdict delivered by the said Court sentencing to death by hanging all (suspects) victims among Dujail's residents, pursuant to Presidential Decree No. 778 of 6/16/1984, just two days after the promulgation of the conviction ruling and the verdict on 6/14/1984 by said Court.

e. The report presented by the committee established under the chair of Hussein Kamel in 1987 regarding the Dujail's case, containing margin comments and signed by defendant Saddam Hussein.

f. The study provided by the Legal Affairs Department at the (disbanded) Office of the Presidency, dated 7/28/1987, concerning the execution of four persons by mistake and considering them to have died in detention.

g. The study provided by the Legal Affairs Department at the Office of the Presidency, dated 4/5/1987, regarding the non-enforcement of the death sentence verdict concerning two persons whose names were in the verdict promulgated by the abolished Revolutionary Court, Reference No. 944/c/1984, dated 6/14/1984.

7. The visual and audio recording projected before the Tribunal, in which defendant Saddam Hussein is speaking. Among other things, he states in this recording that it is of little importance to him and that he does not care about those who die during interrogation, regardless of their numbers. This recording, assuming it has no direct relation to what occurred in Dujail, is considered among the presumptions regarding the way of thinking of defendant Saddam Hussein, at least prior to the incident, especially that defendant Saddam and his lawyer objected before the Tribunal that this recording was prior to Dujail's incident and had no relation to it.

8. Later on, defendant Saddam Hussein issued instructions to "compensate the owners of orchards that had been razed and confiscated in retaliation" against Dujail's residents. According to the said defendant's admission before this Tribunal on 3/1/2006, he issued instructions to raze the orchards because of the attack that targeted him. It goes without saying that the compensation, following the perpetration of the act, besides constituting evidence for his perpetration of that act following orders given by him, does not negate the fact that the act was committed and that the crime occurred with consequences thereto. Even if the compensation took place, it was not realized for all those who were harmed. This concerns civil liability and has no effect on criminal liability, which comprises a public right for the local (Iraqi) community and the international community. In any case, chopping down trees on such a large scale and razing the orchards are considered a waste of national resources, and compensations for the razing constitute a waste of public money.

9. The satellite pictures of Dujail taken on 9/25/1982 and afterward on 7/31/1983 show the large portions of orchards and farmlands that were razed in the region of Dujail. These pictures were exhibited to the Tribunal.

10. Defendant Saddam Hussein did not issue any instructions concerning investigating or prosecuting those who were responsible for the arrest, detention, torture and killing of elderly, children, women and youths among Dujail's residents, even though he was cognizant of that.

11. The audio recording of the phone conversation between defendant Saddam Hussein and defendant Taha Yassin Ramadan regarding razing the orchards in Dujail and compensating their owners, which the Tribunal heard in one of the trial hearings.

12. The audio recording of defendant Saddam, in which he addressed the Sheikhs and notables of Jabbour tribes, wherein he reveals what happened to the residents of Samija, which is the old name given to the town of Dujail.

13. The aforementioned statements of complainants and witnesses during the investigative and trial stages.

14. The leadership responsibility of defendant Saddam Hussein (responsibility of the Supreme Commander) given that at the time of the incident on 7/8/1982 and until 1/16/1989 he was the President of the Republic, the Commander-in-Chief of the Armed Forces, and the Chairman of the Revolutionary Command Council.

Defendant Saddam Hussein was the Supreme Commander and the senior chief of the intelligence, security, military, party and administrative institutions given that they were linked to him personally or directly, or they were linked to his office, which is under the direct control of its president.

This responsibility was set forth in Article 15 (Fourth) of the Tribunal's Law, pursuant to which defendant Saddam Hussein is liable "for crimes committed by persons operating under his authority, in particular if he is cognizant thereto or if there are reasons for his being cognizant thereto." Likewise, defendant Saddam Hussein was the Commander-in-Chief of the Armed Forces, and military units, especially in totalitarian and heavily centralized regimes, cannot carry out operations such as the ones that occurred in Dujail, and cannot move around unless they are instructed by the Commander-in-Chief of the Armed Forces. This is especially the case when the actions of the military units happened during the Iraq-Iran war, and that the Dujail's region is at a distance of no more than 60 kilometers from Baghdad.

What confirms also the cognizance of defendant Saddam Hussein about what occurred in Dujail are the documents and correspondences that have been exhibited before the Tribunal, including the arraignment of those victims among Dujail's residents who were considered suspects before the (abolished) Revolutionary Court pursuant to Arraignment Order No. 762 of 5/27/1984, and his endorsement of the said Court's Verdict No. 944/c/1984 of 6/14/1984 sentencing all those victims by virtue of Presidential Decree No. 778 of 6/16/1984. We can mention also Letter No. 1969 of 9/12/1984 sent by the Intelligence Service Directorate to the Presidency's Secretariat, which indicates that many Party and official organizations were inquiring about the victims and asking for information thereto. There is also Resolution No. 1283 of 10/14/1982 of the Revolutionary Command Council, which refers to the confiscation of Dujail's farmlands belonging to the victims without any compensation. Defendant

Saddam Hussein has admitted before this Tribunal that he used to personally read his own mail (Presidency of the Republic, Chair of the Revolutionary Command Council, and as Commander-in-Chief of the Armed Forces).

The Tribunal has established the validity of the documents, records and letters, as well as the margin notes included therein, and which were sent to the Presidency of the Republic and its departments, as well as to the Chair of the (abolished) Revolutionary Command Council and its departments, from the head of the Intelligence Service (linked directly to the Chair of the Revolutionary Command Council), and from the other organizations as well as from the investigation committees. This is based on the report of the trilateral committee of criminal evidence experts dated 4/13/2006, and the report of five-member committee of criminal evidence experts dated 4/23/2006, which ascertained the similarity of the handwritings and signatures belonging to defendants Saddam Hussein and Barzan Ibrahim with the samples of handwritings and signatures of the said defendants once they were matched.

It is clear from the above that there are many indications and presumptions which prove that defendant Saddam Hussein issued the orders to perpetrate acts that constitute crimes against humanity, and which prove his criminal liability given that he was the Supreme Commander with respect to the actions of his subordinates for most crimes against humanity committed in Dujail on the day of the incident (7/8/1982) and afterward, until 1/16/1989. These crimes have been included in the indictment addressed to defendant Saddam Hussein on 5/15/2006, and are stipulated in Article 12 (First) of the Tribunal's Law.

Nevertheless, the matter requires additional corroboration that these evidences and presumptions confirm beyond any reasonable doubt the criminal liability of Saddam Hussein with respect to these crimes. This is done by reviewing the different types of criminal involvement and responsibility thereto set forth in Article 15 of the Tribunal's Law, and in the provisions of criminal involvement articles specified in Penal Code No. 111 of 1969 (Article 47 to 54 of the Penal Code).

Types of Criminal Involvement and Liability Thereto

Besides what the aforementioned Article 15 of the Tribunal's Law has set forth concerning the different types of personal criminal involvement and liability thereto, Articles 47 to 54 of the Penal Code No. 111 of 1969 have provided for the criminal involvement of the principal and accomplice, wherein Article 47 of the Penal Code has stipulated that the perpetrator of the crime shall be:

1. The person who committed it alone or with someone else.
2. The person who participates in committing it, if it consists of a series of acts and if he has, during its perpetration, deliberately committed acts that constitute it.
3. Anyone who has instigated by any means a person to carry out an act that constitutes a crime if that person is not for any reason criminally liable thereto.

Article 48 of the Penal Code has specified that a person shall be considered accomplice in a crime if:

1. The person instigated someone else to commit the crime, and the crime occurred because of that instigation.
2. The person has agreed with others to commit the crime, and the crime occurred because of that agreement.
3. The person has provided a weapon or tools or any other object that was used in the perpetration of the crime, while being cognizant thereto, or has deliberately helped someone else by any other means in the organized, facilitated or completed acts to commit the crime.

Article 49 of the Penal Code prescribed that any accomplice shall be considered principal in the crime pursuant to Article 48 if said principal was present during the commission of the crime or during the commission of any other act that makes up a crime.

Article 53 of the Penal Code has laid down the liability of the principal and accomplice for probable crimes, wherein it is stated: “A crime participant, whether a principal or accomplice, shall incur the punishment pertaining to the crime that actually took place, even if it is not the one said accomplice intended to commit, when the crime that occurred is the probable result of the actual participation.”

Article 54 of the Penal Code set forth the ruling in case the intent of one of the participants in the crime is different, wherein it stated: “If the intent of one of the participants in the crime, whether as principal or accomplice, or the nature of his cognizance thereto, is at odds with the intent of the other participants or the nature of their cognizance thereto, each shall be punished according to their intent or nature of their cognizance.” In that case, we are dealing with provisions that pertain to the types of criminal involvement and liability thereto, which are set forth in the Tribunal’s Law, which is a special law (Article 15 thereof), and with provisions prescribed in the Penal Code, which is a public law. It is obvious that in case there is a provision for a specific situation in both laws, it is the special law that applies. However, if there is no provision in the special law, the provision that is set forth in the public law, which is the Penal Code, shall be enforced.

Extent of Defendant Saddam Hussein’s Liability for the Crimes he is Charged with in the Indictment

Pursuant to the indictment against defendant Saddam Hussein, the acts he is charged of perpetrating fall under clauses (a, d, e, f, i, j) of Paragraph (First), Article 12, of the Tribunal’s Law. Hence, we will determine the extent of defendant Saddam Hussein’s liability respectively for each of these acts set forth in the said clauses:

Extent of Defendant Saddam Hussein’s Liability for Willful Killing as a Crime Against Humanity Pursuant to Article 15 (First, a) of the Tribunal’s Law

We have shown earlier the components of willful killing as a crime against humanity, which are:

1. The crime perpetrator must have killed one person or more, or must have caused that.
2. The deed must be part of a large-scale or systematic assault against civilian populations.
3. The crime perpetrator must know that the deed is part of a large-scale or systematic assault directed against civilian populations

We have shown earlier, when determining the liability of defendant 'Awwad al-Bandar, that the two general components that must be present for committing any type of crimes against humanity and for the liability of any suspect thereto, are the second and third elements mentioned above. It was established that those two components were present in the Dujail's case as regards defendant 'Awwad al-Bandar. Are they present with respect to defendant Saddam Hussein?

Actually, in order to determine the extent of liability of any suspect for acts he is charged for and which constitute any kind of crime against humanity, all of these components must be present in order to confront said suspect.

The corroborating evidence and presumptions against Saddam Hussein, which we have pointed out to earlier, establish his criminal liability for the charge of willful killing leveled against him and that constitutes a crime against humanity, based on the existing components for such crime.

The substantive component constituting a criminal deed (act of murder), and the criminal outcome (death of the victims) concerning Dujail residents (victims), as well as the causal relation between this outcome and that criminal deed, are all present. This has been established through the many corroborating elements, namely the assault and executions carried out by the intelligence and security outfits, in addition to the popular army, military units, including Republican Guard forces, against a number of Dujail residents on the day of the incident and the following day, plus the arrests and detention of a great number of Dujail residents (women, children, elderly and youths), mainly at the Party division headquarters in Dujail, then their imprisonment at the Hakimiya jail which belongs to the Intelligence Service, at the Abu Ghraib prison, which is under the control of the Intelligence agency, and at the desert detention center of Lea. Some died during torture at those locations. Others passed on because of the wretched living and hygienic conditions in which they were placed. This was also the case for a great number of detainees whom the (abolished) Revolutionary Court sentenced to death by hanging pursuant to Verdict No. 944/c/1984 of 6/14/1984 by the said Court. The verdict was ratified by defendant Saddam Hussein, the then President of the Republic, on 6/16/1984, two days after it was promulgated. The death penalty was then carried out against all of them by virtue of two death sentence execution reports, mentioned earlier. Death certificates were issued by the official competent authority at that time for those against whom the death penalty was implemented and for those who had been executed earlier (prior to referring their names to the Revolutionary Court). All of these facts establish the substantive component of the deliberate murder crime.

The mental component for the deliberate murder crime, which comprises defendant Saddam Hussein's criminal intent to kill those aggrieved individuals (victims) among Dujail's

residents, broken down into its two elements of cognizance and volition, as has been established to the Tribunal, was also present. Defendant Saddam Hussein was aware of all the elements of this criminal event (willful killing) and he wanted it realized. This was established to the Tribunal on the basis of the many aforementioned corroborating elements. Defendant Saddam Hussein was cognizant, as was proven to the Tribunal, based on the statements of the defendant himself during the investigative stage, and based on the statements of complainants and witnesses, as well as on the visual and audio recording of defendant Saddam Hussein's speech to Dujail's residents less than an hour after the attempt to assassinate him. Those who carried out that attempt were no more than ten persons at the most. Likewise, defendant Saddam stated, during the investigation, that the gunshots that were fired towards the motorcade that he was traveling with came from two rifles. This was confirmed also by some of the defense witnesses for defendant Saddam Hussein, and by the witness Waddah al-Sheikh. Knowing this fact does not prove that the element of cognizance existed with respect to defendant Saddam Hussein, but it does establish his volition in carrying out the criminal act of killing this great number of Dujail residents who had been arrested, detained, tortured and then executed on the pretext that there was an attempt to assassinate the former President of the Republic.

In fact, if there are some who try to justify the killing of a number of persons among Dujail's residents on the first day of the incident under the pretext of pursuing, detaining and killing those who tried to commit this deed (assassination attempt), there is no legal, legislative or human justification or reason that can be accepted for arresting and detaining hundreds of women, children, elderly and youths among Dujail's residents and the killing of many among them, up to 200 people approximately, if we include those who died or were executed at Hakimiya jail, which belongs to the Intelligence Service, at Abu Ghraib prison, and at the desert detention center of Lea, many of whom were underage or elderly. The excessive and inhumane reaction of the Ba'th Party, which was under the command of defendant Saddam Hussein, and which led to the murder of that great number of civilians, cannot be justified under any pretext and under any circumstances.

The cognizance and volition [TN: mens rea] of defendant Saddam Hussein in accomplishing such a criminal act reflected in the killing of that great number of people, are also established on the basis of many other elements. These include his arraignment of a great number of Dujail residents before the (abolished) Revolutionary Court to be prosecuted for attempting an act he knows well they are innocent of and his ratification of the verdict sentencing all of them to death by hanging. By doing so, defendant Saddam Hussein has actually issued an order to kill all those people. His cognizance was also established later on when he examined the results of the investigations that the investigative committees have carried out concerning the elimination (murder) of 46 persons among Dujail's residents during interrogation, as a result of torture, without taking any measure to call to account those who have committed these acts.

This Tribunal has established that the military units, including the Republican Guard as well as military aircraft (helicopters), have fired at civilians among Dujail's residents who happened to be at the orchards. Who gave the order to shoot those people? Is that not of the competence of the Commander-in-Chief of the Armed Forces? If defendant Saddam Hussein did not issue these orders to shoot, why did he not try to find and punish the officers or officials for giving such orders? It bears noting that when defendant Saddam

Hussein denied having issued such an order, he indicated his being aware that it is illegal for military units to carry out such acts. This Tribunal cannot accept defendant Saddam Hussein's denial that he issued the orders to shoot at residents present in Dujail's orchards at the time when it has been established to the Tribunal that military units, some directly linked with defendant Saddam Hussein (Republican Guard), Intelligence Service units connected with his brother, defendant Barzan Ibrahim, along with security and popular army units mobilized and set about their acts of killing, arresting and detaining people in a region that does not lie farther than 60 kilometers from Baghdad, when the Iraq-Iran war was still taking place. This Tribunal took notice that defendant Saddam Hussein admitted that the mobilization of such military and security units requires orders issued by him in his capacity as Commander-in-Chief of the Armed Forces, save for very rare cases (he mentioned that in his testimony, which was recorded by the Investigative Panel). The Tribunal is convinced that the Dujail's incident and what happened afterwards was not one of those rare cases when these divisions and units would mobilize without clear orders from high-ranking political, military and party officials, who were under the command of defendant Saddam Hussein, especially during the circumstances that we have mentioned and for the reasons we have indicated.

The military units as well as the intelligence, security and party outfits could not act, or rather would not have dared act the way they did, without clear orders from the Commander-in-Chief of the Armed Forces, the President of the Republic, the Chairman of the Revolutionary Command Council, and from the supreme commander of Iraq's Ba'th Party, especially under a regime that is heavily centralized and under circumstances such as the ones prevailing during the Iraq-Iran war. It is irrelevant after that whether those orders went to the commanders of these units or divisions, or whether they went to defendant Barzan Ibrahim and defendant Taha Hussein, who issued the orders to their subordinates to carry out defendant Saddam's instructions.

Based on the above, this Tribunal believes firmly and beyond any reasonable doubt, based on the only acceptable and reasonable logical conclusion, that defendant Saddam issued his orders either directly or indirectly (by means of defendant Barzan Ibrahim and defendant Taha Ramadan) to attack the town of Dujail following the failed attempt to assassinate him which a few individuals had carried out. This large-scale assault was neither necessary nor appropriate for this very limited attempt.

The acts that the military units and the intelligence, security and party outfits carried out in terms of killing, arrests, illegal detentions and torturing people, and then executions, were not necessary in order to stop an immediate and imminent threat. Carrying out these acts that are in breach of law and shelling the orchards with helicopter gunships was not necessary and did not constitute an appropriate quantitative and qualitative response to the firing of a few shots at the motorcade of defendant Saddam Hussein. This massive, large-scale and organized assault, as well as its outcome, represents crimes against humanity, including deliberate murder as a crime against humanity.

Concerning once more defendant Saddam Hussein's ratification of the death sentence verdict against all those Dujail residents whose names were referred to the (abolished) Revolutionary Court, defendant Saddam Hussein was asked what in his opinion was the meaning of his ratifying the verdict? He replied: "The ratification means that I have the

necessary constitutional authority to revoke or revise the verdict by pardoning persons who were convicted by the Court and sentenced to death.” This answer indicates that defendant Saddam Hussein was aware of his constitutional power to revoke or revise a death sentence verdict. This makes him liable for not taking strict measures, prior to ratifying the death sentence verdict for all those whose names had been referred to the aforesaid Court, in order to ensure that the Revolutionary Court did not act in ways that are in breach of the law. Instead, we see defendant Saddam Hussein ratifying the said Court’s death sentence verdict against all of the victims just two days after it was passed.

What is more aggravating is that a great number of those whose death sentence was ratified by defendant Saddam Hussein were underage, and 46 of those victims had died earlier during interrogation as a result of torture. While defendant Saddam Hussein denied knowing that, he had to know, before referring so many civilian people to the (abolished) Revolutionary Court and ratifying immediately after the verdict which sentences them all to death, at a time where the age of any suspect had to be established on the preamble of the deposition that reflects his or her statements, whether during the investigative stage (prior to the arraignment) or during the trial’s stage, when their statements were recorded by the Court. It bears mentioning that defendant ‘Awwad Ahmad al-Bandar has emphasized more than once that the records pertaining to any case for which the Revolutionary Court has issued a verdict are inspected by a competent legal committee at the Office of the President prior to submitting them to the President (defendant Saddam Hussein).

We will discuss later on the different types of criminal involvement concerning defendant Saddam Hussein and which entail criminal liability for willful killing considered as a crime against humanity. First though, we would like to establish whether the general components of crimes against humanity apply to his case.

Although we have mentioned earlier some of the manifest elements that prove the perpetration by the defendant of a criminal conduct (issuing the order to kill) as part of a large-scale and systematic assault against civilian populations, this Tribunal shall consider this component in a broader way, and shall determine whether defendant Saddam Hussein knew that his conduct was part of a large-scale or systematic attack against civilian populations.

This Tribunal has established that the conduct of defendant Saddam Hussein was part of a wide-scale and systematic (organized) assault against civilian populations on the basis of many indications and presumptions, including the large number of military forces as well as intelligence and popular army units, and on the basis of the organization and recurrent acts concerning arrests, detentions and tortures, then the killing of many residents who, according to what the Tribunal established, were orchard owners, farmers, along with their children and wives among Dujail’s residents. Defendant Saddam Hussein was present in Dujail during the incident. Further, the number of people killed in the first and second day as a result of gunshots and shelling by helicopter gunships, indicates that shooting towards the orchards was aimed at an indefinite number of people. Local authorities were also implicated in perpetrating these crimes, besides the implication of senior political and military leadership.

The civilian nature of the victims among Dujail's residents was as clear as day. This large-scale and systematic assault involved dozens of families (roughly 85 families) belonging to dozens of tribes, most of whom are tribes located in Dujail.

This Tribunal has also established that defendant Saddam Hussein was cognizant that his conduct constitutes part of a large-scale and systematic assault against civilian populations, based on his knowledge of the nature of the region he visited (Dujail) and where he gave a speech immediately after the isolated assassination attempt. He spoke with the civilian population, and then a great number of those people were arrested after he left Dujail. These arrests occurred even prior to his departure, according to the statements of some complainants, on the first day the incident took place. Defendant Saddam Hussein knew the gravity of the acts perpetrated and the systematic nature of the acts perpetrated against Dujail's residents. Defendant Saddam Hussein was the Commander-in-Chief of the Armed Forces, directly above defendant Barzan Ibrahim. Likewise, the Republican Guard troops, which took part in that assault, were very close to defendant Saddam Hussein.

The criminal liability of defendant Saddam Hussein for the willful killing considered as a crime against humanity rests on several modes of criminal involvement set forth in Article 15 of the Tribunal's Law, and in articles concerning criminal involvement provided for in the Penal Code No. 111 of 1969. These are as follows:

Defendant Saddam Hussein's Liability for Willful Killing as a Crime Against Humanity for Issuing Orders to Kill

It has been established on the basis of the investigation and trial, and through the availability of material and moral evidence, that defendant Saddam Hussein issued his orders, at Radwaniya, to defendant Barzan Ibrahim, who was the Intelligence Service chief and the former official in charge of the President's security, to go to Dujail immediately after he returned from it, and to personally oversee the assault, killing and arrests of Dujail's residents, and to interrogate them. Most, if not all, of the statements by the complainants arrested the day of the incident, on 7/8/1982, or the following day, confirmed that defendant Barzan Ibrahim was the one who was issuing the orders for arresting Dujail's residents and sending them to the Intelligence's Hakimiya prison, and he was the one who was supervising tortures at that prison. Some of the complainants even confirmed that defendant Barzan Ibrahim personally tortured them or tortured others in the Hakimiya building that belonged to the Intelligence Service.

Whereas it was established that defendant Barzan received his orders from defendant Saddam for investigating Dujail's residents and overseeing all that was necessary; whereas the investigation comprised illegal arrests and unjustified detention as well as tortures until death; whereas all aspects of said investigation were in breach of the law and led to the arraignment of many Dujail residents before the (abolished) Revolutionary Court, which Court delivered its death sentence verdict against everyone; whereas defendant Saddam ratified that verdict, even though he knew that those who shot at the motorcade in Dujail were no more than a few individuals, according to defendant Saddam's own admission;

Now, Therefore, it follows that the orders that defendant Saddam has issued, from the order he gave to defendant Barzan for overseeing the investigation, to the arraignment order before the Revolutionary Court, to the ratification order for carrying out the death sentence for all those against whom the death sentence verdict was handed down by the said Court, all of these orders incorporate in one way or another orders to kill.

The first order that defendant Saddam gave to defendant Barzan to oversee the investigation comprised an order to perpetrate the act of killing, because this was a very predictable outcome under a totalitarian and extremely harsh regime whose nature was known in the first place to Saddam. The very probable outcome, which is practically natural according to causal and logical inferences and deductions, entails the killing of those detainees or at least the killing of many of them.

Articles 53 (f) and 34 (b) of the Penal Code No. 111 of 1969 complete the picture which establishes the criminal liability of defendant Saddam Hussein for issuing those orders, not only to defendant Barzan, but also to defendant Taha Hussein, and to commanders of the security, party, and military institutions, including the Republican Guard, orders to arrest many Dujail residents and to send them first to the Intelligence Service's Hakimiya jail. Article 53 of the Penal Code stipulates that "anyone who is involved in a crime, whether as a principal or accomplice, shall be punished for the crime that actually occurred, even if it is not the one he intended to commit when the crime that took place was a possible result stemming from the involvement that occurred."

Article 34 (b) of the same Code provides that "the crime shall be deliberate if the person who committed the crime has criminal intent; and the crime shall be considered deliberate also if the actor expected criminal results stemming from his act and he carried it out while accepting the risk of their occurrence."

Nevertheless, the intent of the defendant to kill a great number of Dujail residents was obvious and beyond any reasonable doubt when he referred a large number of Dujail's civilian residents to the abolished Revolutionary Court, and then ratified soon afterward the verdict, just two days after the said Court's verdict sentencing all of them to death came out, while he knew that the number of those who attempted to assassinate him did not exceed a few people.

Defendant Saddam Hussein's liability as the principal who issued an order to kill those who were still alive (at least 96 persons) among those who received a death sentence from the (abolished) Revolutionary Court, by ratifying the death sentence verdict against all of them, does not ensue from his ratifying the death sentence verdict for those victims, and before that referring them to the said Court. Defendant Saddam Hussein was the President of the Republic, and these matters pertain to his constitutional and legal prerogatives. He indeed asserted that fact before this Tribunal. However, his liability as someone who issued an order stems from the fact that he knew that those he resolved to refer to the Revolutionary Court, his ratification of the verdict sentencing all of them to death, and the execution of the death sentence, he knew thus that this was being done against innocent people who were not connected in any way with the attempt to assassinate him and who were not linked to the Dawa Party. This is confirmed by the fact that on the day of the incident, he mentioned in a speech he gave before Dujail's residents that no more than ten people have carried out

this act (assassination attempt). Likewise, in his deposition to the Investigative panel, he mentioned that the shots were fired at the motorcade vehicles from two or more rifles.

Moreover, defendant Saddam's liability for the crime of willful killing as a crime against humanity rests on his passing the resolution to refer to the Revolutionary Court that great number of Dujail residents, on his ratification of the verdict sentencing all of them to death, and on the fact that he knew that his act, or more precisely, his acts were part of that large-scale and systematic assault which he ordered to launch against Dujail's residents. The cognizance here is obvious because defendant Saddam Hussein has issued the orders to arrest, detain, torture and then execute people, in addition to ratifying the death sentence verdict against 148 persons, including children, some of whom did not complete their twelfth birthday. Some people had also been killed before being referred to the said Court.

Anyone who issues an order for committing a crime, and when the person who receives that order commits that crime and other possible crimes, shall in fact be deemed a principal because he had a central role which is actually more important and more serious than that of the accomplice who organizes the place where the crime is perpetrated (A. 48, Penal Code), and even more important and more serious than that of the person who is the principal in perpetrating the crime without carrying out the deeds constituting the criminal act. At any rate, his role is no less serious and important than the role of the one who executes with his own hand the elements of the crime; it is actually more serious and important.

The persons liable for the death of the Dujail residents who were detained at the Intelligence Service Hakimiya jail, at Abu Ghraib prison, which was under the control of the Intelligence Service, and at the Lea desert compound, and who have died from malnutrition and bad food, as well as from the lack of milk for children and the lack or shortage of medical care, which meant the lack or shortage of medications, so the persons liable for those deaths are the ones who gave the orders, who made the arrests and supervised the arrests, and the ones who detained these people and supervised the detention. The people who died, even though they were not subjected to beatings, died as a result of wretched living and hygienic conditions. The act of those who caused the realization of such outcome falls, according to some, under the provisions of Article 410 of the Penal Code No. 111 of 1969, given that the text of said Article includes anyone who perpetrates any act in breach of law and that leads to death. Death need not be the result of beatings. Criminal international law considers the willful killing perpetrated by those who caused the death of those victims a crime against humanity, pursuant to the definition of the term "killing" set forth in Article 7 (1, a) of the International Criminal Court's Charter, which implies anyone who caused the death of one or more persons. These two terms are synonymous in international humanitarian law. This Tribunal believes that this interpretation is the appropriate one which agrees with heavenly laws and positive human laws, especially with regard to a crime against humanity that causes harm to the international community, and to its human values and concepts.

Anyone who detains children, elderly, pregnant and breast-feeding women, as well as elderly women, in miserable conditions where there is shortage of decent food, where there is no milk for the children, and little or no medical care, where abject living conditions prevail, and who keeps them in small quarters with bad ventilation and stale air, without sun exposure, in remote desert areas, far from urban regions and normal life, exposing them to

the bitter cold of winter and to the extreme heat of the summer, and then gives these few people rotten food that provokes diarrheas, and assuming no one who has been living under these conditions dies, the act of the perpetrator who orders the detention or supervised it or who aided and abetted it or instigated it or contributed in carrying it out in any way possible, said perpetrator's liability shall rest because the criminal intent was probable (indirect intent) for committing the crime of killing, which is the criminal intent, and in this case this is equal to direct criminal intent (deliberate) in terms of legal merit. This is pursuant to Article 34 (b) of the aforementioned Penal Code. If the volition of the principal or accomplice is directed at committing a specific crime, the perpetrator shall also be liable for the potential crimes that occurred because they were the probable outcomes of the participation that took place. This is in line with Article 53 of the aforementioned Penal Code.

The positions that defendant Saddam Hussein occupied as President of the Republic, Commander-in-Chief of the Armed Forces, Chair of the Revolutionary Command Council, Prime Minister and supreme chief of the Ba'th Party in Iraq, have enabled defendant Saddam Hussein to issue his orders to commit illegal arrests concerning a great number of Dujail residents and to illegally detain them, and said orders will be addressed to anyone who is directly connected to him, to defendant Barzan Ibrahim as the Intelligence Service chief and the one in charge of his security and protection, to defendant Taha Yassin, who was First Deputy Prime Minister and the top commander of the Popular Army, to the head of the Republican Guard, and to other institutions' chiefs.

It is true that there is no direct evidence that shows that defendant Saddam Hussein issued his orders to defendant Barzan Ibrahim and to defendant Taha Yassin and others to kill a great number of Dujail's residents. However, the criminal intent of the defendant may be inferred from the circumstances surrounding the crime and the criminal, and the position of authority represents one of the circumstances that may be taken into account when it establishes that the defendant is cognizant that his presence at the location of the incident or his statements there or in any other place, even if they were indirect, may be interpreted as an encouraging sign or support for the person who is perpetrating the crime. Thus, we have to consider the power of the person as significant evidence, whereby his mere presence or later statements, even if indirect, establish deliberate criminal involvement. The International Criminal Tribunal for the former Yugoslavia held to a large extent a similar opinion in its verdict delivered on 6/25/1999 in the case of Zlatko Aleksovski.

The illegal arrests and unjustified detention of Dujail's residents occurred in a sweeping and methodical fashion. The contribution of defendant Saddam Hussein was of great significance, not only in these operations, but also in facilitating the murder of Dujail's victims. We may say that this contribution was very significant and makes the contributor a perpetrator in the crime.

In a separate opinion by Judge Cassese, whereby he distinguished between willful killing as a crime against humanity and willful killing as a war crime, with respect to the verdict of the International Criminal Tribunal for the former Yugoslavia which was handed down on January 26, 2000, in the case of Dusko Tadic, he states: "Murder, in order to be defined a 'crime against humanity', must be part of a widespread or systematic practice. In addition, it must be established that the mental element of the crime includes not only the mens rea concerning the killing of the victim, but also knowledge of the existence of the widespread or

systematic practice. Thus, if murder is defined as a ‘crime against humanity’, it cannot consist merely of a single or even a multiple violation of international humanitarian law, however serious this may have been. Rather, murder is simply one element of extensive criminal misconduct and the murderer must have acted in the knowledge that his or her conduct formed part of this overall context.”

Cassese continues to say: “Normally a ‘widespread or systematic practice’ of misbehaviour is either planned or instigated, or promoted, or countenanced, or at least tolerated by the governmental authorities wielding control over the area where the crime has been committed. It follows that the murder at issue forms part of a whole pattern of criminality.”

This Tribunal agrees with this opinion and is fully convinced that the charges against defendant Saddam, as regards committing a crime as a crime against humanity, and then his liability thereto, were fully realized pursuant to that opinion. For this and other reasons mentioned earlier, this Tribunal is fully convinced that defendant Saddam Hussein is criminally liable for willful killing on the basis of his issuing orders that led to those outcomes pertaining to the death of the aggrieved Dujail’s residents (victims), whether these were direct orders to kill as per his ratification of the verdict sentencing to death a great number of Dujail’s residents, or indirect orders as per the cases mentioned earlier.

Saddam Hussein’s Liability for Willful Killing as a Crime Against Humanity Given that he is the Most Prominent Participants in a Joint Criminal Act to Kill Many Dujail Residents

When determining the extent of defendant ‘Awwad al-Bandar’s criminal liability as a crime against humanity, we said that this liability rests on his issuing the order to kill, in addition to his involvement in a joint criminal act that aims to execute the victims among Dujail’s residents who had been referred to the said Court pursuant to the arraignment order issued by defendant Saddam Hussein. This was one aspect, among others, of a joint criminal act. The other aspect is that the act comprised the involvement of defendant Saddam Hussein in giving rise to and accomplishing said act.

This type of liability, which the ruling of the Appellate Court specified in the Tadic case, as was indicated by the verdict issued in the aforementioned Milorad Kvojejac case, applies to a situation in which all of the participants with a joint intent take part in order to commit specific criminal acts in which the principal carries out a deed that is outside the scope of the joint criminal act, yet is the natural and possible outcome ensuing from the impact of the joint criminal act that was agreed upon.

In order for the criminal liability to be established on the basis of joint criminal deed, the existence of that agreement must be proven. As we said earlier, that agreement must be declared or explicit, or one might infer its existence from the surrounding circumstances. Further, the agreement need not occur at a specific time prior to committing the crime. The circumstances in which two persons or more participate in committing a specific crime may establish that the undeclared agreement, and even the implicit one, is equivalent to an agreement that occurs between them at the time of the perpetration of the crime or earlier.

We have also said that a person shall be involved in a joint crime either:

1. Through direct participation in the perpetration of the crime agreed upon (as a principal);
or
2. Through his presence (the suspect) at the time the crime is perpetrated, while being aware that the crime was committed or will be committed, and he deliberately aids and abets another participant in the joint criminal deed in order to perpetrate the crime. This condition is present to challenge defendant Saddam, who was not present at the time the crime was perpetrated, although he was cognizant that the crime will be perpetrated, and he deliberately aided and abetted another participant in that joint criminal act for the perpetration of the crime; in addition, he ordered the perpetration of said crime, especially with respect to the victims who were referred to the Revolutionary Tribunal and against whom a verdict sentencing all of them to death was delivered, and he endorsed the execution of these death sentences; or
3. Through an act that supports a specific regime under which a crime was committed (meaning the region where that regime was in control); this happens either by means of the suspect's position in the power structure or by means of his job, while being cognizant of the nature of that regime and his intent in supporting it in order to boost the criminal activity or the criminal design of that regime or group or party while being aware of the intent of that regime or group or party to commit the crime.

This condition is also present in challenging defendant Saddam Hussein. His criminal liability here rests on the basis of a joint criminal act to kill many Dujail residents, especially those indicated in the above second paragraph, whereby defendant Saddam Hussein was the head of that regime, the head of the ruling establishment in said regime, the president of the party that used to lead this ruling establishment, and he occupied the top positions in the regime, ruling establishment and the Ba'th Party. He, more than anyone else, knew about the nature of that regime, and his intent in supporting it is obvious and unequivocal, so much so that even during the trial he was quite open in instigating and inciting others to support this regime which no longer exists. The deliberate involvement of defendant Saddam Hussein in the killing of Dujail's victims was designed to boost the criminal activities of the Ba'th Party and the ruling establishment which he was heading. Because he was the head of that regime, and of the ruling establishment and party, he is the first one to know about the intent of the regime, the ruling establishment and party to commit a deliberate murder as a crime against humanity.

As a matter of fact, if one or more of the participants in that joint crime perpetrated the crime agreed upon, all of the participants in that act shall be criminally liable with respect to that crime, irrespective of the role that each one has played in perpetrating it.

The necessary joint criminal intent for more than one defendant in that case (up to this point, the intent of defendant Saddam Hussein, the intent of defendant 'Awwad al-Bandar, and Barzan Ibrahim) for this type of liability to arise was inferred and its existence established for the aforesaid defendants from the facts, evidence and presumptions mentioned earlier; that inference is the only reasonable one that is available in the evidence.

The Tribunal confirms once more that the involvement of defendant Saddam Hussein in this joint crime (willful killing as a crime against humanity) was also the natural and probable outcome of that involvement in that joint criminal act which is reflected in the arrest of Dujail citizens and detaining them in ways that are in breach of law. In other words, even if this joint criminal act did not take place at the beginning of the arrests, it was realized after the arrest and detention of these victims in contravention of the law, given that it was the natural and probable outcome following the arrest and detention.

Whereas the Tribunal is convinced that defendant Saddam Hussein has participated in a joint criminal act to kill civilian populations from the Dujail's region, he is thus liable for the willful killing as a crime against humanity based on the joint criminal act.

Liability of Defendant Saddam Hussein for Willful Killing as a Crime Against Humanity in his Capacity as Supreme Leader Pursuant to Article 15 (Four) of the Tribunal's Law

Article 15 (Fourth) of the Tribunal's Law stipulated that "the supreme leader shall not be exempt from criminal liability for crimes committed by persons operating under his control, if said leader knew or had reasons to know that his subordinates have committed such acts or were about to commit them and said leader did not take the necessary and appropriate measures to prevent the occurrence of said acts, or if he did not refer the case to the competent authorities in order to conduct the investigation and prosecution."

For this type of liability to arise, three conditions must be present before considering the supreme leader criminally liable for criminal acts committed by his subordinates. These conditions are the following:

1. The existence of a leader-subordinate relationship between the top official and his subordinates.
2. The top official was aware or had reasons to be aware that his subordinates were about to commit criminal acts or that they committed such acts, but
3. The supreme leader or the top official did not take the necessary and reasonable measures to prevent such acts or punish those who have perpetrated those acts at that time.

With respect to the first condition, the leader-subordinate relationship requires the existence of a hierarchical professional relationship between the leader and the subordinate. The International Criminal Tribunal for the former Yugoslavia, in the case of Milorad Krnojelac, was of the opinion that an official quality need not be imparted to that relationship, and that it is not necessary that it be defined according to official status only. A hierarchical relation may exist for the higher official position on the basis of power but not in accord with law. What needs to be established is that the leader has effective power over the persons who have committed the alleged crimes. Effective power shall mean the practical ability to prevent crimes or punish its perpetrators if said crimes were committed. When the leader has effective power and fails to use it, he shall be liable for the crimes that his subordinates have committed. Further, two or more leaders shall be liable for the same

crime committed by one person, if it is proven that the principal was under the authority of the two leaders at that time. This Tribunal believes that it is not necessary that the relationship between the leader and the subordinate be direct. That means that said relationship shall exist even if it is not direct. Thus, this relationship shall exist between the supreme leader and between the subordinate of a subordinate, since it is not necessary for the subordinate to have committed the crime, but said crime may be committed by his subordinate. The text of Article 15 (Fourth) stipulates clearly the liability of the leader for the acts committed by persons who are under his control. Naturally, the subordinates who are further down will be under the control of the subordinate who has a direct link to the supreme leader; thus, they shall be deemed, along with their chief, to be under the control of the supreme leader.

This condition, which entails this liability to arise, exists in challenging defendant Saddam Hussein, given that he was the supreme leader not only for defendant Barzan Ibrahim, defendant Taha Ramadan and defendant 'Awwad al-Bandar only, but he was also the supreme leader for those who work under the control of those defendants. In other words, if the Supreme President is able to directly order his subordinates, *a fortiori* he is able to order the subordinates of those subordinates.

Likewise, the hierarchical relationship of the higher official position between defendant Saddam Hussein and his subordinates was not simply based on power alone, in his capacity as the top leader of the Ba'th Party, but also was in accord with law. Defendant Saddam Hussein had effective power over the persons who perpetrated crimes against humanity in Dujail, including willful killing as a crime against humanity. Defendant Saddam Hussein possessed this (effective) power to prevent these crimes or to punish their perpetrators.

Defendant Saddam Hussein could do whatever he pleased whenever he pleased; he could reward and punish anyone he wants; he could, as Chair of the Revolutionary Command Council, enact any law he wished, whenever he wished. Saddam's will was the law that must be complied with, regardless how unfair that law was. The best evidence of that is that he enacted a law promulgated by the disbanded Revolutionary Command Council, which defendant Saddam headed, stipulating cutting off the ear of anyone who dodges or does not perform military service. And this occurred in 1995, after the end of the Iraq-Iran war, and many years after the end of the second Gulf war. He also passed a retroactive law which sentences to death anyone who is a member of the Dawa Party.

Moreover, defendant Saddam Hussein was cognizant or had reasons to be cognizant that his subordinates were about to commit a crime or perpetrated a crime. This Tribunal has established, on the basis of the investigation and trial, and through direct or circumstantial evidence available in the trial that he was cognizant thereto, and he did not prevent the perpetration of these crimes or punish their perpetrators through specific procedures and measures. Instead, he himself issued the orders for the perpetrations of some of these, especially those related to the execution of the persons against whom the (abolished) Revolutionary Court delivered a death sentence. Likewise, when he knew, by means of the information available to him following the reports of the investigative committees that were set up in 1987, that some persons were killed during interrogation at the Intelligence Service's Hakimiya prison, that no trial was conducted for those who had been referred to the Revolutionary Court, that the trial was a sham, and yet a death sentence verdict was

handed down against all of them, he did not take any measure to call to account those persons who had perpetrated those crimes, save for one case, where an intelligence officer, Hikmat Abdul Wahab, was arraigned before the Intelligence Court in order to be questioned solely for his mistake in executing inadvertently four persons that had no link to the Dujail affair, instead of two persons whose names were listed in the conviction ruling and judgment delivered by the Revolutionary Court in its Verdict No. 944/c/1984 of 6/14/1984.

Defendant Saddam Hussein failed to take the necessary and reasonable measures to prevent or punish his subordinates for the crimes they perpetrated and which resulted in the killing of many Dujail residents. He is thus deemed criminally liable for those crimes pursuant to Article 15 (Four) of the Tribunal's Law which specifies the criminal liability of the supreme leader for the criminal acts of his subordinates. Although defendant Saddam Hussein had the power, in all meanings of the word, he did not take any measure to prevent the crimes that were committed against Dujail's inhabitants. And he did not do whatever he could, and actually he did not make any effort, to punish the perpetrators of those crimes.

Clearly, defendant Saddam Hussein had supreme power over his subordinates, and he had advance knowledge of all crimes committed, and yet he did not take the necessary measures to prevent and punish the perpetrators of said crimes. As a result, he must be held criminally liable in conformity with Article 15 (Four) of the Tribunal's Law.

In this regard, the Tribunal would like to explain that the cognizance that a subordinate who is very close and has direct access to the supreme leader, as was the case between defendant Saddam Hussein and his maternal brother, defendant Barzan Ibrahim, is considered the supreme leader's cognizance, or at least akin to a cause for cognizance. Defendant Saddam Hussein, even if it was said that he was not cognizant, had reasons to know because the relation existing between Saddam and defendant Barzan was not simply the relation of a leader with his subordinate, but also that of a very strong family ties in a regime known to have its power concentrated in the hands of a family from one of the villages of Tikrit.

Likewise, the letters between the Presidency of the Republic and the Office of the Presidency on the one hand, and the intelligence, security, military and party organs on the other, establish the reasons that make the knowledge of the person who was head of state (defendant Saddam Hussein) undeniable.

The responsibility of the supreme leader and of the other chiefs and commanders in general is not by means of third-parties' deeds, but it is a personal responsibility that rests on the perpetration by said subordinates of the criminal deeds as well as in the violation by the leader of the legal obligation he is bound by. This is a violation of what the law prescribes in terms of undertaking preventive measures when he knows that there are crimes that are about to be perpetrated, and in terms of playing a deterrent role when the crimes are committed and he knows that they have been committed.

It follows from the above that the criminal liability of defendant Saddam Hussein does not solely stem from the fact that he was President of the Republic, Chairman of the Revolutionary Command Council, Prime Minister, and Commander-in-Chief of the Armed Forces at the time of the incident. Rather, it stems also from his issuing the order to execute

civilians among Dujail's residents, and in his participating also in a joint criminal deed. All of that occurred as part of a large-scale and systematic assault against civilian inhabitants and with the cognizance of defendant Saddam thereto.

God Almighty says: "Do not take life - which God has made sacred - except for a just cause. And if anyone is slain wrongfully, we have given his heir authority (to demand punishment or to forgive): but let him not exceed bounds in the matter of taking life; for he is helped (by the Law)." (Al Isra', Verse 33).

Extent of Defendant Saddam's Liability for the Forcible Displacement or Expulsion of Inhabitants which Constitutes a Crime Against Humanity

The Tribunal has charged on 5/15/2005 defendant Saddam Hussein with the expulsion or forcible displacement of residents, which constitutes a crime against humanity in accordance with Article (First, d) of the Tribunal's Law.

Expulsion or forcible displacement of residents, pursuant to Article 12 (Second, d) means "forcibly displacing specific populations from the region where they are legitimately present through eviction or through any other coercive act without any legal justification."

Moreover, pursuant to this provision and to international humanitarian law, the basic elements of this crime are the following:

1. The expulsion or forcible displacement by the suspect of one or more persons to another country or place through expulsion or any other coercive act for reasons that are not endorsed by international law.
2. The person(s) in interest must be legitimately present in the region from which they have been removed or transferred in that way.
3. The perpetrator of the crime must be cognizant of the factual circumstances that establish the legitimacy of that presence.
4. This conduct must be part of a large-scale or systematic assault directed against civilian populations.
5. The perpetrator of the crime must be cognizant that the conduct is part of a large-scale and systematic assault directed against civilian populations.

These are the legal grounds or requirements that must be present in order to assert that defendant Saddam Hussein is criminally liable for this crime. The proof for these grounds are many, including for the first ground evidence that the expulsion occurred without choice, evidence that the victims were arrested before being displaced, evidence that there was a climate of fear, the demolition of the evictees' homes, evidence that civilians were considered detainees, so on.

Most of the substantiation elements that we have indicated were available in the case of Dujail's civilian residents who were forcibly displaced from the region where they legitimately lived (Dujail) given that they were citizens (orchards' owners and farmers along with their wives and children, in addition to students with their parents and siblings). These people have been living in Dujail for a very long period of time as Iraqi citizens, and they inhabited that town and its orchards. Some 400 of those people, comprising eighty-five (85) families which belonged to ten tribes, were forcibly removed after they were arrested in breach of law, whether it is international law or Iraqi law. They were then detained at the Intelligence Service's Hakimiya jail, and afterward at Abu Ghraib's prison, and then transferred to the Lea's desert complex, which was originally designed to shelter the wandering nomads along with their cattle in Samawa desert, close to the Iraqi-Saudi Arabia borders.

Following the investigation and the trial, other substantiating elements emerged with respect to the perpetration of that crime. Among these elements we have the records that confirm to the Tribunal the fact that those Dujail civilian residents (victims), men, women, children and elderly, were taken to that desolate area in the middle of the desert. This is in addition to the testimonies of many complainants and corroborating witnesses during the investigation and trial stages, specifying that the intelligence and general security organs, as well as Muthanna governorate security outfit (Samawa) were involved in the task of transferring these families in small groups from the Hakimiya and Abu Ghraib jails to the Muthanna governorate center (Samawa), and then to the desert complex, where they remained roughly three years. It bears noting that this duration varied from one person to another, according to the date the person was displaced and the date he or she was released.

Among those aforementioned records, which were submitted before the Tribunal, we have the following: Letter No. 106 of 5/8/1983 from the director's office at the Intelligence Service (which was linked to the Revolutionary Command Council headed by defendant Saddam Hussein), sent to Muthanna governorate security directorate, instructing the expulsion of 115 Dujail residents whose names were mentioned in five attached lists; there were also documents which included the lists of names of Dujail residents who had been evicted, mentioning the license plate numbers of the vehicles that took them to Muthanna governorate center (Samawa) and the names of the drivers.

Likewise, the perpetrators of that crime were aware of the factual circumstances which establish the legitimate presence of Dujail civilian officials, given that those displaced lived for hundreds of years, along with their fathers and forefathers, in the Dujail's region, and were orchards' owners and Iraqi national belonging to Arab tribes that lived and still live in the Dujail's region. Some of those who perpetrated these crimes were from the same region and knew personally the residents who were displaced, given that Dujail is a small town with few residents.

The forcible displacement of those civilian populations occurred after their arrest and detention in Hakimiya jail and Abu Ghraib prison. For this reason, this conduct was part of the large-scale and systematic assault directed against Dujail's civilian residents.

We have taken into consideration the nature of the location where Dujail's victims were removed and the conditions pertaining to their freedom of movement, as well as the question that may arise as to whether there is some sort of overlap between one charge and another leveled at defendant Saddam Hussein concerning the imprisonment or severe deprivation of physical liberty, which constitutes a crime against humanity. After discussing the available evidence at this trial, and after taking notice of all information thereto, this Tribunal believes that the basic elements pertaining to the crime of deportation or forcible displacement of Dujail's residents are present, indicating though that those victims were not imprisoned or extremely deprived of physical liberty, even though they were present in a complex which was named a prison in the middle of the desert. Proof of that is that they had at least some freedom of movement in the desert. Likewise, the cells and houses they were placed in were not locked from the outside, but from the inside, as a number of complainants indicated. This is different somewhat from what one finds in jails and detention centers where the physical freedom of the prisoner, detainee or inmate is extremely limited.

We still have to determine whether detainee Saddam Hussein bears criminal responsibility for those crimes pertaining to the forcible displacement of a great number of Dujail residents to that Samawa's desert location. Naturally, this depends in the main on how much he was aware that his conduct constituted a part of that large-scale or systematic assault against those civilian populations, and also depends on the time that he knew about said displacement, as well as the nature of the measures he took if he became cognizant thereto.

During the investigation and trial, defendant Saddam Hussein denied knowing in the beginning that those civilian populations had been removed from Dujail to that region, although the evidence available in the trial is sufficient to show that defendant Saddam was cognizant of the perpetration of that crime committed by the intelligence chief in coordination with the general security and Muthanna security directors. This is reflected in Letter No. 1106, issued on 5/8/1983, from the chief of Intelligence Service, which was linked to the Revolutionary Command Council headed by defendant Saddam Hussein, and addressed to the Muthanna governorate security directorate, a copy of which was delivered to General Security Directorate, instructing the eviction of 115 persons among Dujail's residents whose names were mentioned in five lists attached to said letter. Likewise, there is Letter No. 147 of 5/14/1983 sent by the office of the intelligence chief to the Muthanna governorate security directorate, a copy of which was delivered to the General Security Directorate, instructing the eviction of 114 persons whose names were also contained in five lists, in addition to other similar letters sent by the office of the intelligence chief. And according to statements made by a great number of complainants during the investigative and trial stages, a delegation from the President's Office arrived at Lea's desert complex at the end of 1983 or some time in 1984 in order to collect donations from the Dujail residents had been evicted in order to support military efforts during the Iraq-Iran war. These facts prove that Saddam Hussein knew that the intent as well as the practical and effective measures existed since April or May of 1983 for expelling those Dujail residents to that desert location, and not since April 1986, when defendant Saddam Hussein decided to release them, end their banishment, and allow them to return to Dujail.

However, this Tribunal has not established that defendant Saddam Hussein issued the order to carry out this act, which constitutes a crime against humanity. This Tribunal believes that

defendant Saddam Hussein was aware of said act early on, namely in April 1983. This is what the evidence (records) provides. At the very least, he overlooked this act, or rather these acts, he kept silent thereto and did not prevent their occurrence.

Defendant Saddam Hussein's silence and neglect were an expression of the implicit and undeclared agreement which the joint criminal act requires, and of the deliberate participation of defendant Saddam Hussein in bolstering the criminal activities and criminal design of the group (Ba'th Party and the regime). This happened through silence and neglect. Naturally, defendant Saddam was cognizant thereto, because he was the leader of that regime and that Party.

It follows that if it is not possible to hold defendant Saddam Hussein liable for that act, in conformity with Article 15 (Second, a, b, c) of the Tribunal's Law, the available evidence is sufficient to render defendant Saddam criminally liable for this crime, based on his participation in a joint criminal act stipulated in Article 15 (Second, d) of the Tribunal's Law, given that the basic elements for such a crime are present to challenge defendant Saddam Hussein.

Further, this Tribunal most certainly holds defendant Saddam Hussein criminally liable for this crime by virtue of Article 15 (Four) of the Tribunal's Law, because he was the supreme leader (President of the Republic, Chairman of the Revolutionary Command Council, etc.) when he knew that those victims among Dujail's residents were to be forcibly banished to the Lea's desert complex in Samawa beginning spring 1983, if not earlier. And yet, he did not take any measure to prevent the commitment of such a crime. When, once more, he realized in 1986 that they were still in that complex, he decided to set them free and end their banishment; yet he did not take any measure to refer this case to the competent authorities in order to conduct an investigation and to prosecute intelligence and security staff, including higher-ups, and then to punish them for those crimes they have committed against the victims among Dujail's residents.

Defendant Saddam Hussein's knowledge of this crime in 1983 and in 1986 is established in the trial records, including the enclosed documents, and through the statements of those in interest, including the complainants who have testified that they were set free and were able to return to Dujail after defendant Saddam Hussein issued a pardon in spring 1986.

For these reasons, defendant Saddam Hussein is also criminally liable for the crime of expulsion or forcible displacement of residents as a crime against humanity pursuant to Article 15 (Four) of the Tribunal's Law.

Extent of Defendant Saddam Hussein's Liability for Imprisonment or Severe Deprivation of Physical Liberty which Constitutes a Crime Against Humanity

The Tribunal has leveled on 5/15/2006 another charge against defendant Saddam Hussein pursuant to Article 12 (First, e) of the Tribunal's Law. For this crime to take place, the following basic elements must be present:

1. The perpetrator must have jailed one or more persons or, in other words, must have harshly deprived one or more persons of physical liberty.
2. The gravity of the conduct must be such as to constitute a violation of the basic principles of international law.
3. The perpetrator must know that this conduct is part of a large-scale or systematic assault against civilian residents.

The grounds for establishing these legal requirements pertaining to the commitment of such a crime are many, including for instance the arrests or the many arrests that occurred; the imprisonment or detention or preventive custody; the circumstances of the arrests; the position of the defendant, the general characteristic or characteristics of the detainee; the civil status of the detainees; the duration of the detention; the announcement of the reasons for the detention; the fact that the investigations with the detainees began a short while after they went into prison; the questions that were asked during the interrogations; mistreatment or bodily harm in the course of detention and interrogations; violation of basic procedural rights during the interrogations; death of detainees; the exposure of detainees to inhumane circumstances; detainees being forced to sign written confessions; releasing detainees after the investigation; random and illegal arrests; detainees being prosecuted for any crime; detainees being convicted for any crime; the existence of legal procedures at the detention location.

The Tribunal has established that most of these elements existed; this was based on the evidence that was submitted to the Tribunal during this trial, whether such evidence is reflected primarily in the documents and records that were presented to the Tribunal, including but not limited to, the 361 pages transferred by the Intelligence Service to the National Security Department at the Office of the Presidency, which pages contain the names of 148 Dujail residents and their testimonies. These testimonies comprised their acknowledgments that they set out to assassinate the former President on 7/8/1982 and that they were members of the Dawa Party. Said evidence includes also the request by the Office of the Presidency to arraign them before the Revolutionary Court in order to be tried for the charge of committing an act that defendant Saddam, before anyone else, knows they did not commit.

Among these documents, we also find the arraignment order of those victims to appear before the said Court. This was established in the depositions concerning the positions that those victims had, as most of them were farmers and students. Other documents represent the reports sent by the investigative committees to defendant Saddam Hussein, including the report of the Investigative Committee headed by Hussein Kamel.

Other evidences presented to this Tribunal are the statements of the complainants and corroborating witnesses during the investigative and trial stages. Most of the complainants confirmed that they were detained in the Intelligence Service's Hakimiya jail, and that they were later on transferred in small groups to the Abu Ghraib prison. They also stated that during their detention they were subjected to all sorts of torture, and that a number of detainees were executed during interrogation. Others died as a result of the abject living

and hygienic conditions at those locations. Further, they stated that interrogation of the detainees began immediately after they entered the Hakimiya jail.

Overall, the evidence and presumptions for the perpetration of that crime are many. But the main question here is the following: Is defendant Saddam Hussein criminally liable for that crime? Who perpetrated that crime? Who are those who are liable thereto?

