

## **Iraqi High Tribunal**

Baghdad, Iraq

Number: 29/c/2006

Date: December 26, 2006

The appeals commission of the Iraqi High Tribunal was formed on December 12, 2006, comprising of judges authorized to adjudicate in the name of the people and issued the following verdict:

### Appellants:

- 1- Public prosecutor in the High Iraqi Court.
- 2- Complainants and those claiming personal right/ represented by the attorneys Salam Abdil Wadoud Al Lamy, Mohammad Abdil Nabi Al Jawhar, Abdil Wahab Abdil Rida Al Okaili, Ali Shalham Al Hmaidawi, Mohammad Ali Al Lamy and Abid Hassan Al Kinany.
- 3- The convicted Saddam Hussein Al Majeed/ represented by attorneys Khalil Ad Dulaimy, Wadoud Fawzi, Issam Azzawi, Ramsey Clark, Bushra Al Khalil, Ahmed As Siddiq, Mohammad Tayyib, Ziad An Najdawi and Curtiss Dubilz.
- 4- The Convicted Barzan Ibrahim Al Hassan/ represented by attorney Wadoud Fawzi Shams Ed Deen.
- 5- The Convicted Taha Yassin Ramadan/represented by attorneys Sulaiman Abbas Al Jabbouri, Bushra Al Khalil and Mohammad Mounib.
- 6- The Convicted Abdallah Kathem Rowayid/represented by attorneys Tamer Al Mashhadani, Hisham al Fitian and Mohammad Harbi Al Jinabi.
- 7- The Convicted Mizhir Abdallah Kathem/ represented by Tamer Al Mashhadani, Hisham al Fitian and Mohammad Harbi Al Jinabi.

8- The Convicted Ali Dayeh Ali/ represented by assigned attorney Najah Az Zaidi.

9- The Convicted Awwad Hamad Al Bandar/ represented by attorney Bader Awwad Hamad Al Bandar.

Appeal against: The verdict by the First Criminal Court in the High Iraqi Criminal Tribunal number 1/E first/2005 on November 5, 2006.

The file was received according to a letter from the First Criminal Court number 1/E/2005, on 11/14/2006 to consider it as an appeal according to rule (68/B) of Procedural Rules and (254/A) of Criminal Procedures. The First Criminal Tribunal in the Iraqi High Tribunal issued its verdict number 1/E first/2005 on 11/5/2006, containing the sentences of the convicted Saddam Hussein Al Majeed, Barzan Ibrahim al Hassan, Awwad Hamad Al Bandar of death by hanging for committing deliberate killing as a crime against humanity according to provisions of article (12/first/a) and as indicated by article (15 first, second, third and fourth) of the Iraqi High Tribunal number (10), year 2005.

The penalty was determined according to provisions of article (406/1/A) of the penal code number (111), year 1969 as amended and as indicated by article (25) of the law of the High Iraqi Tribunal number (10), year 2005. The penalty was determined according to provisions of article (406/1/A) of the penal code number (111) year 1969 as amended and as indicated by article (24) of the code of the Iraqi High Tribunal. It sentenced the convicted Abdallah Kathem Rowayid, Ali Dayeh Ali, Mizher Abdallah Kathem, to 15 years in jail for committing the crime of deliberate killing as a crime against humanity in accordance with provisions of article (12/first A) and as indicated by article (15/first, second and fifth) of the code of the Iraqi High Tribunal number (10) year 2005. The penalty was determined according to provisions of article (406/1/a) of penal code number (10) year 2005.

The penalty was determined according to provisions of article (406/1/a) of the penal code number (111) year 1969 as amended and as indicated by article (24) of the code

of the Iraqi High Tribunal. It also sentenced the convicted Abdallah Kathem Rowayid, Ali Dayeh Ali and Mizhir Abdallah Kathem to 15 years in jail for committing deliberate killing as a crime against humanity according to provisions of article (12/first/A) and as indicated by article (15/first, second and fifth) of the code of the High Iraqi Tribunal number (10), year 2005. The penalty was determined according to provisions of article (406/1/A) of the penal code number (111), year 1969 as amended and as indicated by article (24) of the code of the Iraqi High Tribunal. It also sentenced the convicted Saddam Hussein Al Majeed, Barzan Ibrahim al Hassan, and Taha Yassin Ramadan to 10 years imprisonment for committing expulsion or forced transfer of people as a crime against humanity according to provisions of article (12/first/H) and as indicated by article (15/first, second, third and fourth) of the code of the Iraqi High Tribunal number (10), year 2005.

