

IHT Part 3 Translation

(...continued from IHT Part 2)

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

Similarly, (.....), who was a former member of the team entrusted with protecting the accused Saddam Hussein who testified in court on 05/24/2006, stressed that there was an attempt to assassinate the former President of the Republic at Dujail during the incident. Some of his statements were built on what he heard from others. When asked by court about the number of shots fired at the motorcade, since he was with the accused at the time, he said there was a heavy fire (more than four or five rifles shooting). He denied that anyone was hit in that incident, saying (Nobody was hurt, only cars were damaged).

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

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

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

Republic directed against citizens. It was not a personal revenge, he said, but an institutional act organized according to the law and the plans.

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

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

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

The testimony or witness (...) before court on May 29, 2006 was based on what he heard from others. A witness for defense who testified under protection in court on May 30, 2006, gave details of a purported attempt to assassinate the former President of the Republic Saddam Hussein. This witness also said he was hit in the rear of his right foot although he was on the right side of the street and fire came from the left side of the street.

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

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

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

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

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

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

Questions raised in the case concerning primarily the accused Saddam Hussein

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

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

This also requires knowing:

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

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

The indictment addressed to the accused Saddam Hussein on May 15, 2006 stated: (I charge you, Saddam Hussein, that when you held the position of President of the Republic of Iraq and Commander-in –Chief of the Armed Forces and President of the Revolutionary Command Council (formerly) and when you visited the town of Dujail

which is part of the Province of Salahiddin administratively, on July 8, 1982, under the pretext that fire was shot at the cars accompanying your motorcade, you issued orders to the military, security and intelligence organs, to the Popular Army and Baath Party organization in Dujail to launch a systematic, large scale attack using different kinds of weapons and helicopters to kill, arrest, detain and torture a large number of the inhabitants of Dujail (men, women and children) and then issued orders to dig out fields and destroy buildings belonging to them, and that according to those orders, forces and units killed nine persons that day and the following day.

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

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

Those victims include: Abdil Wahhab Jaafar Habib Al Obaidi, Sabriah Abbas Ahmed al Obaidi, Sabri Asad Abdallah Al Haidaary and two children Mothanna Majeed Yacoub and Thabit Asad Ali Haidari. Then the Department of National Security Affairs at the Presidential Office (Now dissolved) sent over to the now dissolved revolutionary court headed by the accused Awwad Ahmad Al Bandar, at direct orders from you, 148 names, including names of some people who died because of torture under investigation in the Department of Investigation and Intelligence and Abu Ghraib Jail. They included teenagers who were under 18 years old, namely (Mahmoud Hassan Mohammad Al Haidary, Abbas Kathim Habib Al Marsoumy, Mahdy Hussain Aly Al Mousawy, Habib Jassim Jawad, Hashem AlyLafteh Az Zubaidy, Mohammad Abid Jawad Az Zubaidy,

Mohammad Hassan Mahdy Al Aswady, Fuad Hassan Mahdi Al Aswady, Khamis Kathem Jaafar Al Obaidy, Hussein Aly Habib Al Obaidy, Hady Abdil Wahab Jaafar Al Obaidy, Maitham Mahdy Abbas As Sulamy, Aly Anwar Hassan As Sulamy, Jaafar Aly Hussein Al Mousaway, Mo'ayyid Salem Majid Al Haidary, Imad Abbas Hassoun Al Haidary, Nasser Abdil Aziz Jawad A Zubaidy, Ahmed Jassim Mohammad Rida Hinnou, Jassim Naji Abid Al aswady, Hussain Salman Mislih Al Khazraji, Hussein Duham Sultan As Sulamy, Amer Duham Sultan As Sulamy, Yousef Abid Aly Hassan Al Obaidy, Mahmoud Jassem Abdil Hassan Al Jumaily, Hafiz Mohammad Hady Al Kulaby, Ibrahim Saleh Kazem Al Mousawy, Mosallam Abid Aly Najim Abboud As Sulamy, Ahmed Jassem Abdil Hassan, Mahdy Saed Abboud, Qassem Mohammad Jassem Az Zandah Az Zubaidy, Salem Abbas Aly, Haidar Jassem Hussein As Sulamy). The Revolutionary courtsentenced them all to death by hanging not subject to appeal, in a summary trial that lasted one session only under judgement number 944/G/1984 on June 14, 1984.