Actually, the complainants and the witnesses did not mention that defendant Saddam Hussein had personally imprisoned any of Dujail's residents. None also stated that they heard defendant Saddam saying that, or ordering that. Yet, this Tribunal has established that defendant Saddam Hussein has issued orders to defendant Barazan Ibrahim, and also to defendant Taha Yassin, instructing them to interrogate Dujail's residents and to oversee all the necessary measures in this regard, even though he knew full well that those who fired the shots at the motorcade were no more than a few individuals. He thus instructed them to interrogate many Dujail residents, some 600 of them. Defendant Saddam Hussein commissioned his brother, Barzan, the intelligence chief, to do that, in addition to the arrests, detentions, and extreme deprivation of physical liberty.

This means that defendant Saddam Hussein issued the order to arrest and detain all those civilian Dujail populations. Said order, which entailed the arrest, imprisonment and deprivation of physical liberty for those populations, was in breach of the law.

On the other hand, defendant Saddam has implicitly admitted that he was aware that those victims had been imprisoned when he stated before the Tribunal on 12/21/2005 that any harm that was inflicted on those who have spoken is a mistake and in violation of the law, as these things happen in third world countries.

Likewise, defendant Saddam Hussein knew from the beginning that a great number of Dujail residents were in the Intelligence Service's jail (Hakimiya). This can be easily inferred from the fact that defendant Saddam appointed defendant Barzan to question them. Moreover, defendant Saddam knew that when many of those detainees were referred to the Revolutionary Court in order to be prosecuted for an act they did not commit. This was in accordance with the arraignment order issued by the Office of the Presidency on 5/27/1984. Defendant Saddam was actually cognizant of that when the Intelligence Service, which is affiliated with the Revolutionary Command Council, sent a letter to the Office of the Presidency, asking for the measures that need to be taken after there were many inquiries concerning the fate of those detainees. He was cognizant thereto when he examined the results of the investigation conducted by the Investigative Committee in 1987. At any rate, defendant Saddam Hussein did not take any measure to prevent the occurrence of that crime, and he did not take any measure to punish Intelligence Service members or anyone else who participated in the perpetration of such a crime. This was for a simple reason, which is that he ordered the perpetration of said crime, even if he did not do that directly.

Additionally, the participation of defendant Saddam Hussein with a group of people in a joint criminal intent to commit such a crime was to bolster the criminal activities and criminal design of the regime along with the intelligence, security and party organs. He was cognizant of the intent to commit the crime by those who led those organs, because he had

that intent to begin with in his capacity as the leader of that regime and the head of all those organs.

This Tribunal is thus fully convinced that defendant Saddam Hussein is criminally liable for the imprisonment and the extreme deprivation of physical liberty concerning the residents of Dujail who were detained, and this constitutes a crime against humanity. This Tribunal has no doubts that defendant Saddam Hussein is criminally liable for this crime by virtue of several provisions of Article 15 (Second, b, d) and of Article 15 (Fourth) of the Tribunal's Law, in his capacity as the Supreme Leader (President of the Republic and Chairman of the Revolutionary command Council) during the perpetration of the crime, which started on 7/8/1982 and continued for a long period (several years), depending on the respective fate of each of those detainees.

Extent of the Liability of Defendant Saddam Hussein for Torture as a Crime Against Humanity

This Tribunal has on 5/15/2006 brought another charge against defendant Saddam Hussein, which is torture as a crime against humanity. This crime is set forth in Article 12 (First, f) of the Tribunal's Law. In order for it to occur, several basic elements must exist:

1. The crime perpetrator must inflict severe pain or extreme suffering, whether physical or psychological, to one or more persons.
2. This person or those persons must be detained by the crime perpetrator or be under his control.
3. This pain or suffering must not solely result from legitimate punishment, or must not accompany or follow from said punishment.
4. The conduct must be part of a large-scale or systematic assault against civilian populations.
5. The crime perpetrator must know that the conduct is part of a large-scale or systematic assault against civilian populations.

Article 12 (Second, e) of the Tribunal's Law has defined torture as deliberately causing extreme pain and suffering, whether physical or mental, to a person in detention or under the control of the suspect, provided that torture does not include pain and suffering stemming from legal penalties or the like.

The elements that prove these facts or legal requirements for committing the crime of torture, which are one aspect of crimes against humanity, are many, including evidence of electric shocks, beatings, solitary confinement for long periods while being blindfolded and having one's hands tied, forcing detainees to stand on two feet or one foot for long periods of time, violent beatings inflicted on all parts of the body, hanging the victim from his hands or legs while binding his hands behind his back, pulling nails or teeth, burning, exposure to bright

light, long periods of sleep deprivation or without rest, long periods of starvation, bad hygienic conditions for long periods of time, no medical assistance for long periods of time, threats of torture or execution, threats to rape relatives, threats to rape the victim, forcing the victim to watch assaults perpetrated against another person, exposing the victim to humiliating treatment, such as getting naked along with the application of scare tactics such as the threat of harm or of causing serious harm. All of these actions are instances of physical or psychological torture, although they are not the only ones. Most of these actions and similar ones have been carried out on Dujail residents detained at the Intelligence's Hakimiya prison compound, at Abu Ghraib jail, and at Lea's desert complex.

Complainant Ahmed Hassan al-Dujaili testified before the Tribunal that "in the afternoon of 7/9/1982 he was placed, along with fifty other detainees, in a vehicle that took them to the Intelligence's Hakimiya location and they were put in the building parking garage. They were called traitors. Men and women were beaten. Some 500 detainees were gathered in that location, including women and children. The complainant described afterward the type of torture the detainees, including women, were subjected to as well as the scarce and bad food they were given. He mentioned the names of those who were tortured, including Kassem Abd Ali al-Ubaydi, and those who died during torture, including Jassem Muhammad Latif and Hussein Yacoub Majid.

Witness (...) mentions in his testimony to the Tribunal on 12/5/2005 the details of what occurred in Dujail, and what followed in terms of arrests, detention, executions and tortures. He also states in his testimony that the one who was responsible for that was Saddam Hussein, because he was the President of the Republic. Likewise, shielded complainant (Ms...) recounted to the Tribunal the harrowing journey she and her family went through at the Intelligence Service's Hakimiya jail, at Abu Ghraib's prison and at Lea's desert complex, along with 84 other families.

Shielded complainant (...) indicated to the Tribunal on 12/21/2005 that electric torture went on in front of defendant Barzan, who used to munch on grapes while the victims were tortured. He also stated that he saw the body of Jassem Muhammad Latif, which had traces of torture, in the Hakimiya jail. He saw also Mujbil Hassan dying in front of him at Abu Ghraib prison after being struck on the head with the metal buckle of a military belt.

Saddam Hussein himself implicitly admitted during the 12/21/2005 session, after hearing the statements of one shielded complainant: "Anything or any harm that happened to those who have testified is a mistake and in breach of the law; this is something that happens in third world countries."

Shielded complainant (...) stated before the Tribunal on 12/21/2005 that "afterward, they took me to the intelligence... and brought me into a room; then they took me down to the torture chamber and started tormenting me with all kinds of torture, from beatings to electric shocks... Two or more days later I found myself in the chamber again, and torture was frequently repeated. Then they brought me down once more to the torture chamber. Defendant Barzan was present, and I was blindfolded. Barzan said: 'Take off the hood,' which was covering the head and the eyes. He then told me: 'Today I will handle you and I will let you see with your own eyes...' They then electrocuted me. The torture continued for seven or eight days."

When asked how he recognized Barzan, the complainant replied that he had seen him in pictures, on television and in magazines. When the complainant was asked by defendant Barzan, "How did you know that the one you saw was (Barzan) Ibrahim?" the complainant answered, "I knew that when they sent me to the chamber, where they told me that Barzan is looking for me, and when I went in I saw him in front of me."

Shielded complainant (Ms...) disclosed to the Tribunal on 1/29/2006 that she had been given electric shocks at the Intelligence's Hakimiya jail, and they placed her in front of her husband and threatened him that she would be tortured before his own eyes.

Shielded complainant (Ms...) stated before the Tribunal on 1/29/2006 that she saw her father, her sister and her nephew getting beaten and tortured at the Intelligence Service's jail. She mentioned that her sister, who was twenty years of age, was severely tortured at the Intelligence's prison and died after leaving prison as a result of torture. She also mentioned that the Intelligence staff used to torture women, while children were crying because of the hot water, the unavailability of milk as well as the scarcity of food, and they were not able to sleep. The torture of women occurred at night, which is an indirect hint to what may occur during that time, since we have to take into account the fact that Middle Eastern women, including Iraqi ones, do not dare mention the topic of rape and sex crimes for fear of creating a scandal because of the shame attached to that, even if women are the victims.

Complainant (...) indicated that he witnessed the torture of women carried out in front of him at the Intelligence jail, because at that time he was six-years-old and he was always accompanying the women.

Complainant (...) stated before the Tribunal on 2/12/2006 that the Intelligence Service staff arrested his father and brother, who was fifteen years old, and that his father told him, after he was released in 1986, that his brother became crazy as a result of torture.

Complainant (Ms...), who was 22 years old when the incident occurred and who was arrested and sent to the Intelligence Service's Hakimiya jail, stated before the Tribunal on 2/1/2006 that she saw Barzan who asked the Guards, "Did you bring her?" They told him, "Yes." He then said: "We brought you the recalcitrant one with shackled hands and legs." She recalled that they began torturing her and beating her on the hand; they also placed electric wires on her feet and jolted her with electric shocks. She had also to endure beatings with rubber truncheons several times in the course of one day. They also stripped her of her clothes. She mentioned as well that defendant Barzan struck her head with the grip of a handgun and she fainted. The following day, they took her to the torture chamber. She saw Barzan, who instructed one of the guards to give her an enema injection. She suffered afterward from diarrhea. Indeed, they did that and then suspended her and placed her in a cell for seven days without food and water. She testified also that she witnessed the torture of Jassem Muhammad Latif, who died as a result of torture.

The said female complainant revealed also that a person whose name is Samir, one of the Intelligence interrogators, tortured her and broke her hand. She also witnessed torture acts

at Abu Ghraib prison, and saw Hajj Mujbil Aziz being struck on the head with the metal buckle, causing his death.

Complainant (...), who was 23 years old when the incident occurred and who was a member of the Popular Army, testified before the Tribunal on 2/1/2006 that on the day of the incident he saw Barzan overseeing the arrests that Intelligence and army personnel were undertaking.

Complainant (...), who was 11 years of age when the incident occurred, testified on 2/1/2006 before the Tribunal that he witnessed electric shock torture inflicted at the Intelligence center. He mentioned that his sister was tortured before his eyes and was stripped of her clothes. When they were transferred to Abu Ghraib's prison on December 1982, they were tortured there also. This torture included beatings and long periods of sleep deprivation. Said complainant mentions in his testimony that on the day of the incident he saw Republican Guard units take part in the arrests.

Complainant (...), who was 16 years old at the time of the incident, mentioned before the Tribunal on 2/2/2006 that he was tortured by having electric wire placed in his ear and having the switch turned on, and that defendant Barzan personally lit a cigarette and put it out behind his ear. He added that the burn scars still exist until now, and that this took place while he was held down by two Intelligence guards. Then Barzan instructed that they take him up to a red-painted room after they had beaten him to a pulp. He indicated that he was tortured the following day while hung from his feet, and three days later he was tortured again by receiving beatings while naked. Electric wires were then attached to sensitive parts of his body. The said complainant mentioned also that torture continued at Abu Ghraib prison.

We can see from the above that the recurrent statements of the complainants confirm their being subjected to torture, along with other victims, in the hands of Intelligence members at Hakimiya jail, at Abu Ghraib prison, and less so at Lea's desert complex. They also indicate that torture caused the death of 46 persons detained at the Intelligence Service's Hakimiya jail during their interrogation. This was established to the Tribunal through the aforementioned records that were submitted to it and whose validity was proven.

Many complainants testified that defendant Barzan Ibrahim used to monitor the tortures, and some mentioned that Barzan personally tortured them. Others indicated also that defendant Barzan, in addition to overseeing the torture at the Intelligence's jail, oversaw also the arrests of the victims that took place in Dujail and that comprised men, women and children. These were placed to begin with at Hakimiya jail, where they stayed for different periods, depending on the victims.

We can also see from the above that the basic elements of this crime have been realized for challenging defendant Barzan Ibrahim along with the Intelligence members who perpetrated said crime. Is defendant Saddam Hussein criminally liable for this crime? None of the complainants said that Saddam personally tortured them, nor did they hear Saddam order torturing them. However, at the same time, most if not all of them said that defendant Saddam Hussein is liable thereto because he was President of the Republic, because he was the custodian who is responsible for his subjects, and because he commissioned Barzan to conduct the investigation of Dujail's residents, to arrest them, detain them, and then

interrogate them, which entails naturally or very probably torture, either to obtain true (genuine) confessions, or untrue (false) confessions, either for punishment or to fulfill the desires of some of those who are committing these acts, or for other reasons.

Nevertheless, defendant Saddam Hussein admitted implicitly that he knew about these practices which were taking place at the Intelligence Service's jail and Abu Ghraib prison when on 12/21/2005 he said: "These acts and this harm inflicted on those who have testified here is a mistake and in breach of the law; these things happen in third world countries."

Therefore, this Tribunal believes that defendant Saddam Hussein issued an order to defendant Barzan, and said order, even if it was not an express order to torture the victims among Dujail's residents, was an order to oversee the arrests and the investigation of those who were arrested as well as placing them in Hakimiya jail, and that order includes torture. The order to perpetrate this crime was implicit and is an order issued by a chief to his subordinate, and the evidence thereto was presented in the trial. Likewise, torture is a probable crime attendant upon the arrests and illegal detention. Hence, defendant Saddam Hussein is criminally liable for torturing Dujail's residents, which constitutes a crime against humanity by virtue of Article 15 (Second, b) of the Tribunal's Law, and Article 53 of the Penal Code.

Moreover, the legal requirements for defendant Saddam Hussein's criminal liability for the joint criminal act, pursuant to Article 15 (Second, d), are present also for challenging him for torture as a crime against humanity, given that this participation (regardless of the method) was deliberate, or at least incorporated probable intent pursuant to Article 34/b of the Penal Code, and aimed to bolster the criminal activity and the criminal design of the Ba'th Party regime in addition to those of the intelligence and security apparatus, which in the final analysis were under the control of defendant Saddam Hussein. Defendant Saddam was cognizant of the intent of those who head these outfits to perpetrate the crime, because he is the leaders of these outfits' chiefs, including defendant Barzan, who was very close to him by reason of family ties and of official reasons. Likewise, Saddam was cognizant because he was the supreme commander of the Ba'th Party, which held the reins of power in Iraq. He also knew of that intent, because he was the one who issued the order to arrest Dujail residents in ways that contravene the law and to question them, with likely criminal outcomes thereto.

Further to the above, defendant Saddam Hussein bears the responsibility that rests on the principle of the supreme leader's responsibility stipulated in Article 15 (Fourth) of the Tribunal's Law, as all the legal requirements of said responsibility are present to challenge defendant Saddam Hussein, including the fact that there is a relationship between the chief and his subordinates, between the defendant and persons who have committed the crime. This relationship existed between defendant Saddam and defendant Barzan Ibrahim, who personally committed acts of torture against Dujail's victims detained at the Intelligence's Hakimiya jail, and directly oversaw the torture of others among those victims, which torture was committed by Intelligence officers conducting the interrogation in said jail.

This Tribunal has established that defendant Saddam Hussein had effective power and the practical means to prevent these crimes and punish those who perpetrated them. He held

sway over defendant Barzan Ibrahim and Intelligence Service members, enabling him to curtail their actions and prevent the perpetration of torture, enabling him also to refer them for investigation and prosecution if indeed they committed acts of torture. This has been established by the Tribunal through much material evidence, including the arraignment of the Intelligence officer, Hikmat Abdul Wahab, before the Intelligence Court, not for torturing, executing, or imprisoning those, but for inadvertently killing four persons who were not among Dujail's victims.

Defendant Saddam Hussein was aware of the Dujail victims' torture at the Intelligence's Hakimiya jail, or at least he had reasons to know that, including the fact that it was he who issued the order to conduct the investigation of so many Dujail residents, and thus their arrest and detention are in contravention of the law. Additionally, defendant Barzan was directly and closely associated with defendant Saddam, not only because he was the Intelligence Service chief, but also because he was his maternal brother and a high-ranking official in the Ba'th Party which was headed by defendant Saddam Hussein. Most Iraqis knew that the leadership of the Ba'th Party as well as of the military, intelligence and security organs was essentially in the hands of the family and tribe of defendant Saddam Hussein. What defendant Barzan Ibrahim knows will perforce be known by defendant Saddam Hussein, or be considered a reason to know, especially that defendant Saddam was the one who issued the order to defendant Barzan in order to oversee the investigation with Dujail's residents. Further, he is liable for a joint criminal act, as we have shown earlier, a fact which also requires that every participant be cognizant of the intent of the other participants. That is why cognizance thereof is present, or the reasons implying defendant Saddam Hussein's cognizance were present as far as his knowing that his subordinates will commit acts of torture, that being a natural and logical consequence stemming from a totalitarian and harsh regime, and a President known to have monopoly of power and to use the most brutal methods to eliminate his adversaries.

At any rate, it is beyond any reasonable doubt that defendant Saddam Hussein, after examining in 1987 the report of the Investigative Committee headed by Hussein Kamel, knew that a number of detainees had been killed during interrogation as a result of torture. This confirms his cognizance of the acts of torture and killing with respect to Dujail's victims. Yet he did not take any measures to hold to account and punish the officials who have perpetrated these crimes.

Extent of Defendant Saddam Hussein's Liability for the Enforced Disappearance of Persons as a Crime Against Humanity

Besides the charges leveled by this Tribunal against defendant Saddam Hussein on 5/15/2006, in which the extent of his liability thereto was discussed, the Tribunal has charged him also with the enforced disappearance as a crime against humanity pursuant to Article 12 (First, i) of the Tribunal's Law. Article 12 (Second, g) of the Tribunal's Law defined enforced disappearance of persons as the arrest, detention or abduction of persons by the State or a political organization or by virtue of an authorization or support therefrom for that act, or for their silence thereto, and then refusing to acknowledge depriving those persons of

their freedom, or to give information regarding their fate or their whereabouts in order to deprive them for a long period of time of the protection of the law.

For this crime to arise the following basic elements must be present:

1. The crime perpetrator must:

- a. Arrest, detain or abduct one or more persons.
- b. Refuse to acknowledge the arrest, detention or abduction of said person(s) or to give any information about their fate or their whereabouts.

2.

- a. Said arrest, detention or abduction must be followed by the refusal to acknowledge depriving said person(s) of their freedom or to provide information about their fate and whereabouts.
- b. Said refusal must be preceded by or coincide with freedom deprivation.

3. The crime perpetrator must know that:

- a. Arresting, detaining or abducting said person(s) will be followed, in the normal course of events, by the refusal to acknowledge depriving them of freedom or to give information concerning their fate or whereabouts.
- b. This rejection is preceded by or coincides with freedom deprivation.

4. Said arrest, detention or abduction must be carried out by the State or a political organization, or following an authorization, support or endorsement therefrom.

5. The refusal to acknowledge depriving said person(s) of their freedom or to give information concerning their fate or whereabouts must be made by the State or a political organization, or following an authorization, support or endorsement therefrom.

6. The crime perpetrator must intend to deprive said person(s) from the protection of the law for a long period of time.

7. The conduct must be part of a large-scale or systematic assault against civilian populations.

8. The crime perpetrator must know that the conduct is part of a large-scale or systematic assault against civilian populations, or must intend that such conduct be part of said assault.

After reviewing and discussing the available evidence in this trial, the Tribunal is convinced that some of the basic elements that are necessary for the commitment of said crime are not present. It follows that it is not possible to assume that any defendant in this case, including defendant Saddam Hussein, is in any way liable for acts that constitute a crime in accordance with international law. This Tribunal did not establish that any of the victims had submitted a request to any state institution in order to inquire about the fate of victims or about their whereabouts. Likewise, it was not established that state institutions,

including those directly connected with defendant Saddam Hussein, refused to acknowledge arresting, detaining or abducting any of Dujail's residents, after they were arrested and detained or in the course of their being arrested and detained. Additionally, this Tribunal did not establish that defendant Saddam Hussein, or the other detainees in this case who have been charged with this count, knew that arresting and detaining Dujail's residents will be followed, in the normal course of things, by the refusal to acknowledge depriving them of freedom or to give information on their fate or whereabouts, whether at the time they were arrested and detained or afterward. If the previous basic elements were not present for this crime to arise, this will lead to the unavailability of the other element, which is for the state or political organization to refuse acknowledging that Dujail's residents are deprived of their freedom or to refuse giving information on their fate or whereabouts; this will also lead to the unavailability of an authorization, an encouragement or endorsement from said state or organization. This Tribunal has not established that there was a refusal by any of the state institutions or the Ba'th Party to acknowledge that, since no request was submitted thereto by any relatives of Dujail's residents.

For these reasons, this Tribunal has resolved to dismiss the charge leveled against him with respect to that crime, pursuant to Article 182 (b) of the amended Criminal Trials Procedures Law No. 23 of 1971.

Extent of Defendant Saddam Hussein's Liability for Other Inhumane Acts Constituting a Crime Against Humanity

Another charge leveled by this Tribunal against Saddam Hussein on 5/15/2006 pertained to other inhumane acts constituting a crime against humanity pursuant to Article 12 (First, j) of the Tribunal's Law.

The legal requirements for the crime concerning other analogous inhumane acts to arise and which consist in deliberately causing extreme pain or grave harm to the body or to mental or physical health, said requirements are as follows:

1. The perpetrator of the crime must inflict extreme pain or severe harm to the body or to mental or physical health by committing an inhumane act.
2. Said act must be similar to any other act set forth in Article 12 (First) of the Supreme Iraqi Criminal Tribunal (SICT) Law.
3. The perpetrator of the crime must be cognizant of the factual circumstances that establish the nature of the act.
4. The conduct must be carried out as part of a large-scale or systematic assault against civilian populations.
5. The crime perpetrator must know that the conduct is part of a large-scale or systematic assault against civilian populations.

This Tribunal believes that the other inhumane acts constituting a crime against humanity in the Dujail's case consist of razing the orchards belonging to the victims among Dujail's residents, and the confiscation of their lands in ways that contravene the law, resulting thus in severe hardship for said victims. The case includes other inhumane acts which overlap with crimes against humanity, and for which we have determined the criminal liability of defendant Saddam Hussein thereto. Therefore, it is not necessary to mention them here, and we will confine ourselves to determining the liability of the said defendant in the razing of orchards and the confiscation of farmlands belonging to the civilian residents of Dujail.

On 3/1/2006, defendant Saddam Hussein admitted before the Tribunal that he ordered the razing of Dujail's orchards. Likewise, most of the complainants, during the investigative and trial stages, testified that their orchards were razed following the limited and failed assassination attempt on 7/8/1982. Afterward, their orchards and farmlands were confiscated, their homes were demolished, and their homes' contents were stolen by Dujail's security and Ba'th Party members after their arrest, detention and expulsion to the desert of Samawa. These facts are based on the confession of the said defendant, the statements of the complainants whose validity was established by the Tribunal, and the satellite pictures of Dujail's region showing it before it was razed and after, and the extent of the disaster that befell these orchards, which were reduced to barren land. And they are based on Resolution No. 1283 of 10/24/1982 passed by the (disbanded) Revolutionary Command Council and signed by Saddam Hussein, in his capacity as Chairman of said Council, which Resolution prescribed the confiscation of farmlands and razed orchards belonging to Dujail's civilian residents. They are reflected also in Resolution No. 100 of 1/23/1985 enacted by the Revolutionary Command council, which is also signed by defendant Saddam Hussein, and which includes the similar provisions as the former Resolution.

Whereas these two resolutions were passed in violation of the law, in particular confiscation law, besides being in breach of the Interim Constitution of 1970; whereas razing the orchards caused severe hardship to the region's population, especially the owners of, and those who work in those, orchards, as all fruit-bearing trees were plucked out and destroyed; whereas this act is similar in kind to forcible displacement of residents among Dujail's families and to the execution of some, as well as to the imprisonment and torture of many of them, since the destruction of the means of livelihood and sources of income for those victims is considered among the other crimes provided for in Article 12 (First) of the Tribunal's Law; and whereas by these measures the Ba'th Party regime, under the leadership of defendant Saddam Hussein, targeted Dujail residents who had to endure the most extreme harm and damages that are hard to repair;

Now, Therefore, this Tribunal believes unequivocally that razing Dujail's orchards, the confiscation of lands, the demolition of homes and the stealing of their contents as well as stealing vehicles belonging to Dujail's residents, are acts similar in kind to other acts constituting crimes against humanity stipulated in Article 12 (First) of the Tribunal's Law.

Property for human beings has no less value than one's child. God Almighty says: "Wealth and sons are allurements of the life of this world" (Verse 46, Koran's Chapter of the Cave). Likewise, criminal laws in various international countries sanction the legitimate protection of property in the same way it authorizes self-defense (Cf. Article 42 of the Penal Code No.

111 of 1969). There is also a well-known maxim in Iraq, which Saddam Hussein used to repeat frequently, which says: “Better to sever one’s head than to lose one’s livelihood.” For all these reasons, the razing of the orchards and the confiscation of farmlands and orchards, which were the sources of livelihood for those victims, are considered among the other inhumane acts that are similar in kind to the crimes against humanity set forth in Article 12 (First) of the Tribunal’s Law. Further, given defendant Saddam Hussein’s awareness of property value (orchards and fields), especially for those owners and farmers who consider these fruit trees as their children, and the fact that defendant Saddam Hussein was born and raised in one of Tikrit’s villages (with roots in the countryside), the Tribunal is thus convinced that defendant Saddam Hussein harbored criminal intent for perpetrating these inhumane acts which constitute an international crime in conformity with international law and the Tribunal’s Law.

Defendant Saddam Hussein knew the nature of this sweeping and methodical assault, and he knew that his conduct was part of that. The evidence thereto is provided by his statements of 3/1/2006 before the Tribunal with respect to razing the orchards, and through the audio tapes which the Tribunal heard, whereby it is stated in one of the tapes that what happened in Dujail is a lesson and an example others must be guided by (Abdul Ghani, Abdul Ghafoor) in putting down the uprising of 1991. Then there are statements of defendant Saddam Hussein on the aforementioned date, in which he explains that razing Dujail’s orchards was a collective punishment for the limited and failed assassination attempt that occurred on 7/8/1982.

The razing of the orchards was a complementary part to the sweeping and methodical assault against Dujail’s citizens. Defendant Saddam Hussein contacted defendant Taha Yassin Ramadan immediately after that attempt, as soon as he returned from Dujail. He tasked him to oversee the measures that must be taken in confronting Dujail’s residents, and instructed him to meet with other officials at the National Council building, to discuss these measures and to take the decisions thereto. The Tribunal established that the issue of the razing of Dujail’s orchards was among the issues that were submitted, and a decision was taken thereto, whereby defendant Taha Yassin Ramadan set up a committee to complete that mission. Moreover, he personally oversaw the razing, according to the many testimonies of complainants during the investigative and trial stages. For all the above reasons, this Tribunal resolved that defendant Saddam Hussein is criminally liable for this crime (other inhumane acts constituting a crime against humanity), which caused severe hardship to Dujail’s residents, especially the owners of those fields and orchards.

It is of no help to Saddam Hussein that the competent Iraqi state organizations set out afterward to compensate the owners of the orchards and the fields, because the crime had already taken place, and post-damage repair relates to civil liability and has nothing to do with criminal liability, especially that this act constitutes an international crime, since razing orchards represents a waste of national resources, and compensating people for the razing act is a waste of public money.

Based on the above, defendant Saddam is criminally liable for these inhumane acts constituting a crime against humanity, by virtue of Article 15 (Second, b, d) of SICT Law.

Tribunal's Verdict Concerning the Charges Against Defendant Saddam Hussein

First: This Tribunal has established beyond any reasonable doubt that defendant Saddam Hussein has committed acts that fall under the provisions of Article 12 (First, a, d, e, f, j) of SICT Law No. 10 of 2005, and in line with Article 15 (First, Second, Third, Fourth) of the same Law. Thus, it is resolved to incriminate him and determine his punishment pursuant to these as follows:

1. Convict defendant Saddam Hussein al-Majid for willful killing as a crime against humanity pursuant to Article 12 (First, a) of the Tribunal's Law, and by virtue of Article 15 (Second, b, c, d, f) and Article 15 (Fourth) of the same Law.
2. Convict defendant Saddam Hussein al-Majid for the deportation or forcible transfer of population as a crime against humanity in accordance with Article 12 (First, d) of the Tribunal's Law, and by virtue of Article 15 (Second, b, d) and Article 15 (Fourth) of the same Law.
3. Convict defendant Saddam Hussein al-Majid for the imprisonment or other severe deprivation of physical liberty, in violation of fundamental norms of international law, as a crime against humanity in accordance with Article 12 (First, e) of the Tribunal's Law, and by virtue of Article 15 (Second, b, d, f) and Article 15 (Fourth) of the same Law.
4. Convict defendant Saddam Hussein al-Majid for torture as a crime against humanity pursuant to Article 12 (First, f) of the Tribunal's Law and by virtue of Article 15 (Second, b, c, d) and Article 15 (Fourth) of the same Law.
5. Convict defendant Saddam Hussein al-Majid for other inhumane acts of a similar character intentionally causing great suffering or serious injury to the body or to mental or physical health, as a crime against humanity pursuant to Article 12 (First) of the Tribunal's Law, and by virtue of Article 15 (Second, b, d) of the same Law.

The above clauses are pursuant to Article 182 (a) of the Law on Criminal Proceedings No. 23 of 1971.

Second: Given that the crime of enforced disappearance of persons as a crime against humanity did not arise because one of its elements is absent, this Tribunal has resolved to dismiss the charge against defendant Saddam Hussein for that act and to exonerate him in that respect pursuant to Article 182 (b) of the amended Law on Criminal Proceedings No. 23 of 1971. The unanimous verdict was delivered in the presence of the parties and was publicly instructed on 11/5/2006.

Unanimous verdict delivered in the presence of the parties and publicly instructed on 11/5/2006.

Signature
Member

Signature
Member

Signature
Member

Conviction Ruling Against Defendant Saddam Hussein

The Tribunal has discussed in detail and objectively the findings of the charge against defendant Saddam Hussein al-Majid during the session of 5/25/2006 pursuant to the provisions of Article 12 (First, a, d, e, f, l, j), and by virtue of Article 15, Paragraphs (First, Second, Third, Fourth) of the Supreme Iraqi Criminal Tribunal (SICT) Law No. 10 of 2005, which overall “indicate that you have issued direct orders, as President of the Republic, Commander-in-Chief of the Armed Forces” to military units as well to intelligence and security agencies, in coordination with Ba’th Party and Popular Army members in Dujail, in order to carry out a systematic and large-scale assault that uses different types of weapons, including warplanes and helicopter gunships, and placing the small town under military control and cordoning off its neighborhoods along with its entry and exit points, beginning on 7/8/1982 and on the following days. These measures were in response to gunshots fired at your motorcade, which was passing through the town on the morning of the aforesaid date. The aim thereto was to inflict collective punishment on the townspeople on the pretext that they were “agents of a foreign state and criminals.” The disciplinary mission was given to the Intelligence Service chief, defendant Ibrahim al-Hassan whom you met the same day, immediately after you arrived in Baghdad, and you entrusted him with the task. Likewise, the aircraft bombing of the site where the shots were fired was ordered directly by you as Commander-in-Chief of the Armed Forces. Those who were present in the orchard at the time and who were killed by that bombing were Abbas Jassem Muhammad, Rida Hitto al-Salami, Karim Kazem Jaafar, Imad Hassan Mehdi Jaafar al-Assadi, Muhammad Abd Jawad al-Zubaydi, Mahrouz Muhammad Hadi al-Kilani, Hashem Adnan Jassem al-Khirbatli, Sadek Majed Hamid al-Khizali, and Sattar Toufik Yahya al-Khafaji.

Later on, under direct instructions from Barzan Ibrahim, who had been commissioned by you, the town was placed under siege for three days. Armored military units, consisting of a special Republican Guard brigade, along with Popular Army units, were dispatched, and a systematic and large-scale assault ensued in application of an emergency plan. Various state and party agencies took part in that assault, the town was encircled and its entry points were closed off. Further, Barzan Ibrahim used the Ba’th Party center as his tactical headquarters. Raids and arrests continued day and night, targeting individual or collective family residences, based on previous security evidence regarding the beatings of families and their children. This was also mentioned in conversations referring to “security suspicions” concerning them. Because of the great number of families, some of them were placed in schools, at police stations and at Popular Army headquarters. Then, the so-called “preliminary” questioning took place, which included beatings, kicking, emptying homes by party and security members, under the supervision of Intelligence officers who promptly came to Dujail for that purpose. In no time Intelligence Service vehicles, which consisted of Mercedes buses with tinted glass, were brought in, driven by people from outside the region. The families were then transported directly to the Intelligence Service headquarters in Baghdad. There were more than one thousand individual detainees who were part of the 399 families that were taken. They were placed successively at the Intelligence Service’s Investigation and Inquiry Office, and experienced intelligence officers set out to torture the family members, individually and in groups. In the Hakimiya interrogation center, a number of detainees died as a result of torture, which included passing an electric current on

sensitive parts of the body, powerful beatings inflicted on the head, sleep deprivation, and placing families in rooms that had red walls and ceilings as well as red light. Additionally, women and young girls were stripped of their clothes during torture, and they were subjected to sexual acts in utter contempt of the customs and honor of women and their family.

Those who died in torture included Yacoub Youssef Hussein al-Ubaydi, Jassem Muhammad Latif al-Salami, Saleh Muhammad Jassem, Kassem Ali Assad al-Haydari, and Alwan Hassan Hussein al-Salami. Three weeks later, the remaining detainees were taken to the Intelligence Service's section at Abu Ghraib prison, where torture and the humiliation of women and young girls resumed. Afterward, men were separated from women. Because of torture and the lack of services, as well as the extreme heat and mistreatment, other detainees died. Those were Mujbil Hussein Aziz, Yassin Hassan Hitto al-Salami, and Nowfah Hassan Agha al-Zubaydi. The deceased children were Hisham Fakhri Assad al-Haydar, Zeynah Muhammad Hassan al-Haydari, and Ali Mujbel Yacoub al-Kharbatli.

The rest of the detainees were taken to a remote desert location in Samawa governorate, which is the desert region of Iraq. They remained four years there. During that grueling period, they endured many hardships stemming from desert conditions, extreme privations, torture, hunger, bitter water, harsh and exhausting hygienic and living conditions, in addition to being deliberately deprived of medication and food. This resulted in the death of other detainees, including Hamid Mehdi al-Khazali, Abdul Wahab Jaafar Habib al-Ubaydi, Sabriya Abbas Ahmad al-Ubaydi, and Sabri Assad 'Abdullah al-Haydari. The deceased children included Muthna Majid Yacoub and Thabet Assad Ali al-Haydari. The bodies of the deceased were eaten by hyenas and other wild desert animals. Despite all these calamities and misfortunes, officials did not hesitate to visit those miserable people, once in order to take their remaining children to military service, given that they had reached military conscription age, and sending them immediately to the raging battlefields on the frontlines with Iran, and other times to collect donations from those wretched people in support of the so-called Saddam's Qadisiyah in the war with Iran!!! [TN: Battle of Qadisiyah, in which early Arab Muslims beat the Persians to eventually conquer Persia or Iran, took place around 636 AD].

Later on, 148 persons belonging to those miserable families were referred to the Revolutionary Court, presided by defendant 'Awwad Hamad al-Bandar, charged with "sabotage, threatening the security of the state, and working as agents for a foreign country." They were all sentenced to death, including some who died during torture at intelligence locales, in addition to those who died in the desert and at Abu-Ghraib prison. Among those were 23 individuals who were underage to be sentenced to death. This is in violation of the provisions of Article 79 of the Iraqi Penal Code No. 111 of 1969, of the Law on Criminal Proceedings No. 23 of 1971, and the Youths Protection Law No. [blank] of 1983. This is also in breach of international legislations and human rights principles, including Clause 5 of the list of civil and political rights [TN: This refers to the International Covenant on Civil and Political Rights] passed by the United Nations on December 16, 1966, which came into effect on March 23, 1969, and was ratified by the Iraqi government on February 18, 1969. Article 6, Clause 5, of the list of civil and political rights, states "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age."

Despite all these legal facts, you, Saddam Hussein, as President of the Republic, have issued Presidential Decree 778, dated June 16, 1994 [sic], ratifying the death sentence verdicts against those victims. Following the execution, the bodies were not delivered to their families and were buried at secret locations.

Further, you have promulgated Resolution No. 1283, dated 10/12/1984, of the Revolutionary Command Council, instructing the confiscation and destruction of farmlands and the razing [TN: or “dredging”] of the orchards belonging to the families of those victims of the events against whom the death sentence had been carried out (Muhammad Hassan Muhammad al-Haydari, Muhammad Jamil Ayoub al-Khazarji, Nejmeddin Abd Jawad al-Zubaydi, Ismail Abbas al-Khazaali, Talal Yacoub Majed al-Kharbatli, and Taleb Jamil Ayoub al-Khazarji).

These facts have been established on the basis of official documents issued by public institutions, and are referred to in the trial records, and on the basis of reports and resolutions governing the death sentences, withholding of the bodies, demolition of dwellings and homes, in addition to razing thriving orchards and farmlands.

In your capacity as the supreme leader of the ruling Revolutionary Command Council, as the President of the Republic and Commander-in-Chief of the Armed Forces, and by reason of your great responsibilities, you are directly liable for the crimes that were perpetrated against those victims and their families. Likewise, during the investigative and trial sessions you have candidly explained, with some conceit, that you are the sole person responsible for all these measure and orders issued in this regard and promulgated by you. In point of fact, in your testimony before the Tribunal on March 1, 2005, you have stated: “Since it is the leader who bears the responsibility, why are you looking for details?” You also stated: “I am not used to rely on other people.”

Whereas pursuant to your position in power and in the regime; pursuant to the enactment of presidential decrees and sovereign orders; and pursuant to your position as the person responsible for issuing the death sentence execution orders and for the outcomes of such aberrant measures; it follows that you bear full criminal responsibility thereto.

As for the razing of orchards and the destruction of homes, the signing of the orders issued thereto was not denied, since you stated: “Opening fire at the President’s motorcade requires that the Revolutionary Command Council take notice.” With respect to razing residents’ homes and your role thereto, you have indicated before the Tribunal that “if Taha said that, he is telling the truth.” Your statement was to confirm what he did with regard to implementing the razing measures in line with your personal and direct orders.

You also stated before the Tribunal, as regards the families detained in Lea’s desert complex: “These families were taken so that they remain separate.”

We have looked at these facts and examined closely the trial records, and considered the circumstances that came about on the heels of Saddam Hussein’s visit to Dujail on 7/8/1982. We have also looked at the exhibits produced and established in the minutes of the trial hearings, and considered defendant Saddam Hussein’s statements throughout the questioning, as well as the declarations of defendant Saddam Hussein, which were proclaimed in a mode of “defiance” mixed with “schadenfreude” for the victims and their

family members, and formulated in an obdurate, supercilious and smug way. We have also considered that defendant Saddam Hussein was the effective leader who was feared by his subordinates, leaving no doubt hence that the military and intelligence forces unequivocally moved from Baghdad to Dujail on the direct orders of President Saddam Hussein, and under the supervision of defendant Barzan Ibrahim, based on his statements during the investigation and trial.

Moreover, the shots fired by military forces and the aircraft shelling were under his direct orders, meaning “President” Saddam Hussein.

Taking into account the above facts as well as the substantive facts established on the ground, and pursuant to governing resolutions and official statements, as well as the examination of trial records, and taking notice of issues discussed before the Tribunal and the evidence pertaining to exhibited official documents referred to by the parties to the trial and which have been the object of review and scrutiny by the Tribunal., we see that the assault on Dujail on 7/8/1982 and the measures that followed that assault targeted in the first place civilian residents, given that the victims were family members who were not militarily nor organizationally connected with the attempt to assassinate Saddam Hussein on 7/8/1982. Even if according to what has been said this was an operation to “discipline the attackers,” this claim is unfounded because the “disciplinary actions” exceeded by far the number of attackers. According to official statements, those who early on died inside the orchards, as a result of aircraft bombing, were nine, and their names were mentioned in the indictment. However, the many civilian residents who were targeted by the assault included all of the small town’s families, since the number of detainees early on stood at one thousand people, more than one-tenth of the town’s population, which numbers ten thousand people. Overall, more than 500 persons were imprisoned and killed, including elderly folks and women, and even breastfeeding infants. According to Intelligence Service records, there were in the end 399 detainees, while 143 persons died. This represents more than five percent of the small town’s population. We have to add the material damages that afflicted the residents as part of “collective punishment” for the attempt. These included the demolition of residential dwellings, razing the orchards that surrounded the agricultural town, in addition to the damages and harm that struck whole families stripped of their possessions and future means of livelihood.

Upon analyzing and closely examining the assault and the siege of the town and of its population, we see that it was large-scale. As it were, the town was placed under the control of regular military troops for days and weeks. It was also subjected to a sweeping military and security siege, as if war had been declared, with all that a declaration of war implies in terms of emergency measures, the presence of military units and full formations of Republican Guard troops equipped with their weapons, warplanes, helicopter gunships. Further, the town was flooded with intelligence agents commanded by defendant Barzan Ibrahim al-Hassan, the head of the Intelligence Service. Likewise, popular army and party members, as well as local security and police forces, were placed under his command in times of emergency. Military detachments also swept through the town’s streets and alleys, while its entry and exit points were sealed in preparation for the arrest of whole families. Members of those families were even brought in even though they had been either on the frontline, outside Dujail, or were in the employ of public institutions outside the town. These facts and names are mentioned and described in this ruling. Finally, many families were

executed, tortured and forcibly displaced for years from Dujail, until the enactment of the amnesty resolution concerning the remaining families on 6/8/1986.

Further, we ought to mention the severe and harsh punishment meted out to the suspects and the execution of many amongst them in detention, as was indicated, in addition to the death of other family members as a result of torture, beatings and the lack of medical care and of the necessary means of livelihood to sustain life. Additionally, these acts, which targeted Dujail's population, took place within a large-scale and systematic plan that continued for several years. We have to mention also the organization of a broad engineering project directed against properties and homes, and the destruction of orchards in what was called a dredging operation in the "town development" plan. Then there was the promulgation of sovereign resolutions by the "President of the Republic" governing the re-registration of the orchards and farmlands within the borders of the towns of Dujail and Balad, in the name of the State, in addition to Resolution No. 1283 of 10/12/1984 by the Revolutionary Command Council, as aforementioned.

In light of the established facts, the Criminal Panel of this Tribunal unanimously considers that the former regime, under the presidency of Saddam Hussein, along with the other chiefs, Barzan Ibrahim and Taha Yassin Ramadan, perpetrated a series of crimes that fall under the provisions of Article 12 of SICT Law No. 10 of 2005, including a systematic and large-scale assault designed to discipline and intimidate.

Whereas defendant Saddam Hussein, by virtue of his influential position has effective power and holds sway over all government institutions; and whereas he used to exercise his responsibilities as President and Commander-in-Chief, or as his supporters called him, Leader of the People; it follows that he bears primary criminal responsibility for the crimes that were perpetrated in Dujail. This responsibility is first personal, as an individual who gives orders, and it is also responsibility for being a president who is responsible for the acts of his subordinates, as stipulated by laws in force and effect.

[PART 4]

This responsibility is first personal, as an individual who gives orders, and it is also a responsibility for being a president who is responsible for the acts of his subordinates, as stipulated by laws in force and effect, and pursuant to the Penal Code No. 111 of 1969. Further, Saddam Hussein was the head of state and Commander-in-Chief of the Armed Forces, the regime was totalitarian, and he was the most powerful figure in the government and the party, and as such running the country. Additionally, all important and pertinent resolutions were promulgated directly by him or submitted to him for ratification, given his higher authority and his “strong security sense” as his close aides described him. When asked, in the course of the investigation, about his ratification of the verdicts issued by the Revolutionary Court for 147 Dujail residents, (he replied that) “the verdict was delivered and there is nothing in the Constitution which indicates that the President must ensure that the Court has complied with valid procedures in carrying out judicial duties before the ratification of the death sentence verdict” [TN: The Arabic text does not mention the expression “he replied that”, but the context seems to imply that it was Saddam’s answer].

On the other hand, the defendant knew the extent of his power and prerogatives as well as the limited powers of his subordinates, when he testified during the investigation and trial that “with regard to the unit movements,” that is, the “army units,” they would move in general to carry out security missions (by orders) of the Commander-in-Chief of the Armed Forces. [TN: Original text does not have the expression “by orders of”, but this seems to be implied]. This statement came in response to a question concerning the movement of the Republican Guard troops to Dujail on the day of the incident, 7/8/1982.

Moreover, with respect to the competence of the Revolutionary Court, whose verdicts could not be appealed, Saddam Hussein responded to the question of the investigator by saying that “every one of these trials was established by law, and this law informed the authorities about the kind of challenge – appeal – that must be submitted. As for his ratification of the death sentence verdict, Saddam Hussein answered: “Ratification means that I have the necessary constitutional authority to revoke or revise verdicts (by means of pardons) concerning persons convicted by the Court and sentenced to death.” In light of this reply, Saddam Hussein had thus the power not to ratify the implementation of the death sentence verdicts delivered by the Revolutionary Court against 148 Dujail residents. However, with cognizance and premeditation, he promptly ratified the implementation of the death sentence verdicts, and a presidential decree was promulgated for carrying out the collective death sentence verdicts.

Likewise, in his capacity as Commander-in-Chief of the Armed Forces, defendant Saddam Hussein had tasked his aide Hussein Kamel to investigate any procedural violations committed by intelligence outfits. Hussein Kamel informed him about the executions that took place during the interrogations, and about the slaying of four persons without the delivery of a judgment in that regard by the official in charge of the death sentence verdict. However, he did not take any appropriate decision thereto and overlooked the matter. Likewise, when he was informed that a few party members did not participate in the identification of the defendants or of the “criminals” as they were called in the “report,” he

stated with his own handwriting that he sought an explanation from the Interior Minister regarding the motives behind the behavior of the security staff, and asked him to provide the names of the party members who did not identify the criminals.

This definitely indicates that he was cognizant of the measures taken against Dujail residents, and that he treated harshly these individuals and family members, whom he described as criminals with his own handwriting. This occurred before even investigations and inquiries were carried out in this regard, which shows, or even confirms clearly that he was biased against Dujail residents on the one hand, and on the other that he had prior knowledge of the severe retaliatory measures against Dujail individuals and families. Likewise, he accepted to certify and to carry out the verdicts issued by the Revolutionary Court against 148 Dujail victims, pursuant to Presidential Decree 778, dated June 11, 1984. The Intelligence Service sent the presidential decree along with the death sentence verdict to the Adult Reform Department, Long-Term Sentence Section, to immediately carry out the death sentence verdicts!!!

As regards the forcible displacement of the residents, defendant Saddam Hussein, who held the supreme power and was feared by everyone, planned the expulsion of the Dujail families after their arrest, imprisonment and death sentences. This is ascertained by the fact that those families remained in the desert until the promulgation by Saddam (Hussein) of a pardon decree therefor on 7/18/1984, which decree was officially notified to the said families, following which they returned home.

Moreover, he had prior knowledge of the razing of Dujail's orchards, which caused psychological hardship and adverse economic effects, in addition to damages to the region's economy. This occurred pursuant to his order, which is reflected in Revolutionary Command Council Resolution No. 1283 of 10/14/1998 prescribing the registration of Dujail's orchards and fields in Balad. Further, with regard to the razing of the town's orchards, a compact disc was exhibited during the Tribunal's hearing of 3/1/2006. It consisted of an audio recording for a meeting that took place between defendant Saddam Hussein and Abdul Ghani Abdul Ghafour, a member of Regional Command. Saddam Hussein says therein that in the razing of Dujail's orchards [TN: "dredging" could be an alternative translation for "razing"], he was inspired by the razing of Basra forests. This is indicated in the case records and in the verdict.

Last but not least, the Intelligence Service higher-ups referred the names of six staff members to the Office of the Secretariat (Saddam Hussein's Office) to be commended and rewarded for the courageous attitudes the said Intelligence members had shown during their confrontation with Dawa Party members in the Dujail region, and for their effective participation in pursuing, surrounding and arresting them. This was pursuant to Intelligence Service Letter No. 1220, dated May 21, 1982. Resolution No. 982 of 7/31/1982 was passed, signed by Saddam Hussein, granting the six individuals one-year seniority bonuses and promotion.

It bears noting that the razing of orchards filled with all kinds of trees and fruits, which represented the economic backbone of Dujail's residents, is equivalent to the destruction of the town's infrastructure. Further, Saddam Hussein, on March 11, 2005, testified that he ordered the destruction of the orchards in order to "punish Dujail's residents" following the

assassination attempt that targeted him. He thus had prior knowledge that the razing would be harmful to the residents.

Hence, based on material facts and written evidence; in light of the statements and representations of Saddam Hussein during the investigative hearings and trial; by reason of the official documents and resolutions issued personally and signed by him; whereas he was the supreme and dreaded leader, in which case his subordinates did not have discretion to act without orders given and determined by him; whereas he was alert to and aware of what went on around him; whereas everyone carried out his orders and instructions on the one hand, and on the other the Dujail incident and the misfortunes and misery that resulted therefrom were the natural consequence of the gunshots fired at his personal motorcade;

Now, Therefore, in light of the findings of fact as well as the aforementioned official documents, the Tribunal has unanimously resolved to convict defendant Saddam Hussein according to the indictment leveled against him, pursuant to the provision of Article 12 (First) (a, d, e, f, j), plus (Second), (Third) and (Fourth) of Supreme Iraqi Criminal Tribunal (SICT) Law No. 10 of 2005, in line with Article 15 thereof, Paragraphs (First, Second, Third, Fourth) thereof, and in line with Article 406, Paragraphs (1) (a) of the Iraqi Penal Code No. 111 of 1969, and to sentence him thereunder.

The verdict was delivered by consensus and rendered on 11/5/2006.

Judge
Raouf Rashid
President of the Supreme Cassation Court

[Signature]
Member

Defendant Barzan Ibrahim al-Hassan al-Tikriti

Charges leveled at defendant Barzan Ibrahim:

On 5/15/2005, this Tribunal has charged defendant Barzan Ibrahim with counts of committing a number of crimes against humanity, which fall under the provisions of Article 12 (First) (a, d, e, f, i, j) of SICT Law No. 10 [sic] of 2005. These crimes are the following:

1. Premeditated murder;
2. Deportation or forcible displacement of population;
3. Imprisonment or otherwise severe deprivation of physical liberty in violation of fundamental norms of international law;
4. Torture;
5. Enforced disappearance of persons;
6. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to mental or physical health.

These charges were leveled pursuant to Article 15 (First, Second, Third, Fourth) of the Tribunal's law.

Summary of Statements of Complainants and Corroborating Witnesses Against Defendant Barzan Ibrahim:

Among the statements of witness Waddah al-Sheikh, during the investigation on 1/25/2005, we have the following:

“On 7/8/1982, while I was at my office I received a phone call from defendant Barzan Ibrahim al-Tikriti. He asked me to come to his office at the Intelligence Service in al-Mansour. This is where that agency was located at the time. When I went to his office, I noticed that the atmosphere was tense and things were not as usual there. When I entered the secretary's office, and before going into defendant Barzan's room, the defendant came out and met us in the secretary's office. There were no more than twelve persons present. Among them I recall Muhammad Alyawi; Hassib Saber, who held the position of assistant general director for counter-espionage; Ali Mahmoud Hashem, who used to work in the secret service division; Khalil Ibrahim Mahmoud, who I believe was security director or something else; and Maneh Abdul Rashid, who was department security head.

“Defendant Barzan, who was the intelligence chief, informed us that defendant Saddam Hussein, the then President of the Republic, had been the target of a failed assassination attempt in the Dujail's region, which lies 60 to 65 km north of Baghdad. He ordered us to move immediately to the Dujail's region and to investigate the matter. He also instructed the head of the protection unit to move to the same location. We went indeed... to the Dujail's region and moved to the party division's center, which lied at Dujail's entrance, and turned it into our operating headquarters... We all went there, without exception, and we set about the investigation.

“At about seven pm, more specifically at sunset, defendant Barzan and Saadoun Shaker, who was the Interior Minister, came to the party division’s center, which became our headquarters. At that time, a great number of officials from the region of Balad, Kazimiya and Dujail came and settled in the garden of the party division’s center. I asked defendant Barzan and Saadoun Shaker, who was standing next to him, given that I was the investigation official, whether anyone had been injured by the gunshots during the assassination attempt against defendant Saddam Hussein. He answered that no one was hurt, and that none of the motorcade vehicles was hit. Following my inquiries and questioning whether there was any perpetrator atop the orchard’s fence, I learned that the perpetrators were behind the fence, and that empty cartridges from the Kalashnikov rifle were behind the orchard’s fence, I mean, inside and not outside the orchard... Also, the distance between the orchard’s fence and the main street is not greater than 25-30 meters, while the height of the fence is about two meters... As part of my work, and while conducting searches, I found no more than twelve to fifteen empty cartridges that belonged to Kalashnikov rounds... Defendant Barzan told me also that no one was hurt and no car was hit.

“As the head of operations in the region, Barzan instructed the police force, party members and security personnel to arrest suspects along with their families, including children and women. At that point, a Republican Guard unit showed up, comprising a Special Forces brigade, but I do not recall the unit’s number. Until then, the intelligence agency did not take part in the operations, given that the intelligence personnel were few... They numbered ten to twelve members. The security forces began arresting women along with children who were not yet twelve years old. According to the rules of thumbs of investigations, if there is an assassination attempt, the participants do not return to their homes... Yet, those who were arrested were elderly, teenagers and children who were not yet twelve years of age. I informed defendant Barzan, who was heading the operation in the region, that those children, elderly and women had nothing to do with the incident, and I asked the defendant (Barzan) what I should do with them, given that they were many... He told me to send them to Baghdad. Because of their large numbers, I contacted people who worked with us, at Intelligence Service’s Hakimiya building, which was located in the vicinity of the Passports Directorate and the Courthouse in Karada. I asked them to free a place to make room for those who will be sent from Dujial, and to send those who are in Hakimiya to the sectors that are under the control of the intelligence director at Abu Ghraib prison. Indeed, large Mercedes Jumbo vehicles were dispatched, each accommodating roughly fifty passengers. Defendant Barzan stood at the entrance of the hall belonging to the party division’s center, and we began taking people out and boarding them into the vehicles. Defendant Barzan ordered that the people be put in the vehicles, and he released many of the detainees. The releases were based on appearances!

“This situation continued for three days, and the transportation of families and individuals went on until the second day, and on the third day there was no one to transport anymore... The units, whether of the army, protection agency, police, security, or of the popular army, who came with defendant Samir al-Shaykhali... were all receiving orders from Barzan, who was heading the operation. Communications and orders were verbal, as Barzan was staying at the party division’s center and used to verbally issue direct orders for these units, since the region was very small. So the orders came in a direct fashion. However, I did not hear

the orders that came to defendant Barzan. But I inferred that they were given directly by defendant Saddam. On the evening of the first day, when we were present in the party division's center, Barzan asked me for a preliminary report about the reasons that triggered that incident. And in fact I did draft a report, which included the history of the region... I informed him that there are families that hate the party and I submitted a two- or three-page report. The next day, Hussein Kamel arrived and asked him about the report. So I gave it to him. At that time, Hussein Kamel was an aide to defendant Saddam Hussein. (That means that the report was sent to Saddam Hussein.) In addition, defendant Barzan issued an order that anyone who can bear arms shall be referred to the court.

"Afterward, we went to the Intelligence Service office in Baghdad and we began the interrogations. Most of those present were practically interrogated. They were classified according to families, and the statements of two or three persons from each family were recorded, and the questioning did not focus on the Dujail incident only but on other events also.

"The interrogations of Dujail's residents continued, although it slacked off. Some of the Dujail's residents were sent to Abu Ghraib prison... Other detainees were of young age, including the witness (Ms...), who was then of young. At that time, a committee was formed, headed by Taha Hussein. Muhammad Aliawi, who was the director of the Intelligence Service office that was dealing with the Dujail's question, due to its gravity, was also in that committee. The recommendations offered by defendant Taha Hussein included chopping down trees and razing orchards for one to three kilometers in all directions. This recommendation was carried out. Following the orders of defendant Taha Hussein, Dujail's orchards and trees were razed

"That committee decided to detain them in the region of Nakrat Salman, south of Samawa, in a camp that had been outfitted for them.

"More specifically, in February 1984, there were Dujail families that had been detained from 1982 until I left Hakimiya in February 1984, at which time they were sent to the camp that had been set up for them... This order came from the committee, which was headed by Taha Hussein. I learned also that there was a directive from defendant Saddam Hussein to refer anyone who could bear arms to the courts. This was the same order that was given by Barzan when he was in Dujail region in 1982. I believe that the order was written down, but I did not see it.