The penalty was determined according to provisions of article (421b) of penal code number (111) year 1969 as amended and as indicated by article (24) of the code of the Iraqi High Tribunal number (10) year 2005. It also sentenced the convicted Saddam Hussein Al Majeed, Barzan Ibrahim Al Hassan, Abdallah Kathem Rowayid, Taha Yassin Ramadan, Mizhir Abdallah Kathem and Ali Dayeh Ali to 15 years in jail for committing imprisonment and severe deprivation of physical freedom as a crime against humanity in accordance with provisions of article (21/first /z) as indicated by article (15/first/second/third and fourth) of the code of the Iraqi High Tribunal number (10) year 2005. Their penalty was determined in accordance with provisions of article (421 B, E, H) of the penal code number (111) year 1969 and as indicated by article (24) of the code of the Iraqi High Tribunal number (10) year 2005.

The Court also sentenced the convicted Saddam Hussein Al Majeed and Barzan Ibrahim Al Hassan to ten years in jail for committing torture as a crime against humanity in accordance with provisions of article (12/first) and as indicated by article (15/first/second/third and fourth) of the code of the Iraqi High Tribunal number (10) year 2005. The penalty was determined in accordance with provisions of article (333) of the penal code number (111) year 1969 as amended as indicated by article (24) of the code of the Iraqi High Tribunal number (10) year 2005. It sentenced the convicted Taha Yassin Ramadan, Mizhir Abdallah Kathem, Ali Dayeh Ali and Abdallah Kathem Rowayid to seven years in jail for committing torture as a crime against

humanity in accordance with provisions of article (12/first) and as indicated by article (15/first/second, third and fourth) of the code of the Iraqi High Tribunal number (10) year, 2005. The penalty was determined in accordance with provisions of article (333) of penal code number (111), year 1969 as amended and as indicated by article (24) of the code of the Iraqi High Tribunal number (10), year 2005.

The Court sentenced the convicted Saddam Hussein Al Majeed, Barzan Ibrahim and Taha Yassin Ramadan to a seven-year jail term for committing other inhumane acts as a crime against humanity in accordance with provisions of article (12/first U) and as indicated by article (15/first/second/third and fourth) of the code of the Iraqi High Tribunal number (10), year 2005. The penalty was determined in accordance with provisions of article (2/479) of the penal code number (111), year 1969 as amended and as indicated by article (24) of the code of the Iraqi High Tribunal number (10), year 2005.

The Court decided to throw out the charge against each of the following: Saddam Hussein Al Majeed, Barzan Ibrahim Al Hassan, Taha Yassin Ramadan, Abdallah Kathem Rowayid, Mizhir Abdallah Kathem, Mohammad Azzawi and Ali Dayeh Ali for the crime they were accused of, namely forced disappearance of persons as a crime against humanity for lack of evidence and basis; it has also decided to acquit them of the said charge in accordance with provisions of article (182/B) of the Criminal Procedure Law number (23), year 1971 as amended.

The Court decided to acquit the accused Mohammad Azzawi and throw out the charge against him according to provisions of article (182 E) of the Criminal Procedure Law number (23) year 1971) as amended. The court has decided to apply the harsher penalty against the convicted according to provisions of article (142) of the penal code number (111), year 1969 as amended. The decision was concluded by consensus. The first appellant, the chairmanship of public prosecution in this tribunal, appealed to this court the sentencing paragraph with regard to the penalty levied against the convicted Taha Yassin Ramadan, demanding that it be harsher to the limit consistent with the act he committed against the people of Dujail. Also, the complaining appellants and claimants of personal right challenged the said verdict, demanding the penalty be harsher against the convicted Taha Yassin Ramadan,

Abdallah Kathem Rowayid, Ali Dayeh Ali and Mizhir Abdallah Kathem, making the penalty death by hanging. They also appealed the sentencing paragraph against the convicted Mohammad Azzawi. They also asked that the court rule to compensate the complainants for being unable to take their case to the civil courts to demand such compensation.

The appellant Barzan Ibrahim Al Hassan also challenged the said verdict, demanding that it be declared null and void for reasons he had cited in his document dated 12/3/2006, claiming that the verdict was in violation of the law and it was erroneously interpreted, the verdict was in contravention of procedures and there were substantial faults in facts which led to injustice. Appellant Abdallah Kathem Rowayid also challenged the said verdict for the reasons he included in his document dated 12/3/2006, demanding that he be absolved of responsibility in the case, and asking for mercy and to have the penalty against him commuted.

Appellant Taha Yassin Ramadan also challenged the said verdict, demanding to have it declared null and void for reasons he included in his document dated 12/3/2006. These reasons are: the existence of substantial faults in procedures, violation of law and substantial faults in procedures by failing to apply rule (58), first paragraph of procedural rules and collecting evidence of the Iraqi High Tribunal and substantial fault in procedures by not respecting the principle of transparency of trial and a substantial fault in procedures by contravening the law, particularly provisions of article (212) of the Criminal Procedure Law and a substantial fault in procedures by contravening the law and violating the right of defense by not respecting the principle of comprehensive publicity through closing the doors of the court and preventing people from entering the rooms of the court during sessions.