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

Evidence and Circumstantial Evidence Against the Accused Saddam Hussein:

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

1- The accused Saddam Hussein, who held during the period of the incident (from 7/8/1982 to 01/16/1989) the position of President of the Republic and Commander of the Armed Forces and President of the Revolutionary Command Council, and that the executive and legislative powers were focused in his hands in almost a total way, so that he could issue any law or decision that has the power of law any time he wished, and that

the judicial power was in the hand of the minister of justice who was subservient to the chief of the executive power.

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

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

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

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

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

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

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

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

4- The orders issued by the accused Saddam Hussein following his return to Baghdad from Dujail to security officials associated with him directly to meet at the National Council, and the order he issued to the accused Taha Yassin Ramadan to preside over this meeting and draw a suitable plan to deal with the situation and start arresting

and detaining the people of Dujail and interrogating them, and this thing actually happened on the day of the incident and subsequent days and weeks.

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

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

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

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

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

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

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

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

G- The study presented by the Legal Affairs Department in the Presidential Office dated April 5, 1987 regarding the non-execution of two of those whose names were mentioned in sentence issued by the dissolved Revolutionary Court number 944GI1984, dated June 14 1984.

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

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

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

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

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

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

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

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

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

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

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

The court has evidence of the authenticity of the documents and letters and the comments they contained sent to the Presidency of the Republic and the departments associated with

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

It is clear from all the aforesaid that there is a great deal of evidence that proves that the accused Saddam Hussein issued orders to commit actions that constitute crimes against humanity and proves his criminal liability being the supreme responsible authority for the actions of his subordinates regarding most of the crimes committed in Dujail on the day of the incident on July 8, 1982 and later until January 16, 1989 contained in the indictment paper addressed to the accused Saddam Hussein on May 15, 2006, provided for in article 12/1 of the court law.

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

Kinds of Criminal Involvement and Liability For It

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

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

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

- 1- Instigated it and it took place as a result of this instigation.

2- Agreed with others to carry it out and it took place as a result of this agreement.

3- Gave a weapon “or tools or any other thing used in carrying out the crime while knowing it or assisted him deliberately” in any other way that facilitates or completes its commission.

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

Article 53 of the penal law provided for responsibility of perpetrator and co-conspirator for probable crimes. It stated “A participant in a crime, whether he is actor or conspirator, is punished according to punishment for the crime that actually took place “even if it was other than the one he meant to commit when the crime that took place is a possible result of the participation that took place.” Article 54 of the penal law identified the ruling when the purpose of a participant in the crime is different. It stated, “If the purpose of one of the participants in the crime is different – whether he was actor or conspirator or the way he knew about it from other conspirators, or the way in which that others knew about it, each one is punished according to his intention or the way he knew.” In this case, we deal with texts relating to the kinds of criminal participation and responsibility for it is mentioned in the court’s law which is a special (article 15) and another mentioned in the penal law which is a public law. It is intuitive that when there is a ruling for a certain case in both laws, the special law is the one that is applicable. If there is no ruling in the special law, the ruling in the public law is applied, which is the criminal law.

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

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

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

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

1. That the perpetrator of the crime kills another person or more or causes that,
2. To commit the act as part of a large scale or systematic attack directed against civilian population.

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

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

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

The moral side of the deliberate killing crime as represented by the criminal intention of the accused Saddam Hussein in killing those (victims) of the inhabitants of Dujail with both the will and knowledge elements was proven to the court too. The accused Saddam Hussein was aware of all elements of that criminal incident (deliberate killing) and wanted to fulfill them. That was proven to the court through numerous prosecution

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

In fact, if there are some people who justify the killing of a number of individuals from the people of Dujail on the first day of the incident under the pretext of chasing, detaining and killing those who started committing that act (assassination attempt) there is no legal, or legitimate, or human justification that can be accepted for arresting and detaining hundreds of women, children old men and young men of the inhabitants of Dujail and killing a large number of them, almost (200), if we take into account the number of those who were killed in (the governorate) jail which belongs to the Intelligence branch and Abu Ghraib jail and LEA desert detention center. These included a large number of young men and old men. The reaction of the Baath Party regime which was led by the accused Saddam Hussein which was characterized with brutality and lack of concern for humanity by killing this large number of civilians cannot be justified under any pretext whatsoever,