"Barzan Ibrahim was the person running the operations in Dujail. He stepped down as Intelligence Service chief in November 1983."

Moreover, the statements of witness Waddah al-Shaykh were recorded by a three-judge panel belonging to the first panel of SICT on 10/23/2005 at Abu Ghraib's military hospital. The statements were heard by the Tribunal on 10/28/2005 in the course of the trial. They comprised the following:

"On 7/8/1982, the day of the incident, I was the director of investigations and inquiries at the Intelligence Service, which was then headed by defendant Barzan. He informed me that the motorcade of defendant Saddam Hussein had been the target of gunshots in Dujail's

region when he was visiting it as the then President of the Republic. I left for Dujail in the company of several intelligence officials, including Ali Mahmoud, Hussein Mohsen, Muhammad Sibaawi, and Maneh Abdul Rashid. We reached the party division's center there, and the party chief there was Ahmed Ibrahim, aka Abu Nabil. The investigation of the incident had started and I went to the site, which was close to Dujail's courthouse. It consisted of a mud wall. I believe that there were between 7 to 12 individuals who fired the shots from behind the wall. I inferred that based on traces left on the wall, which was a bit high, from their rifles' magazines. The individual had to raise his head, while standing behind it, in order to see what was beyond the wall. When I went there, I saw other government forces belonging to the army, the party, and emergency forces in Dujail, with each group comprising between one hundred to one hundred and fifty individuals; there was also a brigade belonging to the Republican Guards Special Forces. These groups represented the emergency, security, intelligence, and party forces. A short while after my arrival, on the same day of the incident, defendant Barzan arrived to the party division's center, accompanied by the former Interior Minister, Saadoun Shaker, whose role was just to attend, as he remained silent.

“The forces that were present there received an order from defendant Barzan, after obtaining information from the security and party organizations, to deploy in the form of detachments throughout the different regions of the town. They began arresting residents without focusing on a specific religious sect. Those arrests targeted men and women of different ages, and included families that had only women and children, as well as elderly and young men. There were some who had dodged military service. The number of detainees reached roughly 400 persons. They were kept at the party division's center and at Dujail's security headquarters, since Dujail did not have any intelligence center. I knew at that time that some individuals had been executed prior to my arrival to Dujail. Included among those were one to three persons who had been killed in the orchards. From what I heard, they were executed by the motorcades' protection team following the gunshots incident. The detainees were then taken to the Intelligence's Hakimiya building in Baghdad in Mercedes vehicles that accommodated 50 passengers and that belonged to the Intelligence Service. The following day, I submitted a report to defendant Barzan, and the report included all preliminary information concerning the incident as well as information about Dujail's residents. When I presented the report to defendant Barzan, he signed it and returned it to me so that I can submit it to Hussein Kamel, who was the personal aide to defendant Saddam Hussein at that time, and who had come to Dujail the day after the incident.”

Witness Waddah al-Shaykh continues by stating that “the detainees were interrogated at Hakimiya by our officers, who were Faysal Shahin, Hikmat Abdul Wahab, Kamel Hussein, Jabbar Shehab, Daboud Salem, Ayyad Hadi, including the interrogation magistrate, Sadek Salem, whose role was limited to supervising those officers. I also met the detainees when I inspected the premises. The day after the incident, the families, including civilians, farmers and others, were taken to the Intelligence section of Abu Ghraib's prison on January 1983. Defendant Barzan, who until then was still the intelligence chief, told me to take the detainees to Muthanna province, where they were to be delivered to Muthanna Security Directorate members. I do not know what happened to them afterward. I remained in my post as investigation director until the end of January 1984.”

Witness Waddah al-Shaykh added: “During the time I spent at Intelligence, none of the detainees were prosecuted; everything was handled at Hakimiya. This is established in the delivery and receipt record.” Replying to a question by the Tribunal, he said that “none of the detainees died when I was there, and I did not notice that anyone had been physically tortured. If someone did something on his own, I was not aware of that. I did not give any orders and I did not receive any orders from Barzan or any other person to torture the detainees. I noticed though that there were two officers, Abd Sharif and Shehab, whose father’s name I don’t recall, who used to treat badly and insult the detainees. That is why I requested their transfer to the Residency Directorate.”

Witness Waddah al-Shayk insisted that, as a result of his inspection of the incident’s site, the persons who took part in firing the shots were no more than 12 persons. He said: “I confirmed that in my report, which I submitted to defendant Barzan. I do not know why so many residents were arrested.” Replying to a question by the public prosecutor, he answered that a number of intelligence officers were rewarded by the then President of the Republic, defendant Saddam Hussein, and they received a one-year seniority bonus, in appreciation for the “efforts exerted in investigating Dujail’s incident, and I was one of those officers.”

In response to another question by the public prosecutor, he said that “Barzan gave us the orders directly regarding the investigations that occurred, as I mentioned earlier. Most likely, the inspection of the orchards, as well as the deployment of the troops in the region was on the basis of orders issued by defendant Barzan. The witness added: “I heard from Judge Abdul Aziz Daoud, who held the post of Presidential Palace Judge at the time, that Saddam Hussein had issued a decree at the time for the arraignment of anyone who could bear arms. Barzan asked me to bring before the court anyone who carried weapons at the time of the incident as well as anyone who had anything to do with the incident. All of these measures were coordinated with the party and security organizations. However, I do not recall the details pertaining to the project of the committee headed by Taha Hussein Ramadan. I learned afterward that the detained families were sent to Muthanna province and were set free three or more years later, because I was imprisoned at that time.” As to who had been executed, he replied that “they were executed even though they were innocent.” He added that he handed over the management of Hakimiya on 1/28/1984, after his transfer to the Intelligence Security Department, to an intelligence officer, Khalil Ibrahim Mahmoud.

With respect to the reports of 1987 that the public prosecutor referred to, which reports specified that a number of “detainees died during interrogation, he said that “the uneasy relations between Barzan and Fadel al-Barak, who was security chief at the time, were the reason behind his writing down this information contained in these reports. I doubt their credibility, because when I was around there was no torture.”

In response to a question posed by the Tribunal, he answered: “On the day of the incident or the following day, we apprehended a wounded person in the orchards. He was among those who fired at the motorcade. Hi name was Hassan al-Hage Muhammad, originally form Dujail. Following his arrest he admitted that he gathered a few persons he did not know, except for one person who happened to be one of Kazem Jaafar’s sons, to shoot at the motorcade.” Witness Waddah al-Shayk added that “a non-military helicopter was targeted by gunshots from the orchards, and the pilot was wounded.” In reply to another question, he said that

most of those who were brought before the Revolutionary Court denied having anything to do with firing the shots or even supplying the weapons. I have no idea why they were brought to the Court.”

Complainant Ahmed Hassan Muhammad al-Dujaili mentioned in his testimony on 12/5/2006 [sic] before the Tribunal that on 7/8/1982, ten minutes after defendant Saddam Hussein, the ten President of the Republic, left the home of Raddam al-Hatem, he along with the others heard gunshots. They then saw an aircraft shelling the orchards. Afterward, the area was placed under curfew. His sister Umna Jabbar Mustafa’s daughter was injured as a result of the random shooting. Mass arrests were conducted, as residents, including a 65-year-old man, were randomly and collectively arrested. The arrests continued the day after the incident and were conducted by Intelligence Service agents. The detainees, including women and children, were kept at the party division’s center. He indicated also that he saw the bodies of nine persons whose names he remembers. Their names are stated in the indictment leveled against defendant Saddam Hussein and in the indictment leveled against defendant Barzan Ibrahim.

Moreover, witness Ahmed Hassan Muhammad mentioned that on the following day he saw defendant Barzan. He was wearing jeans and red shoes, with sunglasses on. He was sporting a goatee and was outfitted with a bullet-proof vest. He also saw a number of security and party officials, including Taha Yassin Ramadan. In the afternoon of 7/9/1982 he was placed with fifty other detainees, and they were transported to Intelligence’s Hakimiya building in Baghdad. They were taken down to the building’s garage while being called “traitors.” Men and women were beaten. The number of detainees there stood at roughly five hundred, including women and children.

Witness Ahmed Hassan indicated that he was kept in a room with his father and brothers (Muhammad, Salem, Mahmoud, Mohsen, Ali, Jawwad, and Ibrahim) as well as his mother (Majooda Shaker Mahmoud) and his sisters (Najdiya, Sooad, Zynab, Asma and Leila).

The witness then describes the types of torture that the detainees, including women, were subjected to, and the awful and meager food they were offered. He mentioned the names of detainees who were tortured, including Kassem Abd Ali al-Obaydi and Kassem Ali Assad. He also mentioned the names of individuals who were executed during interrogation. These included Jassem Muhammad Latif and Hussein Yacoub Majid, whose arms and legs were broken. “They brought one Saleh Muhammad Jassem, a teacher born in 1950, and fired at his leg during interrogation. Then they started torturing Kassem Abd Ali al-Ubaydi by burning a rubber hose and placing it on his body. Jassem Muhammad Latif died also during torture; he had dodged military service. They also shot at and injured Kassem Ali Assad during torture. Likewise, Hussein Yacoub Majid was tortured and his arms and legs were broken.”

The detainees were telling the interrogators that they were ready to sign anything as long as they leave their wives and sisters alone. “After having been detained for seventy days at the Intelligence Service location, we were sent to Abu Ghraib. The situation there was less bad than at Intelligence; still, the guards used to beat us constantly. At night, they used to send us for compulsory treatment. We would stand in line, and if someone complained about pain in some part of his body, for instance his head, they would hit specifically that part.”

At Abu Ghraib prison, complainant Ahmed Hassan saw one Mujbil Hassan Aziz al-Marsumi, who was detained there with them, being hit on the head by guards and dying on the spot following the blow. He was at the time 65 years of age. The fate of his body remained unknown. The witness recalls that Abu Ghraib prison guards used to torture them in front of the women. The guards used also to fire shots at night in order to scare them and placed the children in quarantine. The witness remembers the death of a child, Hisham Fakhri Sabri Assad, born on 6/6/1982. His mother had asked a prison guard to have some milk so that the child does not die. The guard told her to hand him over through the window in case he dies. Indeed, when the child died, she handed him over to the guard, who threw him in a waste basket. The witness also recalls cases of pregnant women miscarrying because of the wretched conditions prevailing in Abu Ghraib prison. The guards allowed the detainees to sleep from 3 a.m. until 6 a.m. (three hours).

Complainant Ahmed Hassan recounts more details concerning tortures, executions and poor conditions at Abu Ghraib, at the special section of that jail, and at Lea's desert prison, where they were transferred. He was transferred to the said prison on 6/18/1984. He mentioned that he did not know the fate of his seven brothers and did not know where their graves were until now. However, he knew, after the fall of the regime, that they had been executed, based on a document he found at the Association of Released Prisoners.

Complainant Jawwad Abdul Aziz also testified before the Tribunal on 12/5/2005. He stated, among other things, that "after the arrival of defendant Saddam's motorcade to the Ibrahimiya School, I noticed gunshots going in all directions. The protection staff was heavily armed. I also saw vehicles armed with machine guns firing at people. Curfew was put in place in the region. This was going on in the afternoon. The army poured into the area in great numbers and carried out a broad assault. I also saw helicopter gunships shelling the area. Many residents were killed, among them Akil Ali al-Khayat al-Makdimi and Jamil al-Marsumi, who died as a result of the aircraft bombardment. They were Ba'th Party members and were considered at the time martyrs. That shows that the firing was random. The helicopter gunships continued the bombardment for four days. I also saw the army shooting in all directions from atop the orchards' walls, and I witnessed the arrest of many young men."

The public prosecutor, referring to the complainant's testimony during the preliminary investigation, in which he stated that he witnessed defendant Barzan holding a sniper rifle and shooting randomly, asked him if he indeed saw that. He replied: "It is my father who saw that, not me." The complainant indicated that three of his brothers, Fares, Nasser and Kays, were executed even though they had nothing to do with the incident and were not affiliated to any political organization."

On 12/62005, the Tribunal heard the statements of the shielded female complainant (A), excerpts of which indicate that "on the day of the incident, when we were fasting for the month of Ramadan, we heard some commotion, and knew that Saddam was coming to Dujail. We went out to see him. A short while later we saw a large military force and aircraft bombing the region. The resident fled as a result. The security forces set about arresting residents and took them in vehicles with tinted glasses. The detainees, who included an elderly woman, were brought to the party division's center, accompanied by a party official (Abu Nabil). The party's center was crowded with families. Then, paddy wagons took them

to the Intelligence Service. They placed them against the wall and took them to room no. 58. There were about eighty-five families. The place was crowded and they slept in shifts. The water was very warm, as it was July.” The witness added that “they took my mother for interrogation and they placed my brother in front of her. She was sixty years old. My brother sustained head injuries because of the harsh torture. Then they brought me down for interrogation and used to torture me with electricity. Afterward, they took me back up to the room, and the next day brought me once more down for interrogation...”

The witness continued by mentioning details about the torture, the insults and abuses that took place, including forcing her to remove her clothes and hanging her by her hands, using electricity to torture her, raising her legs upward to hit her, and placing her in a red room. She also indicates that afterward the elderly and children were taken to Abu Ghraib prison, while the young girls were kept at Intelligence until the end of the interrogations. Then they were sent to Abu Ghraib prison. The suffering continued there, and the place was filthy. Their heads and bodies became infested with lice. In winter, the water was extremely cold. Also, they used to torture men in front of them (in front of women), and they did not allow them to stay in restrooms more than five minutes.” Her sister was also beaten with rubber hoses. She mentions also that they were transferred to the security division of Samawa and then to Lea’s desert compound, where she learned that her maternal aunt, Sabriya, had died. The witness describes also the miserable conditions and the shortage of food prevailing at Lea’s desert compound. In response to the Tribunal’s question as to who did the beatings, the complainant answered that she did not know because she was blindfolded. In response to another question concerning the type of assaults carried out, she replied that “there were the most hideous kinds of assaults. What do you think would happen to a woman when they raise her legs and remove her clothes? They used to torture us with electricity and beatings. They used to tell me: ‘Thank your Lord that you are at Intelligence; if you were at General Security, there would be no virgin girl left; and most of the young girls did not marry because of the effects of torture.’” (This was an indirect reference to their being raped and their losing their virginity.)

The said female complainant indicated that four of her brothers were executed; they were (.....). The second female complainant was heard by the Tribunal on 12/6/1005. She mentioned that the day after Dujail’s incident, she and her family, consisting of her husband and four daughters (.....) and their six children, were arrested. “We were then transferred to the Intelligence Service location, and detained in a room. I saw all of my other relatives detained in the room. They gave us very warm water, which came from a boiler. They used to take the young girls for interrogation, beat them and insult them... They took our pictures... We remained at the Intelligence location for about a month. Afterward, we were taken to Abu Ghraib prison, where they placed us with other detainees. We were about thirty persons in a tiny room, measuring roughly three meters long and one meter wide. Our group consisted 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, and later on we were taken to a desert location near Saudi Arabia. We were kept there three years. The prison was located in Samawa province. Of my family members, only my four daughters were with me. My husband and six sons were not with us. I do not know what happened to them ever since they took them from the Intelligence location to Abu Ghraib prison. I am submitting a complaint against Saddam Hussein and Barzan Ibrahim, and against a Dujail’s security

officer, one Abu Ahmed, as well as against Majid Hamid Nasser and Omran Hassan Omran, as they were the persons who incarcerated us.”

On 12/6/2005 the Tribunal heard also the testimony of another complainant (Complainant C), to the effect that that he was detained along with family (his father, mother and sisters) on the day after the incident, and that they were taken to the party division’s center in Dujail, where they remained for about an hour and where other detainees were present. Then, they brought vehicles that took them to the Intelligence’s Hakimiya location. The witness describes the different types of torture that he and his sister were subjected to, including the use of electric shock, even though she was 12 years old then. She was thus quite young. Their interrogation continued from eleven in the morning until two a.m. Food was in short supply. They remained 19 days at the Intelligence location, and then they were taken to Abu Ghraib prison, where they stayed eleven (11) months, during which they were subjected to torture. Women, children and men were also there. Men were asked to bark like dogs in front of their women, and they used to hit them with rubber hoses.

He mentioned that he saw guards hitting Amer Daham al-Sultan on his head. He had an epileptic fit after being hit with a cable. He said that this occurred before his very own eyes. They also tortured another person, Ibrahim Saleh Kazem. He lost his mind because of torture. They used to bring the kids and torture them in plain view of their mothers. They used also to forcibly rouse them early in the morning from their sleep after they had gone to sleep at three a.m. He indicated that children died because of malnutrition and the lack of medicine. Moreover, pregnant women were induced to abort. He also stated that his father was killed at Abu Ghraib prison due to beatings and torture. He learned that from several persons who were brought later on from Abu Ghraib prison to Lea’s desert jail, when he was at the Lea’s desert location. Further, his military brother was fetched from his military unit and was tortured, even though he was not present at Dujail the day of the incident, but was actually with his military unit. He indicates also that they were taken to Samawa’s desert. The witness recounts details concerning the wretched hygienic and living conditions that prevailed at Lea’s compound, and the death of a number of detainees there. He is filing a complaint against Saddam Hussein and Barzan Ibrahim, so on.

In response to a question by defendant Barzan posed to the complainant, whether he had seen him during the long period he had spent in jail, the complainant replied, “Yes, I have seen him in Dujail. But at the Intelligence location, we were blindfolded; I saw him in Dujail, the day after the incident, at the party’s center.”

Two other complainants were heard by the Tribunal on 12/6/2005. Witness (E) mentioned similar information to the statements of witness (C), most of which were quoted.

On 12/7/2005, complainant no. (1) testified before the Tribunal, stating that he and his family were arrested after the failure of the assassination attempt. He was taken to the party’s center in Dujail and was presented to defendant Barzan, who questioned all of the detainees. The complainant stated that he was detained in a red room for two or three days, at the Intelligence’s Hakimiya jail, before he was kept for four or five days in another room where five or six handcuffed persons were held, without any water to meet their needs. Afterward, he was taken to cell (69) inside the Intelligence’s Hakimiya headquarter. There, he was constantly tortured for seventy days before he was sent to Abu Ghraib prison. He

testified that when detainees asked for food, they were beaten and kicked. The complainant added that he was detained at Abu Ghraib prison, along with his family. There, he was forcibly prevented from sleeping and to stand for several days. If anyone falls asleep they would beat him. The witness indicates that he and others were tortured and beaten at Abu Ghraib prison. They were placed in the “special” section, where the room measured 1.5 x 2 meters and had no bathrooms. Five detainees used to be crammed in that room.

One day, two hours after eating the food that was served, all the detainees had diarrhea. However, when their request to be taken to the bathrooms [was denied], some of them had to relieve themselves in the same room. They were taken afterward to Lea’s desert compound, near the Saudi borders. Said complainant said that he did not see defendant Barzan at the Intelligence location, but he heard his voice. When he inquired about him, they told him that it was Barzan. Complainant No. (1), who testified before the Tribunal on 12/21/2005, stated that his family was arrested after the failed assassination attempt. He was taken to the party’s center in Dujail where he saw nine bodies and many people whose hands were tied and who were blindfolded. Said complainant added that when entered the room, he saw Barzan Ibrahim surrounded by armed bodyguards. He said that he had not seen Barzan before, but that he had a beard, and he was able to recognize him from the picture that is in Barzan’s book concerning the seven assassination attempts on Saddam Hussein. All detainees were sent to the Intelligence center in Baghdad, where they were tortured and forced to sleep amidst the filth of others, and had to drink boiling water. There was a 16-year-old who was being tortured with him. She said that she saw Barzan. Said witness added that he heard the screams of Yacoub Youssef al-Ubaydi before it stopped suddenly. The intelligence officer came afterward and removed Yacoub from his jail cell. He also said that he saw the body of Jassem Muhammad Latif after a group of armed people, with Barzan in front, walked by him. “At that time, I was suffering from fever because I was left sprawled on the ground. I used to lean against the wall with my legs spread out in front of me, because I could not carry my own weight. Despite my poor health, I was asked to sit on my knees for my treatment. I thought that there was a doctor, until Barzan showed up and stood over me and asked the guards, What’s wrong with him? They told him that I had a fever. He asked me my name, and I told him that my name is Ali. Defendant Barzan asked me then, Are you Hussein’s brother? I said yes. At that point he struck my feet with a strong blow, which made me forget the fever. Then defendant Barzan said, Leave him, do not give him any treatment; this family does not deserve to live. Afterward, they took me once more to my cell and I suffered for weeks from pain in my feet. I was then transferred to Abu Ghraib prison and placed in a jail that belonged to the Intelligence Service. At Abu Ghraib prison, Dujail’s families were tortured. One child died and the survivors remained there for seven to nine months, until they were taken to Lea’s detention center, which lies close to the Saudi border. They were kept there for three years.” This witness testified that many rape incidents occurred during detention, and that he knows two people whose torture was supervised by Barzan.

When said witness was released from Lea prison, he returned to Dujail and found that his home had been demolished. The reason said complainant filed a complaint against Barzan is because the latter tortured him and tortured his siblings at the Intelligence location. Said witness indicated that Barzan was present “at the party’s center in Dujail and at the Intelligence building. All of Barzan’s bodyguards used to fear him because he was the one

who gave orders. I saw him at the Intelligence location and he was the one who struck me.” Said witness was 14 years old when the incident occurred.

The second complainant who testified before the Tribunal on 12/21/2005 stated that he was arrested the evening of the failed assassination attempt. He was then taken to the Ba’th Party’s center in Dujail, and there he saw 11 bodies (four in the hallway and seven the room). He was asked to identify the body of his son, but he could not because the bodies were mutilated. When he was taken to another room, where fifty Dujail residents were present, he saw Barzan there. Then he was taken to a pick-up car outside the party division’s center, and he saw two bodies inside the car. He identified the body of his son and that of another person. Afterward, he was taken to the Intelligence Hakimiya center in Baghdad where he was placed with 140 persons in a room that does not hold more than thirty persons. There were excrements everywhere. He was tortured and interrogated about his son for seventeen days. The witness said: “I will not forget Barzan, as he was sitting on a chair munching on grapes during the interrogation and torture. I was dying and he was eating grapes.” He added: “I collapsed afterward because of torture. They took me and placed me with the others for two days. I was unconscious.” He was taken afterward to Abu Ghraib prison where he remained one year and two months, and he was tortured there also.

Said witness saw Abu Ghraib guards beating to death an elderly man, whose name was Mujbil Hassan. He was complaining about the beatings and died two days later from his wounds. Afterward, said witness was taken to Lea jail, next to the Saudi borders, and he remained there for three years and six months. After his release he went back to Dujail, only to be rearrested and brought back to the Intelligence center where he was placed in solitary confinement. He was released three days later. The witness said that he knew Barzan because everyone knows him straightaway, and “I had seen him earlier on TV.” He stated that he is filing the complaint against Barzan because he is the person who is responsible for the death of his son.

Another complainant testified on December 21, 2005. The witness said that he was a soldier “in detachment 1145, a special operations unit. I left the detachment twenty days prior to the Dujail incident.” But he was arrested and sent to the party’s center in Dujail, where he was questioned and asked to admit that he was a member of the Dawa Party. He stated that he was tortured with electricity, and asked once more to confess that he was a member of the Dawa Party. He said that “they tortured me by giving me electric shocks while I was hung from the ceiling of the room. I was drooling and my mouth was foaming like soap because of the harsh torture. The torture sessions continued until one day I was taken to a fourth room where I met Barzan, the Intelligence Service chief. I met him face to face. He asked the guards and the other officers to remove the hood covering my face. They removed the hood and Barzan told me the following: You have to confess something today, and if you don’t I will remove your entrails from your behind and I will show them to you. Because of the severe, unbearable and continuing torture I wished every minute that I could die or be executed. I answered Barzan by saying that it does not befit someone in that position to utter such words. Afterward, he asked the guards and the rest of the crew to finish me off. They tortured me by using electric shocks. They pulled my fingernails and my toenails. Then they left me hanging from the ceiling, and it was difficult for me to distinguish day from night, as I was unconscious from the electric shocks. Afterward, they left me until I woke up, at

which point the interrogation resumed in the same manner on ten more occasions during which they used all types of torture.

“At the end of these ten occasions, they were finished with me. I was left in the room until they stopped interrogating me. That torture went on for seventy or eighty days, and I did not know what would happen to me.” The witness was then taken to Abu Ghraib prison where he saw many folks from Dujail. He remained there for one year and seven months, and was frequently tortured. He was afterward brought to the Intelligence Service Directorate, where he was asked to confess. They told him that he had to say and sign something or to return to his military unit and work as an informer for them. He was then brought back to his unit. During his leave he visited Dujail and saw the razed trees and orchards. Said witness filed a complaint against Barzan. He said that “he knows Barzan because he had a beard and he was featured in magazines and newspapers; we know it is Barzan.” Said witness said that when he saw Barzan the first time “they had put me in a room, and he was sitting next to the door. He told them to remove the hood off my face so that he could see me. We stood face to face. I swear to God Almighty that I am saying the truth. I repeat that I stood face to face with Barzan, and we knew that we were at the Intelligence Service Directorate.”

Witness No. 2 testified on February 1, 2006, before the Tribunal. She indicated that she was arrested and taken to the party’s center in Dujail and then to Intelligence headquarters in Baghdad. The said witness was subjected to torture because she refused to admit that she was a member of Dawa Party. She said that she did not know anything. “Someone said: ‘Bring her some clothes to wear.’ He was mocking me. They brought an electric shock device and placed it in my ear. He told me: ‘Don’t you want to confess?’ When I answered that I had nothing to say, he ordered: ‘Take her to the operations room.’ When I was taken to the operations room, they removed my clothes and I was hung by my hands. I was hit from every direction with rubber hoses. Two people were hitting me. One of them called out and informed them that Barzan was coming. When he arrived, I pleaded with him and told him that I did not know anything, and asked him why they are treating me like that. Barzan inquired with a guard, and asked him: ‘Don’t you know yet?’ The guard replied: ‘No, sir.’ Barzan told him: Change the way she is hanging. So they changed my position and hung me from my legs. They placed wires in my ears, on my fingers and toes, and everywhere in my body. Barzan screamed and said: ‘Keep her hanging for a full hour.’ I was getting blows from all directions during that hour. I pleaded with the guards to untie me. My neck was broken. Before Barzan left the room he hit me on my chest, causing a fracture. The scar can still be seen until now. Barzan turned to the guard and said: ‘Keep her like that for an hour.’”

The said witness was afterward transferred to Abu Ghraib prison where she and her father suffered from diarrhea. She and her family were summoned later on to the Intelligence Hakimiya headquarters. She stated that Barzan tortured her father. Her paternal aunt was a witness to that. She added: “My paternal cousin was summoned, along with my uncle, to that location and she was tortured also by Barzan. Five months later, she was brought once more to Abu Ghraib, where she was kept for one year before being transferred to Lea’s compound near the Saudi border. Three and a half years later, she returned to the Dujail’s region. She found that her home and the orchards had been razed. She filed a lawsuit against Barzan in which she stated that Barzan supervised and participated directly in her torture.

Complainant No. 1 testified on February 2, 2006, before the Tribunal, stating that all of his family members were arrested and taken to the party's center in Dujail, where Barzan hit his father. The witness said: "I asked my father why Barzan hit him. He told him: 'Your brother was killed in the aircraft bombing when he was in the orchard.'" The witness's father said that he was beaten and tortured by Barzan. He testified that even though he did not know Barzan, his father, who was somewhat old, told him that Barzan used to beat him and pushed his forehead to the ground. The witness added: "I heard Barzan insulting my father and pushing him to the ground. Barzan, who was wearing civilian clothes, said: 'Take them away.' Afterward, they brought my father and my paternal aunt's husband, and whisked us away to the Intelligence Hakimiya headquarters in Baghdad, where we were tortured. When we were there, Barzan burned the fingers of Hajji Maher, a 60-year-old man."

Complainant No. 2 testified on February 2, 2006, that he was arrested after the failed attempt to assassinate Saddam Hussein. He was taken to the Intelligence Service's Hakimiya headquarters in Baghdad. He said that when he was there he saw other persons and "I told my father to come and see who's there. He got up from his seat and looked around and told me that this was Barzan and that he was accompanied by civilians." The witness added that a man by the name of Samir tortured him later on with electricity, while a guard named Raed was kicking him. "He placed two pincers, at times on my ears and at other times on my nose. About ten minutes later, and while I was screaming, Barzan came into the room I was in and inquired with the interrogator about me. The latter told him that I was not willing to confess. Two persons were accompanying Barzan. He asked one of them to hand him a cigarette. He put it behind my ear, and the scars are still visible." He was tortured for several days; he was then taken to Abu Ghraib prison and Lea's compound. The witness filed a complaint against Barzan because Barzan personally tortured him and extinguished a cigarette on his head.

Several complaints were heard during the trial on February 13, 2006. Witness No. 4 stated that he was nine years old at the time of the incident. He indicated that "after we were arrested at home we were taken to the party's center in Dujail, where we saw Barzan al-Tikriti." Testimony No. 1 indicated that "on the day of the incident, Saddam Hussein and Barzan al-Tikriti, who was supervising the arrests as head of the Intelligence Service, were present." Testimony No. 17 came from a military conscript, who stated that following the attack on Saddam there were mass arrests in Dujail, and all of his brothers were arrested. He said: "I heard that Barzan Ibrahim was with the group and that he was the one who gave the arrest orders."

Several complaints were also heard on March 1, 2005. "Defendant Barzan al-Tikrity was in Dujail after the incident. He gave the orders to intelligence agents and party members in order to arrest the suspects in Dujail." Another witness said that "my brother and a great number of area residents were arrested, and I heard that defendant Barzan Ibrahim was in the town at that time, but I did not see him."

Statements By Other Trial Defendants Concerning Defendant Barzan Ibrahim

Even though the Court of Cassation in Iraq adheres to the principle of dismissing the testimony of a defendant against another one involved in the same case, nevertheless if one defendant is involved in another lawsuit and his testimony was recorded as a witness against another defendant in the first lawsuit, so even though the Court abides by that principle in general, yet it considers that the testimony of one defendant against another in the same trial may be taken as a presumption and not as evidence, provided that the information that needs more support, confirmation and corroboration be upheld or corroborated on the basis of other evidence. This is especially the case if that evidence is used by one suspect in order to evade liability by transferring such liability to another suspect in the same trial. This is why we will select afterward the most important excerpts from what the remaining defendants stated concerning the role of defendant Barzan Ibrahim in the Dujail's case, taking into account the abovementioned constraints. We will also take into consideration that for the aforementioned reasons the testimonies of said defendants in the preliminary investigation phase are closer to the truth and to the facts of the matter than their statements before the Tribunal. This agrees with the principle that the Iraqi Court of Cassation abides by in this regard. Moreover, this matter should help in reaching the truth and in achieving justice, far from the influence that one of the defendants might have on others, in particular if he affects them or their families materially and morally in view of difficult security circumstances, whereby they would fear making statements before him, which statements might harm him or hurt his chances in the trial.

Statements of Defendant 'Ali Dayeh 'Ali Concerning Defendant Barzan Ibrahim:

In his testimony, which was recorded by the Investigative Panel on 5/25/2005, defendant Ali Dayeh Ali indicated that "I returned to the Dujail's region in the afternoon and I saw the town surrounded by security forces. I believe the Intelligence Service and party personnel were in full force. Among those present was the party chief during that period, the (fugitive) defendant Ahmed Ibrahim Hassoun, aka Abu Nabil. We were also accompanied by defendants 'Abdullah Ruwaid, a party division member then, and his son, Mizher 'Abdullah. I learned that among the defendant officials who were in the region, there was defendant Barzan Ibrahim al-Hassan. However, I did not meet him. I learned also when I was there that several bodies, belonging to people who were slain by helicopter gunships in the orchards, were brought in... On 7/8/1982, several Dujail families, with their full members, were apprehended. The families included women, children and men. Once they were arrested they were taken to the Dujail's party division center. Large vans with tinted glasses were brought in. Those families were then boarded into these vehicles and transported to an unknown destination. My job then was to provide security to the party division. I believe that because of the presence of defendant Barzan Ibrahim al-Hassan, who was conducting the operation, especially those concerning the arrests in Dujail, the orders for transporting the suspects were given by him. I must say that a group of people and families were tortured inside the party division center, specifically inside the room that was occupied by defendant Barzan Ibrahim, defendant Ahmed Ibrahim and a group of leaders during that period."

Statements of Defendant Mizher ‘Abdullah Concerning Defendant Barzan Ibrahim:

Defendant Mizher ‘Abdullah testified before the Investigative Panel on 2/21/2005. Concerning defendant Barzan Ibrahim he stated the following: “At that time, I saw security forces heading in cars towards the orchards. Defendant Barzan Ibrahim, who was the intelligence chief, was accompanying them. I was then standing in front of the party division center door... As regards the razing [TN: “dredging” is an alternate translation] of the fields and the destruction of the trees, I was given an assignment by party authorities, by orders of Barzan Ibrahim conveyed to us through the party, to bring power shovels, steamrollers and graders in order to cut down the trees and raze the fields. Indeed, I took the power shovels with which to carry out the operation, etc.”

Statements of Defendant ‘Abdullah Kadhim Ruwayid Concerning Defendant Barzan Ibrahim:

Defendant ‘Abdullah Kadhim Ruwayid testified before the Investigative Panel on 5/21/2005 that “the number of shots fired (on the motorcade) and that I heard were sporadic and did not exceed ten or twelve shots. I am a farmer and I am well aware of what gunshots sound like. However, I did not personally hear the speech that Saddam Hussein gave, but I heard about it from others. It seems that (few had heard it). Following the gunshots I went to the party division center and remained there... A short while later, a large contingent of security forces arrived from Baghdad, including military troops, and surrounded the town. A number of intelligence officers came also, along with defendant Barzan Ibrahim. I saw him at the party division center. Other high-ranking officials also showed up. Then, helicopter gunships started shooting at the orchards... The orders given to apprehend [the suspects] were not based on arrest warrants issued by official sources. I did not know at that time the motives for the arrests, but naturally they [TN: those arrested] had nothing to do with the incident; I do not understand why they were apprehended.”

Statements of Defendant Muhammad Azzawi Concerning Defendant Barzan Ibrahim:

On 6/1/2005, the statements of defendant Muhammad Azzawi Ali were recorded by the Investigative Panel. He indicated therein that “when I was at the party division center I saw each of the defendants Barzan Ibrahim al-Hassan, ‘Abdullah Ruwaid, and the chief of the party division, Ahmed Ibrahim al-Hassoun al-Samarra’i. I also saw Saadoun Shaker and Iyada Kanaan al-Sadid at the same location where many families were detained. They boarded them onto large vehicles and took them to an unknown destination. There were women and children with these families... I did not arrest any of Dujail’s residents and did not take part in any operation. Also, I did not torture any of Dujail’s residents. This operation, which concerned the arrests in Dujail, was conducted by defendant Barzan Ibrahim at that time.”

Statements of Defendant Taha Yassin Ramadan Concerning Defendant Barzan Ibrahim:

The statements of Taha Yassin Ramadan, which were recorded by the Investigative Panel on 2/29/2005, included the following:

“In 1982, as far as I recall, when I held the post of Deputy Prime Minister in the former regime, defendant Saddam Hussein, the then President of the Republic, contacted me by phone. He told me that he had been the target of an assassination attempt in the Dujail’s region and asked to go and meet up with security officials. He told me that he instructed them to go to the National Council headquarters. As far as I recall, it was a Friday. When I went I found Fadel al-Barak, who used to hold the post of security director. He was executed afterward for various reasons. I also met another person, whose name I don’t recall, who told me that he came on behalf of the intelligence chief. He informed me that the intelligence chief went to meet with Saddam Hussein following the incident, along with two or three persons I don’t remember exactly who they were. I was told to listen to what the security officials had to say, to give my remarks and to direct their activities if there were any instructions in this regard, etc.

“As is well-known, the security agencies are not connected with any ministry. They are directly linked to the Office of the Presidency. What we mean by ‘linked to the Office of the Presidency’ is that institutions, such as intelligence or security agencies in the former regime, were directly linked to the person of the President of the Republic. This was also the case for military intelligence. The channel of communication was the Secretariat Department.

“In general, these institutions received their orders directly from defendant Saddam Hussein, given that they are linked to the presidency, and he held the post of President of the Republic at that time.”

Summary of Barzan Ibrahim al-Hassan’s Statements during the Investigation and Trial Stages:

Overall, defendant Barzan Ibrahim denied the charges leveled at him, whether during the investigative or trial phase. However, the statements of defendant Barzan, during the investigation and trial, contained important details that help shed light on what occurred in Dujail on the day of the incident and on the actions perpetrated afterward and that pertained to crimes against humanity.

In his statements, which were recorded by the Investigative Panel on 1/25/2005, in the presence of his then attorney and the public prosecutor, Barzan Ibrahim indicated that on the day of the incident he left the Radwaniya region, where he congratulated defendant Saddam Hussein for having escaped the assassination attempt, and headed to Dujail, accompanied by Saadoun Shaker. There, he inquired with those who were present about the incident. Some people, he does not remember who they were, informed him that when defendant Saddam Hussein’s motorcade was passing, a few unknown people shot at it. Barzan mentions also that defendant Saddam Hussein asked him to the Dujail region in

order to know the causes of that incident and to conduct the investigation in the region in order to identify the suspects. He said that this was his duty because he was in charge of the security of the president. When he arrived in Dujail he found military troops there, which consisted of the Republican Guards, security forces, the police, and some Ba'ath Party members. He recalls that he saw these military units as they were laying siege to the town. Each of the groups had its own command. Defendant Barzan, in his capacity as intelligence chief and also as the official in charge of the president's security, arrived in Dujail two to three hours after the incident. When he inquired about the incident, he was told that there were some criminals who fired shots at Saddam Hussein's motorcade. Defendant Barzan indicated that "I was the one who was responsible for the region. I spent the day of the incident and the evening in Dujail, until the next day. After I learned about the details concerning the situation, I requested that the orchards be surrounded. Military troops encircled the area, and helicopter gunships flew over the region. There were exchanges of gunfire between elements hiding in the orchards and the military troops, resulting in the death of two to three persons. Three or four individuals were apprehended and questioned. I heard that the security chief at that time – it was just hearsay, as I did not have any official information in this regard – went to Dujail and seized many persons along with their families. He also had the trees and palm trees chopped down. I informed defendant Saddam Hussein, who was then President, that this behavior was not right and must be rejected." In response to a question by the Investigative Panel, defendant Barzan responded: "Those who were arrested in my presence and following my orders, and who were sent to the Intelligence Hakimiya headquarters at that time for interrogation, were three or four persons only." He added that he did not know about the arrest of the many families, including women and children. He denied that the Intelligence Service had anything to do with sending the detainees to Abu Ghraib prison and to the Lea's desert compound, where they remained until 1986.

After being told that it was the Intelligence Service that referred the case to the Revolutionary Court, by order of the Office of the Presidency, that the case number at Intelligence was 40/1984, that the arraignment order number was 762/6, dated 5/27/1984, that the investigation departments at Intelligence were in charge of the investigation, while he is saying that he has nothing to do with the issue, he was asked, What is your answer? He replied: "The Intelligence Service had no information about the subject nor was it connected to it. It is possible that the case [was handled by the Intelligence Service] after I was no longer intelligence chief in 1983." He reiterated that he had nothing to do with the issue and emphasized that the referral of the suspects to the Revolutionary Court occurred after he stepped down from his intelligence post. He stressed that it was the General Security Directorate that borrowed the name of Intelligence in many instances then.

The statements of defendant Barzan Ibrahim to the Tribunal are to a large extent similar to his statements to the Investigative Panel. However, they contain additional information. Besides defendant Barzan's testimony, which was heard by the Tribunal on 3/15/2006, said Tribunal enabled him in many sessions to provide statements, comments and arguments regarding the case and the charges leveled against him. On 3/15/2006, defendant Barzan indicated that he submitted for the second time his resignation as intelligence chief in August 1983, and his resignation was accepted on October 6 of the same year. He had no more ties to the state. He also mentioned that he visited Dujail on the first day of the incident and the following day, and that it was the General Security Directorate that took

over the case. He added that on the first day he released those who were detained at the party division center and greeted them. He stated also that he blamed the security and party agencies because they had arrested people on the basis of suspicion. This occurred before dozens of people, including defendant Muhammad ‘Azzawi al-Marsumi. He indicated also that he did not apprehend anyone, and the proof of that is that the detainees were referred to the court two years after his resignation. He further stated that he did not supervise the investigation and did not see the memo by Waddah al-Shaykh. He added that those who testified against him were committing perjury and were saying what they have been told, since the Investigation and Inquiry Department could not hold that many people, because it consisted of a small two-story building, with the first floor occupied by offices, and the second having no more than thirty cells. This was the condition in which he left it until early 1983. He also stated that he did not apprehend anyone, and that apprehending people is not the competence of the Intelligence Service. He further mentioned that he did not commission Waddah al-Shaykh to draft the report and to submit it to Hussein Kamel, because “Hussein Kamel reports to me, given that he is a member of Saddam Hussein’s protection staff, and I am in charge of Saddam Hussein’s protection. As for Waddah al-Shaykh, he is not someone reliable, as the events have proven. He has a long history of misconducts and fabrications.” Defendant Barzan also stressed that “the General Security director set up a camp and began to attack Dawa Party strongholds, chop down trees and detain people. Dujail is one of Dawa Party strongholds and one of their hideaways, as weapons, explosives, mortars, medical supplies, canned food, printers, paper, so on, were seized.” Defendant Barzan challenged the veracity of the letter which was attributed to him and which contain his signatures, by stating that it was forged. He emphasized that he released a great number of detainees (nearly eighty people) held at the party division center in Dujail on the first day of the incident, once he came to Dujail. Overall, the defendant denied that the Intelligence Service had anything to do with Dujail’s events. And the defendant denied the charges leveled at him with regard to his committing crimes against humanity in the case of Dujail.

Summary of Defense Witness Statements on behalf of Defendant Barzan Ibrahim:

The Tribunal listened to the statements of nine defense witnesses on behalf of defendant Barzan Ibrahim al-Hassan. The first one occurred on 5/22/2006, wherein defense witness Sabaawi Ibrahim al-Hassan, who is defendant Barzan’s brother, testified that on the day of the incident (which was determined during the trial to be 7/8/1982), he went to see his youngest brother, Barzan. He saw him at home at around nine pm. “I told him that I heard that there was an assassination attempt against the president. He replied, ‘I was also at the department when I received the news and went to Dujail.’ At the time, Barzan was responsible for the protection of the president, since there was no special security agency, but it was Barzan who oversaw these security matters. He went to Dujail to see up close what was going on, and to check if the protection personnel [TN: “Protection personnel” could also be translated as “bodyguards”] had been at all negligent in doing their job. Barzan told me, ‘I went and surveyed the place, and there was no sign of negligence by the protection personnel. It seems that the matter was planned and organized in advance.’ He also told me that the General Security director also came. I asked him if he was going to have a role in

the matter. He replied, 'I have no role in this, and you know, Sabaawi, about existing prerogatives. This is the competence of the security agency, and outlawed parties are the prerogative of the security organs. I went to survey the site, and to check whether there was any negligence by the protection staff, and I did not find any.'

The Tribunal interjected and told the witness that he is a defense witness on behalf of defendant Barzan, and that he will be given later on the opportunity to testify with respect to defendant Saddam. The witness answered, with regard to Barzan, that "I already told you that he said to me that this was neither his competence nor that of the Intelligence Service and that he went to check on the incident and find out how it took place; he also had to find out whether the protection staff had been neglectful in doing their job. He said also that this was the purview of the security apparatus and that of the director of General Security, who was present in the region. He added that he would convey to the President that there was carelessness on the part of the security apparatus and the party." In response to a question by defendant Saddam Hussein's and defendant Barzan Ibrahim's attorney, Khalil al-Dulaymi, as to whether Barzan told him that a number of witnesses, especially Dujail residents, indicated that when Barzan visited Dujail, he freed more than 70 detainees, witness Sabaawi answered: "Yes, he told me that there are people who could confirm this. Muhammad al-Marsoomi (who is facing charges in the same case) came to me and pleaded with me to mediate in a tribal matter. He mentioned to me how Barzan released him along with other detainees years ago."

Another witness, whose given symbol was (2), testified before the Tribunal on 5/22/2006. Said witness used to work at the Intelligence Service during the incident. He stated that he did not remember the day of the incident, but he learned about it during the trial proceedings on 7/8. He said that "the trial proceedings were being broadcast directly on television. I came to the Intelligence department shortly before the official close of business and I learned that there was a departmental meeting gathering Intelligence staff. One or two hours after the official close of business, the Intelligence staff were allowed to leave the department. The next day, we learned that there was an assassination attempt against the president in Dujail's region. I did not notice any unusual or preventive measures taking place within the Intelligence bureau, and I did not notice any arrests being made or any interrogation, neither in the first days nor later on inside the bureau." Answering a question posed by the Tribunal, the witness said that he was not instructed to do anything, and this was also the case for other people he knew. He added that he had no direct contact with defendant Barzan then. In response to another question by the Tribunal, he answered that he did not notice any detainees at the Intelligence bureau. And he replied to another question that he had nothing to do with the investigation department, because it is a separate department, and that his work was in counter-espionage.

Defendant Barzan then posed the following question to the witness: "When you used to go to the Investigation and Inquiry Department, as part of your job, did you sense that there was something unusual, or did any of your colleagues inform you directly or indirectly that something like this case was taking place?" In response to that question, the witness answered that "we sometimes have requests coming to the Investigation and Inquiry Department in order to follow up on an investigation. However, during that period, I did not hear anything unusual going on at the Investigation and Inquiry building, as we used to visit it from time to time." In response to a question by the public prosecutor, the witness said

that every two or three months in 1982 and 1983 he used to go to the Investigation and Inquiry Department (Hakimiya).

Another defense witness, whose symbol was (4), testified before the Tribunal on 5/29/2006. He used to be one of defendant Barzan's bodyguards at the time the incident took place. He stated that when he went on the day of the incident with another witness, who was also part of the protection team, to the farm of defendant Saddam in Radwaniya, defendant Barzan was there. They accompanied him afterward to Dujail and went into the party division center. There were roughly seventy to eighty people present. When defendant Barzan asked a member of the party division about that, he told him that those are Dujail residents who were detained. After he met them, he let them go. One of the women even wanted to kiss his hands, but he told her that "we came here to serve you; we came to check on the situation, because we are trying to make sure that no errors or wrong are committed." After eating their "iftar" [break-the-fast] meal (as this was Ramadan), they returned to Baghdad. He also went with defendant Barzan on the second day at noon to the party division center in Dujail and found that the situation was quiet. They returned before the "iftar" to Baghdad.

Said witness confirmed that he saw the detainees whom defendant Barzan set free the first day of the incident inside the party division's room, because its door was open. In response to a question posed by the public prosecutor, whether the detainees who were freed by defendant Barzan (70 to 80 persons) included men, women and children, the witness answered, "Yes those who were freed included men, women and children. There was one who was 15 years old and another one 20 years old, and there were five to ten women who were in detention."

The Tribunal heard on the same day (5/29/2006) the testimony of another defense witness on behalf of defendant Barzan Ibrahim. Following are excerpts of his testimony: "We went to Dujail, and we reached the party division center. I was standing by the door and saw the popular army in front of the party division center. There were people milling around. He was annoyed. When he opened the door to the party division room he saw many detainees. He greeted them and apologized to them. He then let them go. One of them invited him for the break-the-fast meal. After that meal, we returned to Baghdad." Said witness indicated that he went with defendant Barzan and someone else (the previous defense witness) to Dujail the second day and left it before sunset.

Said witness is the paternal cousin of Barzan. In response to the question of the public prosecutor, whether he saw detainees in the room when he arrived to the party division in Dujail, the witness answered: "Yes, there were seventy or more detainees in the room of the party division, and they were set free." With respect to the public prosecutor's question whether there were women and children among the detainees, the witness replied that "they were all men." This contradicts what the previous witness mentioned, which is that there were women and children, besides men.

The Tribunal heard on 6/12/2006 the statements of another defense witness on behalf of Barzan Ibrahim. His symbol is (1). He alleged that he was also one of the defendant's bodyguards when the incident took place. Said witness indicated that he was among those who accompanied defendant Barzan to Dujail on the first day of the incident, but he remained outside the party division center. One hour later, people emerged from the

division center chanting “long live the president” and “long live the party,” and cheering the intelligence chief for setting them free. One of the popular army guards, who was standing by the division center door, told him that the president had been the subject of an assassination attempt and was not hurt. Said witness said that the bodyguards were carrying machine guns and were cautious because the region was dangerous. Following the “iftar” (in Ramadan) the intelligence chief (defendant Barzan) came out and returned to the Baghdad department. The witness said that he went with the defendant the second day to Dujail and reached it about four pm. Then they returned to Baghdad before the “iftar” time. In response to a question by the public prosecutor, the witness responded that “all of the detainees who were released from the division center by defendant Barzan were men, and there were no children or women amongst them, according to one of the guards.”

On the same day, 6/12/2006, another defense witness on behalf of defendant Barzan testified before the Tribunal that he went with defendant Barzan to Dujail on the day of the event and they went to the party division center there. One hour or less than an hour later, residents emerged from the division center chanting, “Long live the President.” When he inquired with one of the guards about what was going on, the guard told him that the president had been the target of an assassination attempt, and that Barzan released those residents. The witness added that after the break-the-fast meal they returned to Baghdad. The witness alleged that he went with defendant Barzan to Dujail and remained there two to three hours, and then returned to Baghdad before the break-the-fast meal.

On 6/13/2006, the Tribunal heard the testimony of another defense witness (symbol no. 3) on behalf of Barzan Ibrahim. His testimony was similar to the previous witness. He repeated that defendant Barzan freed nearly fifty detainees the first day of the incident from the party division center in Dujail, and they were all men. He added that during his work with defendant Barzan he did not go another time to Dujail, “and we did not go to Hakimiya.” He indicated that he did not see any detained families, neither at Intelligence Service headquarters nor at Hakimiya.

The other witness that the Tribunal heard on 6/13/2006 did not have an eyewitness account pertaining to the Dujail’s incident or what happened in Dujail following the incident. In response to a question from attorney Khamis al-Ubaydi, Barzan’s counsel, he answered that he did not see any detained families, either at Intelligence headquarters or at Hakimiya.

Evidence and Presumptions Against Barzan Ibrahim:

Defendant Barzan Ibrahim held the post of Intelligence Service chief from mid-1979 until 1983. Furthermore, he was the most senior official responsible for the security of defendant Saddam Hussein, who was President of the Republic and Chairman of the Revolutionary Command Council then. Defendant Barzan is the half-brother (maternal brother) of defendant Saddam Hussein. At noon of 7/8/1982 he met with defendant Saddam Hussein at Rawaniya farm, and received the order to go to Dujail in order to investigate the incident. The evidence available in this trial against defendant Barzan Ibrahim is the following:

1. The statements of Barzan Ibrahim, which were recorded by the three-judge Investigative Panel on 1/25/2005, in the presence of his own attorney and of the public prosecutor. These statements include the following: “He asked me to go to the Dujail’s region (meaning that defendant Saddam Hussein requested that), and this was my duty, since at that time I was responsible for the security of the president. Once I went there I found army troops, Republican Guards, security forces, members of the police and Ba’th Party members. At that time, the military troops were surrounding the region. I saw them myself. Each of the groups had its own command. I was in that region, in my capacity as intelligence chief and responsible for the president’ security also... So I was the person in charge who was present in that area, where I spent the day of the incident and the evening in Dujail, until the next day.”

Defendant Barzan adds that “after I learned about the details of the situation, I requested that the orchards be surrounded. Military troops surrounded that area, and helicopter gunships flew over the region. There were exchanges of gunfire between elements hiding in the orchards and the military troops, resulting in the death of two to three persons. Three or four individuals were apprehended and questioned.” He also states to the Investigative Panel that “the persons who were apprehended in my presence and following my orders were sent to Hakimiya Intelligence center at that time for questioning; they were no more than four or five persons.”

2. Defendant Barzan Ibrahim admitted before the Tribunal on 3/15/2005 that he went to Dujail and he stayed at the party division center for two successive days (the day of the incident and the next day).

3. The statements of witness Waddah al-Shaykh before the investigative judge on 1/25/2005, excerpts of which are the following: “On 7/8/1982, while I was at my office I received a phone call from defendant Barzan Ibrahim. He asked me to come to his office at the Intelligence Service in al-Mansour. When I went to his office, I noticed that the atmosphere was tense and things were not as usual there. When I entered the secretary’s office, and before going into defendant Barzan’s room, the defendant came out and met us in the secretary’s office. There were no more than twelve persons present. Among them I recall Muhammad Alyawi; Hassib Saber, who held the position of assistant general director for counter-espionage; Ali Mahmoud Hashem, who used to work in the secret service division; Khalil Ibrahim Mahmoud, who I believe was security director or something else; and Maneh Abdul Rashid, who was department security head.

“Defendant Barzan, who was the intelligence chief, informed us that defendant Saddam Hussein, the then President of the Republic, had been the target of a failed assassination attempt in the Dujail’s region, which lies 60 to 65 km north of Baghdad. He ordered us to move immediately to the Dujail’s region and to investigate the matter. He also instructed the head of the protection unit to move to the same location. We went indeed with our cars to the Dujail’s region and turned the party division’s center into our operating headquarters... We all went there, without exception, and we set about the investigation, etc.”

Witness Waddah al-Shaykh also stated: “At about seven pm, more specifically at sunset, defendant Barzan and Saadoun Shaker, who was the Interior Minister, came to the party division’s center, which became our headquarters. At that time, a great number of officials

from the region of Balad, Kazimiya and Dujail came and settled in the garden of the party division center... As part of my work, and while conducting searches, I found no more than twelve to fifteen empty cartridges that belonged to Kalashnikov rounds. I did not take this into consideration since no one and no car were hit in the incident... However, I inquired with defendant Barzan, and he told me that no one was hurt and no car was hit.

“As the head of operations in the region, Barzan instructed the police force, party members and security personnel to arrest suspects along with their families, including children and women. At that point, a Republican Guard unit (Special Forces brigade) showed up, but I do not recall the unit’s number. Until then, the intelligence agency did not take part in the operations, given that the intelligence personnel were few... They numbered ten to twelve members. The security forces began arresting women along with children who were not yet twelve years old. According to the rules of thumb in investigations, if there is an assassination attempt, the participants do not return to their homes.... I informed defendant Barzan, who was heading the operation in the region, that those children, elderly and women had nothing to do with the incident, and I asked defendant Barzan what I should do with them, given that they were so many and there were no services provided... He told me to send them to Baghdad. Indeed, I dispatched large Mercedes Jumbo vehicles, each holding roughly fifty passengers. Defendant Barzan stood at the entrance of the hall belonging to the party division’s center, and we began taking people out and boarding them into the vehicles. Defendant Barzan Ibrahim placed also some people in the vehicles, and he released many of the detainees. The releases were based on appearances, so on. This situation continued for three days, and the transportation of families and individuals went on until the second day ...”

Witness Waddah al-Shaykh states also that “Everyone was receiving their orders from Barzan, who was heading the operation. Communications and orders were verbal, as Barzan was staying at the party division center and used to verbally issue direct orders... However, I did not hear the orders that came to defendant Barzan. But I inferred that they were given directly by defendant Saddam. On the evening of the first day, when we were present in the party division center, Barzan asked me for a preliminary report about the reasons that triggered that incident. And in fact I did draft a report... and I submitted a two- or three-page report. The next day, Hussein Kamel arrived and asked him about the report. So I gave it to him. At that time, Hussein Kamel was an aide to defendant Saddam Hussein, which means that the report was sent to Saddam Hussein. In addition, defendant Barzan issued an order that anyone who can bear arms shall be referred to the court.”

4. Further, Waddah al-Shaykh gave statements to the Tribunal’s three-judge panel on 10/23/2005 at Abu Ghraib’s military hospital, and these were recorded. The statements were heard by the Tribunal on 10/28/2005 and were similar to his testimony to the Investigative Panel on 1/25/2005.

5. The statements of many complainants during the investigative and trial stages. Said complainants testified that defendant Barzan Ibrahim personally supervised their interrogation at the Intelligence Hakimiya building, and he supervised the tortures during the interrogations. Some of them testified that defendant Barzan personally tortured them.

6. The statements of the aforementioned complainants in this trial, which statements were given during the investigative stage. They include those of complainants Ali Dayeh Ali, ‘Abdullah Kadhim Ruwayid, Mizher ‘Abdullah, Muhammad Azzawi and Taha Yassin Ramadan.

