

## IHT Part 2 Translation

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

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

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

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

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

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

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

As for the crime of extermination it has become part of international conventional law (written) by virtue of the convention of preventing extermination penalized in 1948 which Iraq ratified on January 20, 1959. As for the crimes against humanity these have become established and became part of international customary law, whether in war or

peace, and Iraq has ratified the international covenant in 1971 related to political and civil rights of the year 1966 effective on March 23, 1976. Article 15/2 of the said covenant stipulates that " nothing in this article shall infringe on the prosecution or punishment of any person for committing any act, or abstention from committing an act, which at the time of its perpetration was considered a crime according to the general principles of law recognized by the Community of Nations and the general principles of the law. Also, as is clear pursuant to article 38 of the basic system of the International Tribunal of Justice it is a supplementary source and derived from the sources of international law.

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

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

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

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

The non-stipulation in international treaties and conventions and the codes of international criminal tribunals of penalties that are imposed on the perpetrators of international crimes, does not mean that there is no obligatory international custom for international criminal tribunals to impose penalties on those who commit the said crimes; otherwise what is the use of the provision for implicating these actions and considering them international crimes unless they are punishable?

The implementation of the legality of the penalty does not necessarily mean that the stipulation of the penalty is correlatory to the stipulation of the crime in the same

provision, for even in national law we may find some laws in which there is a stipulation implicating an act, while we find the punishment for such a crime in another provision, either in the same law or in another law.

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

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

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

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

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

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

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

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

## **The Principle of Non-Retroactivity of Criminal Law**

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

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

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

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

With regard to the organization of the Iraqi High Tribunal and its procedures and since it is based on the law issued first in 2003 and then in 2005, whereas committing the crimes ascribed to the accused date back to 1982, this issue relates to procedural or formal aspects which are not related to the principle of non-retroactivity of penal law, since penal stipulations become effective on the day of their issue but apply to both previous and future procedures, unless amended or invalidated to be replaced by new procedural stipulations. Penal procedure codes are the laws that set the formal rules for organizing the stages of investigation and trial, thus leading, in the end, to a substantive decision which punishes the offender, discharges the accused or declares his acquittal. Punishment, discharge and acquittal are considered substantive decisions, whereas the means and procedures leading to the decision are considered rules of formalities.

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

## **Summary**

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

Accordingly, in case international conventional law stipulates for incrimination of an action after its incidence, then the incriminating stipulation in this case reveals the formulation of international law related to what was mentioned in that text long ago, and thus this international customary law would be applicable to the actions which the mentioned stipulation focused on. And this does not in any way contravene the principle of non-retroactivity of penal law since in this case the action is considered

criminal in international law at the moment of its commitment, and this is what was the case when the tribunal law was issued, whereby the criminal acts included in it were already considered criminal in international law when they were committed in 1982, and for a very long time before that time. These were considered criminal acts in 1907, 1945, 1948 and 1949 with respect to war crimes and extermination; and since the mid 1970s, if not earlier, with respect to crimes against humanity during peacetime; and surely it was prior to that time with respect to crimes against humanity during wartime. According to all that has preceded, application of the tribunal law to the principle of legitimacy of the crimes and sanctions and the principle of the non-retroactivity of the penal law is no more than an objection not based on sound legal foundations. Therefore, the court absolutely and completely rejects it.

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

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

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

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

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

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

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

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

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

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

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

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

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

As for the second element of murder as a crime against humanity, it is represented by committing the deed as part of a widespread and systematic attack

against civilian population, and this requires the deed of the perpetrator (the act of murder) to be either part of a widespread or of a systematic attack, or part of both. There are multiple elements that prove that the attack was either widespread or systematic, including, the accumulation of violent acts that differ, according to nature and magnitude, or the direct involvement of the authorities in committing multiple crimes, or the presence of a known policy aimed against a certain community, and the involvement of the higher commands, political or military commands, etc.. What is also meant by against any group of the civilian population, according to article 12, Second/a, a behavioral method that involves repeated perpetration of actions stated in provision (First) of the said article and it means here the act of murdering any group of a civilian population pursuant to a policy of a state or organization that requires the perpetration of such an attack or the furtherance of such a policy.

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

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

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

- 1- There should be an attack.
- 2- The acts of the defendant should be part of the attack.
- 3- The attack should be against civilian population
- 4- The attack should be widespread (wide scaled) or organized (systematic).

- 5- The main perpetrator should be aware (knows) of the general context in which the acts take place and should be aware (knows) that his actions are part of the attack.

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

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

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

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

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

Moreover, this court is convinced what was set forth in the International Tribunal's decision mentioned above, which says that in addition to the presence of "mens rea" for perpetration of the crime, the defendant should be aware that the attack

is directed against a civilian community, and should also know that his actions are part of that attack, or at least he carries responsibility for his actions for being part of the attack; and that this does not mean in any way his awareness of the attack's details, since it is sufficient that through the acts or obligations which he willfully agreed to do he becomes aware of carrying responsibility for participating in the perpetration of that attack.

Naturally, establishing to what extent of existence of these aspects and elements which are based on the said concepts and criteria requires finding out whether they existed or not for the defendant to whom the crime is ascribed. This leads to finding out to what extent does the evidence exist that proves committing murder as a crime against humanity on the part of the defendant to whom that crime is ascribed. In other words, we should establish whether adequate evidence and indications is available to prove or deny the defendant's perpetration of the crime(s) ascribed to him? In case evidence exists that prove this, then such evidence is not adequate to prove the defendant's guilt of the crime he is accused of, would be sufficient to incriminate him of another crime?