Moreover, Ramadan argues that there was a substantial fault in procedures by contravening the law and violating the principle of publicity by holding the session in secrecy as a result of an unannounced decision and contravention of the law, especially article (19) (B & D) of law number (10) of year 2005; and violation of the right of defense by excluding the attorney selected by the accused by his own free will in court and contravention of the law, particularly article (19/fourth) of code number (10), year 2005 and article (127) of criminal procedure law and violation of the right

of defense through the trial of his client appellant the presence of military officers from the American occupation forces, and contravention of article (181) of Criminal Procedure para (D, E) and violation of the right of defense by declaring the end of trial and passing verdict without hearing the defense of the accused, and violation of article (131) because the referral decision lacked the law article applying to the predicated crime and contravention of article (224) of criminal procedure due to the absence of justification and contravention of law by lack of justification and violation of the constitution and constitutional immunity by referring the Vice President to trial, and there being a substantial fault in facts which led to contravention of justice.

There was also a challenge by appellant Saddam Hussein Al Majeed of the sentence decision demanding to have it thrown out for reasons he included in his document dated 12/03/2006. These reasons are: contravention of law regarding the legitimacy of crimes, the penalty; the contravention of article (156) of the law of civil litigations number (83), year 1969; contravention of the text of article (159/F 2) of civil litigation code; contravention of the law by violating the right of defense and declaring end of trial and passing verdict without hearing the defense of the accused; contravention of law by violating the principle of innocence of the accused, the transparency of sessions and ignoring the principle of proof without any reasonable doubt; the legality of the tribunal; the direct application international agreements to Iraqi law; faults in interpreting the law by expelling some members of the defense; the immunity issue; non-conformity of the tribunal code with the penal system in Iraq, an error in procedure by violating the rules of justice through full violation of the standards of a just trial and contravention of rules (58) paragraph (first) and 7 of procedural rules and collection of evidence.

Also, appellant Awwad Hamad al Bandar, challenged the court verdict demanding its reversal for reasons he included in his document dated 12/03/2006. These reasons are: the passing of verdict was in violation of law and faulty in its interpretation; the decision was erroneous in procedures; it contained a substantial fault in facts which led to breach of justice; non legitimacy of the court; violations and faults registered in the conviction and sentence ruling.

The file was submitted to the chief public prosecutor of the court which requested in its indictment of December 13, 2006, number 52A and requested the ratification of all rulings pertaining to those who were convicted and those who were acquitted, i.e. Mohammad Azzawi, with the exception of the verdict against the convicted Taha Yassin Ramadan, whose sentence was deemed not severe enough and rejected the other appeals and placed the file under examination and discussion.

Upon examination, the appeals were found to be submitted within the legal period and were accepted formally, since they dealt with the same subject, and a decision was taken to consider them together. Upon considering the appealed decision, the evidence used by the court to issue its conviction of the accused Saddam Hussein al-Majeed, as being the president of the republic, the general commander of the armed forces and the chairman of the Revolutionary Command Council at the time of the event from July 8, 1982 to January 16, 1989, and that he controlled the legislative and executive branches of government, in addition to the audio-visual recordings in which the accused appeared while addressing the people of Dujail on the day of the event, informing them that the number of persons who did the shooting was two or three and wouldn't exceed ten; And based upon his statements during the preliminary investigation and the trial and the orders he issued to security departments officials directly connected to him, in addition to hundreds of official documents attached to the file, which were verified by the accused. This is in addition to the order he issued to compensate farm owners whose lands were dredged.

Therefore, the convicted (Saddam Hussein) is responsible for the systematic and large-scale attack against civilian residents in Dujail of which he was aware. Consequently, he had the requisite intent of murder as a crime against humanity. The material basis of criminal conduct (the act of killing) and the criminal outcome, which is the death of the victims among the people of Dujail. The causal relationship in that conduct is all there. Since crimes against humanity are defined by law as acts listed in article (12) of law number (10) for the year 2005, when committed in a large-scale or systematic attack against any group of civilian population with awareness of this attack. Therefore, most crimes may occur as a result of an act by a state or policy and are executed by perpetrators in authority. However, it is clear that if such crimes were committed and directed against civilian population, then it is necessary that that

results from the policy of a state that commits its acts through executors in authority, or might result from perpetrators who are not in authority.

Whereas the convicted Saddam Hussein was in authority, as former president of the republic, and whereas he directed his crimes against the civilian population of Dujail with the purpose of killing them, then the intent to kill is present. Therefore, he is responsible for them as a crime against humanity. Therefore, the appeals presented by the convict's attorneys are rejected.