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

It was proven to this court that military units, including the Republican Guards, the military aircraft (helicopters) had fired at civilian inhabitants of Dujail who were in the fields. Who issued orders to open fire on those people? Is it not the prerogative of the Supreme Commander of the Armed Forces? If Saddam Hussein were not the one who issued those orders, why didn't he try to find out who did and punish the officers or officials responsible for issuing those orders? Taking into consideration the fact that when the accused Saddam Hussein denied that he issued those orders, said he knows that it is illegal for the military units to carry out such acts. This court cannot accept the denial

by the accused Saddam Hussein that he issued the orders to fire at inhabitants in the fields of Dujail at the time when it is proven to it that military units of the intelligence, some of which are connected directly with the accused Saddam Hussein (The Republican Guard) and units of the Intelligence branch which are connected with his brother the accused Barzan Ibrahim, and units of security and the Popular army moved and began its acts of killing, arresting and detaining people in an area less than 60 Kms from Baghdad in the circumstances of the Iran-Iran war. This court has noted that the accused Saddam Hussein had admitted that the movement of these security and military units required orders to be issued by him being the Commander-in-Chief of the Armed Forces, except in very rare cases (He mentioned that in his testimony which is recorded by the investigative body).

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

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

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

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

Referring back to the ratification by the accused Saddam Hussein of the death sentence against all those inhabitants of Dujail, whose names were referred to the Revolutionary court (dissolved), the accused Saddam Hussein was asked what is the meaning in your opinion of endorsing a sentence? He said (ratification means that I have the necessary

constitutional power to abolish or amend the sentence by exempting people who were convicted by court and sentenced to death). This answer shows that the accused Saddam Hussein was aware of his constitutional authority to abolish or amend a death sentence which lays upon him the responsibility of taking firm measures before endorsing death sentence against all those whose names were referred to the said court so as to be sure that the Revolutionary court did not act “contrary to the law”, but instead of that we see the accused Saddam Hussein endorse the ruling of the said court to sentence to death all victims, only two days after it was issued.

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

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

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

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

unlimited number of people. The local authorities were involved in committing those crimes in addition to the involvement of the political and military commands.

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

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

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

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

It is proven through investigation and trial, and through the availability of a large number of documents and evidence, that the accused Saddam Hussein issued orders in Ridwaniyyah to the accused Barzan Ibrahim, who was Chief of Intelligence and responsible for the security of the former President of the Republic to go to Dujail after the former returned from it directly and to personally supervise the attack, killing and arrest of the people of Dujail. And carrying out an investigation among them and that most, if not all testimonies of complainants who were arrested on the day of the incident, July 8, 1982, and the following day, emphasized that the accused Barzan Ibrahim is the one who issued orders for the arrest of inhabitants of Dujail and sent them to the jail of governorship of Intelligence and that he supervised torture acts in that jail.

Some complainants even stressed that the accused Barzan Ibrahim had tortured them or others in the building of the governorate which belongs to the Intelligence branch. Since it was proven that the accused Barzan received orders from the accused Saddam Hussein to carry out investigations with the inhabitants of Dujail and to carry out all requirements, and since that investigation included illegal arrest, detention and torture until death, and that investigation was in all its wordings in violation of the law and resulted in referring a large number of the people of Dujail to the Revolutionary Court (Dissolved) which issued

its verdict to have them all executed, and ratification of the accused Saddam Hussein of that verdict, although he knew that the number of persons who fired at the motorcade of cars in Dujail did not exceed a few individuals, as the accused Saddam Hussein himself admitted, therefore, the orders issued by the accused Saddam Hussein beginning with the order to the accused Barzan to supervise the investigation to the order of referral to the Revolutionary Court, to the order of ratification of execution sentence issued by the said court, had all contained in one way or the other, orders for killing. The first order issued by the accused Saddam Hussein to the accused Barzan to supervise investigation contained an order to commit the act of killing because as a very possible result in a very harsh totalitarian regime, Saddam knew about its nature more than anybody else. The very possible result which is almost natural according to the logical cause of things, is killing those detainees or at least killing a large number of them.