7. Official records and letters between the Intelligence Service, the Office of the Presidency and the Revolutionary Command Council, including the following:

a. Letter No. 1220 of 7/21/1982, issued by the Office of the Chief of Intelligence Service and addressed to defendant Saddam Hussein, in his capacity as the Chairman of the Revolutionary Command Council, which is directly linked to the Intelligence Service and its chief, and which Letter recommends rewarding Intelligence officers for their role in pursuing and apprehending Dujail residents. The validity of defendant Barzan Ibrahim’s signatures on said Letter has been ascertained in accordance with the reports of 4/13/2006 and of 4/23/2006 of the criminal evidence expert committee.

b. The report dated 7/13/1982 sent by defendant Barzan Ibrahim to defendant Saddam Hussein, which describes the measures that were taken with respect to Dujail’s residents.

c. Two Internal Memos, No. 5682 of 9/23/1982 and No. 6282 of 10/25/1982, issued by the Intelligence Service’s Investigation and Inquiry Directorate, and whose marginal notes and signatures were validated by the report of the criminal evidence experts to be those of defendant Barzan Ibrahim.

d. Arraignment Report No. 762 of 5/27/1984, issued by order of defendant Saddam Hussein, wherein it is stated that “given the grounds for arraignment found in Investigative Case No. 40/1984, Intelligence Service.”

e. The testimony of defendant ‘Awwad al-Bandar to the Investigative Panel on 2/29/2005, in which he states that “the Intelligence Service conducted the interrogations.”

f. The report of the committee set up under the chair of Hussein Kamel, which report was sent to defendant Saddam Hussein in 1982, wherein Paragraph 5 thereof indicates that “the committee examined all of the key elements of the Dujail’s incident that are in the possession of the Intelligence Service.”

g. Letter No. 1282 of 3/31/1987 issued by the Intelligence Service to the Office of the Presidency, wherein Paragraph 3 thereof indicates that the Intelligence Service is in charge of investigating Dujail’s residents and that “the measures have been carried out with regard to the remaining civilians as some of them died during interrogation.”

h. The Intelligence Service Memo sent to MM7, signed by a committee consisting of a chairman and four members, all of them Intelligence members, and wherein Paragraph 3 thereof states that “the civilians against whom a verdict was issued included 46 persons who had been eliminated or who died during interrogation.” Likewise, other paragraphs in the Memo describe in detail the fate of Dujail’s residents.

i. Indictment No. 26/1987 of 9/21/1987, issued by the Intelligence Service Court, which belongs to the Intelligence Service, against its member Hikmat Abdul Wahab for not carrying

out the death sentence on two of Dujail's victims, namely Jassem Mohammed Rida al-Hitto and Ali Habib Jaafar, whose names were mentioned in Indictment No. 944/C/1984 of 6/14/1984, handed down by the (abolished) Revolutionary Court, and in Presidential Decree No. 778 of 6/16/1984, certifying the death sentence verdict for Dujail's residents. Page two of the indictment delivered by the said Intelligence Service Court indicates that "given time constraints, the remaining number of convicts is 96, as the others were eliminated during interrogation."

j. Letter No. 106, dated 5/8/1983, of the Intelligence Service chief; the Intelligence Service letter dated 4/28/1983; Letter No. 2291, dated 10/27/1983, of the Intelligence Service chief; Intelligence Service Letter No. 568 of 3/25/1984; Intelligence Service Letter No. 988 of 6/17/1984; Intelligence Service Letter No. 841 of 5/17/1984, addressed to Muthanna Security Directorate, with copies thereof sent to General Security Directorate, instructing to transfer Dujail's families to the said Muthanna Security Directorate, with enclosures listing the names of those family members and their numbers.

k. Letter No. 647, dated 2/11/1984, of the Muthanna Governorate Security Directorate, addressed to the General Security Directorate, with a copy thereof to the Revolutionary Command Council (Intelligence Service), referring to Intelligence Service Letter No. 322 of 2/6/1984 and describing the transfer of 49 displaced Dujail residents and other transferal records, some of them handwritten and others printed; these were signed by Muthanna Security Director on 10/29/1983 and 2/11/1984, confirming receiving a number of the expelled Dujail's residents in Muthanna province, and then sending them to the Lea's desert compound.

l. Letter No. 173 of 4/13/1986 of the National Security Council, which belonged to the (dismantled) Revolutionary Command Council, addressed to the Intelligence Service chief and instructing the release of the expelled Dujail residents.

m. Intelligence Letter No. 1253 of 3/2/1985 addressed to the Adults Reform Department (Long-Sentences Section), referring to Presidential Decree No. 778 of 1984 and describing the transfer of the 148 convicts sentenced to death, whose names are listed in the said Letter, and requesting the immediate execution of their death sentences.

Extent of Defendant Barzan Ibrahim's Liability for the Crimes he is Charged with in the Indictment

We have mentioned earlier that this Tribunal has charged defendant Ibrahim al-Hassan on 5/15/2006 with six counts of crimes against humanity, pursuant to Article 12 (First) of the Tribunal's law. We will determine below the extent of the said defendant's liability for each one of these counts.

Extent of Defendant Barzan Ibrahim's Liability for Premeditated Murder as Crime Against Humanity:

There is no direct evidence in the trial that defendant Barzan Ibrahim has killed with his own hands any of Dujail's victims, but there are direct and indirect evidence that proves that defendant Barzan has given orders to the military, intelligence, security, party, and popular army units in Dujail to kill Dujail residents who were in the orchards in the first few days of the event. There are also many pieces of evidence that show that he issued verbal instructions to apprehend hundreds of Dujail residents, including women, children, elderly and young men at that time and to send them to the Intelligence Hakimiya jail first, then to Abu Ghraib prison, and afterward to Lea's desert compound through the Muthanna Governorate Security Directorate, where many of them died during torture or as a result of wretched living and hygienic conditions prevailing in these places. These facts become obvious when one reviews the evidence available in the trial against defendant Barzan, and which we have mentioned earlier. These pieces of evidence can be documentary or based on the statements of complainants and corroborating witnesses, or even on defense witnesses testifying on behalf of defendants in this case.

During the first two days of the event, in which defendant Barzan admitted he was at the party division center in Dujail, defendant Barzan, while in Dujail, issued orders to the military forces and to the intelligence, security and party units to attack Dujail's residents. These armed forces and units, as has been ascertained by nine people, were receiving their orders from him. These nine people were Abbas Jassem Muhammad Rida Hitto al-Salami, Karim Kazem Jaafar al-Ubaydi, Imad Hassan Mehdi Jaafar al-Aswadi, Raad al-Karbalani, Muhammad Abd Jawad al-Zubaydi, Mahrouz Muhammad Hadi al-Kalabi, Hashem Adnan Jasem al-Khazaali, Sadek Majid Hamid al-Khazaali, and Sattar Toufic Yahya al-Khafaji.

Additionally, during those days, a large number of Dujail families, comprising 399 members, were apprehended and detained. They were placed in the Investigation and Inquiry Department jail (Hakimiya jail), which belonged to the Intelligence Service, which in turn was controlled by defendant Barzan Ibrahim. This is what witness Waddah al-Shaykh, who was director of said Department and jail at the time the incident occurred and until early 1984, confirmed. This was also confirmed on the basis of documentary evidence, including letters and addresses exhibited to the Tribunal and attached to the records of this case. As a result of torture, which was widely practiced at Hakimiya jail by intelligence officers in the employ of the said Investigation and Inquiry Department, and, as was ascertained, by defendant Barzan Ibrahim who personally took part in torturing a number of those detainees amongst Dujail's residents, a number of victims died, including Yacoub Youssef al-Ubaydi, Jassem Muhammad Latif al-Salami, Saleh Muhammad Jassem, Kassem Ali Assad al-Haydari, and Alwan Hassan Hussein al-Salami. Other Dujail victims were executed or died as a result of torture and the poor conditions which we mentioned earlier, including children, in the special section that belonged to the Intelligence Service in Abu Ghraib prison. These included Mejbek Hassan Aziz al-Marsumi, who was killed as a result of a blow to his head given to him by one of the guards in the said prison, using his military belt buckle, in addition to Yassin Hassan Hitto al-Salami, Nawfa Hassan Agha al-Zubaydi, and the children Hisham Fakhri Assad al-Haydari, Zeina Muhammad Hassan al-Haydari and Ali Majid al-Khribatli. Other deaths were due to the poor conditions prevailing at Lea's desert compound where expelled Dujail residents were detained. These included Hamid Mehdi al-Khazaali, Abdul Wahab Jaafar Habib al-Ubaydi, Sabriya Abbas Ahmed al-Ubaydi, and Sabri Assad 'Abdullah al-Haydari, in addition to the two kids, Muthna Majid Yacoub and Thabet Assad 'Abdullah al-Haydari.

Whereas the arrest, imprisonment and torture of Dujail civilians were from early on by orders of defendant Barzan; whereas slaying as a crime was very probable under these circumstances; therefore, even following the resignation of defendant Barzan Ibrahim as intelligence service chief on 10/6/1983, he shall be criminally liable for the slaying of 148 Dujail residents whose names were referred to the Revolutionary Court, which issued a death penalty verdict for all of them without trial. It has been ascertained also that 46 victims amongst said Dujail residents were executed at indeterminate times between July 1982 and May 1984 prior to the alleged trial. The fact that defendant Barzan stepped down as Intelligence Service chief in October 1983 does not exonerate him for the reason that if they were not killed while he was intelligence chief, he did cause their death when he arrested them and incarcerated them at the Intelligence Service Hakimiya jail.

At any rate, some complainants who were incarcerated at Hakimiya jail testified that some of the victims who were incarcerated with them were killed during torture there when defendant Barzan Ibrahim was present at Hakimiya prison, and that he not only supervised torture but also personally tortured victims. You may refer to the testimonies of Complainant No. 1, Complainant No. 2, and Complainant No. 3 during the 12/21/2006 [sic] court hearing; to the testimonies of Complainant No. 2 and Complainant No. 3 during the 2/1/2006 court hearing; and to the testimony of Complainant No. 1 during the 2/2/2006 court hearing.

It bears mentioning in this regard the verdict delivered on 12/10/1998 by the International Criminal Tribunal for the former Yugoslavia in the case of Anto Furundzija, wherein Paragraph 199 provides that “aiding and abetting need not be tangible, but may consist of moral support or encouragement of the principals in their commission of the crime.”

The said verdict refers to the British case “Rohde”, wherein six persons were concerned in the killing of four British female prisoners who were held by Germans. The women were killed by lethal injection and their bodies disposed of through cremation in the prison’s crematorium. With respect to the expression “concerned in the killing” the military court’s advisory judge explained that actual presence at the scene of the crime is not necessary for a person to be “concerned in the killing.” Likewise, the verdict delivered in the aforesaid case of Anto Furundzija refers to the verdict issued in the “Synagogue” case and the verdict delivered in the “Pig-cart parade” case wherein it is stated that “presence, when combined with authority, can constitute assistance in the form of moral support, that is, the *actus reus* of the offence. The supporter must be of a certain status for this to be sufficient for criminal responsibility.”

This principle became well-established in the aforementioned ruling issued in the case of Zlatko Aleksovski on 6/25/1999, which stated that mere presence constitutes sufficient participation under certain circumstances, as long as it was established that the presence had an effective impact on the commission of the crime, that is, by instigating it, and that the presence of the person there indicates that said person had the required criminal intent (*mens rea*).

The said ruling states also that “The *mens rea* may be deduced from the circumstances, and the position of authority constitutes one of the circumstances which can be considered when establishing that the person against whom the claim is directed knew that his

presence would be interpreted by the perpetrator of the wrongful act as a sign of support or encouragement. An individual's authority must therefore be considered to be an important indicium as establishing that his mere presence constitutes an act of intentional participation" (See paragraph 65 of the ruling issued in the case of Zlatko Aleksovski).

This Tribunal is firmly convinced that defendant Barzan's authority was quite extensive, and that authority was derived from a great number of factors, including his position as intelligence chief in a dictatorial regime, and the fact that he is the brother of the former President of the Republic (defendant Saddam Hussein), who used to occupy other leading positions in the state and the party, besides being head of state. Likewise, defendant Barzan himself held a senior position in the party, which used to rule the country. Moreover, defendant Barzan Ibrahim not only was present at the sites where crimes were committed, but he also personally tortured victims.

Defendant Barzan is liable for the death of all victims amongst Dujail's residents, whether the 96 persons who were actually executed later on, once the death sentence ruling was handed down by the (abolished) Revolutionary Court, or the 46 individuals who died as a result of torture during interrogation at the Intelligence center. This liability is shared by other defendants in this case, and by intelligence officers and members who have personally committed slayings (the principals). Even if there is no direct evidence that defendant Barzan Ibrahim killed them, there are several pieces of evidence that prove that he was cognizant that some of them had been killed by Investigation and Inquiry Directorate officers, members and guards at Hakimiya. In addition, he was present when this occurred and did not take any measure to stop the perpetration of those crimes. And he did not take any measure to call to account anyone when he knew that (assuming he had not been aware of that to begin with). What is more, he encouraged the commission of these criminal acts. In addition, defendant Barzan caused the slaying of those amongst Dujail's residents who were still alive and whose names were listed in the report referring them to the Revolutionary Court. At any rate, the notion of "willful killing" in international criminal law, which agrees with Islamic criminal jurisprudence and other divine laws, permits us to hold criminally accountable a person for any crime, including premeditated murder, if said person has deliberately caused the criminal outcome consisting in the death of the victim(s) when the other basic elements of the crime were present. The aforementioned death sentence execution reports concerning Dujail's victims, prove that the remaining victims amongst Dujail's victims were indeed executed on 3/23/1985 and on 1/16/1989.

This Tribunal is fully convinced that most of witness Waddah al-Shaykh's statements during the investigative and trial stages are true. The validity of these statements is corroborated by the testimonies of many complainants who have testified during the investigation and trial and who have been incarcerated in Hakimiya jail, as well as in Abu Ghraib prison and Lea's desert compound. They are also corroborated by documentary evidence attached to the trial records which was exhibited to the Tribunal.

Furthermore, the testimony of Waddah al-Shaykh, to the effect that he was not aware of acts of torture when he was the Investigation and Inquiry director at Hakimiya jail, was obviously motivated by his wanting to evade responsibility. The Tribunal is entitled to take into consideration part of the testimony that it believes is credible and to cast aside (ignore) the

portion it is not convinced of, in conformity with Article 215 of Law on Criminal Proceedings No. 23 of 1971.

It is indisputable that Waddah al-Shaykh had direct control over the investigation in the failed assassination attempt. Further, he was under the orders of defendant Barzan Ibrahim and submitted his reports to defendant Barzan (as witness Waddah acknowledged during the investigative and trial phases). This means that defendant Barzan was cognizant of everything that took place at Hakimiya and Abu Ghraib prisons.

Moreover, the fact that the bodies of the victims, which were secretly buried in unknown locations, were not found does not mean the crime was not committed and shall not absolve responsibility thereto, as long as the slaying was established through several material and tangible pieces of evidence, including the Revolutionary Court's death sentence ruling, the ratification of defendant Saddam Hussein (the then President of the Republic) of the said death sentence ruling, the death sentence execution reports, the death certificates concerning those executed, which were drawn up by competent medical authorities, in addition to the death records issued by personal status courts as well as civil status records confirming the death of those victims.

As for the de jure authority and de facto power that enable a person to prevent the commission of a crime and to call to account its perpetrators if said crime occurs, defendant Barzan Ibrahim had legal authority, given his position as Intelligence Service chief, pursuant to the Intelligence Law, and he had also actual and effective power. The most important evidence of that is his acknowledgment to the Tribunal on 12/21/2005 that if it were not for him, Dujail would have been reduced to rubble. He also recognized that he released more than seventy detainees amongst Dujail's residents on the first day of Dujail's incident. This was confirmed by defendant Barzan and by his defense witnesses, as well as by corroborating witness Waddah al-Shaykh. What more evidence do we need of de facto power than that?!

The evidence for defendant Barzan's actual power derives also from the fact that he is the brother of defendant Saddam Hussein, who was President of the Republic, Chairman of the Revolutionary Command Council, Commander in Chief of the Armed Forces, Prime Minister, and the senior leader of Iraq's Ba'th Party of which defendant Barzan was a prominent member. This took place under a dictatorial regime. Defendant Barzan was able to prevent the commission of such crimes, which were perpetrated in Dujail on the day of the incident and later on at Hakimiya and Abu Ghraib prisons, as well as at Lea's desert compound, given that he was the head of a repressive organization in a dictatorial regime. However, he did not do that because he knew what was going on and wanted this to happen, which entails defendant Barzan Ibrahim's criminal intent in the commission of murder as a crime against humanity, in which case we have the realization of the overall elements of deliberate murder as a crime against humanity.

Defendant Barzan Ibrahim knew of the mass arrests and mass detention of Dujail's residents, as it was established that the person who issued the orders thereto was defendant Barzan Ibrahim, that those who transported the detainees in intelligence service vehicles did so under orders from defendant Barzan, and that the location where the detainees were held

belonged to the Intelligence Service. Dozens of victims testified that he personally tortured many of Dujail's victims at Hakimiya prison, and supervised the torture of others.

Some of the factors that prove defendant Barzan Ibrahim's criminal intent are the following. He knew that it was just a handful of individuals who had tried to assassinate defendant Saddam Hussein, that no one was hurt in the incident, and that the shots fired at the motorcade did not hit any of the vehicles, as witness Waddah al-Shaykh stated in his testimony during the investigation and trial, and in the report he submitted to defendant Barzan at the time, mentioning therein that there were no more than 15 shots fired. Witness Waddah al-Shaykh inferred this fact from the empty cartridges he found inside the orchard from which the gunshots came. The retaliation of the former Ba'thist regime agencies, which consisted in launching this large-scale and systematic assault against Dujail's residents, was not only highly excessive, but also aimed to achieve specific objectives through the perpetration of these crimes against humanity. Defendant Barzan wanted thus to achieve these criminal outcomes, including deliberate murder.

This crime was committed by many individuals under orders from defendant Barzan Ibrahim, who in turn received orders from defendant Saddam Hussein in this regard. Defendant Barzan has thus committed this crime, along with principals and accessories.

The contribution of defendant Barzan Ibrahim in the realization of these criminal outcomes, including deliberate murder, did not simply derive from his being intelligence service chief. This Tribunal agrees with the rulings issued by international courts whereby mere membership in a state agency, even if that state is known to be repressive, or in a criminal organization, is not sufficient in itself to say that a member thereof has participated in the commission of a crime. It is hence necessary to prove that the defendant (a member of that criminal agency or that criminal organization) has had a role in the execution of a joint plan, since each participant must have a role of some sort, either directly or indirectly, and this participation must lead to criminal outcomes. Indeed, Barzan Ibrahim, besides his function then as Intelligence Service chief, has taken part in the execution of very significant actions in a plan aimed to punish severely Dujail's residents by issuing execution orders in Dujail during the early days of the incident, and issuing arrest and incarceration orders, resulting in criminal outcomes such as torture and more slayings. This was established to the Tribunal on the basis of trial evidence.

In fact, it was not simply the statements of witness Waddah al-Shaykh that provided the evidence or source of information for the commission of defendant Barzan Ibrahim of the criminal acts that he is charged with. There are other pieces of evidence and sources, all of which confirm and establish his perpetrating crimes against humanity, including deliberate murder. These include the statements of complainants who have testified thereto, and the documents, whose validity was established for the Tribunal, and which confirm that Barzan Ibrahim supported what the intelligence officers and associates were doing, and that Barzan was aware of what those officers were doing, since he requested that they be rewarded for the efforts they made from early on in the Dujail's case.

This Tribunal is convinced beyond any reasonable doubt that defendant Barzan Ibrahim ordered and supervised the arrests, and that he supervised the tortures, and even did personally torture some of the victims. The tortures carried out on some victims entail most

logically and rationally deliberate murder crimes, taking into account the brutal methods and the tools used in the acts of torture, the ages of the victims, and the spots in their bodies that were targeted, implying thus (indirect) probable criminal intent, if not direct criminal intent for those who committed those crimes, including premeditated murder. Defendant Barzan Ibrahim was among those who took part in the perpetration of these crimes.

The indications pertaining to the existence of a joint plan in which defendant Barzan has played an essential and very important role are many. This Tribunal infers the existence of that joint plan by means of several factors, including the Radwaniya meeting with defendant Saddam Hussein, the meeting of the National Council, attended by Muhammad Aliawi, defendant Barzan Ibrahim's representative on behalf of the Intelligence Service, the immediate and rushed trip of defendant Barzan to Dujail on the day of the incident and the following days, the orders and supervision pertaining to the arrests and transfer of the detainees amongst Dujail's civilian residents to Hakimiya jail in vehicles belonging to the Intelligence Service, and their interrogations by intelligence officers at Hakimiya jail. The plan's objectives were obvious and were practically embodied in these measures and actions that were in violation of law and that were in retaliation for the firing of several shots which did not hit anyone.

Defendant Barzan Ibrahim controlled the Intelligence Service along with its officers and members, as evidenced by the fact that he instructed them to arrest a great number of Dujail's residents and supervised afterward the arrest of said residents by the said officers and other members of the security apparatus, the popular army and military units. He also oversaw the interrogations carried out by intelligence officers. There were several people who had a joint plan, who were operating in collusion and were coordinating their efforts. There was an exchange of information amongst them, and there was an explicit agreement between some of them, and an implicit agreement with others. This Tribunal infers from the trial evidence that there was a joint plan that was carried out over time, and there was collusion leading to the same objectives.

The dissatisfaction of defendant Barzan, expressed in his report of 7/13/1982 to Saddam, with regard to the efforts of others and their negligence prior to the incident, leading to the assassination attempt carried out by some individuals against Saddam, does not mean that there was no post-incident joint plan and collusion to obtain the result sought from that plan, which was to eliminate the opponents of the Ba'th regime, as well as those who were not followers of said regime or whose intent towards the said regime was under suspicion. In addition, the implementation of the plan would serve as a lesson and an example for others, as was proven in the aforementioned audio recording of defendant Saddam Hussein and that pertained to what happened in Dujail.

Although the general trend in international courts does not require the existence of a joint plan that several persons set up and carry out, each according to their role, for committing crimes against humanity, in order to hold them criminally responsible for said crimes, this Tribunal is fully convinced that such joint plan existed and that defendant Barzan Ibrahim participated in setting it up and in implementing very important items thereof.

This Tribunal believes that this is the only logical and reasonable inference available for this trial in this regard. Defendant Barzan Ibrahim and others had intent to commit crimes against humanity, and there was cognizance that their actions may result in crimes; further, that intent as well as that cognizance were examined or even held by other participants, including defendant Saddam Hussein, intelligence officers and others.

For all these reasons, this Tribunal is firmly convinced that defendant Barzan Ibrahim is criminally liable for premeditated murder as a crime against humanity by virtue of Article 12 (First) (a) of the Tribunal's law, in line with Article 15 (Second) (a, b, c) of the said law.

Extent of Barzan Ibrahim's Liability for Premeditated Murder as a Crime Against Humanity Pursuant to Article 15 (Second) (d) of the Tribunal's Law:

The previous paragraphs establish also that the participation of defendant Barzan Ibrahim, along with the participation of others, including defendant Saddam Hussein, defendant Taha Yassin and others who were in Dujail on the day of the incident, in particular senior state and party officials, implied joint criminal intent to commit several crimes, including deliberate murder as a crime against humanity. Their participation, together with the participation of defendant Barzan Ibrahim, was deliberate and aimed to reinforce the criminal activities of these intelligence, security and party agencies as well as the criminal objective of the Ba'th Party regime that was led by Saddam Hussein (defendant Barzan Ibrahim's brother), who came to power by force in 1968 and maintained his authority for more than three decades by force and by eliminating opponents or those whose party loyalty or loyalty to defendant Saddam Hussein was suspected. Said criminal activities entailed the perpetration of crimes that fall under the jurisdiction of this Tribunal, given that they are crimes against humanity.

Further, awareness of the intent to commit crimes by those who were heading these agencies and by senior officials in the Ba'th Party and the regime in which defendant Saddam Hussein was the supreme leader, said awareness derives from the joint plan that this Tribunal inferred to exist, based on the only logical and reasonable deduction, and which these senior officials set up and carried out. The features of said plan came to light and materialized in the implementation, which was reflected in many facts on the ground and that constitute acts that are crimes against humanity. As aforesaid, there is much evidence for the existence of this plan, such as what went on during the Radwaniya meeting between defendant Saddam Hussein and defendant Barzan Ibrahim on the same day of the incident and immediately afterward, and what went on also in the meeting of the National Council, which took place in the presence of defendant Barzan Ibrahim's representative (his office's director).

Likewise, the existence of this joint plan was quite obvious and undeniable, supported by much documentary evidence enclosed with the trial records, with some items and aspects of said plan comprising aforementioned facts (meetings) that ascertain its existence.

The overall knowledge concerning the intent to commit the crime by the other participants and Ba'th Party senior officials was clearly reflected, even now, by means of many utterances

and pronouncements the main defendants in this case have expressed before the Tribunal in the court hearings.

Early on in the hearings, defendant Barzan Ibrahim testified by describing Dujail's victims as criminals. When one of the complainants asked to recite the Koranic Chapter "Fatiha" in memory of the victims of Dujail, Anfal and Halbaja, defendant Barzan said "the hell with them" instead of reciting the Fatiha chapter. Similar utterances and pronouncements came from defendants Saddam Hussein, Taha Yassin Ramadan and 'Awwad al-Bandar, describing those who were sentenced to death and executed amongst Dujail's residents as traitors and criminals. The matter actually went beyond Dujail's victims and extended to the members and president of this Tribunal, describing them by these terms and others. This was especially the case of defendant Saddam and defendant Barzan during the court hearings. Even if these matters do not constitute direct evidence that such intent existed then (the day of the incident and afterward), they constitute a presumption added to the other pieces of evidence regarding the existence of said intent by those who participated in the perpetration of the crime and regarding the knowledge of defendant Barzan Ibrahim thereof.

Further, awareness of the intent to perpetrate these crimes by Ba'th regime senior officials and by the heads of its repressive agencies stems also from the fact that defendant Barzan Ibrahim was one of the main leading figures of that regime and the head of one of its most important bodies, and from the fact that he was very close to the main decision-making person in that regime, whether in terms of family or position. The intelligence chief was directly connected to, and had direct communications with, the Chairman of the Revolutionary Command Council and the President of the Republic (defendant Saddam Hussein), who is defendant Barzan Ibrahim's brother. He is also in close contact with the other party and regime leaders, including defendant Taha Yassin Ramadan. Likewise, defendant Barzan was aware of said criminal intent because he personally received orders from defendant Saddam Hussein to commit such crimes, and he personally gave orders to others, including intelligence officers, whom he directly supervised when they committed these crimes.

In view of the above, defendant Barzan Ibrahim is criminally liable for premeditated murder as a crime against humanity, given that he participated with a group of people in joint criminal intent to commit deliberate murder as a crime against humanity, and his participation was deliberate and aimed to bolster the criminal activities of the intelligence, security and party organs as well as the criminal intent of the regime and the Ba'th Party; he is also criminally liable for being cognizant of the intent of the heads of those agencies, party and regime to perpetrate this crime. This is pursuant to Article 15 (Second) (d) of the Tribunal's law.

Extent of Defendant Barzan Ibrahim's Liability for Premeditated Murder as a Crime Against Humanity in his Capacity as Intelligence Service Chief Pursuant to Article 15 (Fourth) of the Tribunal's Law:

Defendant Barzan was the head of Intelligence Service. His relation to intelligence officers and members at the Investigation and Inquiry Directorate, which belonged to the Intelligence

Service, was that of a chief with his subordinates. That means that the subordinates who have been known to have committed deliberate murder at Hakimiya and Abu Ghraib prisons were carrying out his orders and were under his legal, actual and effective control. Further, defendant Barzan Ibrahim was cognizant of the perpetration by said officers and members of crimes, including deliberate murder, because some of them at least were committed in his presence, and because he was cognizant also of large-scale acts of torture through electric shocks, shots fired at victims, sharp blows to victims' heads with cables and iron sticks, and through other means. Also, he personally tortured some victims. These acts could lead to their death (their slaying). Even after he stepped down as intelligence chief on 10/6/1983, he had reasons to know prior to that date that said officers and members would commit similar acts.

Whereas these crimes were connected to activities that fall under his responsibility and effective control; whereas he did not take the necessary and reasonable measures within the purview of his authority to prevent or curb the perpetration of these crimes, or to present this matter to the competent authorities for investigation thereof and then hold to account those who committed these crimes; whereas he originally committed some of those crimes or ordered, overlooked, or instigated the commitment of other crimes, including premeditated murder; therefore, he is criminally liable for this crime in his capacity as the head of Intelligence Service, pursuant to Article 15 (Fourth) of the Tribunal's law.

Defendant Barzan Ibrahim had legal authority over his subordinates, and he also had great effective power given that he is the brother of the President of the Republic and Chairman of the Revolutionary Command Council, and as the Secretary General of the Regional Command of Iraq's Ba'th Party then, and as such running the country and the party in a dictatorial regime. The evidence that Barzan had actual and effective authority which he indeed exercised in ways that very few leaders in the former Ba'th regime could exercise is that he set free more than seventy detainees amongst Dujail's residents from the party division's center in Dujail on the day of the incident. This was confirmed by defendant Barzan Ibrahim more than once during the court hearings, and by his defense witnesses as well as by corroborating witness Waddah al-Shaykh in his statements on 1/25/2005 to the Investigative Panel.

In the aforementioned ruling issued in the case of Zlatko Aleksovski, Paragraph 76 et seq., the Court considers that the liability of the senior official is not limited to official powers. Any person who is a de facto senior official may held liable under Article 7 (3) of this Court's law. The key criterion for identifying who is the senior official pursuant to international law is not solely the suspect's official de jure rank but also his capacities, duties and abilities to exercise power. As the Court Panel had determined earlier in the Albi case, the factor that determines responsibility for that type of criminal liability is the de facto possession of power or the lack thereof, and control over the actions of subordinates. Pursuant to that, the official appointment as leader shall not be considered a necessary condition related to such responsibility which may be imposed based on the de facto power of the person in addition to the de jure position as leader. In paragraph 77 of the aforementioned case's ruling, the Court indicates that "The majority position taken in trials after the Second World War was that a superior -subordinate relationship was necessary to entail superior responsibility. In the Toyoda case, the level of control required was defined as 'the actual authority over the offenders to issue orders to them not to commit illegal acts and to punish offenders.'"

In the present case, defendant Barzan Ibrahim had the material capacity as well as the de jure and de facto effective authority and control that enable him to stop and prevent the crime of killing those victims. He also had the capacity and power to punish the perpetrators of such crimes, but he did not do that because he was, as aforesaid, ordering and perpetrating some of them, as well as encouraging and overlooking the perpetration of others. The evidence for defendant Barzan's material power to punish the perpetrators of such crimes may be inferred from the fact that he was able to provide rewards, and anyone who can provide rewards is able to take the necessary measures that ensure accountability and punishment. Defendant Barzan admitted to the Tribunal that it was within his power to reward intelligence officers; there was thus no reason for him to ask the Chairman of the Revolutionary Command Council to do that. He stated that at the time when he was calling into question the letter issued by the Intelligence Service and addressed to defendant Saddam Hussein, in his capacity as Chairman of the Revolutionary Command Council, which contained a request to reward intelligence members whose names were mentioned in the aforesaid letter by providing them with one-year seniority as promotion and bonus for their efforts in the Dujail case. Further, the evidence for the Intelligence Service chief's capacity to legally exercise control over accountability and punishment is the referral of the suspect Hikmat Abd Wahab to the Intelligence Court in order to prosecute him for his failure to carry out the death sentence ruling concerning two Dujail victims, and his execution instead of four other individuals by mistake.

Barzan was aware of the deliberate murder of Dujail's victims. Even if this knowledge was indirect, there was probable or indirect criminal intent and cognizance of one of the factors involved. Probable or indirect criminal intent is equal to direct intent in terms of legal merit, pursuant to Article 34 (b) of Penal Code No. 111 of 1969.

It is true that knowledge does not derive from the position itself, but a senior position is one of the factors that leads to knowledge. Among other sources of knowledge is the presence of the defendant at the crime scene, his personal interrogation of the victims, and his commission of some of these crimes. This has been established with regard to defendant Barzan Ibrahim.

Defendant Barzan Ibrahim had direct knowledge because he was present at the crime scene, because he personally perpetrated some of these crimes, and because some of these crimes were perpetrated under his direct supervision.

Defendant Barzan Ibrahim knew of the illegal arrests in Dujail, at least on the first and second day of the incident. He also knew of the illegal incarceration in Dujail when the detainees were taken away in intelligence service vehicles in his presence, and when they were held at Hakimiya jail with his cognizance also because he was present there too. He also knew of the torture that was taking place at Hakimiya jail under his supervision, and of the torture he personally committed. He also knew of the forcible displacement of the inhabitants, starting in 1983. He must have known also that slaying (assuming he did not have direct knowledge of that) is the very probable outcome of severe torture carried out at Hakimiya and Abu Ghraib prisons.

There is nothing in this trial that indicates that defendant Barzan took any measures to prevent the occurrence of such crimes, including slaying. On the contrary, there is strong evidence that shows that he took part in the perpetration of those crimes. Actually, despite the existence and the seizure of a huge number of documents mentioned by the prosecution office, there was not one piece of evidence found that proves that Barzan took any measure to prevent such crimes or to punish the perpetrators of these crimes. Likewise, the defendant did not, in the first place, indicate during the investigation or the trial that such measures had been taken.

The absence of any evidence showing that defendant Barzan prevented the commission of such crimes or held people accountable for them, and the fact that defendant Barzan did not indicate that he did that, stem from a simple reason, which is that defendant Barzan did not do that in the first place, and because defendant Barzan personally participated in the perpetration of such crimes. It is unreasonable to say afterward that he prevented their commission or that he took measures to punish those who perpetrated those crimes.

For the above reasons, defendant Barzan Ibrahim is criminally liable for premeditated murder as a crime against humanity because he was the senior leader of the Intelligence Service and his liability therein is by virtue of Article 15 (Fourth) of the Tribunal's law.

God Almighty said in His Holy book: "O my Lord! For that Thou hast bestowed Thy Grace on me, never shall I be a help to those who sin!" (Verse 17, al-Qasas Chapter)

Extent of Defendant Barzan Ibrahim's Liability for the Deportation and Forcible Displacement of Populations as a Crime Against Humanity:

This Tribunal has established that a great number of Dujail residents (nearly four hundred people), including women and children, have been evicted and forcibly displaced to the Lea's desert compound in the Muthanna province. This has been established on the basis of the statements of many victims (complainants) who have testified in the course of the investigation and before the Tribunal, and of the aforementioned documentary evidence (letters) issued by the Intelligence Service. (See the section regarding the existing evidence against defendant Barzan Ibrahim, consisting of letters sent to the Security Directorate at Muthanna province and describing the transfer of individuals and families from Dujail, where they were detained, to the Hakimiya and Abu Ghraib prisons, and whose names were mentioned in the lists attached to these letters.) Some of these letters had been issued when defendant Barzan Ibrahim was still Intelligence Service chief and others by the said Service after his resignation on 10/6/1983. The reason is that the displacement of these inhabitants occurred at different stages, as was established also in the letters and records issued and signed by the Muthanna governorate security director, which confirmed that the evicted Dujail residents had reached their destination.

The issue at hand for now is the complex and intricate situation that Dujail's residents, who had been forcibly displaced (naturally without their consent) and incarcerated in the Lea's desert compound, were in. Does that mean that we are before a crime pertaining to the eviction of residents or to the forcible displacement of residents as a crime against humanity,

or is it the case that the conditions in which Dujail's residents were placed at this compound or prison pertain to the crime of imprisonment or other severe deprivation of physical liberty that is in violation of basic principles of international law as a crime against humanity?

This Tribunal has shown earlier, when discussing the extent of defendant Saddam Hussein's criminal liability for the crime of evicting residents or forcibly displacing residents, that although the letters issued by the Intelligence Service, describing the transfer of Dujail's civilian residents to the Muthanna governorate security directorate, were under the title of "detention", said detention at that location is not similar to the situation that characterizes the imprisonment of person(s) or the severe deprivation of their physical liberty in a prison or jail. The reason is that the Dujail's residents who were forcibly displaced to the aforesaid compound had some freedom of movement, even if they were kept in a compound located in the middle of the desert. Likewise, despite the presence of guards who were members of the Muthanna province security directorate at that compound, the doors for the rooms where they were living in that compound were not locked from the outside, but the detainees were able to lock those doors from the inside by placing a stone behind these doors.

Based on the above, this Tribunal believes that the situation of Dujail's residents in the desert compound of Lea is considered an expulsion or forcible displacement and not imprisonment or the severe deprivation of their physical liberty, as was the case at Hakimiya and Abu Ghraib prisons. It is true that they were not able to leave that region and go on their own volition to any destination they would like, including returning to Dujail, which is something that exists in both crimes (forcible displacement of populations as well as imprisonment or severe deprivation of physical liberty). However, they were at least able to walk outside the compound and fetch firewood, even if they were in the desert, which is something that they would not be able to do in a prison or jail. Moreover, the fact that those forcibly displaced residents were able to lock the doors of their rooms from the inside, even if it was by placing a stone behind those doors, is something they would not have been able to do in a prison or jail. Likewise, those displaced persons were able to cook the food they were eating while they were not able to do so at the Hakimiya or Abu Ghraib prisons, where they were given food by the prison administration, even if the food portions were very meager and of poor quality.

For the above reasons the Tribunal believes that defendant Barzan Ibrahim, who was the intelligence chief, issued the orders to expel those civilian residents and send them to Muthanna province, and they were afterward forcibly displaced to the Lea's desert compound. And these orders were indeed carried out by his subordinates, who were intelligence members, by the General Security Directorate, and by the Muthanna Governorate Security Directorate, in the context of a joint plan and a joint criminal act. Further, defendant Barzan's action was premeditated and aimed to bolster the criminal activities of the intelligence and security agencies, and to achieve the criminal objective of the Ba'th Party ruling regime, which was under the control of his brother, defendant Saddam Hussein. In addition, he was aware of the intent of others to commit that crime given his cognizance of that plan and that objective, and because he issued that order. Moreover, he was the Intelligence Service chief and had de jure and de facto authority to prevent to prevent the occurrence of that crime or to call to account the perpetrators of that crime once it was committed. This was shown earlier when we discussed his responsibility for premeditated murder as a crime against humanity. However, he did not do that because it

was he, in the first place, who issued the order to commit the crime of expulsion or forcible displacement of Dujail's civilian residents to that location. Whereas this action is part of a large-scale and systematic assault against Dujail's civilian residents; whereas defendant Barzan was cognizant thereof; therefore, he is criminally liable for the crime of expelling populations or forcible displacement of populations as a crime against humanity pursuant to Article 12 (First) (d) of the Tribunal's law, and by virtue of Article 15 (Second) (a, b, d) and Article 15 (Fourth) of said law.

Extent of Defendant Barzan Ibrahim's Liability for the Crime of Imprisonment or other Severe Deprivation of Physical Liberty as a Crime Against Humanity:

This Tribunal has established, based on the statements of witness Waddah al-Shaykh and those of complainants (victims) amongst Dujail's residents, during the investigative and trial stages, that defendant Barzan Ibrahim issued his orders in Dujail, at least during the first two days of the incident, to the military units as well as to the intelligence, security, party, and popular army organs, to arrest a great number of Dujail's men, women and children. These orders were in fact carried out, as those arrested were held first at the party division center in Dujail.

This Tribunal has also established, based on the said statements, that defendant Barzan Ibrahim personally supervised the transfer of those detainees in intelligence service vehicles to the Hakimiya prison, which was under the control of the Intelligence Service's Investigation and Inquiry Directorate, to incarcerate them there, and then to imprison them in the Intelligence Service section of Abu Ghraib jail. Defendant Barzan was seen by many of the victims at Hakimiya prison, as he was supervising the interrogation and torture acts, and as he personally tortured some of the victims. It was also established that those victims amongst the civilian residents were held by the Intelligence Service, which was headed by defendant Barzan, and that many of those victims were referred to the (abolished) Revolutionary Court pursuant to Arraignment Order No. 40/1984, dated 5/27/1984, issued upon the instructions of defendant Saddam Hussein by the National Security Affairs Department at the Office of the Presidency, wherein it is stated that "given the grounds for arraignment found in Investigative Case No. 40/1984, Intelligence Service."

Further, defendant 'Awwad al-Bandar testified to the Investigative Panel on 2/9/2005 that "interrogations were conducted at the Intelligence Service center." Also, in the report of the investigative committee, headed by Hussein Kamel, paragraph 5 provides that "the committee has done the following: It has examined the key elements of Dujail's incident that exist at the Intelligence Service and Letter No. 1282 of 3/31/1987, sent by the Intelligence Service to the Office of the Presidency, in which paragraph 3 states that the Intelligence Service is in charge of investigating Dujail's residents," and which also states that "the remaining civilians have been executed, as a number of them died during interrogation." For all these reasons, defendant Barzan Ibrahim is criminally liable for the imprisonment or otherwise the severe deprivation of physical liberty as a crime against humanity, pursuant to Article 12 (First) (e) of the Tribunal's law, and by virtue of Article 15 (Second) (a, b) of the said law.

Whereas defendant Barzan's issuance of orders to imprison those victims pertains to his participation with a group of persons in joint criminal intent to commit such a crime; whereas this participation was deliberate and aimed to bolster the criminal activities of the Intelligence Service, which he headed, and to boost the criminal activities of security and party bodies as well as the criminal aims of the Ba'th Party ruling regime, led by his brother, defendant Saddam Hussein; whereas he knew of the intent to commit that crime by said regime and party, of which he is one of the leaders; whereas he received orders thereto from defendant Saddam Hussein; whereas his act was part of a large-scale and systematic assault against civilians; whereas he knew of that assault because he issued the order to launch it; and for the findings we have mentioned in previous paragraphs; it follows that defendant Barzan is also criminally liable for the crime of imprisonment or other severe deprivation of physical liberty as a crime against humanity, pursuant to the provisions of Article 15 (Second) (d) of the Tribunal's law.

Further, the legal requisites for the criminal liability of defendant Barzan Ibrahim are present given that he was the Intelligence Service chief and did not prevent the commitment of said crime by his subordinates (Intelligence Service officers and members) while being cognizant of that, even though his de jure and de facto capacity and authority could enable him to do that. Moreover, he did not take any measures to hold to account those among the intelligence officers and members who committed those crimes, because he originally issued the orders to incarcerate those victims (civilian population) at Hakimiya and Abu Ghraib prisons. He is thus considered also criminally liable for the crime of imprisonment or otherwise of severe deprivation of physical liberty as a crime against humanity pursuant to the provisions of Article 15 (Fourth).

Extent of Defendant Barzan Ibrahim's Liability for Torture as a Crime Against Humanity:

Most of the victims amongst Dujail's residents who have testified during the investigation and trial and who were arrested on the first day of the incident and the following days, who were detained at first at the party division center in Dujail and then taken in Intelligence Service vehicles, by orders of defendant Barzan Ibrahim and under his supervision, to Hakimiya jail and then to Abu Ghraib prison, and afterward to Lea's desert compound, have stated that they were tortured at these locations, whether by intelligence officers and members at Hakimiya jail, by Abu Ghraib prison guards who were Intelligence Service associates, or by guards at the Lea's desert compound, who were in the employ of Muthanna Governorate Security Directorate. They indicated that torture was widespread at Hakimiya jail and took place under the supervision of defendant Barzan Ibrahim, and that actually defendant Barzan personally tortured many victims incarcerated at Hakimiya jail, as can be noticed from the statements of those victims which were mentioned in previous sections of this report (See for instance the section concerning the summary of complainants' statements against defendant Barzan Ibrahim), and from much documentary evidence attached to the records of this case that were exhibited to the Tribunal, confirming hence the truth of that matter.

Among the documents whose validity was established for the Tribunal following the report of the Criminal Evidence Committee which matched the handwritings and signatures of the defendants with samples of their handwritings and signatures, we have Letter No. 1282 of 3/31/1987 issued by the Intelligence Service and addressed to the Office of the Presidency, wherein Paragraph 3 of said Letter states that “the remaining civilians have been executed, as several of them died during interrogation.” There is also the Intelligence Service Memo to MM7, which was mentioned earlier (in the evidence available against defendant Barzan Ibrahim), in which Paragraph 3 thereof states “there are 46 individuals, amongst the civilians for whom the indictment was issued, who have been executed or who died during interrogation.” Likewise, in the aforementioned indictment issued by the Intelligence Court against intelligence officer Hikmat Abdul Wahab, who was a member of the Intelligence Service’s Investigation and Inquiry Directorate and who interrogated detainees amongst Dujail’s victims at Hakimiya jail, we have thus on page 2 of said indictment that “due to time constraints, the total number of remaining convicts stands at 96 given that the others have been eliminated during interrogation.” These documents proved that no less than 46 victims amongst Dujail’s victims were killed during interrogation at Hakimiya or Abu Ghraib jails, or at other unknown locations belonging to the Intelligence Service during the period ranging from the day of the incident on 7/8/1982 to the spring of 1984, prior to the referral to the (abolished) Revolutionary Court of the names of 148 persons amongst Dujail’s victims who were in the custody of the Intelligence Service.

The acts of torture that defendant Barzan Ibrahim personally carried out along with the officers, employees and guards at Hakimiya and Abu Ghraib prisons, some of which – at least at Hakimiya jail – were under the direct supervision of defendant Barzan Ibrahim, included severe beatings with rubber hoses inflicted on the bodies of victims, firing shots in their direction, electric shocks inflicted by placing electric wires in the ear or nose or genitals of the victim, or forcing the victim to sit on a glass bottle and inserting it in his behind. Psychological torture took place also by torturing the victim in front of his or her mother, brother, sister or father. Torture could thus be physical for some victims and psychological torture for other victims. This torture included women and men of all ages, and did not exclude children who were not yet 12 years of age. There were other types of torture, such as extinguishing cigarettes on the head of victims, depriving the latter of sleep for long periods of time, and kicking the victims. One of the complainants stated that defendant Barzan extinguished his cigarette behind his ear, while another witness testified that defendant Barzan kicked his leg when he was sick and as a result he fainted. Another complainant testified that defendant Barzan was munching on grapes while he (the victim) was being tortured. Some female complainants indicated that some girls had been raped; they used to be interrogated for long periods of time, lasting until very late in the night, and they would return to their cells exhausted, with their faces sallow. Other female complainants testified that they were insulted, humiliated and disgraced by being forced to strip off their clothes and to raise their legs, and then receiving beatings on their feet. Many other complainants indicated that they were humiliated, cursed and insulted by defendant Barzan Ibrahim and by intelligence officers and members, as well as by Abu Ghraib prison guards, at the Intelligence Service section there.

There is thus enough evidence that shows that defendant Barzan Ibrahim personally carried out acts of torture against victims amongst Dujail’s residents, and that officers, members and guards belonging to the Investigation and Inquiry Directorate (Hakimiya) have done the

same under his supervision and in his presence at different times and on several occasions. Whereas these acts were part of a large-scale and systematic assault against civilian populations; whereas defendant Barzan was cognizant of that fact since he personally issued the orders for the arrest, imprisonment and torture of Dujail's victims, and he was the one who supervised these; whereas he personally carried out some of the acts of torture against some of the victims amongst Dujail's residents; therefore, he is criminally liable for torture as a crime against humanity pursuant to Article 12 (First) (f) of the Tribunal's law, and by virtue of Article 15 (Second) (a, b, c) and Article 15 (Fourth) of the Tribunal's law.

Whereas it was also established that the actions of defendant Barzan pertaining to the torture of victims among civilian populations in Dujail consisted in his participation with a group of people in a joint criminal intent to commit that crime; whereas this participation was premeditated given the presence of the two elements of knowledge and volition (knowledge of the elements concerning the criminal event (torture) and the volition to realize it); whereas said premeditated participation aimed to bolster the criminal activities of the Intelligence Service as well as the criminal objectives of the Ba'th Party ruling regime, one of whose leading figures was defendant Barzan Ibrahim, besides his being the brother of the President of the Republic and the Chairman of the Revolutionary Command Council, and the Secretary General of the regional command of the Ba'th Party in Iraq; whereas he was aware of the intent of the regime leaders to commit this crime for the reasons we have mentioned; whereas he received orders thereto from defendant Saddam Hussein when he arrested and incarcerated that great number of women, children and men without any legal justification, in compliance with these orders at a time when defendant Saddam Hussein and defendant Barzan knew that those who took part in the failed assassination attempt did not exceed a handful of individuals, as was confirmed by defendant Saddam Hussein in his statements to the Investigative Panel on 6/12/2005, and as was confirmed by witness Waddah al-Shaykh's statements during the investigative and trial states; for all these reasons, defendant Barzan...

[PART 5]

... for all these reasons, defendant Barzan is also criminally liable for torture as a crime against humanity, pursuant to Article 15 (Second) (d) of the Tribunal's law.

Whereas defendant Barzan Ibrahim was the Intelligence Service chief, the head of the (Hakimiya) Investigation and Inquiry Directorate officers, members and guards, the leader of the guards at Abu Ghraib's special section, which was under the control of the said Directorate and of the Intelligence Service; whereas there was a leader-subordinate relation between him and those subordinates who were complying with defendant Barzan Ibrahim's orders; whereas he knew that his subordinates were carrying out acts of torture against victims amongst civilian populations, as said acts were occurring in his presence and under his supervision, and even were personally carried out by him in the presence of those subordinates; whereas he did not prevent the occurrence of that crime; whereas that crime pertained to activities that were under his responsibility and effective control (interrogations of victims in order to compel them to admit carrying out acts they did not commit, namely the attempt to assassinate defendant Saddam Hussein; or to confess that they are members of Dawa Party; or to sign testimonies that they did not examine and which contained their admission to such acts); whereas the victims were tortured as a result of vindictive measures that targeted them; whereas defendant did not take any necessary and reasonable measures, within the purview of his de jure and de facto authority, and thus within the purview of his power to prevent the perpetration of the crime, even though he had de jure power as head of Intelligence Service, and de facto power as one of the ranking figures of the former regime, and the head of an agency that instilled fear in any Iraqi whenever they heard its name under a dictatorial regime led by his brother, defendant Saddam Hussein; whereas he did not take any measures to call to account any Intelligence officer and member among those who were in the employ of the Investigation and Inquiry Directorate with respect to that crime or other crimes committed against Dujail's residents, in breach of humanitarian laws, values and conventions, as well as divine laws;

Now, Therefore, defendant Barzan Ibrahim is also liable for torture as a crime against humanity in accordance with Article 15 (Fourth) of the Tribunal's law.

God Almighty 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." (Holy Koran: Verse 7; Al-Isra Chapter.)

Extent of Defendant Barzan Ibrahim's Liability for the Enforced Disappearance of Persons as a Crime Against Humanity:

We have mentioned earlier that for that crime to take place and thus to criminally hold to account its perpetrators, several elements must be present, as indicated earlier when we discussed the extent of defendant Saddam Hussein's criminal liability for that crime. After examining and discussing the existing evidence in this case, the Tribunal has realized that some elements of said crime, namely forcible disappearance of persons as a crime against

humanity, are not available. It is thus not possible to hold liable any of the defendants in this case against whom this charge was leveled, including defendant Barzan Ibrahim, for acts that do not constitute a crime by virtue of international law and pursuant to the Tribunal's law. The Tribunal has not established that any of the victims submitted a request to any state institution inquiring on the fate of victims or on their locations. Likewise, it has not been established that these institutions, including the one that is linked with defendant Barzan Ibrahim, refused to acknowledge the arrest, incarceration or kidnapping of any of Dujail's residents, after they were arrested and detained, or during that time. It may be the case that requests were submitted by some relatives of those victims in this regard. Further, the Intelligence Service may have issued a denial that any of Dujail's residents have been arrested, incarcerated or kidnapped. However, it has been ascertained that such requests or denials concerning arrests and incarcerations by the Intelligence Service are not available in the records of this case.

Moreover, this Tribunal has not established that defendant Barzan Ibrahim or any of the other defendants in this case against whom this charge was leveled knew that arresting Dujail's residents would entail under normal circumstances the refusal to acknowledge depriving them of freedom or giving information on their fate or their location, whether during their arrests and detention or afterward.

If the above elements are not present for this crime to arise, this shall lead to the unavailability of another element for its occurrence, which would have implied that the refusal to acknowledge depriving Dujail's residents of their freedom or giving information on their fate or their location was made by the state, a political organization or pursuant to an authorization, support or resolution therefrom. The Tribunal has thus not established, based on the available evidence in the case, that there was a refusal by any of the state organizations or by the Ba'th Party to make an acknowledgment thereof, the reason being that none of the Dujail victims' relatives submitted a request in this regard, or it may be that such a request was submitted but is not available in the case records. For all these reasons, this Tribunal has resolved to dismiss the charge leveled against defendant Barzan for this crime, and more specifically, for this act pursuant to Article 182 (b) of the amended Law on Criminal Proceedings No. 23 of 1971.

Extent of Defendant Barzan Ibrahim's Liability for other Inhumane Acts as a Crime Against Humanity:

The evidence and presumptions available in this case against defendant Barzan Ibrahim with regard to the razing of Dujail's orchards are limited to the statements of witness Waddah al-Shaykh, of defendant Mizher 'Abdullah and of defendant Taha Yassin Ramadan during the investigative stage, in addition to a number of documentary evidence. This is as follows:

Witness Waddah al-Shaykh testified during the investigative stage on 1/25/2005 that "at that time, a committee headed by defendant Taha Yassin Ramadan was formed; the department's representative there (he means the Intelligence Service's representative) was Muhammad Aliawi, who was the director of the Intelligence Service Bureau for dealing with

the Dujail question, given that it was of great importance. The recommendations of defendant Taha Yassin Ramada included chopping down trees and razing orchards for one to three kilometers in all directions. This recommendation was executed by orders from defendant Taha Yassin Ramadan. Dujail's orchards and trees were consequently razed."

Defendant Mizher Abdullallah testified before the Investigative Panel on 2/21/2005 that "with respect to razing the fields and chopping down trees, I was tasked by the party organization and under orders from defendant Barzan, conveyed to us through the party, to take with us power shovels [TN: The Arabic word, "shaflaat" شفلات, could also mean "bulldozers" based on context, as the term is not found in the usual Arabic dictionaries], steamrollers and graders in order to chop down the trees and raze the fields. Indeed, I took with me the power shovels and the operation was carried out, etc."

For his part, defendant Taha Yassin Ramadan stated in his testimony, which was recorded by the Investigative Panel on 2/29/2005, the following: "I did in fact go to the National Council, following the orders of defendant Saddam, and I found Fadel al-Barak, who used to be security director... I also found another person - I don't recall his name - who told me that he represented the Intelligence Service chief. He informed that that the Intelligence Service chief went to meet defendant Saddam Hussein following the incident, along with two or three persons whose names I do not recall, etc."

There are also case documents that came out during the period between September and October 1982 that describe the Intelligence Service's plan to dispose of the lands that belonged to the detainees amongst Dujail's residents at a time when defendant Barzan Ibrahim was the Intelligence Service chief. That plan was backed by Resolution No. 283 of 10/14/1982 passed by the National Command Council headed by defendant Saddam Hussein, which Resolution was signed by defendant Saddam Hussein and stipulated the confiscation of lands belonging to the victims amongst residents of Balad and Dujail, and the transfer of their ownership to the Ministry of Agriculture and Agricultural Reform. That document is important because it shows that the former Ba'thist regime implemented the Intelligence Service's plan to dispose of lands owned by Dujail and Balad residents, which Intelligence Service was headed by defendant Barzan Ibrahim.