The convicted (Saddam Hussein) cannot hide behind legality, because the main purpose of the legality principle is to pinpoint the person responsible for the act, and a person who commits a crime of misusing authority cannot claim that he is not aware of this act. The order issued by the administrator of the Coalition Authority number (48) on December 10, 2003, which authorized the Governing Council to establish a special Iraqi tribunal to try Iraqis and other residents of Iraq who are accused of committing mass murders and crimes against humanity or war crimes or violations of specific Iraqi laws is consistent with United Nations Security Council resolutions numbers (1483, 1500 and 1511) for the year 2003.

The government has based its authority to issue such a law on U.N. Security Council resolutions, which authorized the succeeding government to issue decisions and laws consistent with the reality of Iraqi people's lives. Therefore, the creation of the court and the issuance of its laws were lawful and legal. Their legitimacy was not affected by the way the law was formulated. The creation of the court, which became, under law, independent of other Iraqi courts, was independent of any Iraqi government department. On March 8, 2004, the Iraqi constitution was issued, and it established, among other things, a road map for the creation of an Iraqi court. It also emphasized the establishment of the specialized Iraqi court law on June 28, 2004.

At the end of Iraq's occupation and the establishment of a sovereign Iraqi government which took over on the basis of authorities granted by the constitution and U.N. Security Council resolutions, and its assumption of power until May 3, 2005, it funded, supported and allowed the court to function, and in fact, it appointed court judges and created an independent budget in order to be able to work. On May 3,



2005 the transitional Iraqi government, which was elected by more than 60% of the Iraqi people, replaced the interim government. The government authority was defined according to the constitution, and it was recognized as a completely sovereign government.

The government continued to fund the court until a permanent Iraqi government assumed power on May 20, 2006. A new law for the court was then issued. It is law number (10) for the year 2005. It was named the Iraqi High Tribunal. The law was issued by an Iraqi government elected by 78% of the Iraqi people in a national referendum. Therefore, for all the reasons above stated the Iraqi High Tribunal is a legitimate court, and accordingly, the appeals on that basis are rejected.

Regarding official immunity, we say that immunity is the practical immunity which is related to the position held. Therefore, no one can claim that he committed crimes and that his acts are outside the law. Immunity is confined to the duration of occupying the position and does not continue beyond that. It is consistent with it, in presence and without it, and is not given to serve the interest of a person who holds the position, but for the welfare of society. Immunity does not violate the second part of international penal law and the constitution. Therefore, no government has the right to grant immunity from prosecution to its officials for committing crimes against humanity or ethnic massacres. If immunity constitutes a protective framework against prosecution, this principle was no longer recognized after World War II, and immunity lost its effect. The establishment of criminal courts is but an indication of the end of the immunity principle. Since the law allows the trial of any person accused of committing a crime, regardless of his official capacity, even if he was a president or a member of government or of its council, as his capacity does not excuse him from penalty and does not constitute extenuating circumstances. Since the court law included penal clauses, immunity claim for the president of the state, or that the act was committed in the official capacity of the accused, will not constitute an acceptable defense of extenuating circumstances for the penalty. Therefore, immunity does not prevent the court from exercising its jurisdiction.

Therefore, immunity should be a reason for increasing the penalty rather than its mitigation, for a person who enjoys it usually exercises power which enables him to

affect a large number of people, which intensifies the damages and losses resulting from commitment of crimes. The president of the state has international responsibility for the crimes he commits against the international community, since it is not logical and just to punish subordinates who execute illegal orders issued by the president and his aides, and to excuse the president who ordered and schemed for commitment of those crimes. Therefore, he is considered the leader of a gang and not the president of a state which respects the law, and therefore, the head chief is responsible for crimes committed by his subordinates, not only because he is aware of those crimes, but also for his failure to gain that awareness. Refusal is tantamount to affirmative conduct under article (13/1) of the Third Geneva Convention of 1949, which states that any illegal action or refusal by the authority (to prevent it) which caused death or endangered the safety of prisoners of war is outlawed and a serious violation of this convention.

The responsibility of leaders and presidents for crimes committed by those who are under their command or authority is a responsibility for acts executed by forces under their command and authority, provided that the leader knows that his forces committed or were about to commit one of these crimes. Where the fact that the accused holds a high-ranking position in the government is by itself a serious situation, for it is assumed that he is aware of what goes on, and for exploiting his position in committing the crimes. Add to that that his failure to take necessary and reasonable measures within his power to prevent these crimes subjects him to legal accountability. Furthermore, condoning them is considered a signal to his subordinates to continue committing the crimes without fear of punishment. The premise is that the leader is committed to preventing his subordinates from committing international crimes.