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

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

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

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

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

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

The defendant Awad Al-Bandar denied the changes against him by this tribunal, claiming that he only did what any judge would have done in a court of law established under the law, when evidence against defendants is demonstrated; and that in his capacity as president of the (disbanded) Revolutionary Court he followed all legal procedures when that court prosecuted (148) defendants, referred to his tribunal by the Department of National Security in the Office of the President (of the republic), for the attempt to assassinate the accused former president Saddam Hussein in 1982 during the Iran-Iraq war; and that he delegated an attorney to defend them, and that after a trial which lasted two weeks the court decided to execute them all after proving their involvement in attempting to assassinate the former president, and established their membership in Al-Da'awa party under case No. 944/C/1984. And that the decisions of their conviction and adjudication were issued on May 14, 1984 and that he returned the papers of the case to the Office the President (Department of National Security) which submitted the sentence to the former president (the defendant Saddam Hussein) who approved that decision and a presidential decree was issued to that effect on May 16, 1984, upon which the convicts were executed, which is what the defendant Awad al Bandar revealed in his statements before the investigation authority on January 25, 2005, and also on February 28, 2005 and before this court on March 13, 14, 2006. He claimed that he conducted the trial of all the defendants comprised of (148) citizens from Al Dujail together inside the defendants' cage and outside it (in the courtroom). The defendant Awad Al-Bandar and his attorney denied issuing the death penalty sentence against minors amongst the defendants he had prosecuted and insisted that the trial dealt with adult defendants as was demonstrated by their outer appearance. He also insisted that he tried all of the defendants (148) and not (96) defendants. He also challenged (contested) the documents submitted before the tribunal which confirmed that nearly 50 individuals were liquidated (murdered) at the Intelligence (Moukhabarat) Headquarters and that their names were referred to the court in the referral decision and were repeated also in the two decisions of conviction and adjudication.

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

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

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

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

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

All these witnesses were not eye witnesses, neither of the Al Dujail incident nor of the Al Dujail case No. 944/C/1984. Most of the statements of these witnesses focused on general information about the (disbanded) Revolutionary Tribunal, the conduct of its procedures and the behavior and conduct of the defendant Awad Hamad Al-Bandar when he was its president. The testimony of the witnesses (---) was false when he said that he saw the defendant Awad Al Bandar when he was president of the Revolutionary Court in March, 1982, when he prosecuted him in a case he was accused of, and that he used to call him (my son), since Al-Bandar insisted more than once during the investigation and before this tribunal that he became the president of the Revolutionary Court in 1983, which demonstrates that the said witnesses was not present in the (disbanded) Revolutionary Court and did not see the defendant Al-Bandar when the latter was a president of the said court. As to the witness (---), he responded to a question posed by the court considering that he used to attend the Revolutionary Tribunal's courtroom daily. The question was: "What is the area of that courtroom?" The said witness answered: "The courtroom has the shape of a square and its area is nearly similar to the area of this courtroom up to the end of this door". He meant by that our present courtroom.

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

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

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

aspects pertaining to the extent of existing of evidence, or lack of it, against the defendant Awad Al-Bandar.

The questions are:

- 1- When did the decision to refer the defendants (victims) of Al Dujayl citizens reach the (disbanded) Revolutionary Court? When did the alleged trial begin? How long did it last? When was the implication decision issued?
- 2- What was the number of individuals referred to the said tribunal by virtue of the referral decision? What is the number of those who were sentenced in the two decisions of conviction and adjudication?
- 3- Were some individuals of the Al- Dujayl citizens whose names were included in the referral order, already dead due to being liquidated (killed) at the Intelligence Headquarters (Moukhabarat)?
- 4- What is the area of the courtroom of Revolutionary Tribunal? Did the said tribunal have adequate space for putting on trial all the defendants of Al Dujail citizens referred to the said Tribunal all at once?
- 5- Were there any attorneys delegated to defend the accused (victims) of Al Dujail citizens? Were they paid their fees? In case the question is answered positively, why wasn't this mentioned in the decision of conviction and adjudication?
- 6- Were there any criminal grounds attached to the documents of case No. 944/C/1984 or not? If the answer is yes, why wasn't this mentioned in the decisions of convictions and adjudication?
- 7- Were any of the defendants (victims) of Al Dujail citizens sent by the tribunal to the forensic center to determine their age?
- 8- Did the tribunal prosecute minors (under 18 years old) or youths under 20 years old)? Did the tribunal sentence minors (under the age of 18) or under 20 years old of hanging?
- 9- Are there any official documents that prove the ages of those sentenced to death?
- 10- Were the names of certain individuals from Al Dujail set forth in the referral order and the decision of conviction and adjudication, while these were somewhere else during their alleged trial, and if so, who were they?

- 11- What was the sentence issued against the victims (defendants) of Al Dujail citizens?
- 12- Was the death sentence indeed carried out against (148) citizens from Al Dujail and when did that happen?
- 13- Where there any documents or minutes (records) covering execution of the death sentence or death documents or death certificates or copies of registrations that prove their death?
- 14- Are there any individuals who were sentenced to death but are still alive, and if yes, who carries the responsibility to prove that?
- 15- Are there actually other papers that relate to case No. 944/C/1984.
- 16- Were there any orders or pressures from the defendant (Saddam Hussein) or any other high official directed at the defendant (Awad Hamad Al-Bandar) to issue death sentences against (148) citizens from Al Dujail whose names were set forth in the referral order?
- 17- Who signed the decisions of conviction and adjudication? Were the decisions taken unanimously or by a majority?

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

**Answers to the former questions:**

- 1- The order committed by the Department of National Security at the Office of the Presidency to the (disband) Revolutionary Court was issued on May 27, 1984. The defendant Awad Al-Bandar claimed during the trial that he received that order the next day, and also claimed that the trial began right after that and lasted for two weeks. The decisions of conviction and adjudication were then issued on June 14, 1984.
- 2- The number of individuals referred to the (disband) Revolutionary Court by virtue of the referral order mentioned above, were (148) citizens from Al Dujail. Whereas the conviction decision by the said tribunal under No. 944/C/1984 issued on May 14, 1984 included (145) names, while the judgment issued by the same tribunal under the same number and date included (147) names in which the name of (Ali Kabson Mohammad) was not included. Later, the name of that person was added

through a secret and personal note of the (disbanded) Revolutionary Court number (6231), dated November 17, 1984 addressed to the Office of the Presidency, Department of Legal Affairs, which included the order to add the above mentioned name to the presidential decree issued against the rest of the convicts in the above mentioned case No. 944/C/1984.