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

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

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

The responsibility of the accused Saddam Hussein as a main perpetrator who issued an order to kill those who remained alive (at least 96) individuals who were sentenced to be executed by the Revolutionary Court (Now dissolved) by endorsing the verdict to have them all executed, is not based on the fact that he ratified the death sentence against those victims, and before that referring them to the said court. The accused Saddam Hussein was President of the Republic and these matters are within his constitutional and legal prerogatives. He actually defended himself before this court on that basis. But his responsibility for issuing an order is based on the fact that he knew that those whom he decided to refer to the Revolutionary court and then ratified the sentence to execute them all and had the sentence executed, are innocent people who had nothing to do with the

assassination attempt, or with the Dawa Party. In fact he stated on the first day of the incident in his speech before the people of Dujail that there are people, not more than ten, who carried out that act (assassination attempt). Also, in his testimony before the investigating team he said that shots were fired at cars of his motorcade from two rifles or more.

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

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

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

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

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

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

The illegal arrests..., then the [unjustified] detention of the Dujail residents, were carried out on a large scale and systematic manner. The accused Saddam Hussein's participation was of great importance, not only in those operations, but also in facilitating the committing of the killing crimes against the Dujail victims, making it possible to say that this participation of the great importance will make the person who offered it a perpetrator in the crime.

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

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

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

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

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

the collaborative criminal act. The other aspect of that act was presented in the participation of the accused Saddam Hussein in **creating** and carrying out [the crime].

This type of responsibility that was specified by the court of appeals in the case of **[Dusko] Tadic**, as it was pointed out in the verdict that was issued regarding the case of **Milorad Kornyak**, which was noted previously, is applicable to the a case in which all participants contribute with a collective intent to commit certain criminal acts where the main perpetrator carries out an act outside the scope of the collaborative criminal act. Nonetheless, it is a normal and predictable outcome resulting from the collaborative criminal act that was agreed upon.

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

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

- 1- A direct participation in committing the arranged crime (by being described as the original perpetrator);
- 2- Or by his presence (the accused) during the conduct of the crime, with his knowledge that the crime was committed, or will be committed, and he [provides] a willful assistance, or he incites another accomplice in the collaborative criminal act to commit the crime. This instance is available in challenging the accused Saddam, who was not only present during the commission of the crime although he was aware that the crime was going to be committed and he [provided] willful assistance, or he incited another accomplice in such a collaborative criminal act to commit the crime, but above that he ordered the carryout [of the crimes]; especially, in regards to the victims who were referred to the revolutionary court and were all sentenced to death and he approved [their] executions;
- 3- Or through an act in which he supports a certain regime during which the crime has taken place (meaning the region where such regime was dominant). That can be through the position of the accused in the government, or through his position with his knowledge of the nature of such regime and his intent to support it [in order] to reinforce the criminal activity, or the criminal purpose, of that regime, the group, or the party, with

[his] knowledge of an intent for a crime [that will] be committed by this regime, this group, or that party.

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

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

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

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

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

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

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

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

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

The court does not see it necessary for a relation between the leader and subordinate to be direct, meaning that this relation is present even if it was indirect. For instance, this relation might be present between the supreme leader and the subordinate's subordinate,

[which means that] it is unnecessary for the subordinate to be the one who personally commits the crime, but it might be committed by [a person under him].

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

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

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

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

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

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

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

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

The accountability of the supreme leader, the heads, and the commander in chief is not [held] through the acts of others, but is an individual accountability that is based on the conduct of those subordinates to the criminal acts, and the leader's infringement of his legal obligation, [which he is responsible for]. The infringement of what the law obliges

him to assume as a preventive role when he finds out that there are murders that will be committed and to assume a deterrent role when the murders are committed [after] he learns that they were committed.

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

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

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

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

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

5. The perpetrator of the crime must be aware that the manner is part of a comprehensive, or systematic, assault directed against the civilian population.