Whereas the satellite pictures of the Dujail region before and after the razing, exhibited to the Tribunal, show Dujail's orchards filled with fruit trees reduced to barren land after the razing; whereas this plan submitted by the Intelligence Service and this Resolution passed by the dismantled Revolutionary Command Council was in violation of the law and the interim Constitution of 1970; whereas the razing of Dujail's orchards and the confiscation of lands have caused severe hardship to Dujail's residents, especially to their owners and the residents who work therein; whereas the eradication and destruction of all fruit trees are similar in kind to crimes against humanity provided for in Article 12 (First) of the Tribunal's law; whereas such actions aimed to destroy the sources of livelihood and the resources of those victims; whereas the Ba'th Party regime, within which defendant Barzan Ibrahim was considered a prominent figure, targeted the victims amongst Dujail's population, who endured severe hardships as a result of that act, and who suffered great damages, whether material or psychological, which would be hard to remedy; whereas this Tribunal has established that the decision to raze the orchards was taken during a meeting attended by Muhammad Aliawi, who was the then director of defendant Barzan Ibrahim's Office, whereby

he met with defendant Taha Yassin Ramadan and Fadel al-Barak on the day following the incident at the National Council building; whereas in this case the participation of defendant Barzan Ibrahim with others was in a joint criminal intent to commit that act; whereas this participation was premeditated and aimed to bolster the criminal activities of the Intelligence Service; whereas Muhammad Aliawi was present as the representative of the Intelligence Service chief, defendant Barzan Ibrahim, during the meeting at the National Council building during which it was resolved to commit that act; whereas said participation was aimed to foster the criminal objective of the Ba'th Party ruling regime; whereas defendant Barzan Ibrahim was cognizant of the intent of defendant Saddam Hussein, who was leading that regime to commit that crime, given defendant Barzan's direct access to him and given the fact that the Intelligence Service, which had contributed to put in place the plan to raze the orchards and the confiscation of the lands, was directly linked to the Revolutionary Command Council, which was headed by defendant Saddam Hussein; whereas defendant Barzan was aware of what defendant Saddam decided, given his close family ties to the latter by virtue of his being his maternal brother; whereas these inhumane acts were part of a large-scale and systematic assault against a civilian population, and that defendant Barzan was aware of said assault, based on the statements of witness Waddah al-Shaykh on 1/25/2005, on the statements of defendant Mizher 'Abdullah on 2/21/2005, and on the statements of defendant Taha Yassin Ramadan on 2/29/2005, as well as on the aforementioned documentary evidences;

Now, Therefore, defendant Barzan Ibrahim is criminally liable for other inhumane acts that constitute crimes against humanity, pursuant to Article 12 (First) (j) of the Tribunal's law, and by virtue of Article 15 (Second) (b, d) of the said law.

Tribunal's Verdict on the Charges Levelled at Defendant Barzan Ibrahim:

I. This Tribunal has established beyond any reasonable doubt that defendant Barzan Ibrahim has committed acts that fall under the provisions of Article 12 (First) (a, d, e, f, j) of the Supreme Iraqi Criminal Tribunal (SICT) Law No. 10 of 2005, by virtue of Article 15 (First, Second, Third, Fourth) of the said Law. Therefore, the Tribunal has resolved to convict him thereunder as follows:

1. Convict defendant Barzan Ibrahim al-Hassan for premeditated murder as a crime against humanity pursuant to Article 12 (First) (a) of the Tribunal's law, and by virtue of Article 15 (Second) (a, b, c, d) and Article 15 (Fourth) of the said law.
2. Convict defendant Barzan Ibrahim al-Hassan for the deportation or forcible displacement of populations as a crime against humanity pursuant to Article 12 (First) (d) of the Tribunal's law, and by virtue of Article 15 (Second) (a, b, d) and Article 15 (Fourth) of the said law.
3. Convict defendant Barzan Ibrahim al-Hassan for the imprisonment or other severe deprivation of physical liberty in violation of fundamental norms of international law as a crime against humanity pursuant to Article 12 (First) (e) of the Tribunal's law, and by virtue of Article 15 (Second) (a, b, d) and Article 15 (Fourth) of the said law.

4. Convict defendant Barzan Ibrahim al-Hassan for torture as a crime against humanity pursuant to Article 12 (First) (f) of the Tribunal's law, by virtue of Article 15 (Second) (a, b, c) and Article 15 (Fourth) of the said law.

5. Convict defendant Barzan Ibrahim for other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to mental or physical health, as a crime against humanity pursuant to Article (First) (j) of the Tribunal's law, and by virtue of Article 15 (Second) (b, d) of the same law.

All of the above provisions are in conformity with Article 182 (a) of Law on Criminal Proceedings No. 23 of 1971.

II. In view of the fact that the crime of enforced disappearance of persons as a crime against humanity was not established, since one of its basic elements was not present, this Tribunal has resolved to dismiss the charge leveled against defendant Barzan Ibrahim for that act and to acquit him therefor pursuant to Article 182 (b) of the amended Law on Criminal Proceedings No. 23 of 1971. The verdict was unanimously passed and rendered in the presence of the parties on 11/5/2006.

Signature

Signature

Signature

Member

Member

Member

Verdict Against Defendant Barzan Ibrahim al-Hassan

In light of the Indictment dated 5/15/2006 of defendant Barzan Ibrahim al-Hassan pursuant to Article 12:

Whereas you were the Intelligence Service chief and personally responsible for the security of the President of the Republic, your brother, defendant Saddam Hussein, whereas he visited Dujail and his motorcade was fired at on 7/8/1982; whereas he met with you at his Radwaniya farm and then you went to Dujail to conduct the investigation and inquiry against the so-called “criminals”; whereas you remained in the town for three days, and turned the Ba’th Party division center into your office in order to run the operations; whereas you gave direct orders to the security and party units as well as to the popular army in order to place the town under a state of siege and emergency, in preparation for launching a systematic and large-scale assault using different types of weapons, including warplanes and helicopter gunships, in order to shell the town and the surrounding orchards, and to lay siege to the town; whereas you initiated house searches and the arrests of family members, including men, women and children, and held them at the police station and at the party division center, to pave the way for their subsequent transfer in special cars (buses belonging to the Intelligence Service) to the Intelligence Service’s Hakimiya headquarters for interrogation and questioning, albeit of a different kind for family members expelled from Dujail to Baghdad, as things took an unusual course in violation of judicial investigative measures and procedures, pursuant to the amended Criminal Procedures Law No. 23 of 1971;

Whereas the Intelligence Service’s investigator first undertook to survey and investigate the site of the incident; whereas the Intelligence Service’s Investigation and Inquiry director (Waddah al-Shaykh) went to survey the site and supervise, along with other officers, the mass arrests and successive transfers of detainees to the Intelligence Service’s Hakimiya building in Baghdad for interrogation; whereas Waddah al-Shaykh testified before the Tribunal’s president on 10/23/2005 that “the inspection of the orchards and the deployment of troops in Dujail was by orders of Barzan, and in the end most of those who were referred to the Revolutionary Court disavowed the gunfire incident or denied having anything to do it;”

Whereas in the first hours of the incident you took on the mantle of a military ruler with absolute powers; whereas the Tribunal noticed that following your presence, first at the party division center, you set free a few of those who had been arrested in the first place, yet after a hasty and complex security plan was implemented under your effective supervision, whole families, including elderly and infants became the victims of vicious mass arrests according to a calculated plan; whereas these families were taken to the Intelligence Service’s investigation center instead of referring them to the judicial authorities that are responsible for conducting investigations pursuant to the laws in force;

Whereas after taking all steps concerning the arrest of all suspects, as “families” and not as individuals, their funds and properties were seized, including orchards; whereas Waddah al-Shaykh, in his aforesaid testimony, stated that “the inspection of the orchards and the deployment of the troops in Dujail was by orders of Barzan,” adding that “there was no set

working plan, but the operation was random... and Barzan gave orders that anyone who bears arms will be arraigned, that is to say, anyone who can bear arms will be referred to the Intelligence Service's Hakimiya center... and all of those who were referred – later on – to the Revolutionary Court disavowed the gunshots incident or denied having anything to do it;”

Whereas when you conducted the investigation in the Dujail case you considered the victims early on as “criminal enemies” and acted violently against the suspects or those who were under suspicion; whereas the intent to destroy the “victims’ lives” was, from early on, obvious and tangible as regards all of those apprehended and suspects; whereas the slaying, torture and violation of rights which occurred later on were done deliberately and knowingly following a long-term systematic plan that could not be challenged or mitigated; whereas in this spirit you were, from the very first hours of the incident, conducting the arrests as “a military ruler with absolute powers;” whereas the Tribunal noticed, based on testimonies, that you did actually and directly supervise the mass arrests of individuals and families, including women, men and children, and that during your three-day stay you had the final say on the mass arrests and then on the transport of the detainees in Intelligence Service vehicles to the Intelligence Service’s Investigation and Inquiry Bureau in Baghdad, without the intervention of the competent judicial authorities in charge of procedural and judicial investigations in conformity of Criminal Procedures Law No. 22 of 1971; whereas the investigation from the beginning took an irregular course that fell outside the scope of the law; whereas the detainees, including women and children, were treated as “spies and foreign agents” on the pretext of “conspiracy against the regime,” with those who fired the shots being “intelligence agents of enemy and hostile countries;” whereas that charge was leveled against groups of people before even taking the first steps of the investigation, according to the official statement concerning the incident and issued by state institutions;

Whereas following directives issued by you, the town was placed under a “planned and extraordinary military siege” in preparation for the launch of a “systematic and large-scale assault” under your command; whereas different types of weapons, including helicopter gunships and fighter jets, were used on the orchards and the town’s outskirts, followed by [house-to-house] searches and mass arrests, in addition to the slaying of nine people who were present in the orchards; whereas they brought the bodies before you for identification and in order to identify their families; whereas those victims were Abbas Jassem Muhammad, Rida Hitto al-Salami, Karim Kazem Jaafar al-Zubaydi, Imad Hassan Mehdi Jaafar al-Assadi, Raad al-Karbala’ee, who was visiting the town, Muhammad Abd Jawad al-Zubaydi, Mahrous Muhammad Hadi al-Kalabi, Hashem Adnan Jassem al-Khuzaali, Sadek Majid Hamid al-Khazaali, and Sattar Toufic Yahya al-Khafaji; whereas by direct orders from Barzan Ibrahim family members were gathered after their homes were attacked by joint army, security and party units; whereas the number of detained family members reached 399 men, women and children; whereas they were taken by direct orders from you and in Intelligence Service buses and driven by people who were not from Dujail to the Intelligence Service’s Hakimiya interrogation center; whereas, in compliance with your direct orders, the detainees were placed in halls and rooms that had red lights and whose walls were painted in red; whereas the interrogators set about torturing and mistreating the detainees, including the “elderly,” “men and women,” as well as “single women” and “small children;” whereas the torture took the form of electric shocks to the body, “beatings to the head with iron sticks,” hanging by the legs and hands, “depriving the detainees of sleep,” “rapes of young girls and women while they were naked;” whereas as a result of torture the following individuals died:

Yaacoub Yousef Hassan al-Ubaydi, Jassem Muhammad Latif al-Salami, Saleh Muhammad Jassem, Kassem Ali Assad al-Haydari, and Alwan Hassan al-Salami; whereas after more than seventy days of torture, the remaining family members were taken to the Intelligence Service's section at Abu Ghraib prison, where torture, sleep deprivation, shortage of services, lack of physical and mental rest, resumed; whereas "women and children were separated from their family men;" whereas the Tribunal has eyewitness accounts concerning your personal participation in torture and inhumane treatment of the detainees as follows:

1. Complainant No. 1, who testified before the Tribunal on 1/21/2005 [TN: The date could be 12/21/2005, as the Arabic text indicates "kanoon" كانون only] that "Barzan personally kicked him during the interrogation;"

2. Female witness No. 2 testified before the Tribunal on 2/1/2005 that Barzan ordered to hang her upside down from the ceiling, and he watched while she was tortured by being "beaten with electric cables" and then he hit her in the chest, breaking her ribs;

3. Complainant No. 2 testified before the Tribunal on 2/2/2005 that Barzan burned the ear's area by using a lit cigarette and putting it out above his ear; this caused burns and scars that are still visible until now;

4. Complainant No. 2 testified on 12/21/2005 that Barzan was present in the torture chamber and he was munching on grapes while the guards were torturing him at the Intelligence Service's investigative court building;

5. Complainant No. 3 testified before the Tribunal on 12/21/2005 that Barzan threatened that he would remove his entrails from his behind, telling him, in his own words, "I am going to pull out your bowels and place them in your hand." Barzan used to torture him frequently and on a daily basis;

6. Female complainant No. 3 testified before the Tribunal on 2/1/2005 that Barzan fired at her and beat her with a stick; he also instructed that she be taken to the "operations room" and he tried to place her in a sack to let her hang from the ceiling;

7. Witness Shehab Abhmed Abbas al-Khazarji testified before the investigative judge on 7/13/2004 that Barzan used to personally supervise the "mass arrests;"

Based on the testimonies, substantive facts and evidence that came to the attention of the Tribunal during the investigation and trial; and in light of the official documents and evidence exhibited in the case;

Based on the sufficient case evidence that is before the Tribunal; after inspecting and examining the investigative and testimony records; and pursuant to the provisions of Article 182 of the amended Criminal Procedures Law No. 23 of 1982, the Tribunal has unanimously resolved to convict defendant Barzan Ibrahim Hassan in accordance with the provisions of Article 12 (First) (a, d, e, f, j), by virtue of Article 15 (First, Second, Third, Fourth) and of the Iraqi Criminal Tribunal Law No. 10 of 2005, and in line with Article 206 of the Penal Code No. 111 of 1969, in Case No. 1/C/Dujail/2005 submitted to it, and to determine his punishment thereunder. The verdict was rendered on 11/5/2006.

Judge: Raouf Rashid

Signature
Member

Defendant Taha Yassin Ramadan

Charges Against Defendant Taha Yassin Ramadan

On 5/15/2006 this Tribunal has charged defendant Taha Yassin Ramadan with counts of participating in a number of crimes against humanity that fall under the provisions of Article 12 (First) (a, d, e, f, i, j) of the Supreme Iraqi Criminal Tribunal (SICT) Law No. 10 of 2005, and by virtue of Article 15 (First, Second, Third, Fourth) of the said Law.

Summary of Statements by Complainants and Corroborating Witnesses Against Defendant Taha Yassin Ramadan

[Translator's Note: "Corroborating witnesses" is the literal translation of "shoohood ithbaat" شهود إثبات which has appeared throughout the Arabic text (Dujail 1 to 5 so far); but the expression could be loosely translated as "prosecution witnesses"; however, to remain consistent with the previous translation of the term in Dujail Judgment (sections 1 to 4), "corroborating witness" will be used; also, logically speaking, the Arabic text implies that these witnesses are corroborating the complainants' testimonies]

The great majority of complainants and corroborating witnesses did not mention that they saw defendant Taha Yassin Ramadan as he was forcibly apprehending, incarcerating, torturing, slaying or evicting any of Dujail's residents, or forcibly concealing any of them, or ordering anyone to commit any of these acts that constitute crimes against humanity. Likewise, none of the said complainants and corroborating witnesses personally heard (and not through second-hand account) defendant Taha Yassin Ramadan giving orders to others to carry out such criminals acts that are against humanity, except for other criminal acts constituting crimes against humanity. Many of said complainants and witnesses testified that they saw defendant Taha Yassin Ramadan supervising the razing of the orchards in the Dujail region, or have heard that from others.

In his testimony, which was recorded by the Investigative panel on 1/25/2005, witness Waddah Ismaeel al-Shaykh stated the following: "At that time a committee was created and was headed by defendant Taha Yassin Ramadan. The Department was represented in that committee by Muhammad Aliawi, who was the director of the Intelligence Service division that was dealing with the issue of Dujail, given that it was a very important matter. The recommendations submitted by defendant Taha Yassin Ramadan included chopping down trees and razing orchards for one to three kilometers extending in all directions, and the recommendations were carried out by orders of defendant Taha Yassin Ramadan. The trees were cut down and the orchards razed in the Dujail region. This committee decided to detain them in Nakrat al-Salman region, south of Samawa, in camps that had been set up for them, although until then, meaning 1984, more specifically February 1984, none of the suspects were referred to the court. Dujail family members then remained incarcerated from 1982 until I left Hakimiya in February 1984. They were sent afterward to the camp which had been set up for them, but I did not see it, as I was informed that they would be detained at Nakrat

al-Salman. I believe that the order was between Taha Yassin and Saddam Hussein. As for the razing of the fields and orchards, this was due to Taha Yassin Ramadan.”

In his 10/23/2005 testimony recorded by the three-judge bench in the First Trial Panel of SICT, during his stay at Abu Ghraib’s military hospital, which was read to the Tribunal on 10/28/2005, witness Waddah al-Shaykh states the following: “Defendant Taha Yassin Ramadan did not have any role in the beginning; but nearly a month later a committee was formed under his chairmanship. Its main function, as far as I recall, was to raze the orchards in Dujail and Balad. The committee’s other function concerned the detained families. I do not have any details in this regard. Muhammad Aliawi and Saadoun Sabri were committee members.”

Witness Waddah al-Shaykh was the director of the Intelligence Service’s Investigation and Inquiry Department at Hakimiya. Muhammad Aliawi was the director of the Intelligence Service’s Office of the Chairman at that time. Witness Waddah al-Shaykh adds: “As I have stated earlier, the senior party official in Dujail was Ahmed Ibrahim. Everything in Dujail was under his control as far as following up on the arrest of citizens following the incident, and prior to the incident, as far as party monitoring. He was transferred to the Intelligence Service and remained there until I was convicted; I believe he returned to the dismantled Ba’th Party in Dujail.”

It bears noting in this regard that Ahmed Ibrahim, who was the senior Ba’th Party official in Dujail, was perforce one of the senior members of Dujail’s popular army, and thus must have ties with the then commander-in-chief of the popular army, defendant Taha Yassin Ramadan. Given that defendant Taha Yassin was a member of the regional command of the Ba’th Party, and Ahmed Ibrahim was the senior Ba’th Party official in Dujail, the latter must thus be connected with defendant Taha Yassin Ramadan one way or another due to his position.

Complainant Ahmed Hassan Muhammad al-Dujaili, in the court hearing of 12/5/2005, during the trial stage, stated the following about defendant Taha Yassin Ramadan:

1. When asked by the public prosecutor about the identity of those who razed the orchards and homes, the complainant responded that defendant Taha Yassin personally did that, as he supervised the razing operations. He also stated that five of his orchards were razed, and asked for financial and moral damages. The complainant was asked by defendant Taha Yassin’s counsel about the following: How said complainant reached the area, when a large contingent of military troops and a high-ranking official were present (meaning the presence of Taha Yassin)? How were the trees chopped down at the same time when the events were taking place? And how the equipment and bulldozers appeared the next day and razed the dwellings and orchards? The complainant answered that he was in jail and did not witness that. He added that the presence of defendant Taha Yassin was well-known in the region and that the razing occurred four months after his arrest and not on the day that followed the incident, as counsel stated. The complainant indicated that he saw defendant Taha Yassin Ramadan among a number of officials when he was apprehended, the day following the incident. Said complainant filed a complaint against defendant Taha Yassin.

In the court hearing of 12/5/2005, during the trial stage, complainant Jawad Abdul Aziz Jawad stated the following about defendant Taha Yassin:

1. Said complainant testified that in October 1982 dozens of bulldozers set about razing the orchards and proceeded from the western part. "By November, five orchards belonging to us were razed, and three pumps along with their attendant wells were buried." Likewise, three months of produce was destroyed and "four of our homes, which belonged to my brothers, were demolished. I also saw defendant Taha Yassin, as my father and I were in a small cultivated plot that belonged to us. Popular army men called out to us, and my father spoke with Taha Yassin. The latter asked him: 'What is this?' My father told him, 'This is a garden and not an orchard; it belongs to me, and the other one belongs to my brother. He is a military officer and was injured in war.'" Then, defendant Taha Yassin instructed that this garden be spared. He was leaning on a cane. However, five months later it was also razed.

2. He also indicated that it was popular army members who fired their weapons to cheer for and celebrate Saddam's visit to Dujail.

3. Said complainant stated that defendant Saddam Hussein visited Dujail a second time, went to the roof of the police station and said: "I did not order that so much of the orchards be razed, but the brothers, may God forgive them, expanded the area."

4. He filed a complaint against Taha Yassin and asked for material and moral damages for the losses he sustained.

5. Said complainant indicated that he saw defendant Taha Yassin in Dujail.

6. When asked by the public prosecutor about the identity of those who razed the orchards, the complainant answered: "This was by orders of the Revolutionary Command Council (Saddam Hussein), under the supervision of Taha Yassin Ramadan, and included many popular army members and all the Ba'thists in Dujail."

7. When asked by counsel Khalil al-Dulaymi how he was able to identify Taha Hussein when at the time he was ten years old, since he indicated that he saw him there, said complainant replied: "I saw him and I knew him well because I had seen him on television; also, my father had been informed that Taha al-Jazrawi wanted him, and I personally saw him."

The next complainant, referred to as (C) when called upon to testify during the court hearing of 12/6/2005, stated the following about defendant Taha Yassin:

When the public prosecutor asked him who razed the orchards and demolished homes in Dujail, the said complainant replied that he was at the time in jail but "after I was released I heard that Taha Yassin and fellow party members did that."

The testimony of another complainant, referred to as (D) during the court hearing of 12/6/2005 concerning defendant Taha Yassin, went as follows:

1. Tribunal's question to the complainant: "Were your orchards razed, yes or no?"

The said complainant answered: "I do not own any orchards. But orchards in the area were razed."

2. Another question was posed by the prosecution: “Do you have an eyewitness account concerning the razing of the orchards?” The complainant replied: “Yes, I was in the military and I came to visit my folks in Dujail following the incident, and I could not recognize my home. Houses looked like a desert wasteland. People told me that my house was near the police station. I thought I would be able to recognize it but I couldn’t.”

In his testimony, the complainant who was referred to as (C) in the court hearing of 1/29/2006 concerning defendant Taha Yassin, filed a complaint against defendant Taha Yassin “because he razed our orchards.”

A shielded complainant, referred to as (E) when called upon during the 12/6/2005 court session, stated the following with regard to defendant Taha Yassin:

1. The complainant indicated that those who had fired their guns on the day of the incident were a group of people belonging to the popular army.
2. The complainant mentioned also that after his release from the Lea desert jail he saw that his house had been plundered and robbed, and the forty-four thousand dinars that were there were missing. In addition, nine motor engines were stolen from his orchards. He added that “the popular army and others were entering my home as they pleased.” Further, his orchards were razed and the orchards’ walls were demolished.
3. Said complainant indicated that “the popular army killed nine persons. I saw their bodies lying on the ground when I turned myself in one day after they arrested my family. Those slain included my son (---), the son of Jassem Rida al-Hitto, and Fares Ibn Muhammad Hadi. I was not able to identify the others because their bodies were mutilated. Those nine people were slain in the eastern orchards, which belong to Khazraj. I did not see them getting killed, but I saw their bodies.”

The testimony of another shielded complainant, referred to as (A) in the court hearing of 2/2/2006, concerning defendant Taha Yassin, went as follows:

The defendant’s counsel asked him: “Why are you filing a complaint against defendant Taha Yassin?” The complainant answered: “Because when I went back to Dujail, I was told by Dujail’s residents that he was the one who razed the orchards.”

The testimony of the shielded complainant referred to as (F) when called upon by during the court hearing of 12/7/2005 included the following concerning defendant Taha Yassin:

1. Said complainant indicated that he filed a complaint against Taha Yassin because he razed Dujail’s orchards, although he was in prison when the razing occurred. He said that, after his release, he heard from Dujail’s residents that defendant Taha Yassin did the razing. He asked for material and moral damages.
2. Defendant Taha’s counsel asked him how he heard that the orchards had been razed and who were the persons who told him that.

The said complainant replied: “I heard that from Dujail’s residents, specifically Jawad Aziz Jawad and many other Dujail residents.” He refrained from mentioning their names for security reasons.

During the court hearing of 12/21/2005, complainant Ali Hassan Muhammad al-Haydari’s testimony regarding defendant Taha Yassin included the following:

1. He stated that he saw the popular army taking positions throughout the town on the day of the incident.
2. Said complainant indicated that the Friday following the incident “intelligence service men broke into our house. They were wearing civilian clothes and were accompanied by popular army and regular army troops.”
3. He also stated that “a force comprising the popular army and guards raided our home. We were then at home, and that included six boys and four girls along with my father and mother. They arrested all of us. This happened on Friday afternoon, the day after the incident.”
4. The complainant also indicated that “after our release on 4/22/2006 [sic] we noticed that the town’s features had changed. The orchards were razed one month after our arrest, and bulldozers were brought for that. At any rate, Dujail’s residents saw defendant Taha Yassin telling the drivers: ‘Destroy the pigeons’ nests so they do not return to these.’”
5. The said complainant filed a complaint against Taha Yassin because he razed the orchards.

The testimony of the shielded complainant who was referred to as (1) during the court hearing of 12/21/2005 included the following on defendant Taha Yassin:

1. On the day of the incident, several cars and popular army troops showed up.
2. The complainant indicated that “on the day of the incident, past 4 pm, a security officer (Abu Ahmed) came to my place, accompanied by Mishaan Daham. They took me to the guards’ and popular army’s headquarters and I was questioned by one Abu Nabil.
3. Said complainant filed a complaint against Taha Yassin. When the Tribunal asked him why he was filing a complaint against the latter, the complainant replied that he was with him and it was he who was responsible for razing Dujail’s orchards.
4. The defendant’s counsel, Majid Hadab, asked him: “What is the nature of the complaint against Taha Yassin?” The complainant answered that “when the orchards were razed, defendant Taha was present along with Dujail’s senior officials.”

The testimony of the shielded complainant referred to by the number (4) during the court hearing of 12/22/2005 concerning defendant Taha Yassin included the following:

1. Nearly twenty days after the arrest of my whole family by security forces as well as by Ba'th Party and popular army members, we were taken to Dujail's police station and kept in a room with another family. Then we were transferred to the Intelligence department.

2. The complainant indicated that upon their return to Dujail they found that the orchards and fields had been razed. There was also in the orchards a house which had equipment and a burnt motor engine. Its water was cut off and we found out that it had been burned. This happened within four years.

The testimony of the shielded complainant referred to by the number (3) during the court hearing of 12/22/2005 concerning defendant Taha Yassin included the following:

1. "My movable and immovable assets were seized, they destroyed my home and they razed my orchards. I saw with my own eyes the orchards being razed with bulldozers under the protection of the popular army. I would like to register a complaint against Taha Yassin, because he was the head of the popular army."

2. The Tribunal asked the complainant whether he saw the razing of the orchards, and the complainant answered: "Yes, I saw that because I was at home."

3. The Tribunal asked the complainant another question: "When did the razing occur, stating months and days?" Said complainant replied: "I don't remember the months and days. But I saw the bulldozers razing the orchards. This was after the incident."

The testimony of the complainant referred to by the number (5) during the court hearing of 12/22/2005 concerning defendant Taha Yassin included the following:

1. Said complainant requested to register a complaint against Taha Yassin because "he razed our orchards and homes. I knew that from Dujail's residents. They told me that the popular army razed the orchards and that Taha Yassin was supervising them."

2. When defendant Taha Yassin, through the Tribunal, asked the complainant about the link between the popular army and the razing of the orchards, said complainant replied: "The popular army was protecting the persons who were razing the orchards."

The testimony of the shielded complainant referred to by the letter (B) during the court hearing of 2/1/2005 concerning defendant Taha Yassin included the following:

1. After Saddam Hussein's visit to Dujail "we hear gunshots, and half an hour later we went out to the street and saw the popular army..."

2. Said complainant indicated that "on the same day of the incident someone knocked on our door and Republican Guard and popular army troops went in and arrested my father and brother."

3. The complainant indicated also that it was the popular army that was arresting people.

4. The complainant indicated that “our orchards were razed, and I would like to register a complaint against defendant Taha Yassin.”

The testimony of the shielded female complainant referred to by the letter (A) during the court hearing of 1/29/2005 concerning defendant Taha Yassin included the following:

1. Said female complainant requested to file a complaint against Taha Yassin.
2. When asked by defendant ‘Ali Dayeh ‘Ali whether she saw him during the incident and what the nature of her complaint is, the said complainant answered that he was the head of the popular army and that he accompanied the latter.
3. Said female complainant indicated that upon their return she was given the house keys by Younes al-Samara’i, who was a security officer in Dujail, and by Abu Nabil, who was at that time a popular army official.

The testimony of another shielded complainant referred to by the letter (B) during the court hearing of 1/29/2005 concerning defendant Taha Yassin included the following:

1. The said female complainant stated that the popular army and the police were the ones who arrested them and sent them to the Intelligence center after they were kept five days in the police station.
2. When asked by the Tribunal if she knew who made the arrests, the said complainant answered it was “the Republican Guard, the popular army and others I do not know; they are the ones who arrested us.”

The testimony of the shielded complainant referred to by the letter (B) during the court hearing of 2/2/2005 concerning defendant Taha Yassin included the following:

1. When asked by the defense team whether he saw Taha Yassin at Tal Miskin, the complainant answered: “I did not see him with my own eyes because I was in the military.”
2. When the prosecution asked him who made the arrests, what they were wearing and about their description, the complainant answered: “Two were from the intelligence services, accompanied by Abu Ahmed and Abu Nabil. There was also a masked man dressed in traditional garb.”
3. Said complainant indicated that he was filing a complaint against Taha Yassin because he was the one who razed the orchards and he was standing at Tal Miskin.

The testimony of the shielded female complainant referred to by the letter (A) during the court hearing of 2/1/2005 concerning defendant Taha Yassin included the following:

1. Said female complainant indicated that she saw defendant Taha Yassin, in military dress and carrying a handgun, supervising the razing of the orchards. She added: “All nine of our orchards were razed.”

2. When the court-appointed defense attorney asked her whether she saw defendant Taha Yassin razing the orchards, the said complainant replied: “Yes, I saw the defendant as he was supervising the razing of the orchards. He is well-known by most people. At the time he was wearing military garb and a beret.”

3. The court-appointed defense attorney then asked the complainant that since she stated that Taha was the one who razed the orchards, “Where did you see him?” The said complainant answered: “I saw him in a Dujail area called Tal Miskin as he was supervising the razing of the orchards.”

4. The court-appointed defense attorney asked her: “What was the distance between your home and defendant Taha when you saw him razing the orchards?” The said complainant answered: “I cannot give an accurate estimate, but because I work as a farmer in the orchards and gather firewood I saw the defendant in question.”

The testimony of the shielded female complainant referred to by the letter (C) during the court hearing of 2/1/2005 concerning defendant Taha Yassin included the following:

1. The said complainant indicated that when Saddam Hussein visited Dujail “the whole place became like a battlefield with popular army and Republican Guard troops deployed throughout the area.”

2. The said complainant filed a complaint against Taha Yassin.

The testimony of the shielded complainant referred to by the number (8) during the court hearing of 2/1/2005 concerning defendant Taha Yassin included the following:

1. Said complainant stated that on the day of the incident the popular army and the Republican Guard deployed throughout Dujail, and Dujail was transformed into a military zone. Said complainant was at the time doing guard duty in a popular army unit on the street that was opposite the party division center.

2. Said complainant indicated that Taha Yassin issued orders to raze the orchards. These orders were to apprehend Balad’s and Dujail’s residents and to raze their orchards. They set up checkpoints along the access routes to the region. Defendant Taha Yassin was supervising these measures.

3. Said complainant stated that the chief of the popular army unit in Dujail was Ahmed Ibrahim al-Hassoun.

4. When the prosecution asked the complainant about the role of the popular army in the Dujail events, and whether it took part in the arrests of families or any other measures, the complainant answered: “Defendant Taha Yassin instructed that the troops be dispatched to protect the equipment used to raze the orchards.”

5. The court-appointed defense attorney asked the complainant whether he saw the decree by which Saddam Hussein ordered the razing of Dujail’s orchards. Said complainant replied: “Yes, and it was used by Taha Yassin to raze the orchards.”

6. The complainant stressed that defendant Taha was giving the orders to raze the orchards and was meeting with the engineers, including Thannoun, who used to meet with them in order to raze the orchards.

7. The complainant requested to file a complaint against Taha Yassin.

Summary of Statements by Defendants in this Case Concerning Defendant Taha Yassin Ramadan

Summary of Statements by Defendant Barzan Ibrahim during the Investigative Stage Concerning Defendant Taha Yassin Ramadan

The testimony of defendant Barzan Ibrahim al-Tikriti during the investigative stage on 1/25/2005 included the following:

Q: Question by the Investigative Panel to defendant Barzan: “A committee was set up and was headed by defendant Taha Yassin Ramadan and on the orders of defendant Saddam Hussein in order to examine the situation of Dujail’s families and the Dujail area. The intelligence services representative in this committee was Muhammad Aliawi, who was your office director at that time. Do you have any information in this regard?”

A: “Yes, I have some information in this regard, namely that this committee was established on the orders of defendant Saddam Hussein, who was the then President of the Republic. This committee was headed by defendant Taha Yassin Ramadan, and its members consisted of the General Security director at that time, and Muhammad Aliawi, who represented my department within the committee, and he was the office director then.”

Supplement to Defendant Barzan’s Statements during the Investigative Stage Concerning Defendant Taha Yassin Ramadan

“As to what happened afterward in Dujail, a committee was set up, as I recall, and I believe it was headed by defendant Taha Yassin Ramadan, who was deputy prime minister, and its members consisted of the late security director, Fadel al-Barak, and of an intelligence services representative. This committee was dealing with the Dujail case, and it was formed specifically for that purpose. However, I do not know the nature of its activities, its term and the tasks it was assigned to accomplish. I did not receive any information in this regard. But I am sure that the committee was formed under the chair of defendant Taha Yassin, and Fadel al-Barak was one of its members.”

Summary of Defendant Barzan Ibrahim’s Statements during the Trial Stage Concerning Defendant Taha Yassin

Defendant Barzan Ibrahim’s testimony during the court hearing of 3/15/2006 included the following:

Q: Tribunal's questions to defendant Barzan: "You mention in your testimony that your role was secondary or that you did not play any role, that Fadel al-Barak played a major role given that he was the General Security director, and I believe he was implicated, along with Taha Yassin Ramadan, in razing the orchards, and that the General Security agency oftentimes borrowed the intelligence services name, could you elaborate on that?"

A: Defendant Barzan Ibrahim answered: "What has been said is accurate except for the information concerning Taha Yassin Ramadan. He was not present."

Q: Tribunal's question to defendant Barzan Ibrahim: "Was this testimony made when your counsel was present and did he not read it?"

A: Defendant Barzan Ibrahim's verbatim answer: "I myself read the testimony and Taha's name was not there."

Q: Public prosecutor's question to defendant Barzan Ibrahim: "Your testimony indicates that there was a committee headed by Taha Yassin Ramadan and its members were Fadel al-Barak and Muhammad Aliawi, the intelligence services representative and bureau director. Is that correct?"

A: Defendant Barzan Ibrahim's verbatim answer: "No, there was never such a committee and it did not take any decisions."

Summary of Defendant Saddam Hussein's Testimony to the Investigative Panel on 6/12/2005 Concerning Defendant Taha Yassin Ramadan

Q: Investigative Panel's question to defendant Saddam: "The testimony of defendant Taha Yassin Ramadan indicates that you have called him on the phone and asked him to meet the next day with the security agencies that were in charge of the investigation, to monitor operations, to provide recommendations and offer advice, and to instruct them about the investigation in the town, is that correct?"

A: Verbatim: "If comrade Taha Yassin Ramadan said that, he is saying the truth."

Q: Investigative Panel to defendant Saddam Hussein: "Two months after the Dujail's incident, Taha Hussein was seen with a large contingent of engineers with many pieces of equipment; they razed the farmlands and destroyed the town's orchards. Who ordered that?"

A: The Tribunal may direct the question to comrade Taha Yassin Ramadan for the answer. As far as I am concerned, I do not recall that I gave him any such orders.

Q: You are accused of issuing orders to Taha Yassin Ramadan with regard to razing farmlands in the Dujail region and destroying the orchards. Is that correct?

A: I do not recall that I issued such orders.

Summary of Defendant Muhammad Azzawi's Statements during the Investigative Stage Concerning Defendant Taha Yassin Ramadan

1. Defendant Muhammad Azzawi Ali al-Marsoomi's testimony to the Investigative Panel on 5/25/2005 contains verbatim the following with respect to defendant Taha Yassin Ramadan: "As far as the one in charge of razing the orchards and farmlands during that period, I once saw defendant Taha Yassin Ramadan supervising this operation, besides Ahmed Ibrahim al-Samara'ee, and he was standing near the Tal Miskin area."

2. Muhammad Azzawi Ali's testimony regarding the razing of farmlands indicated the following: "I saw defendant Taha Yassin Ramadan with the then senior party official in the region, Ahmed Ibrahim Hassoun, and they were supervising this operation. The fact that I saw Taha Yassin Ramadan was merely fortuitous as I was heading to my orchards in the area."

Summary of Defendant Muhammad al-Azzawi's Statements during the Trial Stage Concerning Defendant Taha Yassin Ramadan

Testimony of Muhammad Azzawi to the Tribunal on 3/13/2006:

Q: Tribunal to defendant: "Who amongst the defendants present in the Tribunal did you see there?"

A: Defendant's answer: "I mentioned in my testimony to the investigative judge that I saw Taha Yassin Ramadan near Tal Miskin. When I came here I told counsel that I did not see him because he does not look like the person I had seen."

Q: Tribunal to defendant: "Didn't you know Taha prior to the incident?"

A: Defendant's answer: "No, I did not know him prior to the event and I did not focus on him."

Q: Tribunal to defendant: "Your testimony indicates that you saw defendant Taha Yassin Ramadan with the then region's senior party official as they were supervising the razing operation. Can you elaborate on that to the Tribunal?"

A: Defendant's answer: "As I indicated earlier, I did not see Taha Yassin Ramadan, but I saw another person."

Q: Tribunal's question: "What did you see as regards the razing of the orchards and the fields?"

A: Defendant's answer: "Yes, I saw the bulldozers when they razed my orchards, which were three orchards."

Q: Tribunal's question: "Did you see popular army units?"

A: Yes I saw the popular army units, which are from outside the Dujail region, accompanying the bulldozers when they were razing the orchards, lest clashes occur with Dujail's residents.

Summary of Defendant 'Ali Dayeh 'Ali's Statements during the Investigative Stage Concerning Defendant Taha Yassin

Defendant 'Ali Dayeh 'Ali's testimony during the investigative stage on 5/25/2005:

His verbatim testimony concerning defendant Taha Yassin Ramadan indicates the following:

"I did not participate in the razing of farmlands and the demolition of homes, but I believe they were razed on the orders of Taha Yassin Ramadan, as some people in the region saw him."

Summary of Defendant 'Ali Dayeh 'Ali's Testimony during the Trial Session of 3/12/2006

1. His verbatim testimony states the following: "I did not participate in supervising the razing of the orchards."

Q: Tribunal's question: "In your testimony concerning the razing of farmlands and the demolition of homes, you state the following: 'I did not take part in the operation but I believe that the razing was carried out by orders from defendant Taha Yassin Ramadan, as some people in the region saw him. As for the arrests, they were carried out by the party apparatus and some party officials, of whom I remember so-and-so.' Can you elaborate on that?"

A: Defendant's answer: "I did not take part in the razing of the orchards. My father's orchards, which were two, were razed. As for defendant Taha Yassin, I did not see him but I heard that he was present. The supervision of the orchards' razing was done under security protection lest clashes occur with Dujail's residents."

Q: Tribunal's question: "Who amongst the other defendants did you see besides defendant Taha Yassin?"

A: Defendant's answer: "I did not see defendant Taha Yassin and I was not familiar with the security personnel that came to Dujail, as it was an assortment of bodyguards, popular army and party members headed by the division's secretary, Ahmed al-Samarra'i. So I did not see anyone."

Q: Prosecution's question to defendant Ali Dayeh: "Since you were standing by the party division's door, who are the state officials that you saw?"

A: Defendant's answer: "I did not see but I heard that Barzan was present along with defendant Taha Yassin Ramadan, with the latter supervising the orchards' razing."

Q: Prosecution's question to the defendant: "What did you see with regard to the orchards? How were they razed? What was your role?"

A: Defendant's answer: "I did not take part in the razing of the orchards. The county chief, Jassem al-Naaeemi, brought the bulldozers to raze the orchards. I did not see the razing taking place... People told me that they were razed by defendant Taha Yassin, but I did not see him."

Summary of Defendant Mizher 'Abdullah Kadhim Ruwayid's Statements to the Investigative Panel on 2/21/2005

His statements concerning defendant Taha Yassin included the following:

1. Tribunal's question to defendant: "Complainants (...), (...), (...) and (...), as well as others, stated that you and the region's security forces apprehended them and brought them to the party division center; they were then transferred to Baghdad and incarcerated with their family members from 1982 until 1986; is that correct?"

Defendant's answer: "I did not participate in the arrests, but with respect to razing the fields and chopping down the trees, I was tasked by the Party and on the orders of defendant Barzan Ibrahim, which the Party conveyed to me, to provide escort for the bulldozers, steamrollers and graders in order to raze the fields. Indeed, I did go with the bulldozers, which carried out the operation. Also, defendant Ahmed Ibrahim al-Samarra'i Abu Nabil was supervising the razing of the farmlands. I was accompanying one of the bulldozers and my duty was to raze the lands of Hussein al-Humaydan and Kazem al-Humaydan."

2. Another question posed to the defendant: "You work as an employee at the post office and your party rank is that of a member. Party activities are political while you have a civil service job. What is then your relation to these political activities?"

Defendant's answer: "Yes, a party official gave me the orders, following instructions from higher-ups. I carried out this order because I was afraid what would happen if I did not do so, even though I knew it was in breach of law; I executed the order because I feared for myself."

3. In response to complainants' civil rights counsel, defendant Mizher Abdullah Kadhim gave the following reply during the court hearing of 3/12/2006: "The popular army individuals were from outside Dujail."

Summary of Defendant ‘Abdullah Kadhim al-Ruwaid’s Statements during the Trial Session of 3/12/2006

His statements concerning defendant Taha Yassin included the following:

1. Tribunal’s question to defendant: “You mentioned in your testimony to the investigative judge that you were a popular army member in Dujail. Who was the popular army’s commander?”

Defendant’s answer: “The popular army’s commander was Tarek al-Tikriti Abu Zayed. He is a division member and the head of Tikrit’s youth association.”

2. Another question posed by the complainants’ civil rights counsel was the following: “One of the complainants indicated that the security agencies sought the assistance of popular army party members from outside Dujail, is that correct?”

Defendant’s response: “Yes, I already mentioned, in response to a prosecution’s question, that the popular army was present outside Dujail. But I do not know where these security forces came from.”

Summary of Defendant Taha Yassin Ramadan’s Statements to the Investigative Panel during the Investigative Hearing of 2/9/2006

1. The said defendant indicated that Saddam Hussein asked him on Friday to go to the National Council headquarters in order to meet with security agencies officials. “Indeed, I did go and I saw Fadel al-Barak along with another intelligence services member. Defendant Saddam Hussein’s instructions were that I go there and listen to what security agencies officials have to say and to offer any observations I might have. I did not have any observations at that time and I was not given an official letter in this regard. It was just advice. And that was the extent of my connection to this matter.”

2. Defendant Taha Yassin Ramadan also indicated in his statements that “I did not go to the region, neither at the time of the incident nor afterward, nor did I meet with defendant Barzan Ibrahim during that period or afterward. And I did not issue any orders to raze the farmlands, and I have no idea as to which authority did that. Also, this matter was not discussed at the Cabinet. There may have been orders issued in this regard by higher authorities.”

3. “I heard that those who carried out the assassination attempt were a few people who belonged to the Dawa Party.”

4. “I do not have any control over security agencies officials. I listened to them, and those agencies used to receive their orders directly from defendant Saddam Hussein, given that they were linked to the Presidency.”

5. “The assassination attempt did not cause any casualties.”

Supplement to Defendant Taha Yassin's Testimony during the Investigative Hearing of 8/28/2005

"I do not know who razed the fields; and the agency that is in charge of events like the Dujail incident (assassination attempt) is General Security, unless an order was given to another authority."

Summary of Defendant Taha Yassin's Statement during the Trial Hearing of 3/14/2006

1. "I was not assigned any task in this case, and Waddah al-Shaykh's testimony is perjurious. I was not given any task by Saddam Hussein, and he did not entrust any senior official or Cabinet member, including the Interior Minister, to do anything."

2. "I did not visit the Dujail site, neither the first day of the incident nor the following day."

3. "I was not entrusted with chairing the formed security committee, and I did not give any orders to popular army members in the Dujail's incident. The popular army did not have any role in that, since it consists of local formations, and it is the region's party chief who issues the orders. My mission was to set up units and send them to the battlefield in the war with Iran."

4. With respect to what happened during the day of the incident, the defendant stated "I was in my residence in Baghdad when Saddam Hussein contacted me in the afternoon by phone and told me that his motorcade had been attacked that day in Dujail. He told me that if I wanted to get more details, given that I am the senior deputy, I must get more information and I could go the Hamurabi building, which is the National Council building where the General Security director and others were discussing ways of coordinating courses of action with the different agencies. And in fact, I left my residence and went to the National Council headquarters."

5. Said defendant indicated that the razing of Dujail's orchards, following what happened, was something normal, and "it is the state's right to do such a thing as long as it is in the public interest or it is necessary to confiscate farms, a facility or a land with appropriate compensation."

6. Defendant Taha Yassin indicated that the popular army in Dujail or Balad is the responsibility of party officials in that region, and Ahmed Ibrahim al-Samarra'i was the one who was the popular army senior official in Dujail county. He used to entrust popular army members with keeping watch over facilities and state equipment. "They do not have the right to decide on the razing of orchards. Such decisions are taken by the Revolutionary Command Council, and the executive agencies carry them out. The popular army, as you know, belongs to the party, and this party was led by the party members who were present in the governorate."

7. Said defendant indicated that it was the region's party senior official who entrusted the popular army with keeping watch over the equipment.

8. Defendant Taha Yassin Ramadan stated that the only authority that could assign me a task, besides my regular duties, was Saddam Hussein. Any other claim is false and perjurious.

9. Said defendant indicated that, in his opinion, those who stood up to the people who attempted to assassinate Saddam Hussein in the Dujail's incident are not guilty, but fulfilled their duties.

10. Following a question by the complainants' individual rights attorney, said defendant stated: "I do not deny that I was the head of the popular army, I am proud of that, and the popular army is the most honorable militia."

Summary of Statements by Defendant Taha Yassin Ramadan's Defense Witnesses

Testimony of Witness No. 6, heard on 3/17/2006.

He stated that he did not see Taha Yassin Ramadan in Dujail when the orchards were razed.

Testimony of Witness No. 2, heard on 3/30/2006.

He testified that he was a resident of Dujail all his life, and ruled out that Taha Yassin was there. He indicated that he received compensation for his land, which was confiscated. The compensation exceeded the actual value of the land. The witness stated that those who were allegedly killed in Dujail came back from Iran on U.S. occupation tanks. He also indicated that he received a compensation worth 1,800 dinars in exchange for one acre of land, and that most of the lands that were destroyed were repaired or improved.

The said witness also testified that he saw the public prosecutor, Jaafar al-Musawi, during the commemoration ceremonies that took place on July 18, 2004 in Dujail.

The testimony of Witness No. 2 was heard by the Tribunal on 3/30/2006.

He indicated that he did not see Taha Yassin Ramadan in Dujail.

The testimony of Witness No. 5 was heard by the Tribunal on 3/31/2006.

He stated that he did not see Taha Yassin Ramadan in Dujail at all, and indicated that he was a member of the popular army in Dujail. He said that the mission of the popular army was to search the orchards and that the popular army did not do house-to-house searches.

The testimony of Witness No. 1 was heard by the Tribunal on 6/6/2006.

He indicated that he was a member of the security staff (bodyguards) that accompanied Barzan when he visited Dujail the day of the incident. He stated that he did not see Taha Yassin, because he was not there.

The testimony of Witness No. 2 was heard by the Tribunal on 6/6/2006.

He mentioned that he was one of Barzan Ibrahim's bodyguards and that Taha Yassin was not there.

The testimony of the shielded defense witness, referred to by the number (3), which was heard by the Tribunal on 5/31/2006, included the following concerning defendant Taha Yassin:

1. "I was a popular army combatant at the time of the incident. My leader came to me and told me to be on alert. A member of the security agency was with us in the Dujail area where the orchards were searched. I, along with a group of combatants and Dujail's security personnel, set about searching the orchards." The witness noticed that the security personnel's mission was to search homes, "while our mission was to search the orchards."
2. Defendant Taha Yassin's counsel asked the witness: "Was the popular army confined to the Dujail region, since you are one of its members?" Said witness responded: "I worked with the popular army and participated in frontline battles. Defendant Taha Yassin saw us off at the battlefield. This was not in Dujail but in a military camp I went to for training."
3. The defendant's counsel asked the witness another question: "Do you know defendant Taha Yassin?" The witness replied: "Yes, I knew him, because he saw us off three times at the popular army units. I shook hands with him and I met him up close."
4. The said counsel posed another question: "Did popular army troops, others than the ones that were posted in Dujail, come to the town?" The witness answered: "No, because we, as a unit in Dujail, were tasked with searching the orchards."
5. The prosecution asked the witness the following question: "What was your situation with respect to military service?" The witness answered: "I joined the popular army because of military service, because serving in the popular army is considered military service. I stayed in the popular army until I was expelled from the party. I was convicted and joined afterward the military service."

Existing Evidence and Presumptions in the Trial Against Defendant Taha Yassin Ramadan

1. The statements of defendant Taha Yassin Ramadan on 2/9/2005 before the three-judge board of the Investigative Panel, in the presence of his attorney, Majid Hadab Haloul, and that of the public prosecutor, included the following:

2. “Defendant Saddam Hussein, who was the President of the Republic during that period, contacted me by phone and told me that he had been attacked in the Dujail region. He asked me to meet with security agencies officials and told me that he had instructed them to be present at the National Council. Indeed, I went and found Fadel al-Barak, who was the General Security director and was later executed for various reasons. I also saw another person whose name I do not know and who informed me that he represents the intelligence services chief. He told me that the intelligence services chief went to meet with Saddam Hussein along with two or three persons I do not remember exactly. I was tasked to listen to what the security agencies officials had to say and to offer my observations if I had any instructions.”

3. Witness Waddah al-Shaykh’s testimony, which was recorded during the investigative hearing of 1/25/2005, included the following: “At that time, a committee was formed under the chair of Taha Yassin Ramadan. The department was represented in that committee by Muhammad Aliawi, who was the Intelligence Service Bureau director for dealing with the Dujail’s question, as it was a very important one. Defendant Taha Yassin Ramadan’s recommendations included chopping down trees and razing orchards for one to three kilometers in all directions. This recommendation was carried out by orders of defendant Taha Yassin Ramadan. The orchards and trees in the Dujail area were thus destroyed. This committee decided to detain them (meaning Dujail’s residents) in the Nakrat al-Salman area, south of al-Samawa, in camps that had been set up for them, although until that time, meaning in 1984, none of the defendants had been referred to the court. More specifically, in February 1984, there were Dujail families that had been detained from 1982 until I left Hakimiya in February 1984, at which time they were sent to the camp that had been set up for them. However, I did not see it, but I was informed that they would be held at Nakrat al-Salman. This order came from the committee, which was headed by Taha Hussein. I believe also that the order was between Taha Yassin and Saddam Hussein. As for the issue of razing the fields and orchards, this was due to Taha Yassin Ramadan.”

4. In his 10/23/2005 testimony recorded by the three-judge board of SICT, during his stay at Abu Ghraib’s military hospital, which testimony was read to the Tribunal on 10/28/2005, the said witness Waddah al-Shaykh states the following: “Defendant Taha Yassin Ramadan did not have any role in the beginning; but nearly a month later a committee was formed under his chairmanship. Its main function, as far as I recall, was to raze the orchards in Dujail and Balad. The committee’s other function concerned the detained families. I do not have any details in this regard. Muhammad Aliawi and Saadoun Sabri were among the committee members.”

As previously mentioned, witness Waddah al-Shaykh was the director of Hakimiya Investigation and Inquiry Department within the Intelligence Service, and Muhammad Aliawi was at that time defendant Barzan Ibrahim’s office director.

5. Defendant Barzan Ibrahim’s statements, which were recorded by the Investigative Panel’s three judges in the presence of his counsel and of the public prosecutor, included the following about Taha Yassin Ramadan: “Yes, I have some information in this regard, which is that this committee was formed on the orders of defendant Saddam Hussein, who was at that time the President of the Republic, and was under the chair of defendant Taha Yassin Ramadan, with its members consisting of the security director and Muhammad Aliawi, who

represented our department in that committee and who used to be the director of my office during that period.”

6. Defendant Barzan Ibrahim repeated the above information and confirmed it when the supplement of his statements was recorded during the investigative stage.

7. The statements of a great number of complainants and corroborating witnesses, and even the statements of some defense witnesses, concerning defendant Taha Yassin Ramadan, underlined that popular army members participated in the arrests of Dujail’s families and, along with military troops and security agencies, in laying siege to the town, as well as raiding homes.

8. Defendant Muhammad ‘Azzawi’s statements, during the investigative hearing of 5/25/2005, included the following: “As far as the one in charge for razing the orchards and farmlands during that period, I once saw defendant Taha Yassin Ramadan supervising this operation, besides Ahmed Ibrahim al-Samarra’i, and he was standing near the Tal Miskin area.”

9. Defendant Saddam Hussein’s verbatim response to the investigative panel on 6/12/2005, when told about Taha Yassin Ramadan’s statements concerning the phone call he received from defendant Saddam, asking him to meet with the security agencies in charge of the investigation, etc., said response was: “If comrade Taha Yassin said that, he must be saying the truth.”

10. Defendant ‘Ali Dayeh’s response to a question by the prosecution during the trial session of 3/12/2006 included the following: “I did not see him but heard that Barzan was present along with defendant Taha Yassin Ramadan, who was supervising the razing of the orchards.”

11. The audio recording between defendant Taha Yassin Ramadan and defendant Saddam Hussein, which was heard by the Tribunal. In that recording, defendant Taha Yassin informs defendant Saddam Hussein that the razing of the orchards took place in two stages. The first one consisted in the razing of one and a half kilometers around the town, with the area becoming a wasteland... Further, the culprits will be identified by the security agencies and will not be compensated, and their names will be recorded. In addition, the persons who will be compensated will be identified and the areas that will be given to them will be determined. Moreover, he will be sending defendant Saddam Hussein a list regarding what he mentioned. This audio recording was heard by the Tribunal on 4/24/2006.

12. Satellite pictures comparing the Dujail region between September 1982 and September 1983, showing thus the Dujail region before the razing and afterward, to wit, the extent of the destruction that befell the region and the traces left by the former Ba’thist regime through the devastation and razing of the fields and orchards that surround the town of Dujail.

13. The document issued by the Intelligence Service, dated 8/30/1984, addressed to the Office of National Security (Secretariat), whose subject was Dujail’s detainees, and referring to the order of the Vice President in his Letter No. 2/6/8750, dated /29/1984, instructing the

arrest of 26 persons from the regions of Dujail and Balad who had completed their military service. This document was exhibited to the Tribunal on March 13, 2006.

14. Document No. 14446 of 11/29/1984 submitted to the Tribunal, the Memo of 11/20/1982, and the letter of 12/10/1984 handwritten and signed by Taha Yassin and addressed to Ahmed Hussein Khodair, the chief of the (dismantled) Office of the Presidency, with defendant Taha Yassin acknowledging that the handwriting and signature thereon are his.

15. Resolution No. 1283, dated 10/14/1982, of the (dismantled) Revolutionary Command Council, and Resolution No. 100, dated 1/23/1985, also of the (dismantled) Revolutionary Command Council.

Extent of Defendant Yassin Ramadan's Criminal Liability for Crimes Against Humanity Pursuant to his Indictment

On 5/15/2006, this Tribunal has charged defendant Taha Yassin with counts of participation in the perpetration of a number of crimes against humanity set forth in Article 12 (First) of the Supreme Iraqi Criminal Tribunal (SICT) Law. These counts pertain to the following crimes:

1. Willful killing.
2. Deportation or forcible displacement of population.
3. Imprisonment or other severe deprivation of physical liberty in violation of fundamental norms of international law.
4. Torture.
5. Enforced disappearance of people.
6. Other inhumane acts of a similar character intentionally causing great suffering or serious injury to the body or to mental or physical health.

We will discuss below the extent of defendant Taha Yassin Ramadan's criminal liability for these crimes pursuant to Article 15 (First, Second, Third, Fourth) of the Tribunal's law, and in line with Articles 47 to 54 of the Penal Code No. 111 of 1969, and by virtue of the provisions of Article 15 (2) of the Tribunal's law, which stipulate that "a person shall be liable pursuant to the provisions of this Law and to the provisions of the Penal Code if said person perpetrates the following..." We will start with the charge leveled against defendant Taha Yassin Ramadan that pertains to imprisonment or otherwise severe deprivation of physical liberty as a crime against humanity for the reasons that we will state when discussing the extent of defendant Taha Yassin Ramadan's criminal liability for said crime.