- 3- Several documents (official documents and decisions by commissions formed for the Al Dujail case) attached to the papers of this case and submitted before this tribunal, point out that about 50 citizens from Al Dujail whose names were included in the referral order and the decisions of conviction and adjudication, were indeed liquidated (killed) at the Intelligence Headquarters (Mouhabarat) before issue of the referral decision, and that only 96 of them were still alive upon issue of that decision, and that even with respect to the rest, these 96 individuals, they were not tried but were sentenced along with those who were executed by hanging to death without any trial and on paper only. Thus was set forth in the memorandum filed by the Department of Legal Affairs to the defendant Saddam Hussein when he was president, dated on April 4, 1987, and particularly in the first clause (1) of that memo: "After convicting 148 individuals who were sentenced to death by the Revolutionary Tribunal, the rest of the convicts were executed, since some of them had died during the investigation". In addition, it was pointed out in the second and third clauses of the decision taken by the commission formed by the Intelligence Service, under number 560 on February 3, 1987, comprising four members of the Intelligence Service. The second clause of this decision says: "It has been decided to refer (148) individuals to the Revolutionary Court and sentence them to death". The third clause of the same decision says: "Among the convicts and the ones sentenced to death, 46 were liquidated or died during the course of the investigation". Also, it has been mentioned in the top secret and personal note of the Intelligence Service No. 1282 dated March 31, 1987, in which the third clause stated: "The rest of the convicts were executed since some of them had died during the investigation". In addition, it was mentioned in the decision of conviction issued on September 23, 1987 by the Intelligence Tribunal attached to the Intelligence Service, related to trial of one of its associates (Hikmat Abed el Wahab) for not carrying out the death sentence against two individuals whose names were set forth in the judgment decision of the Revolutionary Tribunal. These were, Habeeb Jaafar and Jasim Mohammad Al-Hatto. The judgment literally stated: "Regarding the time limitation and the fact that the rest of the overall number of the convicted is (96) due the liquidation of the others in the course of the investigation". These documents and files whose authenticity this tribunal has verified and arrived at a conviction regarding them, proves that the trial was illusionary, in the sense that there was no trial for the rest of the (148) individuals of Al Dujail citizens who were alive at the time of issuing the referral order, since it

has been proven in these documents that there were (46) individuals from among those whose names were set forth in the decision were liquidated (killed) during the investigation and their names were sent with the names of the others to be tried, or more accurately to be sentenced to death by hanging at a time when they were already dead, but actually they were sentenced to death along with others by hanging until dead!?.

- 4- The area of the (disbanded) Revolutionary Court according the estimation of the defence witnesses of Awad Al-Bandar whose name is (---), and whose testimony was heard by this tribunal in its thirty third (33<sup>rd</sup>) session dated June 12, 2006, and who was working in the (disbanded) Revolutionary Court as a personal bodyguard of the tribunal president at the time, the defendant Awad Al-Bandar, from 1983 and up to June 1, 1996: “The courtroom of the Revolutionary Court had the shape of a square and its area is similar to the area of this courtroom up the end of the door”. He was referring to the Iraqi High Tribunal courtroom. This courtroom is estimated to be 10 meters long x 10 meters wide, so that its area does not exceed 100 m<sup>2</sup>. In other words, the area of the Revolutionary Court also did not exceed 100m<sup>2</sup>. When answering a question posed to Awad Al-Bandar during his trial, he said that he put some of the defendants (victims) of Al Dujail citizens inside the defendants’ cage and put the others outside it (in the courtroom). This tribunal believes that it is impossible to prosecute 148 individuals at the same time inside a courtroom with an area that does not exceed 100 m<sup>2</sup>, especially since the platform of the tribunal panel and the prosecution platform as well as the lawyers’ platform occupy a large proportion of the courtroom, so that the remaining area which is estimated to be half the area of the courtroom would never have as well as capacity to house 148 individuals, neither sitting down nor standing up, and it is not even big enough for 96 individuals.
- 5- Despite the insistence of the defendant Al-Bandar during the periods of investigation and trial claiming that he delegated an attorney to defend the accused in case No. 944/C/1984, he did not mention the name of the said attorney. In addition, the decisions of conviction and adjudication issued on June 14, 1984 do not show any indication of delegating an attorney to defend the accused of Al Dujail citizens. They also do not show any sign of paying the fees of any delegated attorney. In addition, these two judgments do not include submitting a defence brief from any attorney whether authentic or delegated.
- 6- The decisions of conviction and adjudication do not establish the presence of any criminal grounds, despite the allegation of the defendant Awad Al-Bandar along, with a number of defence witnesses regarding, about seizing armaments in Al Dujail at the time the incident.

- 7- It has not been proven through the investigation and trial that the (disbanded) Revolutionary Court took any decision to send any of the referred Al Dujail citizens to forensic centers to estimate their age, since the decision of conviction came devoid of any such information; whereas this procedure should have been carried out by the tribunal in case official documents are absent to establish the age of defendants; especially when it was apparent that their ages did not exceed 12 or 15 years.
- 8- By virtue of the referral decision to the court which included (148) names, and the decision of conviction which included (145) names and the judgment decision which included (147) names, where the name of (Ali Kabsoon Mohammad) was later added to it; also by virtue of the letter of the Al Dujail office of civil status and citizenship number 365, dated April 3, 2006, addressed to the prosecutor general of this tribunal, it has been verified that (39) individuals were under 18 years old and (15) had completed 18 years but were under the age of 20.
- 9- The documents of this case included identity cards covering some of the Al Dujail citizens referred to the Revolutionary Tribunal, and by virtue of these official documents (identity cards) which verify the date of birth of the victims of Al Dujail citizens that own these identity cards and who were referred to the (disbanded) Revolutionary Tribunal, it has been verified that a (large) numbers of those sentenced to death were under 18 years old at the time of the incident, while another lesser number of those sentenced to death had completed 18 years of age but were less than 20 years at the time of the incident on July 8, 1982.
- 10- According to what one of the (protected) complainants stated, whose testimony was set down by the investigation authority on February 3, 2005, and whose testimony the tribunal also heard in its sixth (6<sup>th</sup>) session, dated December 21, 2005, where he verified that he did not appear before the (disbanded) Revolutionary Court and that he had no knowledge of his death sentence. Also, in accordance with what another (protected) complainant testified and whose testimony was set down by the investigation magistrate on May 26, 2005, he maintained that he did not appear before any tribunal or stand before any judge, but that he was investigated at Abu Ghreib prison and then transferred to Leya Prison in the Samawa Desert until discharged in April 1986. According to the testimony of another (protected) complainant, whose testimony was set down by the investigation magistrate on February 6, 2005, he said my son (---) whose name was amongst those executed was with me in 1986 and was not executed whereas the death sentence issued in case No. 955/C/1984 says that my son (---) was among the names of those executed, but in 1987 he joined military service and he was killed in the war in 1988. All these testimonies assert that all the people condemned by the (disbanded) Revolutionary Tribunal, their names were included in