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

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

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

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

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

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

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

During the investigation and trial of the accused Saddam Hussein, he has denied his advanced knowledge that this civilian population was removed from Dujail to that [desolated] area. Nonetheless, sufficient evidence is available to [conclude] that the

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

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

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

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

Additionally, this court definitely holds the accused Saddam Hussein criminally accountable to that crime in accordance with article **14/4** of the court law because he was the supreme leader (the head of the state and the chairman of the revolution leadership council...etc.), [and] when learned that there will be a coercive displacement of the victims from the Dujail residents to the Liya complex in Al-Samawa desert from the

spring of the year 1983 - if not before that - he did not take any measure to prevent this crime from taking place. Also, when he learned once again in the year 1986 that they still [reside] at that complex and he decided to release them and end their exile, he did not take any measure to refer this case to the designated authorities in order to launch an investigation and try those individuals from the intelligence and security agencies, including [their] superiors, and punish them for committing that crime against those innocent civilian residents.

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

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

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

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

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

There are many elements of evidence for these legal requirements in order for this crime to be established. Fore example, these are [some of the pieces of evidence that are required]: evidence of arrest; [and evidence of] a large rate of arrests...; an evidence of imprisonment, detention, and an actual detention; evidence for the circumstances of the arrest; evidence of the occupation of every detainee; and evidence of the description, or general descriptions of the detainee; evidence of the civilian status of the detainees; evidence of the period of the detainment; and evidence of the declaration of the reasons behind the detention; evidence that the interrogation of the detainees has begun shortly after their detention; evidence of the questions that were asked during the interrogation; evidence of the mistreatment, or physical harassment, during the period of detention, or interrogation; evidence that the basic procedural rights were violated during the interrogation; evidence for the death of the detainees; evidence that the detainees were subjected to inhumane [treatment]; evidence that the detainees were forced to sign written reports; evidence that the detainees were set free after the interrogation; and evidence of an arbitrary and illegal detention; evidence that the detainees were brought to court for any crime; evidence that the defendants were convicted of any crime; and evidence for the existence of legal procedures at the location of arrest.

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

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

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

are extremely [harsh] at those locations; and the interrogation of those detainees has begun after they were admitted to Al-Hakimiya prison.

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

In reality, the plaintiffs and witnesses did not state that the accused Saddam Hussein has personally imprisoned any of the Dujail residents. Also, none of them has stated that he has heard Saddam as saying that, or ordering that. But what has been proven to this court is that the accused Saddam Hussein has issued an order to the accused Barzan Ibrahim as well as the accused Taha Yassin to conduct an investigation of the Dujail residents and to administer all the procedures that must be taken regarding this [case], although he was [fully] aware that those who fired the shots at the motorcade do not exceed a few individuals. The launching of an investigation of this large number of the Dujail residents, which approximately reached 600 people, following the accused Saddam Hussein assignment of his brother the accused Barzan, [who is] the director of the intelligence agency, to that [investigation] has included arrest, detention, and extreme deprivation of physical movement. This means that the accused Saddam Hussein has issued an order for the arrest and detainment of those civilian residents from the Dujail, and this order of arrest, imprisonment, and deprivation of physical movement was in violation of the law.

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

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

Also, he was aware of that when he reviewed the investigation results that were conducted by the investigation committees in the year 1987. In every situation, the accused Saddam Hussein did not take any measure to prevent this crime from happening. Also, he did not take any measure to punish those...who belong to the intelligence

agency or any other individual who participated in committing this crime. This was due to a simple reason, which is that he has [personally] ordered [that crime] even if it was not committed directly by him.

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

Based on what has been presented, this court is completely convinced that the accused Saddam Hussein is held criminally accountable of the imprisonment and the severe deprivation of the physical freedom of those who were detained from the Dujail residents, [which is considered] a crime against humanity based on several provisions of article **15/2/B, D** as well as article **15/4** of the court law since he is considered the commander-in-chief (the head of the state and the chairman of the revolutionary command council) during the time in which the crime was committed, which [began on] July 8, 1982 and lasted for...several years that [may] vary due to the difference in the fates that everyone of those detainees has [met].