However, we ought first to indicate that there are questions that inevitably come to mind with respect to the extent of defendant Taha Yassin's criminal liability for that crime (imprisonment or severe deprivation of physical liberty) as a crime against humanity, as well as to other crimes he is charged with and that are mentioned in the indictment. These are the following:

1. Does razing orchards and the confiscation of lands constitute a criminal act in Iraqi law and in international law?

2. Did defendant Taha Yassin Ramadan oversee the orchards' razing operations and did he have any role in the confiscation of Dujail's lands? Did he give the orders therefor? Did his participation in this regard constitute in any way criminal participation?
3. Did defendant Taha Yassin Ramadan give the order to apprehend Dujail's residents, to incarcerate them, to torture them or to slay them? Did he supervise, aid and abet, overlook, or participate in any other way to carry out these actions?
4. Did the popular army or Ba'th Party members in Dujail participate in any way in the arrests, detention, imprisonment, torture, slaying or orchards' razing with respect to Dujail's residents?
5. Was defendant Taha Yassin Ramadan the head of the committee that was formed by orders of defendant Saddam Hussein on the day of the incident, which was convened at the National Council on that day?
6. Was defendant Taha Yassin Ramadan a member of the National Security Council? What was the makeup of said Council? What were its powers?
7. Did defendant Taha Yassin Ramadan have any de jure or de facto control over popular army members?
8. Did defendant Taha Yassin Ramadan know that the conduct he is charged with was part of a large-scale or systematic assault against Dujail's population?

All of these questions will be discussed and the Tribunal will answer them in order to reach therefore convictions that are beyond any reasonable doubt, taking into account that this Tribunal has already established that defendant Taha Yassin Ramadan, at the time of the incident and afterward, held the following positions in the Iraqi State and in the Ba'th Party which was running the State: Revolutionary Command Council member; Deputy Prime Minister; Popular Army's Supreme Commander; Ba'th Party's Regional Command Member.

Extent of Defendant Taha Yassin Ramadan's Criminal Liability for Imprisonment or Other Severe Deprivation of Physical Liberty as a Crime Against Humanity

This Tribunal has established by means of aforementioned evidence and presumptions that frequent campaigns were launched by military forces along with intelligence and security agencies, to apprehend hundreds of Dujail's residents (women, children and men) on the day of the incident and the following ones. This was in retaliation for the failed and very limited assassination attempt against the former President on 7/8/1982. This Tribunal has also established that members of the popular army and of the Ba'th Party in Dujail and the surrounding regions actively participated in the frequent, large-scale and systematic arrests carried out by the said forces and agencies. Likewise, Dujail's party officials, who are perforce popular army leaders there, especially viewed in the context of the Iraq-Iran war in

which the popular army was participating in the battlefronts and taking positions at different locations within Iraq, played a major role in the arrests of Dujail's residents and provided the said forces as well as the intelligence and security agencies with information concerning Dujail's residents who were suspected of being members of the Dawa Party, of not being loyal to the Ba'th Party, or of not being loyal to defendant Saddam Hussein.

Dujail's Ba'th Party officials included Ahmed Ibrahim Hassoun al-Samarra'i Abu Nabil, who was very active in the arrests and identification of families that were not loyal to the Ba'th regime and to Saddam Hussein (See statements of many complainants and corroborating witnesses).

The illegal arrests of those victims, which included women, men, children and elderly, led to their illegal detention, first at Dujail's party division center, and then, starting on the first day of the incident, to their illegal transfer and incarceration at the Intelligence Service's Hakimiya prison. Many of the detainees were then taken to Abu Ghraib prison, and then a large number of those were sent to the Lea's desert compound. These facts are well established and the Tribunal is firmly convinced that they did take place. This trial has a vast amount of evidence corroborating that.

Based on the above, the only logical and reasonable conclusion thereto indicates that the popular army agencies and members in addition to the party apparatus in Dujail participated in a sweeping and effective way to incarcerate those victims amongst Dujail's civilian population.

Defendant Taha Yassin Ramadan, besides being Deputy Prime Minister and a prominent member of the Revolutionary Command Council with very close ties to defendant Saddam Hussein, was also a member of the Ba'th Party's Regional Command in Iraq and the supreme commander of the popular army. Moreover, he was a member of the Ba'th Party's National Command (spanning the whole Arab region), which was headed by defendant Saddam Hussein. All party and official positions that defendant Taha Yassin held placed him in close contact with, and gave him direct access to, defendant Saddam Hussein. This occurred in a totalitarian regime whose main concern was preserving its power. The President of said regime (defendant Saddam Hussein) used to reiterate that the law is nothing but what he himself wants. For that reason, there were countless intelligence, security, investigative and military services, and they were all devoted to serve the objectives of the regime and those of its leader, defendant Saddam Hussein, to remain in power at any cost, even if that implied the slaying of hundreds of thousand of citizens or other people.

Defendant Taha Yassin Ramadan enjoyed extensive de jure powers over popular army members. Contrary to what he claimed during the court hearings, namely that his power was confined to training said army's members, which was considered a reserve for the regular army, Resolution No. 1563 of 10/9/1980 passed by the (dismantled) Revolutionary Command Council proves otherwise. Paragraph 1 of said Resolution provides that the popular army's supreme commander shall be vested with the same powers granted to the Defense Minister pursuant to the amended Military Trial Procedures Law No. 44 of 1941 pertaining to military personnel assigned to the popular army or who are members of said army. That means that defendant Taha Yassin was able to take all appropriate legal measures to question and then to hold accountable popular army members, and even

military personnel assigned to the popular army if they perpetrated any crime, whether said crime is set forth in the Military Penal Code No. 13 of 1941, in the Penal Code No. 111 of 1969, or in any other penal code. Pursuant to the aforesaid Military Trial Procedures Law, he could have created military tribunals for the purposes stated therein.

Paragraph 2 of Resolution 1563 of 10/9/1980 passed by the (dismantled) Revolutionary Command Council has vested the popular army's general command chief-of-staff with the powers to set up investigative boards and to vest said boards with all powers in line with the Military Trial Procedures Law. We notice from these provisions that the popular army had a command structure with a chief of staff therefor who was connected with the popular army's supreme commander. That means that the powers and competence of the popular army's supreme commander were not confined to training said army's members. As is well known in all armies of the world, the most important powers and competencies that the chief-of-staff has are to mobilize army units and to dispatch them anywhere. That means that these units maneuver and are assigned duties on the orders of the chief of staff who is associated with the popular army's supreme commander. The popular army's units were being sent from their headquarters to other locations in Iraq, and to the battlefronts. And they were assigned specific tasks. It is quite obvious that the movement of these units and the tasks they were given were by orders of the popular army's supreme commander and chief of staff.

Paragraph 3 of the Resolution passed by the (dismantled) Revolutionary Command Council vested the popular army's chief of staff with the authority to apprehend and to arraign, with the arraignment to be before the closest military tribunal.

Paragraph 4 of said Resolution vested the popular army's chief of staff (associated with the supreme commander) with the authority to entrust the powers set forth in Paragraphs 1 and 2 of said Resolution to regional commanders or anyone who represents them.

Pursuant to Paragraph 5 of said Resolution, an assistant director of the legal department in the popular army's general command shall be appointed and shall be granted the same powers entrusted to the assistant director of the legal department in the regular army. That means that there was a legal department in the popular army's general command which had the same powers as the legal department at the Ministry of Defense and the army's office of the chief of staff.

Based on the above, we can see the extensive de jure authority that defendant Taha Yassin Ramadan had over popular army members. In any case, the de jure authority of the defendant is sufficient to hold him criminally liable for the crimes that his subordinates committed in line with international criminal law, if he knew that these crimes were about to be committed by said subordinates and he did not prevent their perpetration, or if he knew that they had been committed and did not take any appropriate measure to investigate and hold accountable their perpetrators (Cf. the resolution passed in the case of Zlatko Aleksovski mentioned earlier, paragraphs (117, 118, 133, 135) thereof; cf. also the resolution enacted by the appellate chamber in the Musitch case, paragraph 88 thereof).

Defendant Taha Yassin Ramadan also had de facto powers over his subordinates on account of his being among the very few who had close contacts with and direct access to defendant Saddam Hussein, given that he held senior party and official state positions. Defendant

Taha Yassin Ramadan had thus a genuine and high stake in maintaining that regime and that party, and in totally adhering to what defendant Saddam Hussein says and does.

Defendant Taha Yassin Ramadan was thus cognizant of the large-scale and systematic assault in which his popular army troops effectively participated against Dujail's civilian population. He also knew that his conduct in making explicit and implicit decisions in these illegal arrests of Dujail's residents (at the meeting of the National Council, with the General Security director Fadel al-Barak and the representative of the Intelligence Service chief, Muhammad Aliawi, later in the evening on the day of the incident or on the following day, by order from defendant Saddam Hussein, a few hours after the assassination attempt), he thus knew that said conduct was part of that large-scale and systematic assault against a civilian population.

Defendant Taha Yassin Ramadan's participation was deliberate and aimed to bolster the criminal activities of party agencies, whose backbone is the popular army, and of the intelligence, security and military organizations in the perpetration of this crime which led to the incarceration of those victims without any legal justification, in retaliation for the very limited and failed attempt carried out by very few individuals, as defendant Saddam Hussein acknowledged in court session 28. Further, the premeditated participation of defendant Taha Yassin aimed to shore up the criminal objective of the ruling regime which was run by the Ba'th Party, and in which defendant Taha Yassin held a prominent position ever since said Party gained power by force in 1968. Likewise, defendant Taha Yassin knew about the intent of the other participants in that crime as he received the instructions thereon from defendant Saddam Hussein, and on the basis of his meeting at the National Council, given that he was the head of the committee that was formed immediately after the incident in order to bolster the criminal activities of these agencies and to reinforce the criminal objective of that regime and party. Defendant Taha Yassin approved implicitly, if not expressly, what was taking place and what would take place later on in Dujail. In other words, there was an agreement between him, defendant Saddam Hussein, defendant Barzan Ibrahim, who was represented at the meeting that took place at the National Council by his office director, Muhammad Aliawi, and the General Security director Fadel al-Barak. This fact was acknowledged by defendant Taha Yassin when in his testimony, which was recorded by the Investigative Panel on 2/9/2005, he affirmed that "the task given to me was to listen to what the security agencies officials will say, to give my opinion and to instruct them what to do in case I had any instructions."

The meeting of said committee, which was headed by defendant Taha Yassin Ramadan, and which convened at the National Council by order of defendant Saddam Hussein, was said to be for the development of the town of Dujail. Does it make any sense that defendant Saddam Hussein issues an order on the same day of the incident for defendant Taha Yassin Ramadan, as head of said committee, to meet with the representative of the Intelligence Service chief and defendant Barzan Ibrahim's office director, Muhammad Aliawi, and the General Security director, Fadel al-Barak, just hours after the incident, in order to study the development of the town of Dujail, at a time when arrests were under way? If the objective of the said committee, headed by defendant Taha Yassin Ramadan, was the development of the town of Dujail, why was it necessary for the representative of the Intelligence Service chief and the General Security director to be present?

While defendant Taha Yassin Ramadan claimed during the court hearings that he was not cognizant of what went on in Dujail, he had good reasons to know. As a member of the (dismantled) Revolutionary Command Council, as Deputy Prime Minister, as a ranking member of the Ba'th Party Regional Command, as a popular army supreme commander, and as the head of the committee that was formed by order of defendant Saddam Hussein hours after the meeting, which committee convened at the National Council under his chair, he must have known. These very senior positions that defendant Taha Yassin held enabled him to quite easily know about all that was taking place in Dujail. This can be the only logical and reasonable conclusion. One way or another, he knew what was going on without taking any measures to prevent the occurrence of such crimes or any measures to hold accountable those who perpetrated said crimes once they occurred.

Based on the above, it is quite obvious that that there was a joint criminal act in which defendant Taha Yassin Ramadan played an important role and that there was joint criminal intent. Defendant Taha Yassin's very important and premeditated participation aimed to bolster the criminal activities of those party, intelligence and security agencies, and to foster the criminal objective of the Ba'th Party ruling regime, headed by defendant Saddam Hussein.

For those reasons, defendant Taha Yassin Ramadan is criminally liable for the imprisonment or other severe deprivation of physical liberty as a crime against humanity, pursuant to Article 15 (Second) (d) of the Tribunal's law.

Likewise, defendant Taha Yassin Ramadan was the popular army's supreme commander, and there was between him and popular army members a superior-subordinate relation. The immediate subordinate of defendant Taha Yassin in Dujail was Ahmed Ibrahim Hassoun al-Samarra'i (Abu Nabi), given that he was the party chief in that region, and thus the leader of Dujail's popular army in Dujail, issuing orders to popular army members there. These orders included the perpetration of crimes against humanity. Further, defendant Taha Yassin Ramadan was the popular army's supreme commander and as such had extensive powers that were similar to those of the Minister of Defense. He was also a member of the Ba'th Party Regional Command, and the party leaders in Dujail, who were perforce popular army leaders in the region. Said leaders reported to him given that he was their commander, and they also reported to the members of the Party's Regional Command, which members included defendant Taha. Defendant Taha Yassin was thus the senior leader of those party members in Dujail, and he was their chief given that they were members of the popular army, which was headed by defendant Taha Yassin.

It is thus established, based on the above, that the underlings who perpetrated the crime were de jure and de facto under the authority and control of the leader (popular army's supreme commander), defendant Taha Yassin Ramadan. Those underlings committed the crime (illegal arrests and incarceration (imprisonment) of Dujail's residents), if not by direct orders from defendant Taha Yassin, at least with his implicit consent, as he overlooked their actions and failed to exercise proper control over them. Likewise, defendant Taha Yassin knew, or at least there were reasons that implied that he was cognizant, that his subordinates were perpetrating or about to perpetrate those crimes, including the arrests and then imprisonment of the victims amongst Dujail's population, and he did not do anything to prevent their perpetration.

The popular army was supposed to protect people and civilian populations as well as to ensure their security (especially in the context of the Iraq-Iran war, when most of the men between the age of 18 and 45 were on the battlefields). This matter – ensuring the security of citizens – was within the competence and power of defendant Yassin Ramadan in his capacity as the popular army's supreme commander. Instead, the popular army's activities in Dujail consisted of perpetrating those crimes they were supposed to prevent. However, it seems that the loyalty of those party and popular army members, under the command of defendant Taha Yassin Ramadan, was not to the country but to the Ba'th Party, to the Ba'thist regime, and more specifically to Saddam Hussein.

Defendant Taha Yassin Ramadan failed to take any necessary and reasonable measure within his powers to prevent the perpetration of those crimes, or to submit the matter to the proper authorities, namely the judiciary, which has the jurisdiction to investigate and prosecute these crimes once they occur.

For the above reasons, defendant Taha Yassin is also criminally liable for imprisonment or otherwise the severe deprivation of physical liberty as a crime against humanity pursuant to Article 15 (Fourth) of the Tribunal's law.

Extent of Defendant Taha Yassin Ramadan's Criminal Liability for Torture as a Crime Against Humanity

Based on the evidence available in this case, this Tribunal has established that the Dujail victims, including women, children, men, youths, as well as elderly men and women, have been widely tortured using all kinds of physical and psychological torture at the Intelligence Service's Hakimiya prison, at the Intelligence's section of Abu Ghraib jail, and at the Lea desert compound. Prior to that, they were beaten and humiliated when they were apprehended and brought to the party division center in Dujail. Popular army and party members in Dujail participated in these arrests and beatings of Dujail's residents which took place at the party division center and when those residents were apprehended. Afterward, hundreds of Dujail's civilian residents were taken to Hakimiya jail and then to Abu Ghraib prison, where they were tortured by intelligence officers, members and guards, and in the hands of defendant Barzan Ibrahim. As a result of the tortures, no less than 46 persons from Dujail died. Many of those victims were taken to the Lea desert compound and were tortured there by the guards who were in the employ of the Muthanna Governorate Security Directorate. These crimes are well established and are beyond any reasonable doubt.

This Tribunal firmly believes that no one among those incarcerated victims was told how long his or her jail term would last or if they would eventually be released. The prisoners (detainees) were usually asked about their attempt to assassinate the former President. Does it make sense that children and rural women would commit such an act? They were asked also whether they were Dawa Party members and told to admit what they did not perpetrate or do, or to admit that they were members of the said Party. To this end, they were subjected to the most egregious and brutal types of torture.

The arrests were thus in breach of law, since the detainees' age, gender or health condition was not taken into consideration. Also, these arrests had no logical or legal justification,

since it did not make any sense that those children or young rural girls or elderly would commit the action they were charged with, which was the attempt to assassinate Saddam Hussein, or to charge them with being Dawa Party members.

These illegal arrests, in which Dujail's popular army and party members participated, led to their illegal imprisonment and to their torture in the former Ba'thist regime jails. Given that the accusations leveled against those victims would most likely have led to the perpetration of a crime, those who participated in these arrests shall be considered liable for the crimes of imprisonment or otherwise the severe deprivation of physical freedom in addition to torture as crimes against humanity, pursuant to Article 53 of the Penal Code No. 111 of 1969, assuming those who perpetrated those crimes did not have probable (indirect) criminal intent pursuant to Article 34 (b) of the Penal Code.

Likewise, these arrests, which did not rest on any legal, rational or logical foundation, and such deprivation of freedom, which was not only in violation of law but of all divine statutes as well as humanitarian values and concepts, were accompanied, during the arrests and when the victims were detained at the party division center, by beatings in the hands of party and popular army members, in addition to members of other organizations.

The aim of this deed (torture), which caused severe physical and/or psychological pain to Dujail's victims, was to extract information or confessions from some of the victims. It also aimed to punish or scare the victims or other persons, to humiliate or subdue them, or to discriminate against them on political or religious grounds. Those who were torturing Dujail's victims were intelligence officers and staff, security members at the Lea desert compound at al-Samawa, and popular army members, who were state personnel, at the party division center. Resolution No. 373, passed by the (dismantled) Revolutionary Command Council on 3/23/1978, included all popular army volunteer members under the provisions of the amended Military Service and Contract Law No. 1 of 1975 (Cf. a similar opinion issued in this regard in the case of Anto Furundzija mentioned previously, namely paragraph 159 of the Resolution enacted in that case).

Among the possible objectives pursued in torturing victims, we may cite the humiliation of those victims, while the spirit of international humanitarian law is to protect human dignity. What is more, God Almighty says in his revealed Holy Book: "We have honored the sons of Adam..." (Verse 70, Al-Isra Verse). God Almighty tells the truth.

With respect to defendant Taha Yassin Ramadan, we must say that although there is no direct evidence that shows that he personally carried out torture, he has premeditatedly contributed to the commitment of such a crime when he participated in a joint criminal act with a joint criminal intent upon receiving orders from defendant Saddam Hussein and when he attended the aforementioned National Council meeting during which very important resolutions were taken by the committee formed under the chair of defendant Taha Yassin Ramadan on the day of the incident. These resolutions were related to what was happening and what would happen in Dujail and to its civilian population. The participation entailed the adoption of these resolutions in order to bolster the criminal activities of the party, security, intelligence and military agencies as well as of the popular army, and in order to foster the criminal objective of the Ba'th Party ruling regime.

Further, defendant Taha Yassin Ramadan was aware that the other participants intended to commit such crimes for the reasons mentioned earlier, and he wanted thus to realize these crimes. We ought to say here that the intent of some of the participants in the joint criminal act may be direct, while the intent of another participant in the same joint criminal act may be probable (indirect), although this has the same legal merit.

As we mentioned earlier, the arrests were most likely to lead to the crime of incarceration and torture in the prisons of the former Ba'th regime, especially as regards the actions that Dujail's victims were accused of committing. This is the natural and logical consequence, given the conditions prevailing in these prisons, and following the realization of a joint criminal act.

Defendant Taha Yassin Ramadan had sweeping de jure and de facto powers over his subordinates for the reasons we mentioned in the previous paragraphs. These powers were not directed towards preventing the commitment of these crimes before they occurred or to call to account their perpetrators once they were committed. Rather, these powers were channeled by defendant Taha toward the perpetration of these crimes based on the joint criminal act, pursuant to Article 15 (Second) (d) of the Tribunal's law, and based on his leadership responsibility, pursuant to Article 15 (Fourth) of the said law.

Defendant Taha Yassin knew about these crimes, and at the very least he had to be cognizant of them, because he was the supreme commander of the popular army and had de jure and de facto powers over popular army members, because he was a senior official in the Ba'th Party and very close to defendant Saddam Hussein, because he was present at the meeting of the National Council, as the chair of the committee that was formed by order of defendant Saddam Hussein, and because many issues were resolved during that meeting regarding the method of dealing with Dujail's residents and the measures that were taken or that would be taken against them. In fact, none of the leadership members, and in particular the Revolutionary Command Council, ignored what was going on in Dujail following the failed and very limited assassination attempt. This is borne out by what defendant Saddam Hussein acknowledged when he told the Tribunal "that the meeting of the Revolutionary Command Council to examine an assassination attempt and the measures that must be taken is a routine matter." And defendant Taha Yassin Ramadan is an important member of the said Council.

Likewise, defendant Taha Yassin Ramadan did not take any measures to prevent the occurrence of these crimes because he actually wanted them to take place. Also, he did not take any measures to hold to account those who perpetrated these crimes, although he was able to do so for the same aforesaid reasons, because it is not logical for a person to punish someone else for committing an act that the said person wants committed.

For all the above reasons, defendant Taha Yassin Ramadan is criminally liable for torture as a crime against humanity pursuant to Article 15 (Second) (d) of the Tribunal's law and pursuant to Article 15 (Fourth) of the said law.

Extent of Defendant Taha Yassin Ramadan's Liability in the Deportation or Forcible Displacement of Populations as a Crime Against Humanity

What needs to be stressed here is that the expulsion or forcible displacement of populations from the town of Dujail to the Lea desert compound in al-Samawa constitutes a highly probable crime for the arrests and incarceration of Dujail's residents, which crime was perpetrated by popular army and party members in Dujail under the circumstances which we have mentioned in the previous paragraphs and for the other aforesaid reasons. Witness Waddah al-Shaykh has confirmed on 1/25/2005 in his statements during the investigation, and on 10/23/2005 during the trial, read in the court hearing of 10/28/2005, that the committee that was headed by defendant Taha Yassin Ramadan on the order of defendant Saddam Hussein the day of the incident, which committee convened at the National Council hours after the incident and whose members were the Intelligence Service chief, Barzan Ibrahim, who dispatched his office director Muhammad Aliawi to represent him, as well as the General Security director Fadel al-Barak, said committee thus resolved to incarcerate the victims amongst Dujail's residents who were arrested and held at Hakimiya prison and then at Abu Ghraib prison, to be afterward displaced to Nakrat al-Salman region, south of al-Samawa, and kept in a camp (compound) that had been set up for them. Indeed, the Tribunal has established that those victims, including women, children, men, elderly men and women, were expelled to the Lea al-Samawa desert compound, which is close to the Saudi border, starting in 1983. This was done in successive contingents, and the detainees were compelled to stay there until spring 1986. Those displaced constituted eighty families, representing 399 persons of all ages and of both sexes. The documentary evidence which establishes these facts and which we have mentioned earlier, among others, includes Letter No. 106 of 5/8/1983, from the Office of the Intelligence Service Chief, addressed to Muthanna Governorate Security Directorate, requesting the expulsion of 115 Dujail residents whose names are included in five lists attached to the said Letter. In point of fact, Muhammad Aliawi, the director of the Intelligence Service office of defendant Barzan Ibrahim, represented the latter when he attended the meeting of the National Council, given that the intelligence chief was a member of the committee that was formed under orders from defendant Saddam Hussein, as aforementioned. Further, defendant Taha Yassin Ramadan was the head of said committee, which held its first meeting after defendant Saddam instructed that it be immediately set up.

It bears noting once more that those who perpetrated this crime were aware of the actual conditions that establish the legitimate presence of those Dujail civilian residents, given that they, along with their fathers and forefathers, lived for hundreds of years as Iraqi citizens, and that those who arrested them and then incarcerated them were popular army and party members who came from the same region and personally knew those residents who were evicted, given that Dujail constitutes a small area with a small population.

For all the above reasons, defendant Taha Yassin Ramadan is criminally liable for the expulsion or forcible displacement of populations as a crime against humanity pursuant to Article 15 (Second) (d) and Article 15 (Fourth) of the Tribunal's law, and by virtue of Articles 34 (b) and 53 of the Penal Code No. 111 of 1969.

Extent of Defendant Taha Yassin Ramadan's Criminal Liability for Enforced Disappearance of Persons as a Crime Against Humanity

For this crime to arise, all of its elements must be present, which elements were previously mentioned. Given that one of the elements that is necessary for that crime to arise was not fundamentally established in the records of this trial, and for the reasons we have indicated when discussing the extent of the liability of the other defendants (Saddam Hussein and Barzan Ibrahim), it follows that defendant Taha Yassin Ramadan may not be held criminally liable for the act of enforced disappearance of persons as a crime against humanity. The Tribunal has thus resolved to dismiss the charge leveled against him pursuant to Article 12 (First) (i) of the Tribunal's law and to acquit him thereof by reason of Article 182 (b) of the amended Law on Criminal Proceedings No. 23 of 1971.

Extent of Defendant Taha Yassin Ramadan's Criminal Liability for Premeditated Murder as a Crime Against Humanity

First off, the civilian population victims who were killed in Dujail and elsewhere can be broken down into four groups:

1. First group: This includes the victims who were slain by military detachment troops, including the Republican Guard, military aircraft, as well as popular army, security and intelligence members, on the first and second day of the incident. There were at least nine victims in this case, and their names were mentioned in the indictment.
2. The second group: This includes those victims who were slain as a result of tortures aimed to extract phony confessions and to compel said victims to sign false testimonies prepared beforehand; these tortures were also in retaliation against said victims or to terrorize them at the Intelligence Service Hakimiya or Abu Ghraib prisons, as well as at the Lea Samawa desert compound. Those victims were at least 46.
3. The third group: This includes those victims who were killed at the locations mentioned in the second paragraph above as a result of wretched living and hygienic conditions in addition to inhumane treatment, all of which are in breach of law.
4. The fourth group: This includes those victims against whom the death sentence was carried out following the order issued by defendant 'Awwad al-Bandar and members of his court, according to a so-called verdict that was in contravention of truth and reality. This occurred on 6/14/1984 and resulted in the execution of nearly 96 victims.

Based on the evidence available in the trial, this Tribunal has established that popular army and Ba'th Party members in Dujail took part in the slaying of an indefinite number of the aforementioned first group's victims. They also took part in the arrest, beating and incarceration of a great number (in the hundreds) of victims indicated in the aforementioned second, third and fourth groups.

This Tribunal has also established that the popular army has effectively participated in laying siege to the town of Dujail and in the large-scale and systematic assault launched by the military units and by the security, intelligence and Ba'thist party members against Dujail's residents.

Likewise, the Tribunal has established that defendant Taha Yassin Ramadan did not only know but wanted also to realize such criminal actions, to wit, the arrest and incarceration of Dujail's victims in violation of the law. This is established on the basis of his chair of the committee formed by order of defendant Saddam Hussein on the first day of the incident; whose membership comprised the director of the office of the Intelligence Service chief, Muhammad Aliawi, who represented said intelligence chief, defendant Barzan Ibrahim, and General Security director Fadel al-Barak. This is also established by reason of his positions as the supreme commander of the popular army, as a member of the (dismantled) Revolutionary Command Council, and as a member of the Ba'th Party Regional Command in Iraq. He must thus have been aware of what was going on in Dujail, not only having held these prominent official and party positions, but also due to his close ties to defendant Saddam Hussein. (Cf. the aforementioned similar Resolution passed in the case of Zlatko Aleksovski, Paragraph 118 thereof.)

Whereas defendant Taha Yassin Ramadan was the supreme commander of the popular army with de jure powers, as was established earlier by the Tribunal, over his popular army subalterns who have participated in the slaying operations that were carried out in the first and second days of the incident (at least through their laying siege to the town of Dujail), and who have participated to a larger degree in the arrests of Dujail population victims in the first days of the incident, and the following ones; whereas premeditated murder is a highly probable and a natural, somewhat routine, consequence of torture in former Ba'thist regime jails, especially following the accusations leveled at Dujail's victims, namely the attempt to assassinate the former President of the Republic, defendant Saddam Hussein, and following the charges of being members of the Dawa Party; whereas we have to consider the brutal and extremely harsh methods that were carried out in torturing those victims, besides the wretched living and hygienic conditions that those detainees had to endure at the Hakimiya and Abu Ghraib jails, as well as at the Lea desert compound, which led to the slaying of more victims; whereas 96 victims at least were executed by order of defendant 'Awwad al-Bandar and other members of his court, with said order certified just two days later by defendant Saddam Hussein and actually carried out; whereas said order to execute those victims was under the guise that the court had handed down a verdict against them and was thus also a highly probable crime ensuing from arrests and incarcerations in former Ba'thist regime jails due to those accusations pertaining to the highest authority, by reason of the natural sequence of events concerning the rulers of that regime;

Now, therefore, even if direct criminal intent is not present with respect to defendant Taha Yassin Ramadan as far as slaying those victims, most certainly he harbored a probable (indirect) criminal intent to slay them, in conformity with Article 24 of the Penal Code No. 111 of 1969. Even if defendant Taha Yassin Ramadan had no probable criminal intent to murder the victims, although the Tribunal is firmly convinced that at the very least he had such intent, defendant Taha Yassin Ramadan is criminally liable for the probable crimes that were perpetrated by popular army members when they arrested and detained many of Dujail's

residents, pursuant to Article 53 of the Penal Code No. 111 of 1969, and by reason of Article 15 (Second) (d) of the Tribunal's law.

Defendant Taha Yassin Ramadan is thus criminally liable for a joint criminal act in which he deliberately and largely participated, based on the aforementioned reasons as regards his chair of the committee that convened at the national Council on the day of the incident, as regards his being the supreme commander of the popular army, with sweeping powers as well as de jure and de facto powers over popular army members; and given that he harbored a joint criminal intent with the other participants, that he was cognizant of the intent of those participants, and that he was aware that his conduct constituted a part of a large-scale and systematic assault for the aforementioned reasons. Likewise, he knew that his participation and role in that joint criminal act aimed to bolster the criminal activities of popular army members as well as intelligence, party and military agencies, and that his conduct was at the same time fostering the criminal aims of the Ba'th Party ruling regime for the aforementioned reasons and for other reasons mentioned earlier (when determining defendant Taha Yassin's liability for other crimes against humanity he was charged of). (See in this regard the case of Zlatko Aleksovski, Paragraph 64 of the Resolution issued thereon.) For all these reasons he is criminally liable for premeditated murder as a crime against humanity, pursuant to Article 15 (Second) (d) of the Tribunal's law.

Moreover, whereas defendant Taha Yassin Ramadan was the supreme commander of the popular army and had superior-subordinate relations between him and the said army whose members have committed these crimes (participation in the slaying of nine persons at least, and incarceration of hundreds of Dujail's civilian population during the first days of the incident); whereas defendant Taha Yassin Ramadan had sweeping de jure and de facto powers over the officers and members of the popular army (See in the issue of de jure and de facto powers the verdict delivered in the case of Kordic and Cerkez, paragraph 418); whereas the defendant did not only fail to properly control them, but what is more he at the very least overlooked their acts (See the verdict issued in the case of Milorad Krnojelac, paragraph 89), which namely concerned the commitment of such crimes; whereas defendant Taha Yassin knew or at least had strong reasons to know that his subordinates were perpetrating or about to perpetrate such crimes, because as the supreme commander of the popular army he must have known the names and the number of those implicated in these crimes, with the most prominent one being Ahmed Ibrahim al-Samarra'i, the leader of the party apparatus in Dujail, and thus one of the important officials, if not the principal official of the popular army in Dujail, given that defendant Taha Yassin Ramadan was the popular army's supreme commander and a member of the Revolutionary Command Council, and he was thus the one passing resolutions, including the ones related to the Dujail case, in addition to his being also a member of the Ba'th Party's Regional Command, etc.; whereas the activities of those subordinates pertained to crimes that were within the effective purview and responsibility of defendant Taha Yassin Ramadan in his capacity as the supreme commander of the popular army and one of the ranking officials entrusted with providing security to citizens, especially in the context of the Iraq-Iran war; whereas defendant Taha Yassin failed to take the necessary and reasonable steps, within his powers, to prevent his subordinates from committing these crimes, and he failed to take any steps to investigate these crimes once they occurred and to prosecute those who perpetrated them, or to even discipline them, even though he was cognizant thereof;

Now, Therefore, he is criminally liable by reason of leadership or command responsibility, pursuant to Article 15 (Fourth) of the Tribunal's law.

Conclusion

It follows from the above that defendant Taha Yassin Ramadan knew that the conduct of popular army members was a part of a large-scale and systematic assault against Dujail's civilian population, and his knowledge thereof was on the basis of his position as the supreme commander of the popular army; of his phone conversation with defendant Saddam Hussein on the first day of the incident; and of his chair of the committee that was formed and convened at the National Council by order of defendant Saddam Hussein hours after the incident, with the attendance of Security General director Fadel al-Barak along with that of Muhammad Aliawi, the director of the office of the Intelligence Service chief, with these officials discussing, planning and resolving the steps and methods that ought to be taken (See with respect to these requirements the independent opinion of Judge Cassese in the Tadic case, Appellate Panel, paragraph 14; this case was mentioned earlier) in order to retaliate against the limited and failed assassination attempt in Dujail. Given thus that defendant Taha Yassin, based on the above, knew of the regime's plan to assault Dujail by apprehending hundreds of its residents, it is only natural to say that defendant Taha Yassin was cognizant of the popular army's conduct, was cognizant that these conducts and deeds were part of that sweeping and systematic assault against Dujail's civilian population, and was cognizant that his conduct was a part of that assault.

Further, defendant Taha Yassin Ramadan's cognizance of what was mentioned above stemmed from his being a ranking member of the Ba'th Regime ruling regime headed by defendant Saddam Hussein, which resorted to the use of force and coercion to deal with the opposition and to eliminate enemies, or even resorted to the most grisly and brutal ways with those whose loyalties to Saddam Hussein and to the Ba'th Party were suspected, including average people who were clueless about politics. Defendant Saddam Hussein's despotic rule was that of an absolute tyrant. Likewise, the regime used to frequently devise and invent crises to terrorize Iraqis and ensure his stay in power. Crimes against humanity are considered international because their punishment aims in the first place to put an end to the abuses of tyrannical regimes. Interdicting them aims to protect human beings and thus to safeguard humanitarian values, given that human beings in one country are not separate from the international community which is concerned by the fate of humans throughout the world.

For all these reasons defendant Taha Yassin Ramadan is also criminally liable for premeditated murder as a crime against humanity pursuant to Article 15 (Fourth) of the Tribunal's law.

Extent of Defendant Taha Yassin Ramadan's Liability for other Inhumane Acts as a Crime Against Humanity

Evidence concerning the razing of Dujail's orchards is available and abundant, not only with respect to these orchards' razing per se, as this is obvious from what remains of those fields to date, from the satellite pictures taken of the Dujail region prior to the razing, on 9/2/1982, and afterward, and from defendants' acknowledgments, first and foremost defendant Saddam Hussein, in the course of the trial as regards the razing of these orchards. That evidence is also established from audio recordings of phone conversations, including the audio recording of a phone conversation between defendant Saddam Hussein and defendant Taha Yassin Ramadan, as well as the phone conversation between defendant Saddam Hussein and Abdul Ghani Abdul Ghafour, who was fawning on defendant Saddam by saying that what he did with the orchards in the Shatt-al-Arab region in Basra during the 1991 uprising was similar to what happened to Dujail's orchards, and that his action was inspired by what his president, Saddam Hussein, did. The evidence also stems from the statements of dozens of complainants whose orchards were razed in Dujail, in addition to what witness Waddah al-Shaykh indicated in his testimonies during the investigation and trial.

The questions that are raised in this instance and that must be answered prior to determining the extent of defendant Taha Yassin Ramadan's criminal liability for the razing of Dujail's orchards are the following: Were the razing of orchards and the confiscation of lands, which we will discuss later on, criminal acts in accord with Iraqi law and international law? Did defendant Taha Yassin Ramadan supervise the razing of orchards in Dujail or did he issue orders thereto? Did any popular army members participate in the razing one way or another?

With regard to the first question, Article 479 of the Penal Code No. 111 of 1969 provides the following: 1. A penalty consisting of imprisonment, fine or both shall apply:... c) to anyone who uproots, chops down or damages a tree that belongs to others, or who covets the tree or its bark, and then eradicates it; 2. The penalty shall be jail term of no more than seven years or incarceration if the crime occurred between sunset and sunrise by at least three persons or by two persons, one of whom resorted to violence against others or one of whom was carrying conspicuous or concealed weapons."

Further, the razing of these orchards constitutes an inhumane act as a crime against humanity, because it caused severe hardship ensuing from the material and moral harm that was inflicted upon Dujail's victims who owned the orchards, as said orchards were their only source of livelihood, and because property is precious to people just like their children are precious to them too. It is for this reason that lawmakers all over the world permit both legitimate self-defense and the legitimate protection of one's property (Cf. Article 42 of the Iraqi Penal Code No. 111 of 1969). Prior to that, God Almighty said in the Koran that "Wealth and sons are the allurements of the life of this world..." (Verse 46, Al-Khaf Chapter). When the fruit trees, some of which were dozens of years old, were chopped down, it is as if those who carried out the razing or supervised such acts or gave orders to raze these orchards were actually slaying those victims who were the owners of those orchards or the children of those victims. They looted their most precious assets, their lives and the lives of their children, along with their orchards, and they also robbed them of their honor, freedom and dignity. That is why we can safely say that razing the orchards was among the other inhumane acts that are similar to the crimes against humanity set forth in Article 12 (First) of the Tribunal's law.

The question raised for now, whether defendant Taha Yassin Ramadan supervised the razing of these orchards and whether he ordered their razing, can be answered in the statements of a great number of complainants who confirm that they saw defendant Taha Yassin Ramadan supervising the razing operations. A number of other complainants who were incarcerated at Hakimiya jail, at Abu Ghraib prison or at the Lea compound during the razing testified that they heard from Dujail's residents, when they returned in 1986 from the Lea compound in the Samawa desert, that defendant Taha Yassin Ramadan supervised the razing of the orchards. There are also eyewitness accounts besides second-hand accounts. These testimonies recur frequently and reinforce each other. This Tribunal is thus fully convinced that defendant Taha Yassin Ramadan most certainly went to Dujail and oversaw the razing, even if he did that once. This was also confirmed by the defendants in this case, including defendant Muhammad 'Azzawi 'Ali during the investigation. We turn now to the next question: Did defendant Taha Yassin Ramadan order the razing of the orchards? Witness Waddah al-Shaykh, defendant Saddam Hussein, and defendant Mizher 'Abdullah provide us the answer to this question.

Defendant Saddam Hussein acknowledged before the Tribunal on 3/1/2006 that he had ordered the razing of the orchards. Likewise, defendant Saddam Hussein implicitly acknowledged in his 6/12/2005 testimony during the investigation that he had ordered defendant Taha Yassin Ramadan to chair a committee whose members comprise the Intelligence Service chief and the General Security director, and to meet with them at the National Council building on the day of the incident and a few hours after it occurred. This was also confirmed on 12/9/2005 by defendant Taha Yassin's statements during the investigation.

Further, defendant Barzan Ibrahim admitted during the investigation, on 1/25/2005, that such a committee was created under the chair of defendant Taha Yassin Ramadan, by order of defendant Saddam Hussein, with its membership comprising Muhammad Aliawi, representing the Intelligence Service chief, and the General Security director.

The picture becomes complete when witness Waddah al-Shaykh states in his 1/25/2005 testimony during the investigation that "the recommendations that defendant Taha Yassin Ramadan offered included destroying trees and orchards for one to three kilometers in all directions; this recommendation was carried out by orders of defendant Taha Yassin Ramadan, and the orchards and trees were razed in the Dujail region." He also stated in his 10/23/2005 testimony before the Tribunal, which was read during the court session of 10/28/2005, that "at first, defendant Taha Yassin Ramadan did not have any role, but then the committee was formed under his chair nearly a month later, and its main objective, as far as I recall, was to raze and wipe out the orchards of Dujail and Balad."

The picture is clear now, since we can say beyond any reasonable doubt, taking into account the other factors pertaining to his supervision of the orchards' razing referred to earlier, that defendant Taha Yassin Ramadan, in his capacity as chairman of said committee created by order of Saddam Hussein, which committee convened for the first time immediately after the incident at the National Council, with most certainly other meetings thereafter, thus said defendant gave the order to raze Dujail's orchards.

We now come to the other question. Did the popular army and party members in Dujail take part in the razing of those orchards? The evidence thereon is abundant, as a large number of complainants and corroborating witnesses have testified during the investigative and trial stages, along with some defendants, including defendant Muhammad Azzawi Ali, defendant Mizher 'Abdullah Kadhim, during the investigative stage, that they saw popular army members supervising the razing of these orchards, and that they were protecting those who were carrying out the razing operations. Other complainants testified that they had heard about that from Dujail's residents, when they were set free and returned from Lea's Samawa desert compound to Dujail in the spring of 1986.

With respect to the confiscation of Dujail lands, the (dismantled) Revolutionary Command Council passed Resolution No. 1283 on 10/14/1982 and Resolution No. 100 on 1/23/1985. These two Resolutions did not include the confiscation of said lands in accordance with the provisions of the Appropriation Law, and were in violation of the text of the interim Constitution of 1970 and its provisions concerning property rights. Article 16 (c) thereof provided that "private property shall not be expropriated except for the public interest and pursuant to fair compensation in accord with law." Was the confiscation of those lands actually for the public interest? Or was it for other interests? Was the compensation fair? The two Resolutions stipulated the confiscation of lands owned by some victims amongst Dujail's residents without any compensation (Paragraph 3 of Resolution 1283 of 10/14/1982, and Paragraph 1 of Resolution 100 of 1/23/1985), while Paragraph 2 of the first Resolution provided for the compensation of owners of farmlands and orchards in Paragraph 1 (above) with farmlands in regions the Ministry of Agriculture and Agricultural Reform will determine or with residential lots, etc. We can see in this instance elements of discrimination which by virtue of international law is considered to be an international crime. Some orchard owners, which are a minority, were compensated because they supported the party, the regime and Saddam Hussein, and because their orchards were razed and seized as a result of the abrupt wrath of the former President. Therefore, it was admissible to compensate them. But most owners of confiscated farmlands and orchards razed earlier were not compensated, either because they were opposed to the party and to Saddam Hussein, or because they were suspected not to be loyal to Saddam Hussein and to the Ba'th Party.

The elements of the crime in that case are now in place, and compensating some of the victims later on does not exonerate anyone who participated in committing said crime, whether as a principal or as an accomplice, so as to evade criminal liability thereon, even if several years later another group of victims were compensated at a much lower value due to the depreciation of the Iraqi dinar thousands of times in the nineteen nineties relative to its actual value in the early nineteen eighties. At any rate, the compensation for some material damages after all those years does not affect the existence of criminal liability for the perpetrators of said crimes, because if we assume that the compensation was indeed equitable, this would mainly pertain to civil liability and has no bearing on criminal liability. As aforesaid, even if these compensations, which were not adequate, did pay for the material damages, they certainly did not remedy the moral harm which befell those aggrieved victims. Moreover, we are dealing with an international crime in which it does not help to pay inadequate compensations for some of the prejudiced Dujail's residents and victims without paying any compensation for the remaining prejudiced persons and victims amongst Dujail's residents.

Based on the above, what was then the role of defendant Taha Yassin Ramadan in the confiscation of lands and orchards, which constitutes an inhumane act that is similar to other crimes against humanity set forth in Article 12 (First) of the Tribunal's law, and given that said act caused severe hardship to the Dujail's owners of these lands and orchards?

We ought not to forget in this regard that defendant Taha Yassin Ramadan was a member of the (dismantled) Revolutionary Command Council which issued the two aforementioned resolutions (Resolution 1283 of 10/14/1982, and Resolution 100 of 1/23/1985). He has participated in that case in issuing the order to confiscate those farmlands and orchards that belonged to the victims amongst Dujail's residents, and is thus one of the principals who issued those two resolutions. We should note also that defendant Taha Yassin Ramadan knew that his conduct, reflected in the confiscation of farmlands and the razing of orchards, constituted a part of a large-scale and systematic assault against civilian populations, given that he was a member of the Revolutionary Command Council wherein he was supposed to be aware of the text of the resolution he was signing in order for said resolution to be enacted. He was also cognizant of that because he supervised the razing of those orchards prior to their confiscation. This is established through evidences mentioned earlier. He also knew, or at least had reasons to know, by virtue of his position as the supreme commander of the popular army, and yet did not take any steps to prevent the commitment of such crimes, nor did he take any steps to call to account those who perpetrated those crimes because, to begin with, he participated in their perpetration in a premeditated way and by various means and methods.

For the above reasons, defendant Taha Yassin Ramadan is criminally liable for other inhumane acts that are similar in nature and that deliberately caused severe hardship or significant harm to the body or to mental or physical health, as a crime against humanity pursuant to Article 15 (Second) (a, b, c, d) of the Tribunal's law, and to Article 15 (Fourth) of the same law.

Tribunal's Verdict Concerning the Charges Levelled Against Defendant Taha Yassin

1. Convict defendant Taha Yassin Ramadan for premeditated murder as a crime against humanity pursuant to Article 12 (First) (a) of the Tribunal's law, by virtue of Article 15 (Second) (d) and Article 15 (Fourth) of the said law, and in conformity with Article 34 (b) and Article 53 of the Penal Code No. 111 of 1969.

[PART 6]

2. Convict defendant Taha Yassin Ramadan for the deportation and forcible displacement of populations as a crime against humanity pursuant to Article 12 (First) (d) of the Tribunal's law, by reason of Article 15 (Second) (d) and Article 15 (Fourth) of the said law, and in line with Article 34 (b) and Article 53 of the Penal Code No. 111 of 1969.

3. Convict defendant Taha Yassin Ramadan for the imprisonment or other severe deprivation of physical liberty as a crime against humanity pursuant to Article 12 (First) (e) of the Tribunal's law, by virtue of Article 15 (Second) (d) and Article 15 (Fourth) of the said law, and in conformity with Article 34 (b) and Article 53 of the Penal Code No. 111 of 1969.

4. Convict defendant Taha Yassin Ramadan for torture as a crime against humanity pursuant to Article 12 (First) (f) of the Tribunal's law, by virtue of Article 15 (Second) (d) and Article 15 (Fourth) of the said law, and in accordance with Article 34 (b) and Article 53 of the Penal Code No. 111 of 1969.

5. Convict defendant Taha Yassin Ramadan for other inhumane acts as a crime against humanity pursuant to Article 12 (First) (j) of the Tribunal's law, and by virtue of Article 15 (Second) (a, b, c, d) and Article 15 (Fourth) of the said law.

The above clauses are in conformity with Article 182 (a) of the Law on Criminal Proceedings No. 23 of 1971.

6. Defendant Taha Yassin Ramadan is not liable for enforced disappearance of persons as a crime against humanity due to the absence of elements therefor, and thus the charge leveled against him in that regard is dismissed pursuant to Article 12 (First) (i) of the Tribunal's law, in accordance with Article 182 (b) of the amended Law on Criminal Proceedings No. 23 of 1971.

The verdict was unanimously passed and rendered in the presence of the parties on 11/5/2006.

Signature

Signature

Signature

Member

Member

Member

Verdict Against Defendant Taha Yassin Ramadan

Defendant Taha Yassin Ramadan, aka Taha al-Jazrawi, was a prominent member of the Ba'ath Party Regional Command and member of the ruling Revolutionary Command Council, when the Dujail incident took place. He held also the post of Deputy Prime Minister and of supreme commander of the popular army, the body that trains civil party cadres as a prop and support for the armed forces according to the principles embraced by the ruling regime. Even in custody and during the trial he showed loyalty to Saddam Hussein. Case in point, he stated during one of the court hearings, in response to one of the witnesses: "I would have been honored to come to Dujail, but the President did not ask me to; if the President had asked me, it would have been an honor for me to fulfill any task he would have assigned to me."

Following statements from witnesses and complainants during the court hearings, to the effect that he came to Dujail, he stated during the 3/14/2006 court session: "I did not visit Dujail on the first or second day of the incident." However, it is established that, in the days that followed the incident, he visited the region. In point of fact, he was the person implicated, if not the person who came up with that idea, in razing the orchards, based on documents and audio recordings exhibited to the Tribunal. On [TN: Blank date] a CD recording of a conversation between him and Saddam Hussein was presented, wherein the latter says: "The idea of Dujail's razing was inspired by the razing of Basra's forests." Likewise, he personally added to the Tribunal, during the 3/14/2006 session, that "what happened to Dujail's orchards, given what took place there, is something normal; the government is entitled, for the public interest or if the situation requires it, to confiscate farms or facilities or fields in return for adequate compensation." That was how the defendant expressed the idea of razing orchards and farmlands belonging to Dujail residents, following the shots fired at Saddam Hussein's motorcade from inside one of the orchards that ring the town.

Tariq Aziz, a close friend of Taha Yassin, defended Taha Yassin Ramadan in his testimony before the Tribunal on 5/24/2006 by stating that "he did not have anything to do with the Dujail case, because it is the General Security director who is responsible for security matters." And in his testimony before the Tribunal on 3/12, 'Ali Dayeh 'Ali stated: "I did not see Taha Yassin Ramadan, but I heard that he was present to oversee the razing of the orchards, along with a protection force, in order to prevent any clashes with the population." However, it is obvious from well established and disclosed information that in the afternoon of the day when the incident occurred, and following the return of Saddam Hussein to Baghdad, he was summoned to a small meeting which was attended by defendant Taha Yassin Ramadan, who denies this fact. When the topic was mentioned during a court hearing with respect to what Taha Yassin was saying, Saddam Hussein indicated that "if that is what Taha is saying then it must be true."

Given the above and in light of the Tribunal's findings of fact as well as trial records, even if Taha Yassin Ramadan did not have a direct role in the mass arrests, incarceration, and displacement of Dujail families, as well as in the looting of their properties, except as second in command or within the main coterie of defendant Saddam Hussein, he is, by

reason of his position in the party, liable therefor as a principal regime leader; likewise, consistent with his position as the popular army chief he is liable for the arrests that occurred in that case.

Moreover, based on the examination of witness statements, including the defendant's defense witnesses, we notice that "the razing of the orchards did occur," and the intent therefor was obviously "part of a retaliatory plan against Dujail residents." To this end, the defendant's defense witness, Sabaawi Ibrahim, testified to the Tribunal during the court session of 6/13/2006 that "Fadel Barak, the General Security director, told me that 'we have razed the orchards because they are serving as nests for hostile groups,' given the denseness of the orchards and their proximity to Baghdad." Likewise, in his testimony of 4/5/2006, defendant Saddam Hussein stated that "the orchards intersect with each other and it is not possible to keep them under control without military force." In addition, he stated that "if Dujail's orchards were different, most likely no shots would have been fired at the head of state, and the culprits would not have imagined that they could escape." He added: "My bodyguards and the private protection team were around me; they along with others surrounded the area and the site was inspected. There was some resistance, resulting in dead and wounded persons, and there were people who objected to the inspection of the Dujail orchards and the search for the culprits."

It is in the context of this security-minded thinking that the aforementioned Revolutionary Command Council Resolution No. 1283, dated 10/12/1982, was enacted. Said Resolution instructed to register the farmlands and the orchards that were fully owned, or that were state-owned but had usufruct rights, or that were in abeyance and were included in the new central planning for the towns of Dujail and Balad, based on the lists drafted to that end, in the name of the Ministry of Agriculture, stripped of any third-party rights. The said Resolution excluded from any compensation the lots whose numbers and owners' names were listed in the Resolution. In other words, the properties of those Dujail families concerned were confiscated without any compensation, in contravention of all laws and statutes.

Defendant Taha Yassin Ramadan was the person charged with the razing of the orchards and with carrying out the order. According to 'Abdullah Kadhim Ruwayid's defense witnesses, Khodr Abbas Ruwayid and Jabbar Birhan Majid, in their testimony during the court hearing of 2/17/2006, "the razing started from the main thoroughfare; they set up encampments where ten to twelve bulldozers were parked, and the bulldozers began hauling off the trees and ditching them outside Dujail... Those who brought the bulldozers were from outside the Dujail area."

Witness Kazem 'Abdullah Kazem indicated that "three months after the incident, tractors, bulldozers, cars (International model), and six-wheel trucks pulled in, and they set about carting away tree scraps and discarding them outside the town."

However, defendant Taha Ramadan, in his testimony during the 3/14/2006 court session, and in response to a question by the Tribunal, stated that "the popular army's general command was not involved in that; and the popular army stationed in Dujail receives its orders from the party officials in that region."

Witness Mahmoud Thiab Ahmed al-Mashahdani, who was Interior Minister under the regime of Saddam Hussein, testified to the Tribunal on 5/29/2006 that “the orchards of party leaders were razed.” Defendant ‘Ali Dayeh ‘Ali testified to the Tribunal on 3/12/2006 that he did not see Taha Yassin Ramadan but heard that the latter was present and was supervising the orchards’ razing in the presence of a protection force in order to avert any clashes with the population, and that his orchards were razed.

Defendant ‘Abdullah Kadhim al-Mashaikh testified to the Tribunal on the same date that twelve “dunam” of his orchards were razed [TN: “Dunam” or “donum” is equal to 1,000 m² according to various Arabic-English dictionaries, although the online reference source, Wikipedia, mentions that in Iraq it is equal to 2,500 m²], including lot 102/2, district 2, Tal Maskin. He added: “The district’s orchards as well as my father’s and relatives’ orchards were seized, totaling sixteen orchards.” Defendant Muhammad ‘Azzawi Ali testified before the Tribunal on 3/13/2006 that he noticed “the bulldozers as they were razing my three orchards.”

Defendant Mizher ‘Abdullah Kadhim Ruwayid testified to the investigative judge on 2/21/2005 that “I did not take part in the arrests, but with regard to razing the fields and chopping down trees I was tasked by the party apparatus, on the order of defendant Taha Ibrahim which was conveyed to us through the party, to escort the tractors, steamrollers and other equipment in order to raze the fields. This is what I did. I took one of the tractors, and my job was to raze the complainants’ fields.”

In his testimony, Karim Kazem Yassin, a defense witness for defendant Saddam Hussein, stated during the court session of 5/30/2006 that “some time after the shooting at Saddam Hussein’s motorcade, the tractors pulled in, escorted for protection by the border patrol. I knew their members because they were my relatives. Dujail was transformed after the incident. What used to be a six-meter wide road became, after the razing, a sixty-meter wide road.”

In view of the above statement one of the individual rights lawyers asked: “Did the destructive plan they spoke about imply only the razing of the thriving and lucrative orchards and turning them into barren fields?”

This is another outcome stemming from shooting at defendant Saddam Hussein’s motorcade in Dujail on 7/8/1982.

Based on the above and in light of collected facts, the participation of the military in razing Dujail orchards is well established, and the impact of the razing was catastrophic given the great number of families that lost their sources of livelihood and properties, which consisted of thriving orchards yielding all kinds of fruits and vegetables, and covered with trees. Likewise, some defendants in this case, who were from Dujail, testified that by razing the orchards people were unable to live as they used to prior to the razing. This disastrous operation which befell these standing properties have no doubt caused and will continue to cause severe hardships, and will have a grave impact, for years to come perhaps, on the owners’ children given the physical and mental harm that visited the orchards’ owners, including individuals and families who were affiliated with the then ruling Ba’th Party. The operation was harsh and backward to such a degree as to be quite bewildering. How could

an authority or government destroy the livelihood of a town simply because a few shots were fired from one of these orchards?

Further, this deed does not fit into any political or administrative description as far as the destruction of the natural habitat of a town and the transformation of a group of people's mode of living in ways that detrimentally, substantially, economically, and psychologically affect the life of a whole population, and impact the life of Dujail during a period of formation and growth. There is an old popular Iraqi adage, which dates back to the Ottoman rule, which says: "Cut off their necks but do not cut off their livelihood."

The destructive operation, which entailed the razing of the town's orchards and plants, is an act that runs counter to nature, to life, and to the future means of existence for Dujail's residents and for nearby Balad. It is quite painful and sad to see that this operation, which is destructive to the natural habitat and to the lives of many generations, which reduces the livelihood prospects of townsfolk, was allegedly done for the sake of the town's urban development, as was described in documents belonging to the former regime. Irrespective of the regime's justifications, many people lost their properties, and this deliberate destruction of these properties on the direct orders of the governing authority has caused and no doubt will in the future continue to cause severe hardships and will have detrimental effects on the living standards of Dujail's civilian population.

There is no doubt that the governing authority was aware that these retaliatory measures were outside the norms of just rule. These measures included the extensive devastation of people's sources of revenue, and even extended to ruling Ba'th Party families and members, the same ones who participated, along with security organs, in the arrests of suspects and people under suspicion, leading to the indictment, castigation and punishment of the town's population. The reprisals went beyond persons and families and extended to the natural habitat and the future livelihood of the population so as to constitute a crime against humanity, planned for and executed by a ranking member of the government and the party, Taha Yassin Ramadan. The latter was cognizant that this deed caused pain and hardship to the townspeople and that this devastating deed was part of an organized, planned and large-scale assault against Dujail residents, constituting in this case appalling reprisals for the shots fired at the President's motorcade.