the referral decisions and the decisions of conviction and adjudication. It was said they were tried in person, whereas to on the contrary they were not present in the said court, neither in May nor in June of 1984, because they were confined at that time in the Leya Desert Prison in Samawa district.

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

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

These were (Jasim Mohammad Rida al-Hitto, Ali Ja'afar Habeeb and Nabil Bakir Jasim), in addition to (Ali Hussein Ahmad) who has been proven to be still alive up to now according to the letter of the administrative district of Al Dujail No. 1010 dated June 11, 2006 addressed to the Iraqi High Tribunal/ general prosecution, as well as the minutes of the death penalty executions dated on January 16, 1989 and signed by the execution commission and its president Radi Saad Ahmad Faleh upheld the execution of the death penalty by hanging till death on January 16, 1986, at the Adult Reformation section of Abu Ghreib prison, against 10 individuals whose names were mentioned in the minutes of the death penalty execution (previously mentioned). These were the following: (Faleh Mohammad Abbas, Abboud Najem Abboud, Boushan Yaakoob, Tamer Hasson, Kathem Ahmad Mohammad, Hamza Mohammad Hadi,

Ma'an Abbas Hassoon, Hameed Abbas Hassoon, Mohammad Jasim Abed Al-Hasan and Kasim Mohammad Jasim). It is noted from the minutes of the minutes of death penalty executions that Kasim Mohammad Jasim who was 12 years and 4 months old, on the day of Al Dujail incident on July 8, 1982, was later executed on January 16, 1989 when he was over 19 years old, while the rest of the minors were executed in 1985 or they might not even have been alive in 1984 at the time of the alleged trial.

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

Proving that the mentioned individuals are still alive and residing outside Iraq, or may have died before or after the Al Dujail incident for reasons not related to Al Dujail incident, contrary to what was set forth in the minutes of the death penalty executions, death certificates, death documents and identity registration copies issued by official

bodies cannot be contested unless by proving (claiming) forgery. “The burden of proof lies with the one who alleges the contrary of authenticity”, especially that the defendant Awad Al-Bandar testified more than once during trial sessions and during the investigation that he prosecuted 148 citizens from Al Dujail and issued death sentences against them, and there are minutes of the death sentence executions. Nonetheless, the general prosecution authority addressed the administrative district of Al Dujail concerning this issue, which responded in turn in a letter under No. 1020 dated June 11, 2006 that the information regarding the 17 individuals reveals that 15 of them were dead, while no information exists concerning one of them (Abed El -Latif Abed El-Amir), and only one of those 17 is still alive and he is (Ali Hussein Ahmad).

In fact, the defendant Awad Al-Bandar and his attorneys committed a flagrant contradiction when they admitted in more than one session, and more than one petition submitted by the said attorneys of the defendant, that after prosecuting (148) citizens from Al Dujail in the (disbanded) Revolutionary Cour the issued a decision signed by the defendant and the rest of the tribunal members stipulating inflicting the death sentence on all those people referred to the referred to the tribunal on June 14, 1984. In addition, Awad Al-Bandar did not deny during the investigation and trial and during the verbal process of testimony what took place on April 5, 2006, that he signed the decisions of conviction and adjudication and asserted their truthfulness claiming that the tribunal held many trial sessions before arriving in the end at the above mentioned decision. But then the defendant Awad Al-Bandar and his attorneys came back to claim that more than 20 individuals of those (148) convicted are still alive and most of them are outside Iraq, without submitting any evidence or document that upholds this allegation except what was stated in the testimonies (of the 4 witnesses). However, the tribunal concluded, after it opened an independent investigation regarding these witnesses, and after checking them, out that their testimonies were false, since they admitted themselves that the testimonies were dictated by some defence lawyers. What the defendant Al-Bandar and his attorneys said contradicts what the defendant had already admitted, and is no more than an allegation that is contrary to the findings confirmed by this tribunal and supported by documents proving the execution of the death penalties against those individuals and their actual death, except for the four individuals already mentioned. Even assuming that what the defendant and his attorneys said were true, then this upholds and proves the truth which says that no trial session was ever held for those 148 individuals, and this means that those people were never tried, and that the decision of conviction signed by the defendant (Awad Al-Bandar) and which he confessed more than once to be his own, is in fact an order for murder and not a judicial decision. the defendant Awad even during the process of dictating the testimonies of the defendants on April 5, 2006 for the purpose of matching the handwriting and the signatures on the documents with his handwriting and signature, refused to give samples of his signatures, which confirms once more that the signatures shown on the decision of conviction and adjudication are his own. This tribunal considers this matter to be additional evidence which proves that the prosecution wasn't real and no trial sessions were actually held to prosecute those who were referred to it in the Al Dujail case No. 944/C/1984, and therefore the prosecution was illusory and never existed.