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

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

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

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

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

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

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

The **masked** witness (----) stated before the court on December 21, 2005 that the torture with **electricity** was taken place in the presence of Barzan, who was eating grapes during the torture [session] of the victims, and he also saw the body of Jassim Mohammed Latif, which had signs of torture, at Al-Hakimiya prison. Also, Majbal Muhsin was killed in

front of him at Abu Ghuraib prison after he [suffered] from a strike to his head by the metal [**piece**] of the military [uniform] waistband.

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

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

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

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

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

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

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

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

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

The accused (----), who was 23 years old during the time of the incident and was a member of the popular army, stated before the court on February 1, 2006 that he had seen the accused Barzan as he was administering the arrests, which were carried out by members of the intelligence and army.

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

The accused (----), who was 16 years old during the time of the incident, stated before the court on February 2, 2006 that he was subjected to torture, where they had placed an

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

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

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

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

So, is the accused Saddam Hussein held criminally accountable of this crime? None of the plaintiffs has stated that Saddam has personally tortured them. Also, they did not hear that Saddam had ordered that. But they all (most of them, if not all of them) have stated that the accused Saddam Hussein is accountable of that because he was the head of the state, and [because] he was the custodian and was responsible for his subjects, and because he had assigned Barzan to conduct the investigation on the Dujail residents, their arrest and detention, and then their interrogation, which was a normal and...predictable [outcome] that included torture for obtaining confessions that are either genuine (truthful) or not genuine (false), or for the [sake] of torture, or to [satisfy] the desire of some of those who had carried out these acts, or for other reasons.

In addition to that, the accused Saddam Hussein has implicitly acknowledged his awareness of those practices that took place at the intelligence and Abu Ghraib prison when he said on December 21, 2005, “Such acts and harms that occurred against [the

plaintiffs] were a mistake and violate the law, similar to what occurs in Third World countries.”

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

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

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

It has been proven to this court that the accused Saddam was enjoying influential power and a functional ability to prevent those crimes and punish the perpetrators; he had...a power over the accused Barzan Ibrahim and the intelligence agency members, which

enabled him to [control] those individuals and prevent them from committing torture. It also enables him to have them referred to investigation and trial if they would really commit torture. This has been proven to the court through several material evidence, including the referral of Hikmat 'Abd Al-Wahab, an intelligence officer, to the intelligence court, not for torturing those victims, executing, or imprisoning them, but for a mistake he made when he inadvertently executed four [other individuals], who were not [members] of the Dujail victims.

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

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

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

In addition to the charges that were pressed by this court to the accused Saddam Hussein on May 5, 2006, the extent of his accountability to which we have discussed, it has [also] accused him of other charges of coercive disappearance of individuals as a crime against

humanity in accordance with article **12/1/T** of the court law. Article **12/2/Z** of the court law has [defined] the coercive disappearance of individuals by stating that it means the arrest of individuals, detaining them, or abducting them by the state, or a political organization, or by its permission, or support, for this act; or its silence regarding [this act], and then its refusal to acknowledge the deprivation of these individuals of their freedom, or offering information regarding their fate, or the location of their whereabouts in order to deprive them of the legal protection for a long period of time.

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

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

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

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

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

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

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

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

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

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

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

Therefore, due to the acknowledgement of the accused named above, and the plaintiffs' testimonies, whose authenticity has been proven to the court, and the aerial images of Dujail before and after the uprooting, which was shot from satellite, and which show the degree of the disaster that was [inflicted] upon those gardens that have become a barren land; and [due to] the ruling that was issued by the [dissolved] revolutionary command council number 1283 on October 24, 1982, which was ratified by Saddam Hussein, in his capacity as the head of that council, which included the seizure of the farmlands and the uprooted gardens that belonged to the civilian population in Dujail. Also [due] to the ruling of the revolutionary command council number 100 that was issued on January 23, 1985, which was also ratified by the accused Saddam Hussein, which includes a similar language to the first ruling; and because these two rulings were issued illegally; especially, the law of ownership in addition to [the fact that] these two rulings have violated the interim constitution of the year 1970; and because the uprooting of the Dujail gardens has [inflected] extreme suffering upon the residents of the area; especially, on the owners and workers [of the gardens], where the uprooting and damaging of all fruitful plants took place; and because that act is similar in nature to the coercive displacement of many of the Dujail families; and executing, imprisoning, or torturing many of them. The destruction of the sources of living...of those victims, which is an act considered like

other crimes that are provisioned in article **12/1** of the tribunal law, in which the Baath party headed by the accused Saddam Hussein had targeted the Dujail residents, who have suffered the most severe harm and damages, that can hardly be [reversed], and the destruction and theft of their homes, the theft of their vehicles that belonged to the Dujail residents were all acts that are similar in nature to other acts that form a crime against humanity as stated in article 12/1 of the court law.