The leader bears responsibility if he fails intentionally or due to negligence to prevent his subordinates from committing crimes without the need for proven intent of sanctioning such crimes. The act of a subordinate is considered unlawful because such an act does not serve the interest he is protecting, but makes it unlawful, by not upholding local criminal law rulings, as the subordinate is a person who possesses awareness and knowledge, and therefore he is not supposed to execute orders without thinking of the orders he received. His duty is to examine the orders and to not be

committed to execute them, unless they are consistent with legal regulations. A subordinate is one of the persons who uphold the law, just like the president, and therefore, he is committed to execute all commitment imposed by the law. Upholding those commitments is direct, and therefore, pleading by immunity is rejected also.

As for pleading by not applying criminal law retroactively, we say that criminal legislations basically do not apply to the past. This is so in criminal law and is known as not applying criminal law retroactively to the past, meaning that the effect of criminal law does not extend to the past but applies to events that occurred after the law was enacted. This principle is based on the Iraqi penal law number (111) for the year 1969, and was referred to in article (2/F1), while article (1/Second) of the court law indicated the validity of the law on crimes committed since July 17, 1969 and until May 1, 2000 under laws number (1) for the year 2003 and number (10) for the year 2005.

However, the two aforementioned laws do not violate the retroactive principle, as these crimes were stated in articles (11, 12, 13 and 14), and they were stated in laws since the 1950s. They were stated in international treaties. Therefore mass murder crimes were stated in international treaties in 1948 and were ratified by Iraq on January 20, 1959. Thus, by ratifying them they became part of Iraqi laws, and Iraq is committed to the articles stated in the first and second paragraphs of the court law, and therefore they are valid and this is binding on Iraq in light of its clear ratification.

As for article (12) of the court law, which includes crimes against humanity, and although its fundamental source is international norms, as there is no international treaty governing its rules and stating them clearly, international norms presumed them to be international crimes and were accepted by international conduct. Since Iraq is part of the international community, it is also committed to them under the United Nations Charter. As for article (13) pertaining to war crimes, which represent gross violations of the Geneva Conventions of 1949, Iraq had ratified them also on February 12, 1956, and therefore it is committed to them and they are considered an integral part of its laws. Therefore, perpetrators of these laws should be held accountable.

In addition, Iraq ratified international treaties on civil and political rights, which were approved by the National Assembly on December 16, 1966. Iraq joined them under law number (193) for the year 1970, and they took effect on March 23, 1976. Therefore, and under justice principles, no criminal can escape punishment on the basis of this principle, as legal principles were made for the good of society and not for the good of criminals. The legal principle does not support, and cannot pass and be replaced by another principle, and therefore incrimination provisions have no effect regarding the past. The substance of retroactivity of the law is set before the Rome system under the same controls which specify the substance of legitimacy principle on the basis of the fact that not applying retroactivity is not a logical outcome of applying the legitimacy principle. Therefore, the incrimination principle cannot have a retroactive effect. Accordingly, if a provision is stated in an international treaty or agreement for a specific incriminating act, the application of this provision on acts perpetrated before its issuance does not mean that the provision was applied retroactively. This provision was preceded by international norms which entail non-legitimacy of the act. The provisions did no more than record and clarify the substance of previous norms and traditions for the perpetrator of the act and his presence. Therefore, the principle of legitimizing crimes and criminal penalties is consistent with justice principles since it is a fundamental principle in all laws, including international criminal law. Therefore, the appeal to reject the law's retroactivity is also rejected.

As for pleading for the inapplicability of the principle of applying the lesser of the two punishments, this commission believes that this principle states that in the event of changing the law during the period between the time of committing the criminal act attributed to the defendant and the time of sentencing him, then this principle of applying the lesser sentence against the defendant becomes applicable. The only limitation on the ability of the court to implement the capital punishment is order #7-F-3 of the Interim Coalition Authority which was announced during the coalition's occupation of Iraq. This principle, which is known as "Article #2" of the Iraqi Criminal Law #111 of 1969, aims at giving the defendant whatever opportunity available in the value judgments of the society. And because of the fact that the order of the Interim Authority #7-F3 did not stem from the Legislative Authority in Iraq, nor did it include any standards of the public opinion, and it merely reflected the

necessity that the Coalition was supposed to act according to in light of the authority entrusted in it in accordance with the occupation law being the interim sponsor during that present period in Iraq; and because that Authority had no legal sovereignty over the occupied region, and consequently, the Coalition Authority was kind of a separate legal jurisdiction; and according to well-established international laws, the Iraqi High Tribunal was not obliged to implement its rulings or its laws. The order of the Interim Coalition Authority, which suspended execution of capital punishment, was merely a temporary procedure imposed by a interim authority, and therefore, this law could not have been considered a law issued before the sentencing and consequently would have the power to make the law of capital punishment null and void and a law that would be an applicable legal choice of the of the legal judgment.