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

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

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

- 1- The report of the investigation commission formed under the presidency of Hussein Kamel with the membership of judge Abed El Aziz Dawood representing the Legal Affairs Department in the (disbanded) Office of the Presidency, and Ibrahim Jawad representing the Special Security apparatus, dated July 5, 1987 which said: "The testimonies of those two individuals were taken down", referring to Ali Ja'afar Habeeb and Jasim Mohammad Rida Al-Hitto "together with a number of others who were "fictitiously" (nominally) convicted, and those in a similar status were similarly convicted with the rest of the defendants in the case, and were sentenced to death by hanging by the revolutionary tribunal, as shown in the case papers, and without trial". This is affirmed by the case of the two detainees Ali Habeeb Ja'afar and Jasim Mohammad al-Hitto whose names were included in the referral decision and the decisions of adjudication and the minutes of death sentence executions, at the time they were detained in Leya prison in the Samawa desert before and after the date of referral and adjudication. The same commission mentioned above, stated: "It has been decided to detain those in Mouthanna province (Mohafazat) and they were dispatched in three consecutive lists of different dates, where the second list dated on October 7, 1983 contained the names of the two detainees that were sent which are the subject of this investigation, Ali Habeeb Ja'afar and Jasim Mohammad Al-Hitto. The testimonies of those two detainees along with another number of nominally convicted individuals were taken and set down".
- 2- The assertion of the plaintiff (---) before this tribunal, and previously during the investigation, that he did not stand before the Revolutionary Court and did not know anything about the issue of the death sentence against him. In addition, the assertion of (---) during the investigation of a similar testimonies. Also, this was confirmed by the testimonies of the complainant (---) during the investigation that his son (---) whose name was also included in the referral order and decision of adjudication and conviction, and in the minutes of the death sentence executions, that he was and detained with him in Leya desert prison from 1983 up to April 1987, whence

he was taken to military service in 1987, when he had completed 18 years of age, as was killed during the Iraq-Iran war in 1988.

- 3- The decision of conviction and adjudication issued by the Revolutionary Court on June 14, 1984 which were devoid of any indication of delegating an attorney to defend the detainees. No fees were paid to any delegated attorney, and there is no indication of submission of any defence plea by any authentic or delegated attorney.
- 4- What has been stated in the memorandum submitted by the Department of Legal Affairs to the defendant Saddam Hussein in March 1987 mentioned previously.
- 5- What has been stated in the decision of the commission formed by the Intelligence Service, No. 560, dated February 3, 1987 comprised of the five members mentioned above.
- 6- The decision of conviction issued from the Tribunal of Intelligence related to the secret service on September 23, 1987 regarding the trial of its associate (Hikmat Abed al-Wahab) which stated: “In view of the time limitation and the fact that those remaining of the overall number of convicts is (96) as a result of liquidating (killing) the others in the course of the investigation, and based on the people responsible for checking the names of the convicts who were at a place specified for those convicts sentenced to death only, and for the purpose of camouflaging the facts so that members of the execution commission would not know the overall number of individuals who are going to be executed so as not to find out that some of them were liquidated previously; therefore checking the names of the convicts before execution was overlooked which led to the execution of other individuals who weren’t in the lists. This means that the death sentence was not carried out against four other individuals, two of whom are the subject of this case while the destiny of the other two remains unknown.”
- 7- The decision issued by the (disbanded) Revolutionary Court does not include anything that indicates sending any of the individuals referred to it to the forensic medical committee to establish their ages, despite the presence of a large number of minors, some of whom were 12 or 13 or 14 years old.
- 8- The issue of the death sentence against a group of minors who were below the legal age at the time of the incident, whereby the number of these minors amounted to (39) and their ages ranged between 12 and 17 years at the time of the incident in 1982. Also, the issue of death sentences against individuals whose ages ranged between 18

and 20 years at the time of Al Dujail incident in 1982. While this matter forms a clear contravention of constitutions and international conventions including the International Covenant of Political and Civil Rights signed by Iraq at the beginning of 1970s, and also a contravention of article 79 of the Iraqi penal law 111 of 1969; and the law of minors No. 76 of 1983, these are considered additional evidence that indicate that the trial was illusory and not real.

- 9- What the defendant Awad Al-Bandar and his attorneys said and what some of the defence witnesses testified, where it was revealed that the testimonies of four of them were untrue. The tribunal decided, in accordance with this, to reject their testimonies regarding the existence of a number of individuals whose names were mentioned in the referral order of the decision of conviction and adjudication who are still alive up to now and that ten of them are outside Iraq at this time. The tribunal has had it confirmed and verified to it, and has been convinced of the false nature of these allegations through the confessions of those four individuals whose names are mentioned above, who were brought in as defence witnesses, and who testified that that their testimonies before the tribunal on May 30, 2006 were untrue and that those confessions were written by them besides being set down by a judge delegated by the tribunal in the presence of a general prosecutor from the tribunal, who was other than the General Prosecutor Ja'afar al Mousawi. This was done in the presence of a lawyer delegated by the defence office in this tribunal to defend them. These allegations were also proven to be false through what was mentioned in the letter of Al Dujail administrative district No. 1020 dated June 11, 2006 which asserted that the names mentioned in the claims and arguments of the defendant Awad Al Bandar and his attorneys and through the testimonies of the defence witnesses (mentioned above) are for dead people, except for the so-called (Ali Hussein Ahmad). This proves and enforces the evidence and documents which show that the trial of those were referred to the revolution any tribunal by virtue of an order of referral was illusory, since not one of those victims stood before the said tribunal and the decision of conviction was issued on June 14, 1984 in the case papers only without any trial.
- 10- The area of the courtroom of the Revolutionary Court which did not exceed at any rate 100 m2 and the impossibility of conducting a trial for 148 individuals at the same time in it.
- 11- There is no indication in the referral order or the court decision of any reasonable criminal grounds discovered in the case. This contradicts what was mentioned on the testimonies of some defence witnesses before in tribunal about seizing various kinds of

armaments in Al Dujail on the day of the incident and the days that followed.