When he led this operation, defendant Taha Yassin was aware of the consequences ensuing from such a destructive act, and he carried it out as part of a laid out plan against an Iraqi civilian population. Moreover, defendant Taha Yassin Ramadan was the commander of the popular army and the person who drew up the rules and helped steer the conduct of the ruling regime. What is more, the popular army did take part in Dujail's mass arrests, and he was the one who gave the orders to carry out these arrests, given that he was the senior officer and cognizant of the nature of these arrests.

Whereas these sweeping acts and these reprisals against the small town's existence and natural habitat constituted collective punishment against a group of townspeople, and were not directed at specific persons or families; whereas Taha Ramadan was a government official with administrative experience, and thus was aware of the danger that such conduct and cruel treatment against Dujail's population represented; whereas Taha Yassin and the others were most certainly aware that those who fired at Saddam's motorcade were about 12

persons or less, based on the investigative authorities that probed the incident; whereas the razing comprised a systematic and large-scale plan that followed mass arrests of suspects, whose number reached 399, including small boys and girls, women and children; whereas these arrests were carried out following a repressive plan targeting the townspeople and was part of a systematic and large-scale assault;

WHEREFORE, premises considered, and based on recorded information and substantial evidence, the grounds for convicting defendant Taha Yassin Ramadan are established pursuant to Article 12 (First) (a, d, e, j), informed by Paragraphs (First, Second, Third, Fourth) of Article 15 of SICT Law, and informed by Article 406 of the Penal Code No. 111 of 1969. This verdict was rendered on 11/5/2006.

Judge
Ra'uf Rashid
Chief Judge of the High Criminal Tribunal

Defendant ‘Abdullah Kadhim Ruwayid

Charges Levelled Against Defendant ‘Abdullah Kadhim Ruwayid

The Tribunal has charged defendant ‘Abdullah Kadhim Ruwayid on 5/15/2006 with multiple counts of crimes against humanity pursuant to Article 12 (First) (a, e, f, i) of the Tribunal’s law. These counts comprise premeditated murder, imprisonment or other severe deprivation of physical liberty, torture, and enforced disappearance of persons as crimes against humanity.

Summary of Statements by Complainants and Corroborating Witnesses Concerning Defendant ‘Abdullah Kadhim Ruwayid

Complainant Ahmed Hassan Muhammad al-Dujaili testified during the trial stage on 12/5/2005 that the young girl (Batoul Muhammad Hassan) whose leg was injured during Dujail’s incident remained with her grandmother. The latter, Fadila Muhammad Jassem, who was a resident of Balad and was seventy years of age, took care of her granddaughter when she was with her. She sought the protection of defendant ‘Abdullah Kadhim and told him that the child was at the hospital. The defendant then delivered her to the security and intelligence forces that he brought to the hospital to put her in custody... The child, who was eleven years old, was resting at the hospital when the party and intelligence members burst in and seized her. She was then taken to jail along with her grandmother, who died there, and remained incarcerated for four years.

Complainant Ali Hassan Mahmoud al-Haydari, in his testimony to the investigative judge on 3/3/2005, stated that he was pressing charges against defendant ‘Abdullah Kadhim. He added that defendant ‘Abdullah was sectarian by nature and had a hand in all arbitrary arrests, given that those arrested came from a different religious group.

Witness Saadoun Shaker testified during the investigative stage on 6/16/2005 that defendant ‘Abdullah Kadhim had been arrested in 1964 because he was a Ba’thist. He was among the Ba’thists who were apprehended and his name is actually ‘Abdullah Kadhim al-Mashaikh. In the course of the inquest the witness learned that he was designated by the name of ‘Abdullah Ruwayid.

Witness Fadel Mahmoud Gharbi al-Mashaikh testified to the investigative judge on 1/27/2005 that ‘Abdullah Kadhim Ruwayid is his maternal uncle and that he is the leader of the clan (tribe) that he belongs to. He believes that ‘Abdullah Ruwayid was a member of the party and that he is slightly sectarian in temperament.

Summary of Statements by Defendants Muhammad ‘Azzawi and ‘Ali Dayeh Concerning Defendant ‘Abdullah Kadhim

Defendant Muhammad ‘Azzawi ‘Ali testified to the investigative panel on 5/25/2005 as follows: “Everyone was told to head to the party division. Given that I was one of my clan’s prominent figures and a Ba’thist at that time, I went to the Dujail party division. When I was there I saw defendants Barzan Ibrahim al-Hassan and ‘Abdullah al-Ruwayid along with the head of the party division, Ahmed Ibrahim Hassoun al-Samarra’i. I also saw Saadoun Shaker and Obadah Kanaan al-Saddid at the same location where several families were detained. Afterward, they placed those families, including women and children, in large vehicles and took them to an unknown destination.”

During the court hearing of 3/13/2006 defendant Muhammad ‘Azzawi retracted the statements he had given to the investigative panel on 5/25/2005 concerning defendant Muhammad Kadhim

Defendant ‘Ali Dayeh ‘Ali testified to the investigative panel on 5/25/2005 that when he reached the party division center in the afternoon of the same day the incident occurred, the whole party staff was there, including the senior party official at that time, Ahmed Ibrahim Hassoun al-Samara’ee (Abu Nabil). “Defendants ‘Abdullah al-Ruwayid, then a division member, and his son Mizher ‘Abdullah, were there too.”

Defendant ‘Ali Dayeh acknowledged that two or three times he took part in the house-to-house searches. He indicated that defendant ‘Abdullah al-Ruwayid was among the party members who worked with the security agencies in making the arrests. He stated verbatim: “The arrests were made by the party rank and file and some officials. I remember among them ‘Abdullah Ruwayid, Youness Ahmed Ghazal, Masha’an Dahham along with others working with the security forces on the ground.”

During the court hearing of 3/12/2006 defendant ‘Ali Dayeh retracted the statements he had given during the investigative stage concerning ‘Abdullah Kadhim al-Ruwayid.

Summary of Defendant ‘Abdullah Kadhim al-Ruwayid’s Statements During the Investigative Stage

Defendant ‘Abdullah Kadhim al-Ruwayid’s statements to the investigative panel on 5/21/2005, in the presence of an appointed attorney, included the following:

1. He was born in 1925.
2. “I used to be a party division command member in 1970 and remained in that position as a division member. I then became an active member in the (dismantled) Ba’th Party until age 60, at which time I left the party. I believe that was in 1985 or 1986.”
3. He mentioned that he saw defendant Saddam Hussein when he visited Dujail in 1982. “I saw him near the mosque. I followed him like everyone else. When we reached the Ibrahimiya School I heard gunshots. So I fled with the others.”

4. He mentioned that “the gunshots that I heard were sporadic. There were no more than ten to twelve shots. I am a farmer; I know very well what gunshots sounds like.”

5. “After hearing the gunshots I went back to the party division and remained there. I believe my son, Mizher, was among those who were present...”

6. “Some time later, a large contingent of military forces arrived from Baghdad, and the troops laid siege to the town. A number of intelligence personnel showed up along with defendant Barzan Ibrahim. I saw the latter at the party division center. Other leaders arrived and helicopter gunships began strafing the orchards...”

7. “I remained at the party division center at the time and I did not see Dujail families being arrested to be able to know whether they had been arrested by security agents. Among those I remember were the al-Hitto and Kazem Jaafar families. There were other families too, although I do not know how many.”

8. “One of the persons refused to turn himself in to the authorities unless I was present. This is what actually happened. I went with the security agents, as I was the representative of the Farmers Association and of the party. I was also his friend. I called his name from behind the door. His name was Yacoub Majid or Yacoub Muhammad al-Kharbatli... Then I told the security forces to take him away and not to harm him.”

9. “Once those people were taken into custody, I heard that they included women and children, as well as elderly men. They sent them to an unknown destination. Also, the arrest orders were not based on arrest warrants issued by official authorities, and I was not aware of the custody procedures at that time. Naturally though, they had nothing to do with the incident, and I do not know the reason they were put in custody.”

10. “As far as I am concerned, I did not take part in the arrests, except for what I have mentioned regarding Yacoub al-Kharbatli.”

The supplement to the testimony given to the investigative judge on the same day, 5/21/2005, includes the following:

1. “I was awarded an Oldsmobile car, which had metallic color, because I was the sheikh of the Alma tribe. Among Dujail tribes, I was the only one who was given a car by defendant Saddam Hussein. He did not honor anyone else in Dujail. None of Dujail’s other tribal sheikhs were honored... In addition, an agricultural contract pertaining to a 24-donum farmland was drawn up for me and my family. This took place a long time ago.”

2. “During that period I was with the popular army (Osama unit), and I was having my periodic seven-day leave in the month of July 1982. This is when I happened upon defendant Saddam Hussein’s visit to the Dujail region, and this is when the events started unfolding. Given that I was a veteran Ba’thist, I went to the party division center.”

3. “Among the persons who did not turn themselves in was Yacoub al-Kharbatli. Security agents asked me to accompany them to his home, because I knew him. Indeed, I went and I

called out to him. Once he made sure that I was present he opened the door and was seized by the security agents...”

4. “On 7/10/1982 I went to the party division center where defendant Barzan Ibrahim al-Hassan and the persons that I mentioned earlier were present.”

Summary of Defendant ‘Abdullah Kadhim Ruwayid’s Statements to the Tribunal

Defendant ‘Abdullah Kadhim Ruwayid testified before the Tribunal on 3/12/2006. His statements may be summarized as follows:

1. “On the day of the incident, I left my home and came upon a crowd near the mosque... I returned home because there was heavy gunfire.”
2. “I went to the party division center in order to find out where the popular army unit was stationed.”
3. “While at the party division center I saw Saadoun Shaker, a member of the Ba’th Party Regional Command. He was in the company of Barzan. Dujail’s security director, Younes al-Samarra’i, showed up afterward.”
4. “The division’s secretary asked me to go to Yacoub’s home, once he refused to surrender... After asking him to come out he opened the door and said that he had nothing to do with the incident.”
5. “I went back to the party division and told the division’s secretary about what happened to Yacoub.”
6. “A car, driven by Hadi Jawad, loaded with bodies, drove up to the division.”
7. “Afterward, I joined up with the popular army unit.”
8. “I did not accompany the party units to apprehend people.”
9. In response to a question posed by the Tribunal regarding the report and the writing thereon ascribed to him, he said that this report is not true and that “I did not hand Saadoun Shaker any report; also, neither the handwriting nor the signature are mine.”
10. “The highest party rank I reached was division member; afterward, I was demoted to member.”
11. “I saw neither ‘Ali Dayeh nor Mizher at the party division center.”
12. “I was sitting in the division center courtyard when they brought in the bodies.”

13. "Defendant Barzan was present at the party division center."
14. "I went to see the division secretary and found Mashaan there. I asked him to release these people. I told him that they did not recognize those bodies."
15. "Following the afternoon prayer, I went to the party division."
16. "I saw Barzan and Saadoun Shaker at the party division center on 7/8/1982."
17. "I saw the military forces inside the party division center and heard that Saeed Himmo, who was lieutenant general, was in Dujail and laid siege to the town."
18. "I did not witness the razing because I was with the popular army outside the Dujail area."
19. "I did not submit any party report."
20. "I had been a division member for seventeen years, and I became military base leader in the popular army because I was known in the party. I was disciplined afterward and was barred from any promotion."

Summary of Defense Witness Statements Concerning Defendant 'Abdullah Kadhim Ruwayid

The testimony of one defense witness for defendant 'Abdullah Kadhim, referred to by the number (1), included the following during the court hearing of 5/16/2006: "Defendant 'Abdullah preceded me to greet the motorcade of defendant Saddam Hussein, upon the arrival of the latter... Defendant 'Abdullah Kadhim went to the party division center in order find out where his popular army unit was stationed."

The testimony of another defense witness for defendant 'Abdullah Kadhim, referred to by the number (8), was heard by the Tribunal on 5/16/2006 and included the following: "The day of the incident coincided with the last day of defendant 'Abdullah's leave. I met him once defendant Saddam left Dujail. He told me that the matter was grave and that many steps would be taken as a consequence. He asked me to be at the ready and went to join the popular army unit.... Defendant 'Abdullah Kadhim was the one who broached the subject of returning the fields to their owners with defendant Saddam."

Another defense witness for defendant 'Abdullah Kadhim Ruwayid, referred to by the number (1), stated the following while testifying during the court session of 5/17/2006: "On the second day, Friday, at eight-thirty, I left my home and saw the defendant who is present before you, Hajj 'Abdullah Kadhim Ruwayid, in his private car. He pulled up next to me and asked me, 'Where are you going?' He told me that his leave from his popular army unit, which was in Mosul, was over, and that he was going back to link up with it. I bought some items from the store and then headed back home. I then saw the present defendant, Hajj 'Abdullah Kadhim al-Ruwayid al-Mashaikh, a month later. I knew him through his tribal

relations in the region. During his leave from the popular army, I used to see him working in his orchard along with his family members. None of the area's residents told me that he had put people in custody or that he joined in with the security agencies in apprehending people.”

The testimony of defendant ‘Abdullah Kadhim Ruwayid’s defense witness, referred to by the number (2), which took place during the court session of 5/17/2006, included the following:

“On the day of the incident, Thursday, I was fasting and asleep and did not go out. Then, in the afternoon I heard the gunshots and aircraft hovering over the orchards. The following day, I learned that the President had been attacked. I went to the home of ‘Abdullah Kadhim Ruwayid to bid him farewell, as he was about to link up with his unit. His belongings were packed in his car. He told me to look after his children and not to allow them to roam in and out of the orchards, because the matter was serious. The defendant enjoyed a good reputation, and this accusation is malicious.”

The testimony of defendant ‘Abdullah Kadhim Ruwayid’ defense witness, referred to by the number (3), which took place during the court session of 5/17/2006, included the following:

“I was staying at Sheikh ‘Abdullah Kadhim Ruwayid’s home, because my home was close to his. At some point, we heard heavy gunfire. He then left in the afternoon to the party division center in order to inquire whether there was any change in the location where the popular army unit was stationed. Every person enrolled in the popular army had an assigned task he had to fulfill. Once he returned home we had breakfast together. The following day he gathered his things and left for the area where the popular army unit was posted. This was north of Mosul, within the triangle formed by the Iraqi, Turkish and Syrian borders. He only returned a month later. He did not take part in any of the arrests that occurred.”

Trial Evidence and Presumptions Against Defendant ‘Abdullah Kadhim

1. Statements of complainants and corroborating witnesses, including Ahmed Hassan Muhammad al-Dujaily before the Tribunal and Ali Hassan Muhammad al-Haydari during the investigative and prosecution and trial stages, as well as other (shielded) complainants during the investigative phase.
2. Defendant ‘Abdullah Kadhim’s acknowledgment, during the investigative and trial stages, that he was present at the party division center in Dujail on the day of the incident, that he saw defendant Barzan Ibrahim, Saadoun Shaker and other officials, and that he met with them. Also, said defendant’s acknowledgment that he went to the home of Yacoub al-Kharbatli in order to arrest him the same evening of the failed assassination attempt.
3. The party’s security information report submitted by defendant ‘Abdullah Kadhim to the then Ba’th Party Regional Command member, Saadoun Shaker, who was at that time Interior Minister, and who was present on the first day of the incident at the party division center in Dujail, in the company of defendant Barzan Ibrahim and others.

4. The reports of the criminal evidence experts in the three-member committee and the five-member committee, in which eight experts unanimously agreed that the handwriting and signature found in the report mentioned in the previous paragraph belonged to defendant ‘Abdullah Kadhim Ruwayid.

These comprise the first report (three-member committee report, dated 4/13/2006; third paragraph of the test results), and the second report (five-member committee report, dated 4/23/2006; fourth paragraph thereof).

5. The indictment and verdict, referenced 944/C/1984 and dated 6/14/1984, delivered by the (abolished) Revolutionary Court; Presidential Decree No. 778 of 6/16/1984, which included the name of the victim Yacoub al-Kharbatli; and the death sentence execution reports of 1985 and 1989, which comprised the names of Dujail victims whose names were listed in the party information and security report of defendant ‘Abdullah Kadhim Ruwayid.

Extent of Defendant ‘Abdullah Kadhim Ruwayid’s Criminal Liability Pursuant to the Indictment

The evidence and presumptions available against defendant ‘Abdullah Kadhim Ruwayid include the statements of complainants and witnesses during the investigative and trial stages, along with the statements of defendants Muhammad ‘Azzawi and ‘Ali Dayeh during the investigative phase.

Likewise, defendant ‘Abdullah Kadhim acknowledged that he was present at the party division center in Dujail on the night of the incident, and that he took part in the arrest of Yacoub al-Kharbatli. He also admitted that he was a Ba’th Member division member in the region of Dujail at the time the incident, and that he saw witness Saadoun Shaker at the party division center on the day of the incident. Other important evidences against defendant ‘Abdullah Kadhim Ruwayid include the party security report, dated 7/8/1982, which the Tribunal established that it was written in his own handwriting and contained his own signature. Said report was addressed to Saadoun Shaker, who at the time of the incident, was a member of the Ba’th Party Regional Command while concurrently holding the post of Interior Minister. The latter was present on that day in Dujail, along with defendant Barzan and other party and government high-ranking officials.

The said report included the names of 49 victims amongst Dujail’s residents. And it was defendant ‘Abdullah Kadhim Ruwayid who instigated their arrests and set in motion the measures that were taken against them, including their expulsion from Dujail. He considered them hostile to the party and the revolution, and described them along with the party they belonged to as filthy, stating that “they have committed this repugnant crime by firing shots at the hope of the nation, etc.” Defendant ‘Abdullah Kadhim Ruwayid, in this report, considered that the families of those victims were hostile to the Ba’th Party, which means that he did not simply describe the individuals as just hostile to the party, but he generalized that description to encompass their families.

Based on that report, the arrests of those listed thereon actually took place. Said victims were incarcerated and tortured, and nine of those victims, including two teenagers, were executed by orders of defendant 'Awwad al-Bandar and defendant Saddam Hussein.

This party report, written by 'Abdullah Kadhim on the day of the incident, illustrates the criminal involvement (complicity) set forth in the Tribunal's law, Article 15 (Second) (c), in international court laws, and in the Penal Code No. 111 of 1969 (Article 48 thereof). In that report, the defendant abetted the perpetration of crimes against humanity. Likewise, the content of said report is considered a significant aid provided by defendant 'Abdullah Kadhim Ruwayid to the former Ba'th Party repressive agencies in the commission of such crimes. It is also clear that defendant 'Abdullah Kadhim Ruwayid submitted said report to Saadoun Shaker, who was present at the party division center in Dujail, along with defendant Barzan Ibrahim, a few hours after the failed assassination attempt.

This matter (presence at the scene of the crime), makes the accomplice who aids and abets the perpetration of a crime a chief perpetrator pursuant to Article 49 of the Penal Code No. 111 of 1969.

Said report, written by defendant Abdullallah Kadhim, constitutes important aid to the commission of crimes against humanity actually perpetrated. At the same time, the said report abetted the arrest and incarceration of victims whose names and those of their family members were listed therein. The victims included teenagers.

There were 49 victims whose names were listed in the report, and among those victims nine were executed, including two teenagers, on the day of the incident. The Tribunal has confirmed and is fully convinced by the results of the two criminal evidence experts' reports pertaining to the three-member and five-member committees, which results were unanimously reached. The Tribunal is also convinced that these reports are true beyond any reasonable doubt, wherein it was established that the handwriting and signature in the report ascribed to defendant 'Abdullah Kadhim Ruwayid were his. This conclusion was unanimously reached by the experts.

The Tribunal did not disclose the names of said experts because it considers them under protection, similarly to the corroborating and rebuttal witnesses, given the unstable security situation prevailing in Iraq in the course of the trial. This situation should not prevent justice from being presently served in this country, because achieving justice must be one of the factors of stability in Iraq.

Further, the Tribunal did a thorough check of the qualifications, competence and reputation of said experts who verified and matched the different handwritings and signatures attributed to the defendants, including defendant 'Abdullah Kadhim Ruwayid, and gave their professional, impartial and independent opinion thereon. Each of those experts had at least twenty years of experience in their field, and said experts were professionals and worked in their line of business for many years prior to the demise of the former regime. In their many years of experience, the business of said experts, within the scope of their professional work, was independent from administrative authorities. They were independent in the practice of their work and were not under anyone's sway. This fact concerning criminal evidence experts has been well known in Iraq for dozens of years. Moreover, this Tribunal selected

those experts according to very rigorous criteria from criminal evidence investigation directorates belonging to different governorates, and on the basis of different ethnic and religious groups. Nevertheless, after doing the matching, the experts were unanimous in their opinions.

Further, the presence of defendant ‘Abdullah Kadhim at Dujail’s party division hours after the incident, and his being a Ba’th Party division member in Dujail, shall be considered presumptions and evidences for his complicity in the perpetration of the crimes that he is charged with committing. Other evidences available against him reinforce this conclusion, namely the contents of the party report that he submitted to Saadoun Shaker at that place and time, in addition to what defendants Muhammad ‘Azzawi and ‘Ali Dayeh stated during the investigative stage, wherein they confirmed that defendant ‘Abdullah Kadhim accompanied the security and intelligence forces to arrest Dujail victims. We can add to that what other complainants indicated in this regard. Defendant ‘Abdullah Kadhim, as a prominent member in the Ba’th Party (division member), did not come to Dujail’s party division center hours after the incident to simply do some sightseeing. Defendant ‘Abdullah showed up at that time in order to join in with the others in the perpetration of those crimes.

This Tribunal believes beyond any reasonable doubt that defendant ‘Abdullah Kadhim Ruwayid used to hold a very important party position in Dujail. Although he was not able to impose his wishes on party and public officials who were higher in rank than him, such as defendant Barzan Ibrahim, he was, nevertheless, able because of his party and tribal position to have some impact on those officials as far as stemming the perpetration of those crimes. Instead, we see him contributing to their perpetration.

One’s position is considered important to determine individual criminal liability when someone aids and abets the perpetration of crimes against humanity (See in this regard the verdict issued in the case of Anto Furundzija, paragraph 245, mentioned earlier). Moreover, the presence of the defendant at the scene of the crime is not significant in terms of criminal involvement (complicity). In that case, holding the accomplice criminally liable, if he aided and abetted or agreed with others for the perpetration of the crime, is not contingent upon his presence at the scene of the crime when it was perpetrated by principals in the first degree (See paragraph 62 of the verdict passed in Zlatko Aleksovski’s case, which refers to the verdict in Tadic’s case, mentioned earlier). Nevertheless, this Tribunal has established that defendant ‘Abdullah Kadhim came at least on the first day of the incident to the scene of the crime, and presented a report to Saadoun Shaker, who was present at the party division center, and he also participated in the arrests of Dujail’s victims. At the same time, defendant ‘Abdullah Kadhim aided and abetted the perpetration of crimes against humanity. He initially aided and abetted the arrests, incarcerations and displacements of Dujail civilians. This fact is established and irrefutable. This Tribunal is fully convinced that defendant ‘Abdullah Kadhim committed these criminal acts. Likewise, the incarceration of those victims led to their torture. This outcome was highly probable and expected in such a case under the former Ba’th Party regime, which ruled Iraq, especially that the charges were the assassination attempt of the party and regime head at the time, defendant Saddam Hussein, and membership in the Dawa Party and other parties that the former regime considered hostile and threatening to its continuing rule. (No Iraqi had any doubt about that reality.)

Article 34 of the Penal Code No. 111 of 1969 stipulates that “a premeditated crime shall exist if the perpetrator of said crime had criminal intent; and a premeditated crime shall exist... b. If the perpetrator anticipated criminal outcomes for his act and proceeded to commit it while accepting the risks thereof.” Defendant ‘Abdullah Kadhim was a principal in the first degree in the perpetration of the crimes pertaining to arrest and incarceration pursuant to Article 49 of the said Code, and not merely an accessory, since he was present during their perpetration or he participated in committing a constituent act thereto (See Article 49 of the Penal Code).

Moreover, Article 53 of the Penal Code No. 111 of 1969 punishes the perpetrator of a crime, whether as a chief actor or accessory, for the crime that actually took place, even if it was not what said perpetrator intended to commit, when the crime that occurred was the probable outcome of the complicity that took place.

Nevertheless, when defendant ‘Abdullah Kadhim contributed to the commission of that criminal conduct, he anticipated and accepted the criminal consequences, as will be explained later on in more details, stemming from said conduct and from his actual complicity.

Likewise, incarceration in the former Ba’thist regime’s prisons, as well as the brutal tortures that were inflicted upon victims by members of the former regime’s repressive outfits, led naturally and normally to the slaying of those victims, whether under torture or when referring the inmates to sham and bogus trials in order to provide an appearance of legality, which is phony to begin with, in order to execute those victims or to provide a cover-up for those who were slain under torture. This is actually what happened to many Dujail victims, including nine victims whose names were mentioned in the report that defendant ‘Abdullah Kadhim submitted to Saadoun Shaker. The victims were arrested, incarcerated and tortured. Then their names were referred to the Court of ‘Awwad al-Bandar, who issued an order sentencing them to death, which order was carried out later on once it was certified by defendant Saddam Hussein.

It was not necessary to submit this report, under such extraordinary circumstances which the report’s writer, defendant ‘Abdullah Kadhim, mentioned in the report’s introduction, through the party hierarchy, when Saadoun Shaker, the Ba’th Party Command member and the Interior Minister, was personally present in Dujail under such circumstances and on the day of the incident. It would not have been appropriate to submit this report through the party hierarchy as long as the report’s addressee was present in the same location and under these circumstances. Further, defendant ‘Abdullah Kadhim knew Saadoun Shaker since the mid-nineteen-sixties, as is established in the trial records. It was rather necessary, in view of the situation, and from the perspective of the party and regime, to submit this report and others directly to the member of the Party Regional Command and the Interior Ministry without following the routine methods of transmitting the reports through the party hierarchy, since that would take a long time, while the time factor was of paramount concern.

Likewise, although it was not necessary for the aiding and abetting of the crime to be material and tangible, and although it is sufficient that these take the form of moral support or encouragement for the chief perpetrators to commit the crime (See the verdict handed down in Anto Furundzija’s case, paragraph 199, mentioned earlier), yet defendant ‘Abdullah

Kadhim provided this material aid through the report that he submitted to Saadoun Shaker and through his actual complicity in the arrest of at least one of Dujail's victims, namely Yacoub al-Kharbatli. This is in addition to what complainant Ahmed Hassan Muhammad indicated, to wit, that defendant 'Abdullah Kadhim apprehended the young girl Batoul Muhammad Hassan, who was 11 years of age, along with her 70-year-old grandmother, Fadila Muhammad Jassem, who sought his protection and that he turned in to security and party members.

Main Elements of Crimes Against Humanity and Criminal Intent Concerning Defendant 'Abdullah Kadhim for Imprisonment, Premeditated Murder and Torture as Crimes Against Humanity

This Tribunal has established the existence of a simultaneous large-scale and systematic assault launched by a large number of military, intelligence and security forces belonging to the government, in which popular army and party personnel took part, against Dujail's civilian population. Defendant 'Abdullah Kadhim was a prominent party member in Dujail and also belonged at that time to the popular army. That large-scale and systematic assault began immediately after the limited and failed assassination attempt.

Defendant 'Abdullah Kadhim's criminal intent was present when, on the same day of the incident, he wrote the security and party intelligence report which he submitted to Saadoun Shaker, who was in the afternoon of that day in Dujail. The complicity of defendant 'Abdullah Kadhim in the perpetration of those crimes and his contribution thereto are thus well established, even if he left Dujail the day after the incident to join the popular army unit at some location north-west of Mosul. It is the case that an accomplice's criminal liability is not contingent upon the presence of said accomplice at the scene of the crime. Nevertheless, defendant 'Abdullah Kadhim was present at the scene of the crime at least on the first day of the incident.

Defendant 'Abdullah Kadhim was cognizant that his criminal conduct was part of a large-scale and systematic assault, and that it targeted a civilian population. This is quite obvious because he personally witnessed on the first day of the incident that massive assault that the defendant himself described during the trial as the Day of Reckoning. Likewise, defendant 'Abdullah Kadhim saw and met with government and party officials, including defendant Barzan Ibrahim, Saadoun Shaker and others, who came to Dujail hours after the incident. He saw the military units as well as the party, intelligence, security, and popular army forces as they laid siege to Dujail and raided houses and orchards in order to apprehend men and women of all ages. What is more, defendant 'Abdullah Kadhim was himself one of the informants on those victims and took part in arresting at least one of them, according to his testimony. Hence, he must have known about that sweeping assault, and he must have known that his conduct was part of said assault. He also was aware that the victims were civilian residents of Dujail, since he was also a resident of that area and knew its inhabitants, besides being a sheikh of one of its tribes and one of the prominent party members there, especially if we take into account that Dujail is a small region and the number of its population is tiny. That is why he was well aware that those victims were civilian residents. Moreover, the content of the report that he submitted to Saadoun Shaker

proves that he was cognizant that the victims were civilians. Thus, defendant ‘Abdullah Kadhim was aware that his conduct was part of a large-scale assault, and he was aware that said assault targeted a civilian population.

Defendant ‘Abdullah Kadhim could have easily anticipated these large, not to mention massive, reprisals that the former regime outfits (mentioned earlier) and the members of those outfits would unleash on Dujail’s civilian population, in retaliation for a limited and failed (assassination) attempt. The reason is that he himself witnessed and even participated from the beginning in those massive reprisals by committing some acts thereof. He was also a Ba’th Party division member and was familiar with the nature of that party, especially as regards matters concerning its survival and rule under its leader, defendant Saddam Hussein. Likewise, defendant ‘Abdullah Kadhim’s report, which contains information on and the names of a great number of Dujail family members, confirms that defendant ‘Abdullah Kadhim did not merely anticipate, but was also certain, that those reprisals would take that magnitude, especially that he personally witnessed at the very least the initial steps of that assault on the first day of the incident and on the morning of the following day.

Although every person should be considered innocent until proven guilty, and although this Tribunal firmly believes in the presumption of innocence with respect to any suspect, yet based on the evidence available in the case, especially what transpired in defendant ‘Abdullah Kadhim’s report, it cannot presume good intent. It is most certain that defendant ‘Abdullah Kadhim harbored malevolent intent when he drafted that report, mentioning therein the names of women, youths, elderly and families, instigating their arrests and expulsion because all of them, in his opinion, belonged to a filthy organization and took part in shooting at his president and role model, as well as “the hope of the Arab nation and its leader, the hero of Arab nationalism and the country’s custodian,” according to what was stated verbatim therein. Defendant ‘Abdullah Kadhim harbored malevolent intent when he requested – abetted – the arrest of those victims, that steps be taken against them and that they be expelled from Dujail, given that they were hostile to the party and to the revolution, and that they belonged to Dawa Party.

This abetment, which transpires in this report, prods the perpetration of crimes such as the arrests and incarcerations, and even torture and slaying, under a regime whose nature and extensive brutality defendant ‘Abdullah Kadhim is familiar with, since he is one of the advocates of that regime and party in the Dujail region, a regime and a party whose leader could do anything, however brutal, in order to remain in power. Defendant ‘Abdullah Kadhim solicited, aided and abetted the commission of those crimes, and as such he must have been cognizant thereof. Wanting something implies necessarily prior awareness of what one wants.

The acts committed by defendant ‘Abdullah Kadhim by drafting that report, which pointed out the victims, and his participation in the arrest of at least one of said victims, did actually take place. This is confirmed by the fact that a great number of victims, whose names were mentioned in the party report, which was established to be his, were taken into custody. This led to the arrest and detention of those victims. And the incarceration of said victims at Hakimiya and Abu Ghraib jails led to their torture and the slaying of some of them. The notion of premeditated murder as a crime against humanity does not include only the

perpetrator who acts as a principal in the first degree in the execution of a crime or the accomplice who perpetrates the crime as an accessory or abettor thereof, but it also includes any person who causes the criminal outcome to occur, resulting in the death of the victim(s), if said person had criminal intent (knowledge of the criminal event and the volition to realize it), whether that intent was direct or indirect when he committed the deed. Defendant ‘Abdullah Kadhim had at least indirect criminal intent to realize the slaying. This was shown earlier and was established by the Tribunal. The conduct of defendant ‘Abdullah Kadhim, reflected in his drafting of the report, led to the slaying of nine persons, including two youths, Mezher Jamil Ayoub and Mahmoud Hassan Muhammad. This Tribunal is fully convinced that these events did actually and irrefutably take place.

This Tribunal distinguishes between the notion of criminal complicity between individuals committing together and collectively a crime, whereby the participants are the principal actors, and the person who aids and abets someone else in the commission of a crime, whereby the participant who has aided, abetted or agreed with another person is an accessory if the principal actor committed the crime.

The principal complicity in the crime entails playing the chief role in carrying out the crime. Legislators call the main participant in a crime “principal.”¹ The main participant is the one who commits an act that results in a material effect that falls under the purview of natural laws pursuant to which an outcome is brought forth. The accessory, called “accomplice”² by legislators, is the one whose act (aiding, abetting or agreeing) affects psychologically others, creating thus a criminal design in the latter, or giving the latter the courage to commit the crime or to keep at it.

Defendant ‘Abduallah Kadhim was a principal actor when he arrested Yacoub al-Kharbatli, Batoul Muhammad Hassan and Fadila Muhammad Jassem, while he was an accomplice (accessory) in aiding, abetting and perhaps agreeing with others in the perpetration of the crimes constituting the arrest and incarceration of 49 victims amongst Dujail’s population, and then their torture and the slaying of nine of said victims. It is the case that his aid in presenting the information and security report, as well as the crimes whose perpetration he abetted directly or indirectly, led actually to the commission of said crimes by the principal actors. Moreover, the intentional involvement in the crime, which is the psychological element that must be present for complicity to occur, rests on the volition of the accomplice to be involved in realizing the conduct that constitutes the crime. It rests also on the cognizance of the nature of the acts in which the accomplice participates as well as his volition to bring about the outcome that the principal actor wants. All of these factors were present in defendant ‘Abdullah Kadhim. Moreover, defendant ‘Abdullah Kadhim’s complicity in the commission of the crime (defendant’s criminal conduct by aiding, abetting or agreeing to the perpetration of the crime) was causally and materially linked to crimes perpetrated by others.

It should then be said that the liability of the person who aided or abetted the perpetration of a crime, if indeed it occurred, shall not be contingent on the perpetration of said crime at a set time or place by the principal actor, as long as there is a causal relation between that

¹ See Article 47 of the Penal Code No. 111 of 1969

² See Article 48 of the Penal Code No. 111 of 1969

aiding and abetting and the criminal outcome that occurred following the action of the principal actor when the latter committed the crime.

In other words, if it was established that the aiding or abetting occurred at a set time and place, it will be of no relevance afterward for the crime to be perpetrated by the actor on the same day or a short or long while later, and in another place than the one where the aiding or abetting occurred, as long as there is a definite causal relation between the aiding and abetting and the criminal outcomes that occurred, and as long as there is no extraneous factor that severs this causal relation between the criminal conduct of the accomplice and the criminal outcome resulting from the criminal conduct of the principal actor.

It is thus obvious to this Tribunal that there was a definite causal relation between the criminal conduct of defendant ‘Abdullah Kadhim by means of his aiding and abetting the perpetration of crimes against humanity, of which he is charged, and the criminal outcomes that occurred in the incarceration, torture and slaying of a number of Dujail’s victims that the principal actors have perpetrated, which actors were Intelligence Service officers and staff, along with others charged with imprisonment, torture and murder, as well as defendant ‘Awwad al-Bandar, defendant Saddam Hussein and others who are charged with the premeditated murder of nine victims amongst Dujail’s population whose slaying defendant ‘Abdullah aided and abetted.

Likewise, criminal intent, which was reflected in his cognizance of the criminal elements whose perpetration he aided and abetted, and which he wanted realized, was – as was shown earlier – present in defendant ‘Abdullah Kadhim when he committed the criminal conduct of aiding and abetting. Furthermore, the criminal outcomes that he wanted or that at least he anticipated were realized. Yet, he set about his act by aiding and abetting, accepting the risks thereto. It is afterward irrelevant that those criminal outcomes were achieved later on, a month or year later, or in another location than the one where the aiding and abetting occurred, as long as the causal relation between said criminal conduct of the accomplice, which in this case is defendant ‘Abdullah Kadhim’s conduct, and those criminal outcomes that occurred, was not severed by other factors. Additionally, defendant ‘Abdullah Kadhim’s criminal intent was present at the time he committed the criminal conduct (aiding and abetting) and continued until the realization of the criminal outcomes that resulted therefrom and from the criminal conduct of the principal actors.

Tribunal’s Verdict:

For all the above reasons, defendant ‘Abdullah Kadhim Ruwayid is:

1. Criminally liable for premeditated murder as a crime against humanity pursuant to Article 12 (First) (a) of the Tribunal’s law, and by reason of Article 15 (Second) (c) of the said law.
2. Criminally liable for imprisonment or other severe deprivation of physical liberty as a crime against humanity pursuant to Article 12 (First) (e) of the Tribunal’s law, and by reason of Article 15 (Second) (a, c) of the said law.

3. Criminally liable for torture as a crime against humanity pursuant to Article 12 (First) (f) of the Tribunal's law, and by reason of Article 15 (Second) (c) of the said law.

The above clauses are in accordance with Article 34 (b) and Article 53 of the Penal Code No. 111 of 1969, and informed by Articles 47 and 48 of the said Code (Penal Code).

4. Defendant 'Abdullah Kadhim Ruwayid is not liable for the enforced disappearance of persons as a crime against humanity given that one of the main elements of said crime is lacking, and thus said crime did not occur pursuant to Article 132 (b) of the Law on Criminal Proceedings No. 23 of 1971.

WHEREFORE, premises considered, and pursuant to Article 182 of the amended Criminal Procedures Law No. 23 of 1971, the Tribunal has unanimously resolved to convict defendant 'Abdullah Kadhim Ruwayid in accordance with the provisions of Article (12) (First), Paragraphs (a, e, f), informed by Article 15 of SICT Law No. 10 of 2005 and Articles (34, 47, 48, 53) of the Penal Code No. 111 of 1969, and to determine his penalty thereunder. The verdict was rendered in the presence of the parties on 11/5/2006.

Signature

Signature

Signature

Signature

Signature

Member

Member

Member

Member

Judge

Ra'uf Rashid Abdel Rahman

Defendant ‘Ali Dayeh ‘Ali

Charges Levelled Against Defendant ‘Ali Dayeh ‘Ali

On 5/15/2006, this Tribunal charged defendant ‘Ali Dayeh ‘Ali with multiple counts for the perpetration of crimes against humanity, pursuant to Article 12 (First) (a, e, f, i) of the Tribunal’s law, comprising premeditated murder, imprisonment or other severe deprivation of physical liberty, torture, and enforced disappearance of persons as crimes against humanity.

Summary of Statements by Complainants and Corroborating Witnesses Concerning Defendant ‘Ali Dayeh ‘Ali

Many complainants during the investigative stage asked to press charges against defendant ‘Ali Dayeh ‘Ali. One female complainant testified before the investigative judge on 2/3/2005 that defendant ‘Ali Dayeh came to their home and took away her brother (Moslem Abdul Amir Latif) nine days after the Dujail incident. Her brother was not seen since. Later on, it was revealed that her brother was executed after being charged with the attempt to assassinate defendant Saddam Hussein.

Another female complainant, referred to by the letter (a), testified before the Tribunal on 1/29/2006 that defendant ‘Ali Dayeh ‘Ali was an official at the popular army and came with the latter, adding that “he was the one, along with the security officer Abu Nabil, who personally arrested us.”

Another complainant, who was seven years old when the incident occurred, testified to the Tribunal on 1/29/2006 that defendant ‘Ali Dayeh ‘Ali “arrested my parents. He was wearing olive-green garb. Dujail residents will testify to that.” When the Tribunal asked him what he meant by olive-green garb, he said that this meant that he was a party member, adding that he came to arrest “my parents and brothers.”

The age of the witness during the incident in 1982 was brought up several times during the trial and in the defense pleadings, as well as during the testimony, which took place more than twenty years after said incident occurred. This Tribunal considers that in general what is important is not the age of the witness at the time of the incident, but at the time when said witness is testifying. It is very conceivable that catastrophic events become imprinted in the mind of someone who was seven or ten years old at that time more so perhaps than someone who was then thirty or forty years old. At any rate, it is the Tribunal that will decide on the merit of each witness’s testimony.

A shielded female complainant, referred to by the letter (a), testified before the Tribunal on 2/1/2006 that “defendant ‘Ali Dayeh ‘Ali came to our house in military dress and arrested my brother... He knocked on the door and I opened it. Defendant ‘Ali Dayeh ‘Ali told me that it was a simple inquiry, which will not take more than an hour or an hour and a half, and that he will return home afterward. Defendant ‘Ali Dayeh ‘Ali actually arrested my brother twenty days after the incident.”

In response to a question by the appointed attorney, said female complainant stated that “she knows defendant ‘Ali Dayeh ‘Ali because he is from my area and he was a party member at the party division.” In response to another question, the said complainant said that “defendant ‘Ali Dayeh ‘Ali was carrying a weapon (handgun), and he was alone when he came to our house and took my brother with him.”

In a comment interjected by defendant ‘Ali Dayeh ‘Ali, he acknowledged that he went with the party division’s secretary to their home when the said complainant’s brother was apprehended.

Summary of Defendant ‘Ali Dayeh ‘Ali’s Statements During the Investigative and Trial Stages

First: Summary of defendant ‘Ali Dayeh ‘Ali’s statements during the investigative stage

Defendant ‘Ali Dayeh ‘Ali’s statements were recorded by the Investigative Panel on 5/25/2005, in the presence of his attorney, Ahmed Jihad al-Jouri, and of the Tribunal’s public prosecutor. The statements included the following:

1. He was a Dujail resident and used to be employed by the Ministry of Education; in 1982, he was pursuing higher education studies, and his party rank was member trainee.
2. He returned to Dujail – from Baghdad – on the afternoon of the day the incident occurred, and found that the town was surrounded by military, security and intelligence forces, in addition to party members. He went home and then to the party division center, where the whole party staff was present, including the senior party official during that period, Ahmed Ibrahim Hassoun al-Samara’ee (Abu Nabil). Defendant ‘Abdullah Ruwayid and his son, defendant Mizher, were also present. He knew also that defendant Barzan was there, but he did not meet him.
3. He went to the party division center every day after he returned from the official tour of duty in Baghdad, following party assignments.
4. A few Dujail families and all of their members, including women, children and men, were apprehended on 7/8/1982. Once taken into custody and detained at Dujail’s party division center, tinted-window vehicles, which resembled buses, were brought in, and the said families were loaded onto these vehicles and driven to an unknown destination. The defendant’s job at that time was to protect the party division center, and he believes that the orders to transport the detainees came from defendant Barzan Ibrahim.
5. A few persons and families were tortured at the party division center, specifically in the room that defendant Barzan Ibrahim, Ahmed Ibrahim and other leaders were in. He claimed that he did not take part in the torture.

6. He also stated: “As far as arresting people and joining in with the squads that were formed to apprehend Dujail families, I only searched two or more houses for weapons. I went once with the (fugitive) defendant Ahmed Ibrahim al-Samarra’i, who was the regional party leader at that time to a house located near the post office in order to apprehend one person, as he did not know the house’s address. We were both alone and I pointed out the house, which belonged to Aziz Latif al-Salami. He then arrested one of his sons, whose name I forgot. We brought him to the party division center, and defendant Ahmed Ibrahim Hassoun al-Samarra’i sent him afterward to an unknown destination. He has not returned since. I believe that that person who was apprehended by me and by the (fugitive) defendant Ahmed Ibrahim was sentenced to death or executed because until now his fate remains unknown. I did not take part in any other arrests.”

Second: Summary of defendant ‘Ali Dayeh ‘Ali’s statements during the trial stage

The Tribunal heard defendant ‘Ali Dayeh ‘Ali’s statements during the court hearing of 3/12/2006. These statements included the following:

1. “At the time of the incident I was in Baghdad. I returned to Dujail at 6 pm, and learned about the incident from Dujail residents. I headed afterward to the party division center and saw Republican Guard troops and military forces. I also saw tinted-window vehicles outside the party division center. I inquired about them, and was told that those vehicles will transport the families. As far as I am concerned, I did not join in with any party squad to arrest families. There was only one event, which took place a month and a half after Dujail’s incident. My father was ill and elderly (he was born in 1904), and had been the region’s mayor for forty-seven years, that is, in Dujail’s district... On that day, the division secretary phoned my father and told him that he wanted to inquire about a house located near Dujail’s post office. My father told him that he is sick and that he would send me to accompany him. Indeed, I went with the division secretary on behalf of my father, and we set about inquiring on al-Toufi’s home, which I was not familiar with. That is the reason we asked other people about it and were told where it was located. We then headed to the house and found one person there. The division secretary asked him about his name and he answered, ‘My name is Musallem Abdul Amir.’ At that point the division secretary said that there is no reason to enter the house as he is the wanted man. I told him that this family is among those that enjoy a good reputation, and I pleaded with him to leave him and not to take him into custody. However, he ignored my request on the pretext that he had information that made it necessary to question him. Except for this case I did not go to any other home to arrest or question anyone.”

2. “I became party member three years after joining the Ba’th Party. That was on 4/30/1982, two and half months before the incident... I joined the popular army twenty days after the Dujail incident.”

3. “The testimonies I heard so far are slanderous. I was never part of any party squad ... and they wanted to fabricate accusations against me.”

4. “I never drafted any report, because this is beyond my competence. This is the competence of the security authorities. I do not hold a grudge against anyone. So there is no reason for me to write a report. And on 7/8/1982, the day of the incident, I was not in the

area of Dujail... Also, I never carried weapons at any time, and I never joined up with any group (for arrests) except when I went to al-Toufi's home."

5. In response to a question posed by the Tribunal, defendant 'Ali Dayeh stated: "I did not read in full my testimony to the investigative judge because of my poor eyesight. However, I did not see defendant Barzan, although people told me that he was there. I heard also that people had been tortured."

6. "I used to go every day to the university, and upon my return I would go to the party division for attendance purposes. The party manager went along with that because I was busy with my studies... On the day of the incident I was not in Dujail. I returned at 6 pm and headed afterward to the party division center."

7. "When I was in town I saw tinted-window vehicles transporting families to Baghdad. I also saw the security forces deployed and heard that aircraft pounded the orchards."

8. "The distance between my home and the party division center is half a kilometer... I noticed that people were frightened. Some stayed home, but most people stood next to the party division center, where there is a large space. There were also army troops and bodyguards."

9. In response to the public prosecutor, who asked whether his counsel was present when he was questioned, defendant 'Ali Dayeh replied: "Yes, my counsel was present." In response to another question by the public prosecutor, defendant 'Ali Dayeh answered: "I did not read the testimony in full."

10. "I stayed at the party division center until seven and a half... I saw tinted-window vehicles, Costar models, which belonged to the government, driving away the families... I am not sure whether they belonged to the security agency, intelligence services or popular army..."

11. "Each party squad had several people before setting about to arrest someone. I did not see any arrest warrant issued by a court or investigative judge... No arrest warrants or court orders were provided. At that time, we were afraid that the person who would be executed might be a cousin or some relative..."

12. In response to a question by the prosecution whether he participated in house-to-house searches starting on 7/8/1982, defendant 'Ali Dayeh answered: "No, I did not participate in these but I went to one or two homes. Later on, the party set up search squads in order to look for unlicensed weapons. I used to go with them and we would confiscate unlicensed weapons. And if we did not find any unlicensed weapons we would vacate the premises."

13. In response to a question by the prosecution, defendant 'Ali Dayeh said: "We heard that the households or families of Fakhri Sabri Assad Hassan Hajji Muhammad were placed in custody... The women, children and elderly men returned, but the young men did not."

14. In response to questions posed by the prosecution concerning the fate of Musallem Abdul Amir, whether he saw him, how old he was, and whether he returned to his family,

defendant 'Ali Dayeh replied that "it was the division secretary who apprehended this person and I do not know what happened to him. Also I did not see him. He was sixteen or seventeen years old, and he did not return to his folks."

15. "The arrests of families were arbitrary and included women and children."

Summary of Defense Witness Statements Concerning Defendant 'Ali Dayeh 'Ali

- A defense witness for defendant 'Ali Dayeh, referred to by the number (1), testified at the court session of 5/15/2006 that defendant 'Ali Dayeh belonged to the party, and that he did not hear that he took part in the arrest of families and individuals. He added that he is an educator who has taught several generations of students, and that he did not take part in any of the party's squad activities.

- Another defense witness, referred to by the number (2), testified on the same day, 5/15/2006, that said defendant "was in Baghdad on the day of the incident and he came back to Dujail in the afternoon, at 7 pm. He did not join in the arrest of anyone, and I live with him... He belongs to the Ba'th Party. After he returned home he went to the party division center and stayed there for an hour and a half... The distance between that center and his home is 500 meters... He was with the party only part-time because of his studies... He used to stay one or two days in Baghdad... He was not able to attend the meetings, and had to join the popular army... He joined in the arrest of Musallem Abdul Amir after forty days, and we learned that he was in the list of 148 persons who were executed."

- A third defense witness was heard by the Tribunal on the same day, 5/15/2006. He stated that defendant 'Ali Dayeh "was not present on the day of the incident and was in Baghdad because he was pursuing his studies... He did not take part in the party's squad activities... He was not bound by the party office hours... His party rank was that of partisan... He was dismissed from the university because he enlisted with popular army units... He went to apprehend Musallem Abdul Amir. The division secretary came to him and told him that he must accompany him to search a house. When they came close to Musallem Abdul Amir's home, he indicated that he was ordered to make the arrest... He told him that they were decent people... The division secretary told him that they have some work to do that will take fifteen minutes... Defendant 'Ali Dayeh did not know the reason for which he went there... 'Ali Dayeh was not connected to Saadoun Shaker and did not draft any reports."

- Another defense witness for defendant 'Ali Dayeh testified on 5/15/2006 before the Tribunal that defendant 'Ali Dayeh is among "the town's notables and of good moral character... At the time of the incident he was pursuing higher studies... He enlisted with the popular army two months after the incident, and was expelled from school because the son of his maternal uncle was executed... He did not participate in the arrest of any person nor did he raid any home or raze orchards."

- During the same aforementioned court session the Tribunal heard another defense witness for defendant 'Ali Dayeh, referred to by the number (5), who stated that "defendant 'Ali Dayeh, as an upstanding person, was a role model... He was assigned to the popular army

and enlisted two or three months after the incident with the popular army because he interrupted his studies and was dismissed from school... He was not committed to the party and did not attend party meetings... He was sent to a popular army unit... The son of his maternal uncle was executed, and the two others fled abroad... I did not see him join in with the squads to apprehend families or persons... He did not write any reports because his father was a sheikh and a mayor... When an order came to make an arrest, his father would leave with the squads to carry it out. If he was not there, he would instruct his son, defendant 'Ali Dayeh, to do that; and if the latter was not present, it was his youngest son who would be asked to carry out the instructions... On the day of the incident, I did not see defendant 'Ali Dayeh join in with the security organs, because they did not need the mayor... He did not gain anything from the party, and there were question marks over him because his cousin was executed.”

- On 6/5/2006 the Tribunal heard a female defense witness for defendant 'Ali Dayeh. She testified that on the day of the incident he came to Dujail at six and went to sleep... Defendant 'Ali Dayeh was in Dujail on the second day of the incident... He did not wear the olive-green uniform nor did he carry any weapons... He even used to turn in the popular army weapons to the unit. The defendant used to substitute for his father when the latter was sick, because his father was a mayor.”

- On the same aforementioned date the Tribunal heard another defense witness for defendant 'Ali Dayeh, who stated that “defendant 'Ali Dayeh came to the party division center at six and stood with us in front of the party division... Defendant 'Ali Dayeh was present on the second day of the incident because I went to visit him and sat with him at his place... His help was sought when his father was not available...”

Trial Evidence and Presumptions Against Defendant 'Ali Dayeh 'Ali

1. Many complainants and corroborating witnesses stated during the investigative and trial stages that defendant 'Ali Dayeh 'Ali arrested them and their families. This occurred at various times following the incident.
2. Defendant 'Ali Dayeh expressly and implicitly (inferred) acknowledged in the investigative and trial stages that he was present at Dujail's party division at six pm on the first day of the incident and the following days, and that defendant Barzan Ibrahim, Ahmed Ibrahim and other leaders were present at the party division center on the first day of the incident. He knew also that a group of people and families were tortured there. He saw the tinted-window state-owned vehicles in which those people and families were put in and driven away to an unknown destination. He also went with the (fugitive) defendant Ahmed Ibrahim al-Samarra'i (party division secretary) to the house of the victim (Musallem Abdul Amir), and participated in his arrest and his transfer to the party division center, from which he was sent to an unknown destination and then killed. He was among the persons whose names were listed in the ruling of 'Awwad al-Bandar's Court. He was 16 years of age.
3. The party information and security report, dated 7/8/1982, submitted by defendant 'Ali Dayeh 'Ali to the Ba'th Party Regional Command member and the then Interior Minister,

Saadoun Shaker, who was present on the first day of the incident at Dujail's party division center, along with defendant Barzan Ibrahim and other party and state officials.

4. The reports of the criminal evidence experts in the three-member and four-member committees, in which eight experts unanimously agreed that the handwriting and signatures found on the report mentioned in the previous paragraph belonged to defendant 'Ali Dayeh 'Ali. The first report, namely the three-member report, was dated 4/13/2006 (paragraph 4 of the test result). The second report, namely the five-member report, was dated 4/23/2006 (paragraph 3 of the test result).

5. The verdict and conviction, referenced 944/C/1984, of 6/14/1984, handed down by 'Awwad al-Bandar's Court (the abolished Revolutionary Court), Presidential Decree No. 778 of 6/16/1984, and the death sentence execution report, in which the name of the victim, Musallem Abdul Amir, was listed.

Extent of Defendant 'Ali Dayeh's Criminal Liability for the Charges Levelled Against Him in the Indictment

Based on the trial records along with the evidences and presumptions therein, it is clear that defendant 'Ali Dayeh 'Ali was on the day of the incident and at the time it occurred in Baghdad. He then returned home to Dujail, following the limited and failed assassination attempt, on the afternoon of that day. He was a trained member of the (dismantled) Ba'th Party, and went straightaway to the party division center at around six pm. This Tribunal concludes that defendant 'Ali Dayeh 'Ali met with defendant Barzan Ibrahim as he was supervising the arrests, and that he met with the Regional Command member and former Interior Minister, Saadoun Shaker, and he handed him the information and security report mentioned in the case's evidences and presumptions against defendant 'Ali Dayeh. This conclusion is the only logical and reasonable one based on the statements of all parties in the case as well as on the documentary evidence attached to the case records.

This Tribunal has also established that defendant 'Ali Dayeh assisted security and party officials in arresting Musallem Abdul Amir Latif, who was executed later on, Jassem Muhammad Latif and his family, in addition to several individuals and families, whereby members of fourteen families were listed in the report that he submitted to Saadoun Shaker.

Furthermore, this Tribunal recognizes that defendant 'Ali Dayeh was asked to assist security, party and intelligence officials when they were apprehending people in Dujail, and that he helped at that time those government agencies in those arrests. This Tribunal also recognizes that defendant 'Ali Dayeh 'Ali was a Ba'th Party trained member when the incident occurred, and he was hurting because of the execution of his cousin (Ala'a Abdul Hussein Saleh) who was accused of belonging to the Dawa Party. Further, this Tribunal concludes that defendant 'Ali Dayeh 'Ali was called upon to join up with the popular army in the months that followed the incident.

This Tribunal is fully convinced that the intelligence, security and party report, dated 7/8/1982, which was drafted and contained a signature ascribed to defendant 'Ali Dayeh,

and which was addressed to Saadoun Shaker, said report, which informed on and abetted against members of 14 Dujail families, was actually drafted by defendant 'Ali Dayeh. Moreover, it was established that the handwriting found in said report along with the signature at the bottom of said report belong irrefutably to defendant 'Ali Dayeh, based on the unanimous opinion of eight criminal evidence experts. In point of fact, this Tribunal is convinced beyond any reasonable doubt that the opinions of said qualified, impartial and independent experts are truthful, as the Tribunal had very carefully selected said experts, taking into account various factors which we have pointed to earlier when we discussed this subject with respect to determining the extent of defendant 'Abdullah Kadhim Ruwayid's liability.

Likewise, this Tribunal is convinced beyond any reasonable doubt that defendant 'Ali Dayeh 'Ali submitted this report to Saadoun Shaker, who was present at Dujail's party division center hours after the incident, when defendant 'Ali Dayeh went there. This shows then that defendant 'Ali Dayeh informed on a great number of individuals (14 families) amongst Dujail's residents, abetting their arrest, and accusing them of being hostile to the party and the revolution as well as being Dawa Party members (spies). The presentation of this report, given the information it contained, is concurrently considered as aiding the security, intelligence and party organs to perpetrate crimes against humanity. This Tribunal has also established that defendant 'Ali Dayeh has participated in the arrest of a number of Dujail resident in July 1982.