According to the international law, capital punishment is thus a legal punishment, and it is also a punishment contained in the current Iraqi Law. It is listed among the allowable punishments of the criminal acts. This punishment was mentioned in the law that came into being prior to the establishment of the Iraqi government in 1919. This capital punishment was listed in the first part of section "Five". The Iraqi law kept on using the capital punishment without any changes regarding the current issue of appeal. Additionally, the Iraqi people do have the legal and the moral right to create the legal entity for the trial of the former regime leaders. If the Iraqi High Tribunal were to achieve its objectives for which it was established, then its rulings should be in accordance with the international standards of justice and in accordance with the international law. As for the capital punishment, it is legal and it does exist in the Iraqi Law and it is in concordance with the accepted international law, if it were to be applied according to the international treaty of civil and political rights, to which Iraq was party to since January 25, 1971. There is an international resolution that the crimes of war, mass killings and crimes against humanity are among the most dangerous violations according to the law. Due to their magnitude, these crimes exceed by far the simplest requirements of civil and political international rights which states that capital punishment could not be used as punishment except for crimes that are considered very serious according to the law. Therefore, in an internal trial for committing these crimes, applying capital punishment is considered legal in light of both domestic as well as international laws, and therefore, the defense of the accused here is rejected also.

As for the other defenses, the defendants were given enough guarantees to have fair trials. Each suspect was informed of the kind of accusations filed against him. He was given ample chance to defend himself and to choose his legal advisors and attorneys in person with the assistance of legal counselors. He was given the chance to interview the defense witnesses. He used his rights to fully defend himself. He was not forced to say what he did not want to say. Then the defense he is using in this regard is rejected too.

As for the legal preliminary procedures of the defendant Barzan Ibrahim, it has been proven to this committee that he held the position of the head of the intelligence at the time of that incident. He was personally the one in charge of security. At the time the motorcade of defendant Saddam Hussein was fired on in Dujail on July 8, 1982, he met with him in his farm in Redwaniya. He asked him to go to Dujail to head the investigation of the matter and the perpetrators. He remained there for three days, staying at the headquarters of the Party to run the investigations and issue orders to all organizations, including the air force and choppers to shell the town and neighboring orchards, to surround and search the houses, arrest people including women, children and the elderly, bring them over to the Party headquarters and then to transport them to the intelligence apparatus for further interrogations. He had mass arrests in violations of the legal investigation procedures of the law. During that period, he became a military ruler enjoying all powers. He considered people to be enemies and criminals. He actually supervised and conducted these interrogations. He held 399 persons including women and ordered his people to torture them. Many of those arrested people died under torture. There is ample evidence available against him, including the testimony of Waddah Al-Shaikh, Ahmad Hasan Mohammad Dujaili, Jawad Abdul-Aziz, and other plaintiffs and his confession before the court that the interrogations were carried out by his intelligence agency and under his supervision; collectively, these pieces of evidence are sufficient to convict him.

The commission has recognized that the convicted Awwad Hamad Al-Bandar committed, as a principal actor, a joint criminal act that represents a premeditated murder as a crime against humanity, with the help of others based on the initial and prosecutorial investigations. It was proven to the commission that the convicted

Awwad Hamad Al-Bandar had issued verdicts to execute a large number of citizens of Dujail through a mock trial. This verdict was carried out later according to executions documentation log. Therefore, he is criminally responsible for those executions and will be held accountable for all legal consequences.

It was proven to this commission through the investigation that the dissolved Revolutionary Court, which the convicted presided over, did not call any sessions into order to try any of the citizens of Dujail whose names were listed in the transfer decision. Therefore, the behavior of the convicted is part of a systematic, wide ranging offensive targeting the civilian residents of the city, i.e. the citizens of Dujail. He knew that his behavior constituted a part of that offensive; and that he intended to execute the victims to achieve that criminal goal when he and others adopted that criminal behavior. The sham nature of the court [presided over by the convicted] was proven by accounts provided by the protected accusers, due to security reasons, in the trial session dated 12/21/2005 and 5/26/2005. These witnesses claimed that they did not go to the dissolved Revolutionary Court, which was headed by the convicted, and they still were sentenced to death, despite the fact that they were detained in the desert camp of Liya.

That account was corroborated by a third protected accuser on 2/6/2005. This witness claimed that his son was with him in 1986, before he was sentenced to death, even though the decision to execute him was issued in the case number 944/T/84. He said that his son joined the Armed services and was killed in 1988 during the Iran - Iraq war. All these pieces of evidence prove to this commission that most of the accused did not attend their own trials where judgments against them were passed. This proves that the court was only a show or sham. This in addition to the confession made by the convicted during the trial that he had received the transfer order on the next day after it was issued from the National Safety Department. He also said that he had started his court proceedings the next day. The trial lasted for two weeks. The final verdict was a conviction against the whole group, all the while violating the law of the principals of criminal proceedings.