- 12- The referral order was issued on May 27, 1984, and the decision of conviction and adjudication No. 944/C/1984 were issued on June 14, 1984, while the defendant Saddam Hussein who was president at the time affirmed the decisions in presentational decree No. 778 issued to that effect on June 16, 1984.

This fact proves the implicit agreement, if not an explicit one between the defendant Awad Al-Bandar and members of the Revolutionary Court and between the office of the presidency which was under the power of the defendant Saddam Hussein to issue death sentences against all the victims without trying them. This further reinforces the evidence and proofs that affirm that the trial was illusory. Moreover this proves that no checking was ever conducted of the case papers and the decision issued on June 14, 1984 which was affirmed and issued by presidential decree to that effect after only two days and specifically on June 16, 1984.

- 13- The inclusion in the decision of conviction of (145) names of the Al Dujail citizens and the inclusion in the decision of adjudication of (147) names, and then adding another name to it after several months is considered another evidence added to the other evidences and proofs which confirm that the trial was illusory.
- 14- Despite the fact that of this tribunal received all the papers of case no. 944/C/1984 (consisting of 361 pages), it did not find in it any testimonies of the victims before the (Disbanded) Revolutionary Tribunal. In addition, the said papers did not include any of the legal proceedings of the alleged trial.
- 15- The time during which the defendant Awad Al-Bandar alleges that he conducted the prosecution of (148) individuals, which he estimated to be two weeks which also includes official holidays is not sufficient at all for conducting a trial for such as large number of people. What the defendant Al-Bandar testified on his statement before the investigation authority and also before this tribunal that the Revolutionary Court was permitted by virtue of the article 181/D of the code of penal procedures to decide the case in one day might be true or justified in minor cases and unimportant cases where the number of defendants is very limited and not in a critical case like Al Dujail where the number of defendants reached (148).
- 16- If we accepted that what happened on July 8, 1982 was an attempt to assassinate the former president, then the number of those who participated in that attempt should have been very limited and does not exceed the one digit. This upholds what was mentioned in the testimony of the defendant Saddam Hussein himself before the

investigation authority on June 12, 2005 when he literally stated: “During my visit to Al Dujail my car escort was subjected to gunshots, I believe from around two guns, but I am not sure because of the passage of time, and afterwards, that is, after the gunshots, I walked out of the car”. But then “I walked out during the shootings. I walked out of my car and started walking on foot in the city where I reached a platform, ... the roof of one of the population’ homes... etc.”. The number of gunshots fired at the car escort of the defendant Saddam Hussein was limited and small and they came from around two guns according to what Saddam Hussein himself says.

In addition, the witness Waddah Al-Sheikh who was president of the Department of Investigation and Inquiry and who reached the place of the incident at the noon on July 8, 1982 has estimated through his written testimony to this tribunal on October 23, 2005, a few days before his death, that the number off those who fired the shots according to the traces of the gunshots found on the wall of the orchard from which the gunshots were fired, and according to the empty shot cases found on the land of the orchard, the number of those who fired the shorts ranged between 7 and 12 individuals. These established findings do not justify at all sentencing 148 citizens from Al Dujail to death by hanging, nor does it justify arresting, detaining and torturing women, children and old people for four years in detention camps and prisons including Leya Desert Prison.

## **Conclusions and convictions of the Tribunal**

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

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

The conduct perpetrated by the defendant Al-Bandar was part of the widespread and systematic attack against Al Dujail citizens on July 8, 1982 and this conduct was in fact one of the parts of this successive, systematic and widespread attack which accumulated and took several dimensions and shapes regarding its nature and big

magnitude. The civil attributes of the victims proves that most of those who were arrested, tortured and murdered were orchard owners, farmers and their children and women of Al Dujail citizens.

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

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

The evidence concerning the existence of knowledge and intent of the defendant Al-Bandar in connection with his conduct that forms part of the widespread and systematic attack arises too from the position he used to occupy as president of the

Revolutionary Court at the time he issued that order. This position enabled him to know and provided the grounds for him to be able to intend and indeed issue an order of murder under legal cover so that order would come out as a decision issued by a tribunal. This order of killing is considered by itself as evidence of the intent to contribute to committing part of or one of the acts constituting the crime taking the viewpoint mentioned earlier.

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

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

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

This court is convinced that the accused Al-Bandar was aware (knew) of the presence of a wide range attack against the civilian community in Al Dujail, and his position as an president of the Revolutionary Court at that time, and the necessity of being member in the (disbanded) Ba’ath party and his constant communications with

the superior leaders of the party and the country including the accused Saddam Hussein, all lead to the conclusion that the defendant Al-Bandar in fact knew that there was an organized targeting of the civilian community in Al Dujail which was maltreated by multiple means one of which was murder. The defendant admitted that the Al Dujail incident was known and its news were broadcast on foreign TV stations and moreover, that he knew that those individuals whose names were referred to his court had been arrested and imprisoned and then referred to him.

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

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

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

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

This court believes that the two paragraphs (b and d) of Second part of the article mentioned above apply to the act perpetrated by the defendant Al-Bandar, since on the one hand he ordered committing a murder that actually took place when he issued the death sentence in the way we have demonstrated, and since this crime actually took place when that order was carried out through execution (killing) of the victims. In addition, he contributed to a joint criminal act with a group of people inside and outside the Revolutionary Court and with a joint “mens rea” for committing a joint criminal act. The deliberate participation of the accused Al-Bandar had the purpose of furthering the criminal activity and the criminal purpose for number of organizations of

the state and Ba'ath party, including the intelligence service which was presided over by the defendant Barazan Ibrahim during the incident of 1982, and the Office of the Presidency which was under the command of the defendant Saddam Hussein who also used to lead the Ba'ath party and who in turn used to command all the country's apparatus (organizations). The criminal activity to which the accused Al-Bandar contributed by furthering the criminal purpose of these organizations which were led by the some of the defendants in this case included committing a crime under the jurisdiction of this court which is murder as a crime against humanity.