Defendant 'Ali Dayeh's actions in terms of aiding these organs' officials by submitting this report and abetting the arrest of individuals and families whose names were listed therein, led to their incarceration and torture, in addition to the slaying of some of them. In fact, eight of Dujail's victims, among them three youths, Abbas Habib, Mezher jamil Ayoub, and Musallem Abdul Amir Latif, were killed. The other victims were Muhammad Latif, Najji Kazem Jaafar, Salman Abdul Wahab Jaafar, Jassem Abdul Hassan Jaafar, and Hussein Abbas Muhammad. Further, defendant 'Ali Dayeh's actions as far as aiding and abetting led to the arrest and torture of other Dujail victims. Given defendant 'Ali Dayeh's role in all that we have mentioned, he is criminally liable for all acts of imprisonment, torture and premeditated murder as crimes against humanity.

Although the presence of the defendant at the scene of the crime is not important in the case of accessory criminal involvement (complicity), since the accomplice's criminal liability (whether he aided, abetted or agreed with others) in the perpetration of the crime is not contingent upon his being at the scene of the crime if it was committed by the principal actors (Cf. verdict issued in Zlatko Aleksovski's case, paragraph 62, mentioned earlier), this Tribunal has established that defendant 'Ali Dayeh was, on the first day of the incident and the following days, at the scene of the crime, that he submitted on the first day of the incident a report to Saadoun Shaker, who was present at the party division center, and that he contributed also to the arrests of Dujail victims.

Defendant 'Ali Dayeh aided and abetted also the perpetration of crimes against humanity. He aided and abetted, early on, the arrest and incarceration of Dujail civilian residents. The Tribunal is fully convinced that defendant 'Ali Dayeh committed these criminal acts, and that the imprisonment of those victims led to their torture. This was a highly probable and expected outcome under the former Ba'hist ruling regime in Iraq, especially that the

accusation was the attempt to assassinate the then leader of the party and regime (defendant Saddam Hussein), and affiliation to the Dawa Party and other parties that the former regime considered to be hostile and to threaten its hold on power. Further, Article 34 of the Penal Code No. 111 of 1969 stipulates that “a premeditated crime shall exist if the perpetrator of said crime had criminal intent; and a premeditated crime shall exist... b. If the perpetrator anticipated criminal outcomes for his act and proceeded to commit it while accepting the risks thereof.” Defendant ‘Ali Dayeh ‘Ali was a principal actor in the perpetration of crimes pertaining to arrest and imprisonment pursuant to Article 49 of the said Code, and not merely an accomplice, since he was present when the crime was committed, or he has contributed to the perpetration of one of its constituent acts (See Article 49 of the Penal Code).

Moreover, Article 53 of the Penal Code No. 111 of 1969 sentences the participant in a crime, whether a principal or an accessory, for the crime that actually took place, even if it was not the one that said participant intended to commit, when the crime that occurred was the probable outcome of the actual complicity.

Nevertheless, when he participated in the commission of that criminal conduct, defendant ‘Ali Dayeh had anticipated and accepted the criminal outcomes – as will be explained later on in detail – that ensued from that criminal conduct and his actual complicity.

Incarceration in the former Ba’thist regime prisons and the brutal tortures that used to be carried out by members of the former regime’s repressive apparatus against victims leads naturally to the slaying of those victims, whether under torture or when referring the prisoners to sham and bogus trials in order to provide some phony legal appearance to the execution of those victims, or to create a cover-up for those who had been already killed under torture. This is what actually occurred for a great number of Dujail’s victims, including eight victims whose names were listed in the report that defendant ‘Ali Dayeh submitted to Saadoun Shaker, which victims were arrested, incarcerated and tortured, and whose names were referred to the Court of ‘Awwad al-Bandar who issued an order to execute them. Said order was carried out later on once it was certified by defendant Saddam Hussein.

It was not necessary for that report, under the extraordinary circumstances mentioned by the report’s drafter (defendant ‘Ali Dayeh), to be submitted through party hierarchy, if Saadoun Shaker, the Ba’th Party Regional Command member and the Interior Minister, was present in Dujail under these circumstances, on the day of the incident. It was imperative, viewed from the perspective of the party and the regime, to present this report and others directly to the Regional Command member and the Interior Minister without wasting precious time by following routine procedures in transmitting the report through the party hierarchy in a situation that required swift actions commensurate with that massive reaction by party and regime organs against a very limited and failed (assassination) attempt.

Likewise, although there was no need for the aiding and abetting to be material and tangible with respect to the perpetration of the crime, it is sufficient that it comes in the form of moral support or encouragement to the principal actors for its perpetration (See the verdict issued in the case of Anto Furundzija, paragraph 199, mentioned previously). Defendant ‘Ali Dayeh ‘Ali provided this material aid through the report he submitted to Saadoun Shaker, through his actual complicity in the arrest of a number of Dujail victims, including Musallem Abdul

Amir, and, according to a number of complainants' statements, through his participation in the arrest of said victims and their families.

Main Elements of Crimes Against Humanity and Criminal Intent Concerning Defendant 'Ali Dayeh 'Ali in Imprisonment, Torture and Premeditated Murder as Crimes Against Humanity

As aforementioned, this Tribunal has established the concurrent existence of a large-scale and systematic assault launched by the staff and associates of many security, military and intelligence agencies belonging to the state, and in which popular army members and party personnel participated, against Dujail civilian residents. Defendant 'Ali Dayeh 'Ali was one of those party members, and that large-scale and systematic assault was set in motion immediately after the limited and failed assassination attempt.

Defendant 'Ali Dayeh 'Ali had criminal intent with regard to imprisonment, torture and murder as crimes against humanity on the same day of the incident when he drafted the information and security report that he presented to Saadoun Shaker, who was present at Dujail's party division center when defendant 'Ali Dayeh 'Ali arrived there at six pm on the day of the incident. The complicity of defendant 'Ali Dayeh 'Ali in the perpetration of these crimes is thus an established fact, even if torture and slaying occurred later on, since an accomplice's criminal liability is not contingent upon his presence at the crime scene. Nevertheless, defendant 'Ali Dayeh 'Ali was present at the scene of the crime when he participated in the arrest of at least one of the victims, Musallem Abdul Amir Latif. Moreover, the prevailing opinion in criminal jurisprudence, with respect to determining the time a crime was perpetrated, is the time when criminal conduct, and not the criminal outcome, was realized. This is the viewpoint that agrees the most with the objectives of the criminal code given that it is a code that governs individuals and requires that they commit or abstain from committing a specific deed. At the time a criminal deed is perpetrated, the order or instruction that is included in the criminal code is important in terms of the psychological element by which the conduct is described to be illegal. The crucial factor in considering a specific deed as a full-fledged crime or an attempt therefor is the time the act occurs and the criminal deed is accomplished, in conformity with Article 34 (b) of the Penal Code governing indirect (probable) criminal intent, mentioned earlier. Defendant 'Ali Dayeh committed this criminal deed when he drafted this instigative report by which he provided his aid in the perpetration of these crimes against humanity. Likewise, he committed this deed by participating in the arrest of victims amongst Dujail's residents. He harbored this indirect criminal intent when he anticipated criminal results for his act (arrest) and he actually did that, accepting the risk of causing criminal outcomes such as torture and slaying.

Moreover, defendant 'Ali Dayeh 'Ali knew that his criminal conduct was part of a large-scale and systematic assault against a civilian population, because he personally witnessed, on the first day of the incident, that large-scale assault. Further, defendant 'Ali Dayeh 'Ali saw party and state officials, including defendant Barzan Ibrahim, Saadoun Shaker and others who had come to Dujail hours after the incident. He also saw the military units as well as party, intelligence, security and popular army forces laying siege to Dujail, arresting families and torturing their members at the party division center, and then transporting them in

vehicles belonging to those organs. In addition, defendant 'Ali Dayeh 'Ali was one of the participants who informed on those victims and arrested some of them. It is thus natural to say that he knew about that large-scale assault and knew that his conduct was part of said assault. Similarly, he knew that those victims were Dujail civilians, because he is from the same small region which is inhabited by few people. This is clear from what he wrote in the report that he submitted to Saadoun Shaker.

Defendant 'Ali Dayeh 'Ali could have easily anticipated the magnitude of the vast and massive reprisals that the former regime outfits and their members unleashed on Dujail's civilian population as a result of a limited and failed attempt made on 7/8/1982 by a few individuals to assassinate Saddam Hussein. He personally witnessed the initial steps of those reprisals and contributed to the commission of some acts in that regard. Moreover, he was a Ba'th Party member and knew the nature of that party, especially as regards matters concerning its survival and power under its leader, defendant Saddam Hussein, especially that his cousin had been executed simply for belonging then to a party that opposed the regime and Saddam Hussein, namely the Dawa Party.

Furthermore, defendant 'Ali Dayeh 'Ali's report contained information and names concerning a great number of Dujail family members, and this confirms that defendant 'Ali Dayeh 'Ali not only expected, but was also convinced, that those reprisals would be of that magnitude, especially that he had witnessed himself the opening salvos of that assault on the first day of the incident.

Defendant 'Ali Dayeh 'Ali harbored malevolent intent when he drafted that report in which he mentioned the names of a great number of victims, to wit, fourteen Dujail families and their members, accusing them of being hostile to the party and to the revolution, and to be members of the (traitorous) Dawa Party, abetting their arrest and the adoption of measures against them.

This abetment, contained in said report, incites others to perpetrate crimes pertaining to arrests, incarcerations, torture, and even murder under a regime whose nature and cruelty was known to defendant 'Ali Dayeh 'Ali, given that he was a member of that (regime's) party since 1969 and that his cousin was executed merely for being accused of belonging to the Dawa Party. That means that defendant 'Ali Dayeh 'Ali was aware that this regime, this party and Saddam Hussein in person, would do anything, however brutal, to ensure that they remain in power. Imagine then the reaction that would be unleashed following an attempt, even if limited, to assassinate Saddam Hussein!

Defendant 'Ali Dayeh 'Ali solicited, aided and abetted the perpetration of those crimes. He also personally perpetrated some of them (beginning with the arrests). He must then have been cognizant of that. Wanting something presupposes that one is already aware of what one wants.

The acts that defendant 'Ali Dayeh 'Ali committed by drafting that report, informing on the victims and personally contributing to the arrest of some of said victims did actually occur. These facts are well established by the Tribunal through the arrest and incarceration of a great number of victims whose names were listed in the party report, which was proven to be his. This led to the arrest and confinement of those victims. Then the incarceration of those

victims at Hakimiya and Abu Ghraib jails led to their torture and the slaying of some of them. The concept of premeditated murder as a crime against humanity does not encompass solely the actor who plays the principal role in carrying out the crime, the accomplice who perpetrates the crime as an accessory, or the person who abets its perpetration. It also includes the person who causes the criminal outcome to occur, which outcome constitutes the death of victims, if said person had criminal intent (knowledge of the elements of the criminal event and the volition to realize it), whether that intent was direct or indirect when the said person committed the deed.

The conduct of defendant 'Ali Dayeh 'Ali in drafting that report and through his complicity in the series of arrests, led to the slaying of eight victims, including three youths. This Tribunal is fully convinced that these facts are true beyond any reasonable doubt.

Defendant 'Ali Dayeh 'Ali was a principal actor when he contributed to the arrest of Musallem Abdul Amir Latif and other victims we have mentioned earlier, and he was an accomplice by aiding and abetting, and perhaps even agreeing with, others in the perpetration of crimes and the incarceration of a great number of Dujail's victims, then their torture and the slaying of eight of them, since his aid in providing the information and security report and his direct or indirect abetment of the perpetration of the crimes led to the actual commission of said crimes by the principal actors.

Further, the intent to intervene in the crime, which is the psychological element that must be present for complicity to take place, and which rests on the volition of the accomplice to intervene in the realization of the conduct that is the crime, and the knowledge of the nature of the actions that he participates in, as well as his volition to cause the outcome that the perpetrator wants, were all present in defendant 'Ali Dayeh 'Ali. Additionally, defendant 'Ali Dayeh 'Ali's complicity in the perpetration of the crime, namely the defendant's criminal conduct in terms of aiding, abetting and agreeing to the perpetration of the crime, was causally and materially linked to the crimes that were perpetrated by others.

A set time or place for the perpetration of the crime by the principal actor is not considered grounds for the liability of the person who aided or abetted the perpetration of said crime to arise, in case the crime actually occurred, as long as there is a causal relation between that aiding or abetting and the criminal outcome that occurred once the principal actor carried out the crime. If it was proven that the aiding or abetting took place at a set time and place, it is then irrelevant afterward that the crime is perpetrated by the actor on the same day that the accomplice committed that conduct or if it is perpetrated a short or long while later and at a place that is different from the ones in which said conduct took place, as long as there is a definite causal relation between the aiding and abetting on one hand and on the other the criminal outcomes that occurred, without there being any extraneous factor severing this causal relation between the criminal conduct of the accomplice and the criminal outcome that resulted from the direct criminal deed of the principal actor.

This Tribunal is fully and beyond any reasonable doubt convinced that there was a definite causal relation between the criminal conduct of defendant 'Ali Dayeh 'Ali, as far as aiding and abetting the perpetration of crimes against humanity he is accused of committing, and the criminal outcomes that took place through the incarceration, torture and slaying of a number of Dujail victims perpetrated by principal actors comprising intelligence service

officers and staff along with others, including defendant ‘Awwad al-Bandar and defendant Saddam Hussein, said outcomes being the premeditated murder of eight victims among Dujail’s population whose slaying was aided and abetted by defendant ‘Ali Dayeh ‘Ali.

Further, criminal intent, which entails the knowledge of the elements of the criminal events whose perpetrations he aided or abetted and he wanted realized, as aforesaid, was present in defendant ‘Ali Dayeh ‘Ali when he committed the criminal conduct of aiding and abetting, and when the criminal outcomes he wanted or at least expected took place. Still, he pressed on, providing the aiding and abetting and accepting the risks stemming from having such outcomes take place. It is afterward irrelevant whether the criminal outcomes were realized later on, one month or one year later, or in another place than the one where the aiding and abetting occurred, as long as the causal relation between the criminal conduct of the accomplice, which in this case the conduct of defendant ‘Ali Dayeh ‘Ali, and the criminal outcomes that occurred, was not severed by extraneous factors. Additionally, defendant ‘Ali Dayeh ‘Ali’s criminal intent was present at the moment he committed the criminal conduct (aiding and abetting), and continued until the criminal outcomes resulting thereof and from the criminal conduct of the principal actors were achieved.

Tribunal’s Verdict

For all the foregoing reasons, defendant ‘Ali Dayeh ‘Ali is:

1. Criminally liable for premeditated murder as a crime against humanity pursuant to Article 12 (First) (a) of the Tribunal’s law, and in accordance with Article 15 (Second) (c) of the said law.
2. Criminally liable for imprisonment or other severe deprivation of physical liberty as a crime against humanity pursuant to Article 12 (First) (e) of the Tribunal’s law, and in conformity with Article 15 (Second) (a, c) of the said law.
3. Criminally liable for torture as a crime against humanity pursuant to Article 12 (First) (f) of the Tribunal’s law, and in line with Article 15 (Second) (c) of the said law.

The foregoing clauses are in accordance with Article 34 (b) and Article 53 of the Penal Code No. 111 of 1969, informed by Articles 47 and 48 of the said Code.

4. Defendant ‘Ali Dayeh ‘Ali is not liable for the enforced disappearance of persons as a crime against humanity given that one of its basic elements is lacking, in which case it did not take place pursuant to Article 132 (b) of the Law on Criminal Proceedings No. 23 of 1971.

WHEREFORE, premises considered, and pursuant to Article 182 of the amended Criminal Procedures Law No. 23 of 1971, the Tribunal has unanimously resolved to convict defendant ‘Ali Dayeh ‘Ali pursuant to the provisions of Article 12 (First) (paragraphs a, e, f), informed by Article 15 of SICT Law No. 10 of 2005 and Articles (34, 47, 48, 53) of the Penal Code No. 111 of 1969, and to determine his sentence thereunder.

The verdict was rendered in the presence of the parties on 11/5/2006.

Signature

Signature

Signature

Signature

Signature

Member

Member

Member

Member

Judge

Ra'uf Rashid Abdel Rahman

Defendant Mizher ‘Abdullah Kadhim

Charges Against Defendant Mizher ‘Abdullah Kadhim

The Tribunal has charged defendant Mizher ‘Abdullah Kadhim on 5/15/2006 four counts for the perpetration of crimes against humanity. These counts are pursuant to Article 12 (First) (a, e, f, i) of the Tribunal’s law, and encompass premeditated murder, imprisonment or other severe deprivation of physical liberty, torture, and enforced disappearance of persons as crimes against humanity.

Summary of Statements by Complainants and Corroborating Witnesses Concerning Defendant Mizher ‘Abdullah Kadhim

- One shielded complainant testified to the investigated judge on 12/11/2004 that defendant Mizher ‘Abdullah Kadhim was part of the squad that arrested his father and his cousin (paternal uncle’s son), and they took them to an unknown destination. Their fate remained unknown until the fall of the regime, whereby it became known that they were executed.

- A shielded female complainant testified during the investigative stage on 12/12/2004 that defendant Mizher ‘Abdullah Kadhim was accompanying the squad that took her into custody.

- Another shielded female complainant testified before the investigative judge on 1/2/2005 that defendant Mizher ‘Abdullah Kadhim contributed to the arrests and he also apprehended her.

- A fourth shielded complainant testified to the investigative judge on 6/7/2005 that defendant Mizher ‘Abdullah Kadhim came to his home, arrested him and brought him to the police station.

- A shielded female complainant testified to the investigative judge on 11/30/2004 that she was arrested by Mizher ‘Abdullah Kadhim and ‘Ali Dayeh ‘Ali, who were Dujail residents and worked for the party.

- Another shielded complainant stated, also on 11/30/2004, to the investigative judge: “I would like to press charges against Mizher ‘Abdullah Kadhim because he arrested me and my family.”

During the trial stage, the complainant referred to by the letter (a) testified before the Tribunal on 1/29/2006 in response to a question by defendant Mizher ‘Abdullah Kadhim, stating that defendant Mizher “came to my home and pushed me when I opened the door. He showed up with a squad and a security officer. They found my cousin (paternal uncle’s son) sleeping. He hit him and told him to get up... Then he went to the house’s rooftop where my brother and my brother’s son were sleeping. He was the one who informed on them. He also hit me. He did these things with Abu Ahmed, who was a party official (division member or section member).”

Another shielded complainant testified to the Tribunal on 1/29/2006 that defendant Mizher 'Abdullah Kadhim was "the one who arrested my family. Before the fall of the regime I asked defendant Mizher 'Abdullah Kadhim about our phone line and he told me, 'You are a member of the Dawa Party, and you owe forty thousand dinars.'"

One female complainant, referred to by the letter (a), testified before the Tribunal on 2/1/2006 that "on the day of the incident we were sleeping on the roof of our home. Defendant Mizher 'Abdullah Kadhim showed up and went to the roof. He seized my husband and my nephew (brother's son), who was an orphan. It was four in the morning. Defendant Mizher 'Abdullah Kadhim, who was wearing military dress, started beating me and took me downstairs, along with my child who was three months old." She added that defendant Mizher 'Abdullah Kadhim took her husband to an unknown destination and she, along with the children and her paternal aunt, stayed home.

Another female complainant stated during the investigative stage on 12/12/2004 that "I would like to file a complaint against Mizher 'Abdullah Kadhim, a Dujail resident, because he was the person who arrested us, accompanied by 'Ali Dayeh, Younis Ghazal, and Omran Hassan Omran. Once the regime fell, I learned that my children had been executed after they had been taken into custody by the party and security squad."

Summary of Defendant Mizher 'Abdullah Kadhim's Statements During the Investigative and Trial Stages

First: Summary of defendant Mizher 'Abdullah Kadhim's statements during the investigative stage

Defendant Mizher 'Abdullah Kadhim's statements were recorded by the Investigative Panel on 2/21/2005. These statements may be summarized as follows:

1. "I am a Dujail resident by birth and I lived in the area since I was born until now. I served in the police force and worked afterward at Dujail's post office. I was a member of the party (former Ba'th Party)."
2. "On the day of the incident, in 1982, I do not recall exactly what day or month it was, defendant Saddam Hussein came to the region, and at that time I was in the neighborhood. From where I was standing, which was next to the party division center, I heard several gunshots, about six or seven. Afterward, shots rang from Saddam Hussein's security staff. Then I heard that Saddam Hussein headed to Mosul. I stayed with the party division. At that time or an hour or less later, army troops arrived and surrounded the region, and helicopter gunships began strafing the orchards' area. Meanwhile, I stayed at the party division, and saw the persons who were killed in the orchards. I was in the division building and tried to identify them but could not. I do not know where they were sent afterward."

3. "In the meantime I saw security forces driving towards the orchards. They were accompanying defendant Barzan Ibrahim al-Tikriti, who was the Intelligence Services chief. At that time I was standing in front of the party division door."

4. "I did not take part in the arrests of Dujail residents."

5. "As for razing of the fields and chopping down of trees, I was tasked by party officials, on the order of defendant Barzan Ibrahim conveyed to us through the party, to escort the bulldozers, steamrollers and graders to raze the farmlands and orchards. And in fact I did go with the bulldozers, etc."

6. "The order was given to me by party officials according to directives from higher authorities. I did carry out this order (razing the orchards) because I was afraid not to, even though I knew that the order was in violation of the law. But I carried it out because I was afraid I would be punished if I did not."

7. "I was not instructed by party officials to arrest Dujail residents. However, if I was I would have executed the order given to me. But I did not take part in that because I was not ordered to."

8. "I know nothing about the families that were arrested and executed, and I have no idea whether some were released."

The Investigative Panel pointed out to him that Dujail's region is the size of a county as far as administrative division, that it is rural and that its population is tiny, in which case most residents know each other, and that what happened in 1982 in terms of arrests and incarcerations of families, including women and children, was well known throughout the country. Said Panel then asked him: "How come you do not know anything about the arrest and incarceration of families while you are from the region?" He replied: "I indicated that I did not know anything about that matter, although I worked at the post office, which is located within Dujail proper, where I have been living from the time I was born until now."

On 2/28/2005, the Investigative Panel recorded a supplement to the testimony of defendant Mizher 'Abdullah Kadhim. It included the following:

"I do not know the number and size of the families that were arrested, but I remember among the families that were taken into custody that of Hassan al-Hage Muhammad. There was also Mahmoud Majid Yacoub al-Kharbatli, Kazem al-Jaafar, Hajji Jasem al-Hitto and Abbas Hassoun. These are the people I knew were placed in custody. I did not know of any others. I also knew that Latif Saad and Hikmat Abd were apprehended. But as far as the women and children, I was not aware that they had been arrested."

Second: Summary of Defendant Mizher 'Abdullah Kadhim's Statements During the Trial Stage

The Tribunal heard the testimony of defendant Mizher ‘Abdullah Kadhim during the court session of 3/12/2006, which testimony included the following:

1. “I hid some persons who were wanted by security outfits in 1982, among them Bassem Hamid Mehdi and Ahmed Yassin al-Hage Mahmoud. I also helped both Adel Fayek Yahya and Amer Zaydan, who were apprehended in 1985.”
2. “My party rank was that of supporter, and at the time of the incident I was at the post office (at work) because there was an emergency situation and the official business hours were extended to 24 hours.”
3. “The testimonies of complainant (...), her sister (...) and of (...) were false and inaccurate. They were motivated by personal enmity, because their phone line was out of service. It was disconnected because of unpaid bills. They thought that I was behind that and they called me names.”
4. In response to a question by the Tribunal regarding a party report addressed to the Interior Minister, Saadoun Shaker, and ascribed to defendant Mizher ‘Abdullah, the defendant replied: “This report is not in my handwriting and does not bear my signature.”
5. He retracted his statements before the Investigative Panel, which concern his witnessing security forces, including defendant Barzan, boarding a car and heading towards the orchards... saying, “I do not recall that.”
6. In response to a question by the Tribunal, whether he knew of the incident while he was in Dujail, defendant Mizher ‘Abdullah replied: “I learned about the incident two months after it occurred.”
7. In response to a question by the prosecution, defendant Mizher ‘Abdullah said: “The gunfire was intense because of the clash between the two sides. I also said that the number of shots was seven and that half an hour later aircraft came to Dujail and we heard them pounding the orchards.”
8. In response to a question by the lawyer for the civil (individual) rights plaintiffs, defendant Mizher ‘Abdullah stated: “I was on guard duty at the party division.”

Summary of the Statements by Defense Witnesses For Defendant Mizher ‘Abdullah Kadhim

The Tribunal heard a number of defense witnesses for defendant Mizher ‘Abdullah Kadhim during the court session of 5/16/2006. Their statements may be summarized as follows:

A defense witness referred to by the number (1) stated:

1. “Defendant Mizher was not in Dujail but was on guard duty in his office.”

2. "He did not assume any party duty because his party rank was that of a supporter."
3. "On the day of the incident I did not see him taking part in the arrest of anyone... The post office was in a state of emergency for 15 days, and the defendant was at his office. He used to receive his meals there."

A shielded female defense witness was heard by the Tribunal on the same day. She said that the defendant "was at the post office, and the latter was for fifteen days placed under a state of emergency. I used to go there every day to bring him food."

A shielded defense witness testified before the Tribunal on 5/16/2006 that "defendant Mizher was at the office and we contacted him while he was there... He is a party supporter... He did not take part in the arrests because he was at the office."

Another shielded defense witness stated to the Tribunal on the same aforementioned date that "defendant Mizher was at the post office and we used to contact him daily. He did not take part in any search operations nor did he arrest or interrogate anyone. The statements of one of the female complainants against Mizher were due to the phone line."

A new shielded defense witness testified on the same day before the Tribunal that "defendant Mizher is a supporter of the party... At the time of the incident I was not there. While visiting the home of 'Abdullah al-Mashaikh (defendant 'Abdullah Kadhim Ruwayid, defendant Mizher's father), defendant Mizher was at the post office... Defendant Mizher is a party supporter and he has no power... He did not take part in the arrests because he was at the post office... However, some of the female complainants made statements against Mizher because of disconnected phone lines."

Another shielded defense witness stated before the Tribunal on the same day that "I saw Mizher at the entrance of the telephone exchange (building)... I did not see Mizher arresting anyone. He had some problems with one family household... because of the phone line, that is, their phone line was disconnected. That is the reason they pressed charges against him... I did not hear that he accompanied the security forces."

Trial Evidence and Presumptions Against Defendant Mizher 'Abdullah Kadhim

1. The statements of many complainants and corroborating witnesses recorded by the investigative judge and heard by the Tribunal, which indicated that defendant Mizher 'Abdullah Kadhim participated with the security and party forces to arrest and detain a number of Dujail victims from several families.
2. The guilty verdict and ruling handed out by the (abolished) Revolutionary Court on 6/14/1984, as well as the Presidential Decree passed on 6/16/1984, listing the names of Dujail victims that the aforesaid Court sentenced to death. These included a number of victims who were one of the female complainants' sons and whose arrest defendant Mizher 'Abdullah Kadhim had a hand in.

3. The death sentence execution report of 3/23/1985, which contained the names of those victims mentioned in paragraph 2 above.

Extent of Defendant Mizher ‘Abdullah Kadhim’s Criminal Liability For the Charges Leveled Against Him Pursuant to the Indictment

Based on trial evidence, it is clear that defendant Mizher ‘Abdullah Kadhim joined up with security and party members to break into houses and seize no less than nine Dujail victims. He also beat some of those victims when apprehending them. Four of those victims were slain or sentenced to death later on. Their names appeared in Arraignment Order No. 762 of 5/27/1984, delivered by the National Security Affairs Department and referring them to the (abolished) Revolutionary Court. They also appeared in the guilty verdict and ruling issued by the said Court, referenced 944/C1984 and dated 6/14/1984, in Presidential Decree No. 778 of 6/16/1984, and in the death sentence execution report on 3/23/1985. Those four victims were Ibrahim Hassan Latif al-Salami, ‘Ali Anwar Hassan, Jassem Muhammad Latif, and Hashem Muhammad Latif.

The victim Jassem Muhammad Latif was slain under torture at Hakimiya jail according to what complainant Ahmed Hassan al-Dujaili asserted during his testimony of 12/5/2005, even though his name was mentioned in the above resolutions pertaining to the arraignment order, guilty verdict, court ruling, presidential decree, and the death sentence execution report. Upon examining the statements of complainants and corroborating witnesses against defendant Mizher ‘Abdullah, who at the time of the incident was a Ba’th Party and popular army member, it becomes obvious that he was present at Dujail’s party division center on the first day of the incident and the following days when the arrests took place, and that he actually did participate in these arrests. It would be quite unreasonable that so many complainants pressed charges against him and accused him of perpetrating those criminal acts against them only because of a dispute concerning phone lines. The matter is much bigger than that. It concerns their sons, fathers and families that defendant Mizher ‘Abdullah Kadhim had a hand in arresting, which in turn led to their incarceration at Hakimiya and Abu Ghraib prisons and their torture, leading in the case of Jassem Muhammad Latif to his death by torture in the hands of members of the Intelligence Service’s Investigation and Inquiry Department staff at Hakimiya. Some were expelled to the Lea’s desert compound, and yet others were executed following the order issued by defendant ‘Awwad al-Bandar and certified by defendant Saddam Hussein.

The party security report, dated 7/8/1982, that defendant Mizher ‘Abdullah is accused of submitting to Saadoun Shaker, comprised the names of 37 victims described as “Dawa Party criminals who attacked the leader... the country’s custodian, comrade Saddam Hussein... Following are the names of those families deemed hostile to the party and to the revolution, etc.” However, the three-member and five-member committees comprising the criminal evidence experts examined that document and matched the handwriting and signature therein against samples of defendant Mizher ‘Abdullah’s handwriting and signature, and the two committees were unable to irrefutably determine that they belonged to defendant Mizher ‘Abdullah. As a result, this Tribunal cannot use this document as evidence against defendant Mizher ‘Abdullah.

The important question at this point, after establishing the complicity of defendant Mizher ‘Abdullah in the arrests of those victims, is the following: Do these acts render him criminally liable for their torture and the slaying of some of them?

As a matter of fact, while some complainants testified that they have been beaten by defendant Mizher ‘Abdullah when they were arrested or when their family was arrested, none of those victims stated that they witnessed defendant Mizher ‘Abdullah killing with his own hands any of the victims. Does that mean that he is not criminally liable for the torture of those victims when they were incarcerated or for their slaying?

This Tribunal is fully and beyond any reasonable doubt convinced that defendant Mizher ‘Abdullah aided the perpetration of crimes against humanity and aided the arrest and incarceration of Dujail civilian residents. The Tribunal is also fully convinced that defendant Mizher ‘Abdullah committed these criminal acts. Further, the incarceration of those victims led to their torture, which was a highly probable and expected outcome under the former Ba’thist ruling regime in Iraq, especially that the accusation was the attempt to assassinate the then leader of the regime and party, defendant Saddam Hussein, even if a few shots had been fired, or belonging to the Dawa Party or other parties that the former regime considered hostile and a threat to its hold on power.

Moreover, Article 34 of the Penal Code No. 111 of 1969 stipulates that “a premeditated crime shall exist if the perpetrator of said crime had criminal intent; and a premeditated crime shall exist... b. If the perpetrator anticipated criminal outcomes for his act and proceeded to commit it while accepting the risks thereof.” Defendant Mizher ‘Abdullah was a principal actor in the perpetration of crimes pertaining to arrest and incarceration pursuant to Article 49 of the said Code, and not merely an accomplice, since he was present during their perpetration or he participated in committing a constituent act thereto (See Article 49 of the Penal Code).

Similarly, Article 53 of the Penal Code No. 111 of 1969 punishes the perpetrator of a crime, whether as a chief actor or accessory, for the crime that actually took place, even if it was not what said perpetrator intended to commit, when the crime that occurred was the probable outcome of the complicity that took place.

Nevertheless, when defendant Mizher ‘Abdullah contributed to the commission of that criminal conduct, he anticipated and accepted the criminal consequences, as will be explained later on in more details, stemming from said conduct and from his actual contribution.

Likewise, incarceration in the former Ba’thist regime’s prisons, as well as the brutal tortures that were inflicted upon victims by members of the former regime’s repressive outfits, led naturally and normally to the slaying of those victims, whether under torture, as happened to the victim Jassem Muhammad Latif, or when the inmates were referred to sham and bogus trials to impart an appearance of legality to the whole phony process in order to execute those victims (as happened to the remaining victims who were still alive, including Ibrahim Hassan Latif al-Salami, Hashem Muhammad Latif, and ‘Ali Anwar Hassan, whose names were referred to the Revolutionary Court in order for the latter to deliver an order to execute

them without providing them with any legal proceeding, not even a bogus trial) or to provide a cover-up for those who were slain under torture prior to conducting a sham or bogus trial therefor. This is actually what happened to many Dujail victims, including four victims whose arrest and incarceration defendant Mizher 'Abdullah had a hand in. Those victims were arrested, incarcerated and tortured. One of them at least was killed under torture. The names of the others who were still alive (among a total of 148 names) were referred to the Court of 'Awwad al-Bandar, who issued an order sentencing them to death, which order was carried out later on once it was certified by defendant Saddam Hussein who in turn issued an execution order.

Likewise, even though it was not necessary for the aiding and abetting of the crime to be material and tangible, and even though it is sufficient that these to take the form of moral support or encouragement for the chief perpetrators to commit the crime (See the verdict handed down in Anto Furundzija's case, paragraph 199, mentioned earlier), yet defendant Mizher 'Abdullah Ruwayid provided this material aid by means of his actual complicity in the arrest of a number of Dujail victims, including the four aforementioned victims.

Main Elements of Crimes Against Humanity and Criminal Intent Concerning Defendant Mizher 'Abdullah Ruwayid for Imprisonment and Premeditated Murder as Crimes Against Humanity

We have indicated earlier that this Tribunal has established the existence of a concurrent large-scale and systematic assault launched by a large number of security, military, intelligence and party forces belonging to the government, in which popular army members took part, against Dujail's civilian population. Defendant Mizher 'Abdullah Ruwayid was one of those party members, and that large-scale and systematic assault began immediately after the limited and failed assassination attempt.

Defendant Mizher 'Abdullah Ruwayid's criminal intent in the imprisonment, torture and murder as crimes against humanity was present on the same day he participated in apprehending victims amongst Dujail's residents. The complicity of defendant Mizher 'Abdullah Ruwayid in the perpetration of those crimes is thus well established, even if torture and murder occurred later on. In fact, an accomplice's criminal liability is not contingent upon the presence of said accomplice at the scene of the crime. Nevertheless, defendant Mizher 'Abdullah Ruwayid was present at the scene of the crime when he participated in the arrest of victims.

Moreover, the prevailing opinion in criminal jurisprudence states that the time a crime is perpetrated is the time when criminal conduct, and not the criminal outcome, is realized. This is the viewpoint that agrees the most with the objectives of the criminal code given that it is a code that governs individuals and requires that they commit or abstain from committing a specific deed. At the time that a criminal deed is perpetrated, the order or instruction that is included in the criminal code is important in terms of the psychological element by which the conduct is described to be illegal. The crucial factor in considering a specific deed as a full-fledged crime or an attempt therefor is the time the act occurs and the

criminal deed is accomplished, in conformity with Article 34 (b) of the Penal Code governing indirect (probable) criminal intent, mentioned earlier.

Defendant Mizher 'Abdullah Ruwayid committed this criminal deed when he contributed to the arrest of victims amongst Dujail's residents. He also harbored indirect criminal intent when he anticipated the criminal outcomes of his act (arrest) and carried out said act while accepting the risk of letting the criminal outcomes, constituting incarceration, torture and murder, take place.

Moreover, defendant Mizher 'Abdullah Ruwayid knew that his criminal conduct was part of a large-scale and systematic assault against a civilian population, because he personally witnessed, on the first day of the incident, that large-scale and systematic assault. Further, defendant Mizher 'Abdullah Ruwayid saw state and party officials, including defendant Barzan Ibrahim and others who had come to Dujail hours after the incident. He also saw the military units as well as party, intelligence, security and popular army forces laying siege to Dujail and arresting families. Likewise, defendant Mizher 'Abdullah Ruwayid was one of the participants who informed on those victims and arrested some of them. It is thus natural to say that he was cognizant of that large-scale and systematic assault, and was aware that his conduct was part of that assault. Additionally, he knew that those victims were civilian residents since he came from the same region, which region is small and has few inhabitants. Defendant Mizher 'Abdullah Ruwayid admitted that he resided in that region from the time he was born until now.

Defendant Mizher 'Abdullah Ruwayid could have easily anticipated the magnitude of the enormous and massive reprisals that the former regime outfits and their members carried out against Dujail's civilian population as a result of a limited and failed attempt carried out by a few individuals to assassinate Saddam Hussein on 7/8/1982. He himself stated during the inquest and trial that there were about seven shots fired at the motorcade. He also witnessed the beginning of those reprisals and contributed to the commission of some acts in that regard. Moreover, he was a Ba'th Party member and knew the nature of that party, especially as regards its survival and power under its leader, defendant Saddam Hussein, especially that he asserted during the trial that he was harassed simply because his wife belonged to a specific religious sect.

Hence, defendant Mizher 'Abdullah Ruwayid did not merely anticipate, but was convinced also, that these reprisals would take this magnitude, especially that he personally witnessed the initial steps of that assault which started on the first day of the incident.

The acts that defendant Mizher 'Abdullah Ruwayid perpetrated by arresting a number of Dujail victims and beating some of them when apprehended, comprised abetting the perpetration of crimes of imprisonment, torture, and even murder, under a regime whose nature and brutality defendant Mizher 'Abdullah Ruwayid was familiar with, given that he had been a Ba'th Party member for a long period of time prior to the incident. Moreover, Iraqis, especially if they were members of that party, were well aware of the actions committed by party leaders since they came to power in 1968. That means that defendant Mizher 'Abdullah Ruwayid knew that this regime, this party and Saddam Hussein in particular would do anything, however brutal, in order to remain in power. Imagine then the

reaction that would be unleashed following an attempt, even if limited, to assassinate Saddam Hussein!

Defendant Mizher ‘Abdullah Ruwayid aided the perpetration of those crimes. He also personally perpetrated some of them (beginning with the arrests). He must then have been cognizant of that. Wanting something presupposes that one is already aware of what one wants.

The acts that defendant Mizher ‘Abdullah Ruwayid committed by informing on the victims and personally contributing to the arrest of some of said victims did actually occur. These facts are well established by the Tribunal through the arrest and incarceration of a number of victims who have testified during the investigation and trial that the defendant participated in their arrest and the arrest of their families, including their sons, who were executed later on. Those arrests led to the incarceration of those victims at Hakimiya and Abu Ghraib jails, which in turn led to their torture and the slaying of some of them.

The concept of premeditated murder as a crime against humanity does not include solely the actor who plays the principal role in carrying out the crime or the accomplice who aids or abets its perpetration. It also includes the person who causes the criminal outcome to occur, which outcome comprises the death of victims, if said person had criminal intent (knowledge of the elements of the criminal event and the volition to realize it), whether that intent was direct or indirect when the said person committed the deed. At the very least, defendant Mizher ‘Abdullah Ruwayid had indirect criminal intent to bring about imprisonment, torture and murder when he committed the criminal deed. This was indicated earlier and established by the Tribunal.

The conduct of defendant Mizher ‘Abdullah Ruwayid, which comprised his complicity in the series of arrests, led to the slaying of four victims, including ‘Ali Anwar Hassan, who was not yet twenty years of age at the time of the incident. This Tribunal is fully convinced that these facts are true beyond any reasonable doubt. Defendant Mizher ‘Abdullah Ruwayid was a principal actor when he contributed to the arrest and incarceration of a great number of Dujail victims, and he was an accomplice by aiding and perhaps even agreeing with others in the torture of those victims and the slaying of four of them, since the aid he provided led to the actual commission of said crimes by the principal actors. Further, the intent to intervene in the crime, which is the psychological element that must be present for complicity to take place, and which rests on the volition of the accomplice to intervene in the realization of the conduct that is the crime, and the knowledge of the nature of the actions that he participates in, as well as his volition to cause the outcome that the perpetrator wants, were all present in defendant Mizher ‘Abdullah Ruwayid. Additionally, defendant Mizher ‘Abdullah Ruwayid’s complicity in the perpetration of the crime, namely said defendant’s criminal conduct in terms of aiding the perpetration of the crime, was causally and materially linked to the crimes that were perpetrated by others.

A set time or place for the perpetration of the crime by the principal actor is not considered grounds for the liability of the person who aided or abetted the perpetration of said crime to arise, in case the crime actually occurred, as long as there is a causal relation between that aiding or abetting and the criminal outcome that occurred once the principal actor carried out the crime. If it was proven that the aiding or abetting took place at a set time and place,

it is then irrelevant afterward that the crime is perpetrated by the actor on the same day that the accomplice committed that conduct or if it is perpetrated a short or long while later and at a place that is different from the one in which said conduct took place, as long as there is a definite causal relation between the aiding or abetting on one hand and on the other the criminal outcomes that occurred, without there being any extraneous factor severing this causal relation between the criminal conduct of the accomplice and the criminal outcome that resulted from the direct criminal deed of the principal actor.

This Tribunal is fully and beyond any reasonable doubt convinced that there was a definite causal relation between the criminal conduct of defendant Mizher ‘Abdullah, as far as aiding the perpetration of crimes against humanity he is accused of committing, and the criminal outcomes that took place through the incarceration, torture and slaying of a number of Dujail victims perpetrated by principal actors comprising intelligence service officers and staff along with others, including defendant ‘Awwad al-Bandar and defendant Saddam Hussein, said outcomes being the premeditated murder of four victims among Dujail’s population whose slaying was aided by defendant Mizher ‘Abdullah Ruwayid.

Further, criminal intent, which entails the knowledge of the elements of the criminal events whose perpetrations he aided and wanted realized, as aforesaid, was present in defendant Mizher ‘Abdullah Ruwayid when he committed the criminal conduct of aiding, and when the criminal outcomes he wanted or at least expected took place. Still, he pressed on, providing the aiding and accepting the risks stemming from having such outcomes take place. It is subsequently irrelevant whether the criminal outcomes were realized later on, one month or one year later, or in another place than the one where the aiding occurred, as long as the causal relation between the criminal conduct of the accomplice, which in this case the conduct of defendant Mizher ‘Abdullah Ruwayid, and the criminal outcomes that occurred, including the death of victims, was not severed by extraneous factors. Additionally, defendant Mizher ‘Abdullah Ruwayid’s criminal intent was present at the moment he committed the criminal deed (aiding), and continued until the criminal outcomes resulting thereof and from the criminal conduct of the principal actors were achieved.

Tribunal’s Verdict:

For all the foregoing reasons, defendant Mizher ‘Abdullah Ruwayid is:

1. Criminally liable for premeditated murder as a crime against humanity pursuant to Article 12 (First) (a) of the Tribunal’s law, and by reason of Article 15 (Second) (c) of the said law.
2. Criminally liable for imprisonment or other severe deprivation of physical liberty as a crime against humanity pursuant to Article 12 (First) (e) of the Tribunal’s law, and by reason of Article 15 (Second) (a, c) of the said law.
3. Criminally liable for torture as a crime against humanity pursuant to Article 12 (First) (f) of the Tribunal’s law, and by reason of Article 15 (Second) (a, c) of the said law.

The above clauses are in accordance with Article 34 (b) and Article 53 of the Penal Code No. 111 of 1969, and informed by Articles 47 and 48 of the said Code.

4. Defendant Mizher ‘Abdullah Ruwayid is not liable for the enforced disappearance of persons as a crime against humanity given that one of the main elements of said crime is lacking, and thus said crime did not occur, pursuant to Article 132 (b) of the Law on Criminal Proceedings No. 23 of 1971.

WHEREFORE, premises considered, and pursuant to Article 182 of the amended Criminal Procedures Law No. 23 of 1971, the Tribunal has unanimously resolved to convict defendant Mizher ‘Abdullah Ruwayid in accordance with the provisions of Article (12) (First), Paragraphs (a, e, f), by reason of Article 15 of SICT Law No. 10 of 2005 and Articles (34, 47, 48, 53) of the Penal Code No. 111 of 1969 and to determine his penalty thereunder. The verdict was rendered in the presence of the parties on 11/5/2006.

Signature

Signature

Signature

Signature

Signature

Member

Member

Member

Member

Judge

Ra’uf Rashid Abdel Rahman

Ruling Dismissing the Case Against Muhammad ‘Ali Al-Marsumi

Following the indictment dated 5/15/2006 against defendant Muhammad ‘Azzawi ‘Ali, and in light of the ongoing prosecution of the defendants as well as the evidence obtained through the inquest and trial, and based on the comparison between the statements of complainants and witnesses on one hand and the facts obtained through the trial regarding defendant Muhammad ‘Azzawi ‘Ali, the Tribunal finds that the said defendant is an illiterate person who was known in town as a supporter but not a member of the ruling Ba’th Party, and that he was not promoted because of poor eyesight according to security information concerning his maternal aunt’s husband and their children. The said defendant was not in town on the day of the incident. When he returned in the afternoon he was placed with others in the party division center given the damaging information concerning him. When Barzan Ibrahim showed up at the party division, he released him along with others. In his testimony to the Investigative Panel on 4/27/2005, he stated that following instructions from his party superiors, which aimed to hurt him psychologically, he was ordered to accompany a party squad in order to arrest his maternal aunt’s husband, Mijbil Hassan Aziz. He was not home, so his aunt was taken into custody. In the end, his aunt’s husband died in jail.

For his part, complainant Abdul Sattar Majid Hamid testified before the Tribunal that when he was seized by special squads and taken from his home he saw Muhammad ‘Azzawi standing outside. According to inquest and trial depositions, and according to documents exhibited and referenced, the role of defendant Muhammad ‘Azzawi ‘Ali was limited to his being instructed to arrest his aunt and her husband. This was done to hurt him, following some customs that are prevalent in the region and among Iraqis in general, given that there was some negative information regarding him at the party and the security organs. The upshot from the inquest and trial is that the role of the said defendant was limited to being present with the party squad for the arrest of no more than two persons who were his relatives. This was done in order to harm him psychologically and socially.

Likewise, the records and testimonies did not establish that he killed anyone in Dujail nor that he deliberately hurt or harmed anyone during the mass arrests, or what was then known as the “nausea” [TN: Arabic word is “karaf” and is spelled كرف, which is different from the usual spelling قرف, which means nausea, disgust or revulsion] according to the colloquial expression depicting the situation that was unfolding. The role of the defendant was limited to his participation in the arrest of a person very close to him (his aunt’s husband), and because the latter was not there his aunt was put in custody. This no doubt caused him extreme pain and embarrassment. This act does not qualify as a willful act on his part concerning the arrests and is not part of the methodical mass arrests. Further, he was not aware whether this arrest was legal or not, and the Tribunal does not have any evidence to the contrary.

By taking part in the arrest of one of his relatives, namely his aunt’s husband, the defendant was intent on [sic] [TN: Based on context, “not” may be missing; context entails “defendant was not intent on”] taking part in and contributing to the systematic and large-scale assault for the arrest of individuals and families amongst Dujail’s residents. Furthermore, the Intelligence Service’s Investigative and Inquiry director, Waddah al-Shaykh, explained

during his testimony to the Tribunal on November 28, 2005: “I know nothing about Muhammad ‘Azzawi ‘Ali, and I have no idea whether he was with the party groups.”

Additionally, Barzan Ibrahim testified during the court session of January 20, 2005, that “one of the suspects there, Muhammad ‘Azzawi, I released him from custody at the party organization center on the afternoon of 7/8/1982, meaning the day of the incident.”

For the foregoing reasons and based on the evidence and presumptions discussed and presented before the Tribunal, there are no sufficient grounds to warrant the arraignment charge regarding defendant’s violation of Article 12 (First), Paragraphs (2) (e, f, i, j). Accordingly, the Tribunal’s Panel has unanimously resolved to dismiss the charge leveled against Muhammad ‘Azzawi ‘Ali al-Marsumi and to release him from custody if he is not wanted or detained by reason of another case, in accordance with the provisions of Article 182, Paragraph (c), of the Criminal Trial Procedures No. 23 of 1971. The verdict was rendered on 11/5/2006.

Judge
Ra’uf Rashid
Chief Judge of the First Trial Chamber

[Signatures]
Member Member Member

In the name of God, most Gracious, most Merciful

**Supreme Iraqi Criminal Tribunal
First Trial Chamber**

Reference: 1/C First 2005
Date: 11/5/2006

Verdict

The First Trial Chamber of the Supreme Iraqi Criminal Tribunal was established on 11/5/2006, presided by Judge Ra'uf Rashid Abdel Rahman, and with the following Member Judges: (----- and ----- and ----- and -----). Its verdict was delivered in the name of the people:

First:

1.(a) Sentence the accused Saddam Hussein al-Majid, Barzan Ibrahim al-Hassan and 'Awwad Hamad al-Bandar to death by hanging until death for their perpetration of premeditated murder as a crime against humanity, pursuant to the provisions of Article 12 (First) (a), informed by Article 15 (First, Second, Third, Fourth) of the Supreme Iraqi Criminal Tribunal (SICT) Law No. 10 of 2005. The sentence was determined in accordance with the provisions of Article 406 (1) (a) of the amended Penal Code No. 111 of 1969, informed by Article 24 of SICT Law No. 10 of 2005. Ruling by consensus.

(b) Sentence the accused Taha Yassin Ramadan to life in prison for his perpetration of premeditated murder as a crime against humanity, pursuant to Article 12 (First) (a), informed by Article 15 (First, Second, Third, Fourth, Fifth) of SICT Law No. 10 of 2005. The sentence was determined in accordance with the provisions of Article 406 (1) (a) of the amended Penal Code No. 111 of 1969, informed by Article 24 of SICT Law. Ruling by consensus.

(c) Sentence the accused 'Abdullah Kadhim Ruwayid, 'Ali Dayeh 'Ali and Mizher 'Abdullah Kadhim to fifteen years in prison for their perpetration of premeditated murder as a crime against humanity, pursuant to the provisions of Article 12 (First) (a), informed by Article 15 (First, Second, Fifth) of SICT Law No. 10 of 2005. The sentence was determined in accordance with the provisions of Article 406 (1) (a) of the amended Penal Code No. 111 of 1969, informed by Article 24 of SICT Law. Ruling by consensus.

2. Sentence the accused Saddam Hussein al-Majid, Barzan Ibrahim al-Hassan and Taha Yassin Ramadan to ten years in prison for the deportation or forcible displacement of people as a crime against humanity, pursuant to Article 12 (First) (d), informed by Article 15 (First, Second, Third, Fourth) of SICT Law No. 10 of 2005. The sentence was determined in accordance with the provisions of Article 421 (b) of the amended Penal Code No. 111 of 1969, informed by Article 24 of SICT Law of 2005. Ruling by consensus.

3. Sentence the accused Saddam Hussein al-Majid, Barzan Ibrahim al-Hassan, 'Abdullah Kadhim Ruwayid, Taha Yassin Ramadan, Mizher 'Abdullah Kadhim Ruwayid, and 'Ali Dayeh 'Ali to fifteen years in prison for imprisonment or other severe deprivation of physical liberty as a crime against humanity, pursuant to Article 12 (First) (e), informed by Article 15 (First,

Second, Third, Fourth) of SICT Law No. 10 of 2005. The sentence was determined in accordance with the provisions of Article 421 (b, c, d) of the amended Penal Code No. 111 of 1969, informed by Article 24 of SICT Law No. 10 of 2005. Ruling by consensus.

4.(a) Sentence the accused Saddam Hussein al-Majid and Barzan Ibrahim al-Hassan to ten years in prison for the perpetration of torture as a crime against humanity, pursuant to Article 12 (First) (f), informed by Article 15 (First, Second, Third, Fourth) of SICT Law No. 10 of 2005. The sentence was determined in accordance with the provisions of Article 333 of the amended Penal Code No. 111 of 1969, informed by Article 24 of SICT Law No. 10 of 2005. Ruling by consensus.

(b) Sentence the accused Taha Yassin Ramadan, Mizher 'Abdullah Kadhim, 'Ali Dayeh 'Ali and 'Abdullah Kadhim Ruwayid to seven years in prison for the perpetration of torture as a crime against humanity, pursuant to Article 12 (First) (f), informed by Article 15 (First, Second, Third, Fourth) of SICT Law No. 10 of 2005. The sentence was determined in accordance with the provisions of Article 333 of the amended Penal Code No. 111 of 1969, informed by Article 24 of SICT Law No. 10 of 2005. Ruling by consensus.

5. Sentence the accused Saddam Hussein al-Majid, Barzan Ibrahim and Taha Yassin Ramadan to seven years in prison for their perpetration of other inhumane acts as a crime against humanity, pursuant to the provisions of Article 12 (First) (j), informed by Article 15 (First, Second, Third, Fourth) of SICT Law No. 10 of 2005. The sentence was determined in accordance with the provisions of Article 479 (2) of the amended Penal Code No. 111 of 1969, informed by Article 24 of SICT Law No. 10 of 2005. Ruling by consensus.

6. Given that the elements of the crime pertaining to enforced disappearance of persons as a crime against humanity are not present, the Tribunal resolved to dismiss the charge leveled against defendants Saddam Hussein al-Majid, Barzan Ibrahim al-Hassan, Taha Yassin Ramadan, 'Abdullah Kadhim Ruwayid, Mizher 'Abdullah Kadhim, Muhammad 'Azzawi 'Ali, and 'Ali Dayeh 'Ali, with respect to that act, and to acquit them thereof, pursuant to Article 182 (b) of the amended Law on Criminal Proceedings No. 23 of 1971. Ruling by consensus.

7. Due to the lack of evidence against defendant Muhammad 'Azzawi 'Ali, the Tribunal resolved to dismiss the charge leveled against him and to release him from custody, pursuant to Article 182 (c) of the amended Law on Criminal Proceedings No. 23 of 1971, provided he is not in custody for another case. Ruling by consensus.

Second:

a. The most severe sentence shall be carried out against the accused pursuant to the provisions of Article 142 of the amended Penal code No. 111 of 1969.

b. The detention period for the accused Barzan Ibrahim al-Hassan, 'Awwad Hamad al-Bandar, 'Ali Dayeh 'Ali, 'Abdullah Kadhim Ruwayid and Mizher 'Abdullah Kadhim shall be factored in.

c. The detention period for the accused Saddam Hussein al-Majid and Taha Yassin Ramadan shall not be factored in, as the determination of their fate is still pending in this case given that they are also in custody on account of other cases.

Third:

Pursuant to the provisions of Article 224, Paragraph (d), of the Criminal Procedure Law No. 23 of 1971, the accused have been instructed that the trial records will be automatically transferred to the Appellate Panel of the Supreme Iraqi Criminal Tribunal in order to have the verdict reviewed in appeal, and that they may appeal the verdict delivered against them to the Appellate Panel of the Supreme Iraqi Criminal Tribunal within thirty days, starting one day after the verdict against them is handed down on 11/5/2006.

Fourth:

- a. The Tribunal resolved to seize the convicts' movable and immovable property pursuant to the provisions of Article 24 (Sixth) of SICT Law No. 10 of 2005.
- b. Civil rights plaintiffs may resort to civil courts in order to seek damages for losses incurred as a result of the crimes perpetrated against them.

Fifth:

Commence criminal proceedings and notify the Supreme Iraqi Criminal Tribunal's Investigative Judge to take legal action with respect to the persons whose names are mentioned in the documents and in the course of the inquest and trial, namely:

1. Saadoun Shaker Mahmoud
2. Hassib Saber Abdul Aziz
3. 'Ali Mahmoud Hashem
4. Muhammad Aliawi Hamad
5. Nehme 'Ali Hassoun
6. Issam Khodr Abbas
7. Hikmat Abdul Wahab Khalil
8. Kamel Hussein
9. Nouri 'Abdullah
10. Hamed Dahd
11. Dahi Ahmed
12. Mohsen Obayd
13. Faysal Shahin
14. Shamel al-Fayyad
15. Abdul Jabbar Hamid
16. Colonel Tarek Hadi Shakar
17. Daoud Salman Shehab
18. Major Hashem Taha Hamad

Sixth:

Legal fees concerning the attorneys appointed on behalf of the defendants shall be determined in accordance with the principles agreed upon with the defense team.

The verdict was passed by consensus in the presence of the parties and is subject to appeal.
It was rendered on 11/5/2006.

Signature

Signature

Signature

Signature

Signature

Member

Member

Member

Member

Chief Judge

Ra'uf Rashid Abdel Rahman