It is also recognized by this court that four of the victims did die during interrogations, and despite their death, these victims were still referred to the court. And there are

many people who were arrested and were deemed accused; they are still alive. This is another proof that the trial was just a mock trial. It was also noticed that many of the people whose names were listed in the execution decision log were juveniles. It is not permissible to sentence them to death. In addition, there were many people arrested and accused; many are still alive. This is more evidence tending to show that the trial was just a mock trial. Note also that many of the people whose names were listed in the execution decision log were juveniles. It is not permissible to sentence juveniles to death. Moreover, one of the convicted confessed that he was forced to perform as a judge for those trials. This evidence supports the conclusion that he was an executive employee for the regime, carrying out the duties of his job [in the above mentioned fashion], without being an independent judge of the court deciding the fate of innocent people.

As for the convicted Taha Yassin Ramadan it was proven to this commission that he was General Commander of the Popular Army, Deputy Prime Minister, and member of the security forces for the members of the Leadership Commission of the Revolution and a leader in the regional dismantled Baath Party. Also, Ramadan is a known member of the Nationalistic Leadership. It was also proven to the commission that the members of the Popular Army and the Party in Dujail had participated in an effective manner in arresting those victims, the civilian population of Dujail city. In addition to the convicted being the General Commander for the Popular Army he enjoys wide authorities over those who are members of the Army, which contradicts his claim during the trial that his authority was much less.

Decision number 1563 dated 10/9/1980 passed by the dissolved Revolution's Leadership Council grants the Army General Commander the same authorities given to the Secretary of Defense based on the amended Basic Law for Court Marshals number 44 for the year 1941. This means that the convicted could have taken all appropriate legal measures to investigate the members of the Popular Army to reveal whether they committed a crime. He also had the authority to form investigative commissions and to delegate all authorities to the commission. Moreover, the Popular Army General Command had Chiefs of Staff under his command. This means that he was able to move the sections under his command to any location and to assign tasks; as noted that the passed decision gives the Chiefs of Staff other authorities as well. It



is clear from the above mentioned that the convicted had a breadth of the legal authority to act. His failure to act is enough to hold him criminally responsible for actions committed by his subordinates. He did not stop the misconduct or neglected to take appropriate actions against the perpetrators. He did not investigate the activities of perpetrators and did not hold any perpetrators responsible. Thus, because the convicted had actual authority over his subordinates by virtue of his position, he knew of the systematic and wide ranging attacks in which his forces in the Popular Army had participated against the citizens of Dujail. His silent conduct during the meeting in which he confessed to those illegal acts; he would in this way have participated in a direct way with the purpose of reinforcing his criminal activity. Based on the aforementioned, it has been established that his subordinates who had committed the crimes against the victims of (the people) of Dujail town were subordinated to their commander, both legally and actually (i.e. in practice) and that they themselves committed one crime after another, even had they not been under his actual command, then they were at least through his implicit consent and his condoning of their acts and his control of those acts without taking the necessary and reasonable measures within his authority to prevent the commitment of the crimes, or for exposing their accountability to the legal authorities to be investigated. Moreover, he participated in the expropriation of agricultural lands and orchards owned by the people of Dujail, which forms part of the knowingly widespread and systematic attacks directed against a civilian population. All of the aforementioned constitutes adequate evidence for his conviction.

As for the convicts Ali Dayeh Ali and Mizhir Abdallah and Abdallah Kathem, the evidence that the tribunal has relied on in convicting them was based on the testimonies of the witnesses and on what has been established through their confessions which prove their presence in the (Baath) party squad and through the fact that they had participated with the security and party apparatus in breaking into homes and arresting certain individuals of the people of Dujail. These victims were later killed or executed, and the convicts' role caused the occurrence of the criminal result. Regardless of whether their intent was direct or indirect at the time of committing these acts, which establishes that the criminal intent existed at the time of undertaking the acts of murder and torture which the victims were subjected to, and that the time established for committing the crimes or the place in which they were

committed at the hands of the original perpetrator(s) does not constitute a condition for establishing the responsibility of those who aided or abetted the commitment of the aforementioned crimes in case they have actually taken place and as long as a causal relationship exists between the above mentioned instigation and the said assistance, as well as between the criminal result which occurred through the act of the original perpetrator(s) when the crime was perpetrated; and whereas the instigation and assistance has been demonstrated to have taken place through the acts of the convicts during the incident with the assistance of the security apparatus in arresting the victims; then the causal relationships between the committed criminal conduct and the result is established and the evidence upon which the tribunal has relied was adequate for their conviction.