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

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

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

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

The decision issued by the defendant A-Bandar and with the members of the so-called Revolutionary Court on June 14, 1984 is in fact an order of murder and not a judgment issued by virtue of the law and in conformity with it. This order was indeed

fulfilled and more than 90 citizens of Al Dujail were killed on the pretext of the death penalty against them which was issued by the court and carried out by hanging.

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

The International Criminal Tribunal for former Yugoslavia considered in its judgment, (mentioned previously) in the case of (Melorad Karnoglak) that: “The indictment of any defendant for contributing to the commitment of a joint criminal act can be deduced through his membership in such criminal organizations. And in reference to the same decision in the (Tadek) case and the appeal decision which was issued in the case, the criminal responsibility of a joint criminal act in accordance to what that appeal decision has specified in the (Tadek) case applies to the situation where all the participants share in a joint intent to perpetrate criminal acts in which the authentic perpetrator acts outside the range of joint criminal action but despite that leads to the natural and likely result of the effect of the joint criminal act agreed upon”.

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

This matter seems clear in the case of the defendant Awad Al Bandar through many aspects including the referral decision of (148) names of Al Dujail citizens to the Revolutionary Court which took place on May 27, 1984, and then the decisions of conviction and adjudication which were issued to the effect of execution by hanging till death after nearly two weeks from the issue of the referral decision (the two decisions of conviction and adjudication were issued on June 14, 1984), and then this order was sent to the Office of the Presidency at once and a presidential decree was issued affirming the death sentence against the victims only two days after the issue of the decision of conviction, that is, on June 16 1984. This extraordinary speed in which the process of issuing the order of killing the victims of Al Dujail citizen for providing

formal legal coverage means the existence of harmony, understanding and implicit agreement, if not an explicit one to carry out that joint criminal act.

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

It is clear that at least the third case applies to what the defendant Al-Bandar did when he issued a death sentence against (148) citizens from Al Dujail in a trial proven to be illusory, and this through the position of the defendant in authority and also through his position as president of the (disbanded) Revolutionary Tribunal, while knowing the nature of that regime and his intention of supporting it and in consideration of his membership in the disbanded Ba'ath party and as president of one of the states' organizations (the so-called the Revolutionary Tribunal) in that state which was lead by the Ba'ath party (disbanded). The fact that Awad Al-Bandar was as leading member in the Ba'ath party at that time is certain, since it would not have been possible whatsoever for anyone to occupy the position that Awad Al-Bandar used to occupy as president of the Revolutionary Court unless he was leading member in that party. If the crime agreed upon (whatever was the type of this agreement, explicit or implicit) was pretreated by one or more of the contributors to this joint crime, then all the contributors to that act are criminally responsible for that crime regardless of the role each one of them played in committing it.

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

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

Al Dujail citizen whose names were included in the decision of referral, and that the conduct of the mentioned defendant was part of a widespread and systematic attack directed against a civilians population, and that he knew that his conduct forms part of that attack, and intended to carry out the criminal result that took place through the death of the victims when he committed along with others that joint criminal conduct.

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

### **The Decision of Conviction**

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

Member

Member

Member

Signature

Signature

Signature

## **Decision of Conviction Against Awad Hamad Al-Bandar**

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

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

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

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

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

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

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

In addition, there were minors under 18 years of age that were subjected to the death sentence against to the effective and mandatory laws within the context of the legislation and judicial system. These are according to the sequence of the decision of adjudication (Mohamoud Hassan Mohammad al-Haydari, the name sequence in the decision of adjudication is No. 118 and his age according to the day, month and year 7/6/14 years old; Abbas Habeeb Kathem Al Mousawi (65) 7/ 7/ 12 years old, Mahdi Hussein Ali al-Marsoomi (107) age 7/ 4/ 14 years old; Habeeb Jawad sequence No. (116), age 12/ 6/ 17 years; Hashem Ali Lafta Al-Zobiadi, sequence No. (12) age (12) years; Ahamad Abed Jawad Alzobaydi sequence no. (2); Mohammad Abed Jawad Al-Zobaydi; Mohammad Hassan Mahdi Al-Aswadi (108) age 8/ 1/ 15 years old; Fouad Hasan Mahdi Al-Aswadi (12) age 15/ 7/ 12 years old; Khamees Kathem Ja’afar Al-Obeydi age 19/ 6/ 15 years; (48) Hussein Ali Habeeb al-Obeydi age (117) 19/ 3/ 15 years old; Hadi Abed El wahab Ja’afar al-Obeydi age 7/ 6/ 16 years old; (24) Maytham

Mahdi Abbas Al-Salami; (88) Mouayad Salim MaJeed Al-Haydari, sequence No. (106) Naser Abed El-Aziz Jawad Al-Zoubaydi; sequence No. (133) Hussein Salman Mouslim al Khazragi; sequence (134) Hasan Dahhma Soultan Al-Salami; sequence No. (23) Yussuf Abed Ali Hasan Al-Abdeen; sequence No. (27) Hafeth Mohammad Hadi Al-Khalabi, sequence No. (14) Ibrahim Saleh Kathem. Al Mousawi, sequence No. (87) Mousim Abed Ali Hasan Al-Obeydi; Sequence No. (17) Hashem Mhommad Najem Al-Salami; sequence No. (124) Ali Najem Abboud Al-Salami; sequence No. (99) Ahamad Jasim Abed El-Hassan; sequence No. (105) Mahdi Saeed Abboud; sequence No. (109) Kassim Mohammad Jasim Al-Zanada; sequence No. (142) Salem Abed Abbas Ali; sequence No. (31) Hyadar Jasim Hussein Al-Salami).

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

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

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

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

On the other hand, and according to the individuals whose names were included in the death sentence, the names of those who died under investigation were added and later they are 22 individuals who were killed before the decision of referral to the revolutionary tribunal. There were two other individuals, one of whom (Kasim

Mohammad Jasim Zanda) had a death certificate issued in his name after execution of the death penalty through a decision of the Revolutionary Leadership on 23/ 3/ 1985 but he didn't stand before the Revolutionary Court since he was detained in Leya desert and was then under 14 years of age. But upon learning of this fact, the death sentence was executed against him later on December 18, 1989.