As for the defendant Mohammed Azzawi, the tribunal in its decision to set him free has taken into consideration the stipulations of the law considering that the evidence presented was inadequate for his conviction thus rendering the tribunal decision correct. As for the defense submitted by the convicts, this has already been repeated and this Chamber has previously responded to it in detail at the outset of the decision; thus, there is no need to repeat them.

Based upon all of the above, this Court Chamber believes that all states realize that certain common bonds exist that bind all peoples and their cultures which form a common heritage and that this fabric cannot be torn apart, and that millions of women, men and children have fallen victims during the last century to unimaginable horrors which have strongly shaken the human conscience; and whereas these serious crimes threaten the peace, security and prosperity of the world and arouse the concern of the entire international community and must not be allowed to pass without punishment and prosecuting their perpetrators in an effective way through measures taken at the national level that aim to put an end to letting the perpetrators get away with these crimes. As such, it is the duty of the state to exercise its criminal jurisdiction against those responsible for committing international crimes since the crimes of which the defendants are accused of in the Dujail case form both international and domestic crimes and committing them constitutes a violation of the International Penal Code and the Law of Human Rights while at the same time violating Iraqi laws.

Based on the aforementioned, the tribunal decides to uphold the decision of conviction and punishment against the convicts Saddam Hussein al Majeed and Barzan Ibrahim Al Hassan and Awwad Hamad Al Bandar by hanging until death for committing murder as a crime against humanity pursuant to Article (12/First A) and the dictates of Article (15/First, Second and Fourth) of the Iraqi High Tribunal law no. (10) of the year 2005, pursuant to Article (406/2/A) of the penal code no. (111) of the year 1969, as amended by the dictates of Article (24) of the Iraqi High Tribunal law no. (10) of the year 2005.

This Court also upholds the decision of conviction and punishment, as amended, against the convicts Abdallah Kathem Rowayid and Ali Dayeh Ali and Mizhir Abdallah to fifteen years imprisonment for committing murder that constitutes a crime against humanity pursuant to Article (12/First/A) by the dictates of Article (15/First, Second and Fifth) of the Iraqi High Tribunal law no. (10) of the year 2005, and pursuant to the stipulations of Article (406/1/A) of the penal code by the dictates of Article (132) thereof since the role of the aforementioned convicts is not primary in the case and does not rise to its level of magnitude; and further upholds the decision of conviction related to the convict Taha Yassin Ramadan for committing murder as a crime against humanity according to Article (12/First/A) by the dictates of Article (15/First, Second, Third, Fourth and Fifth) of the Iraqi High Tribunal law no. (10) of the year 2005 and pursuant to Article (406/1/A) of the penal code no. (111) of the year 1969 as amended by the dictates of Article (24) of the Iraqi High Tribunal law no. (10) of the year 2005

This Court further upholds the decision of conviction and punishment, as amended, against Abdullah Kathem Rowayid and Ali Dayeh Ali and Mizhir Abdullah to a prison sentence of fifteen years for committing murder as a crime against humanity according to the stipulations of Article (12/First/A) by the dictates of Article (5/First, Second and Fifth) of the of the Iraqi High Tribunal law no. (10) of the year 2005 and pursuant to the stipulations of Article (406/1/A) of the penal code by the dictates of Article (132) thereof, since the role of the convicts is not primary to the case and does not rise to its level of magnitude;

This Court further upholds the decision of conviction and punishment related to the convict Taha Yassin Ramadan for committing murder as a crime against humanity according to Article (12/First/A) by the dictates of Article (15/Frist, Second, Third, Fourth and Fifth) of the Iraqi High Tribunal law no. (10) of the year 2005 and pursuant to Article (406/1/A) of penal code no. (111) of the year 1969 as amended by the dictates of Article (24) of the Iraqi High Tribunal law and the repeal of the sentencing paragraph related to the punishment of life imprisonment and to return the case file to its tribunal for the purpose of strengthening the penalty against him and raising it to the appropriate legal limit. Furthermore, it has decided to uphold all the decisions of conviction and punishment and other decisions passed against the convicts and the decisions of release issued in this case since they conform to the law and to the causes they have been based on, together with the citation of the court that the phrase “the decision has been reached in consensus” is not mentioned on all of the sentencing paragraphs of the decision, but is mentioned at the end of the decision. The decision has been issued by consensus pursuant to the fundamental stipulations of Article (259) on 5 Dhu Al Hijja, 1427 H, corresponding to December 26, 2006.

**Judge**

**Aref Abdul Razzak Al-Shahin**

**Chairman of the Iraqi High Tribunal**

Editors Note: Page format is in U.S. letter. Due to variations in length per page between English and Arabic, the page numbering in this document does not match that of the Arabic original.