Among the other evidence of confusion, and of non-abiding even by legal procedures, and without knowing “the name and personality of the accused standing before the court”, and in the decision of adjudication of two individuals who were at the time of issue of the decision against them among the other names detained in Leya Desert in Samawa. And according to the official documents of the authorities and in light of the report of Hussein Kamel who was delegated by the defendant Saddam Hussein to find out the circumstances of the erroneous execution of four individuals at the intelligence prison in place of four other individuals, and according to a report of a committee formed of four members, including a judge, submitted to Saddam Hussein on July 5, 1987 in which it was stated regarding each of Jassim Mohammad Rida al-Hitto and Ali Habeeb Ja'afar (and the two others whose names were issued in the decision of adjudication at the Revolutionary Court issued by the president of the court Awad Hamad al Bandar) that two of them are alive now, and there are no negative indications against them”. And it was stated in a report dated July 5, 1985 that there are four individuals who were wrongfully executed while two other convicts were released erroneously also. In response to this report, a secret directive, was issued from the Office of the Presidency under No. 35023 on July 13, 1987 addressed to the intelligence service under the title of: “A directive: It is considered that Hasan Abed El Amir al-Hammoudy, and Mahdi Abed-El-Amir Al-Hammoudy, and Faleh Mahdi Abed-El-Amir, and Salah Mahdi Abed El Amir as having died during detention”.

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

Therefore, and since the accused has not into taken consideration all legal and realistic norms when issuing the harsh judgment against (148) citizens of Al Dujail and without regard to the judicial procedures and mandatory legal regulations and the procedures enacted in the code of criminal procedures No. 23 of the year 1972 and penal code No. 11 of the year 1969. Accordingly, and since the tribunal is faced with a

unique situation with respect to an individual who is accused as a judge and assuming that the other defendants, including Saddam Hussein and the chief of intelligence referred to the court, and in consideration that all the defendants are referred to this court, except that this the defendant has abided to begin with by the need to check the number of individuals referred and the cause of the referral in respect to each one of them, at least, and without separating (classifying) each one of the accused individuals even though the case was “urgent and quick” with a “certain particularity or privacy” as he testified before the court.

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

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

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

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

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

the context of a widespread attack against the citizens of Al Dujail and carrying it out quickly.

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

Signatures

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

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

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

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

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

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

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

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

- a- If he perpetrates a crime in his personal capacity or in conjunction with, or through another person, regardless whether that person is criminally responsible or not.

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

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

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

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

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

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

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

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

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

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

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

The witness Waddah El Sheikh stated in his testimony set down by the tribunal on October 23, 2005, that a number of intelligence officers were rewarded by the president of the republic at the time (the defendant Saddam Hussein). The witness Waddah was one of those rewarded, and this was by raising their ranks for a full year for the effort they exerted in the investigations of Al Dujail case. He also mentioned that the defendant Barazan is the one who used to issue orders directly in the investigation and inquiry of the intelligence service. The witness Waddah Al Sheikh also made clear that he heard judge Abed el-Aziz who used to work in the Presidential Palace saying that Saddam Hussein ordered referring anyone capable of arms amongst the Al Dujail citizens to the tribunal. Waddah also mentioned that the number of those who shot at the car escort did not exceed 12 individuals. This was affirmed in his report submitted to the defendant (Barazan) and does not know why these large numbers of citizens were arrested. He added also that most of the individuals who were referred to the (disbanded) Revolutionary Court denied the incident of shooting or any relationship to it and he does not know why they were referred to the tribunal despite this fact.

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

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

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

It is clear from what has preceded that these were not adequate eye-witnesses to prove that the defendant Saddam committed those crimes himself or even issued the orders for their commitment. However, does that mean that there are no other evidences and inferences of his responsibility for those crimes taking into consideration the kinds of personal criminal responsibilities enacted in article 15 of the tribunal law, and the articles of criminal participation enacted in the articles 47 to 45 of penal code No. 111

of the year 1969. Does that mean that Saddam Hussein did not issue those orders whether directly or indirectly? Does that mean that he is not criminally responsible considering that he was the President of the Republic at the time, for those acts that form crimes against humanity that were committed by others?

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

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

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

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

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

The defendant Saddam denied knowing the party that ordered the detention and arrest of complete families comprised of women, children, old people and youths and detaining them in Leya prison in Samawa desert, and he responded that he does not know who released these families detained in Leya prison on April 21, 1986. And when he was reminded of the report submitted to him by the investigation commission on July 2, 1987 about what happened in Al Dujail and “that the mentioned families were released from detention (by a noble deed from you), which meant that you were fully aware of this case and the proceedings of the investigation as attested by your issue of the order to release the detained people in 1986, he answered: “I honored the detained people and let them out, and I don’t recall pursuing the matter at the time, but I think that we charged a certain party with the matter, maybe, but I don’t recall it”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Regarding his affirmation of the judgment of the (disbanded) Revolutionary Court that sentenced 148 of Al Dujail citizens to death, he answered that this matter is not under the presidency's jurisdictions and "I'm not the one who issues sentences but the law and the courts are the ones that issue sentences and my role is to say that the sentence is extenuated or the convict is pardoned, partially or totally. With respect to

me, it seemed that I was convinced that the evidence that was presented was enough to give my accreditation”, and he added that according to my constitutional obligations anything in the constitution that binds the president to check before approving or refusing, I abide by it.

When the defendant Saddam was asked whether he reads the mail addressed to the presidency himself as well as that of the Revolutionary Council Leadership or whether there is a certain party that informs him about its contents, the defendant Saddam answered: “I read my mail”. And when asked: Why did not you take action when you knew in 1987 that citizens from Al Dujail were liquidated (killed) during the investigation before being referred to the tribunal and that their names were mentioned in the decision of referral he responded that, when the president of the state receives news that a death has resulted from torturing and in case he is convinced that the party which told him is honest, then he must act, but regarding the kind of action, each state has its own circumstances.

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

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

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

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

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

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

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

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