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

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

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

Moreover, the accused Saddam Hussein's statement, which was mentioned above, contains [a verbiage indicating] that the uprooting of gardens in Dujail was a collective punishment for failed assassination attempt that took place on July 8, 1982. And since the uprooting of gardens was the [final block] that completes the intensive, or systematic, attack against the Dujail residents; and since the accused Saddam Hussein had directly contacted the accused Taha Yasim Ramadhan after that [assassination] attempt as soon as he returned from Dujail, and had assigned him to supervise the procedures that must be taken in [charging] the Dujail residents, and had ordered him to meet with other officials at the national council building to present and discuss those measures and take the decisions regarding that; and since it has become clear to the court that the issue of uprooting the gardens in Dujail was part of the questions that were raised and a decision

regarding that had been made; [and] the accused Taha Yasin Ramadhan had formed a committee to accomplish this mission; and he personally had supervised the [process] of the uprooting, as it was noted in several of the testimonies by the plaintiffs, who have offered their statements during the investigation and trial phases. Due to all of the [above], this court has ruled that the accused Saddam Hussein is held criminally accountable for this crime (the other inhumane acts as a crime against humanity), which have resulted in the severe suffering of the Dujail residents; especially, the owners of those lands and gardens.

It would not have helped if the accused Saddam Hussein had the concerned Iraqi state agencies compensate the owners of the gardens and lands because the crime had [already] taken place, and the [reversal] of some of the damage is related to the civic responsibility and had no relation to the criminal accountability; especially, when this act represents an international crime and because the uprooting of gardens was a squandering of the national resources, and the compensation of some [victims] is a squandering of the common wealth.

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

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

1. Convicting the accused Saddam Hussein Al-Majid of the deliberate killing as a crime against humanity in accordance with article 12/1/A of the court law as denoted by article **15/2/B, G, D, O** and article 15/4 of the same law.
2. Convicting the accused Saddam Hussein Al-Majid of the removal, or coercive displacement, of the residents as a crime against humanity in accordance with article **12/1/D** of the court law and as denoted by article 15/2/B, D and article 15/4 of the same law.
3. Convicting the accused Saddam Hussein Al-Majid of the imprisonment, or extreme deprivation of [any kind] of physical freedom, which violates the basic principals of international law, as a crime against humanity in accordance with article 12/1/H of the court law and as denoted by article 15/2/B, D and article 15/4 of the same law.
4. Convicting the accused Saddam Hussein Al-Majid of the torture as a crime against humanity in accordance with article 12/1/O of the court law and as denoted by article 15/2/B, G, D and article 15/4 of the same law.

5. Convicting Saddam Hussein Al-Majid of the other inhumane acts that have a similar character to what [inflicts] an extreme suffering, or a grave harm, upon the body, or mental and physical health, as a crime against humanity in accordance to article 12/1 of the court law and as denoted in article 15/2/B, D of the same law.

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

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

Signature
Member

Signature
Member

Signature
Member

Conviction Resolution Against Saddam Hussein

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

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

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

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

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

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

At a subsequent date 148 members of the victims were referred to the Revolutionary court under presidency of the accused Awwad Hamad Al Bandar under charges of “sabotage, threatening security of the country, and being agents of a foreign power.” They were all sentenced to death including those who died under torture in the Intelligence branch, and those who died in the desert in Abu Ghraib jail including 22 who were below the legal age, for execution in violation of article 79 of the Iraqi Penal Law number 111, year 1969, the Proper Penal Trials Law number 23, year 1970, and Children Custody Law number ... Year 1983, in violation of international laws and rules of human rights including paragraph 5 of the list of civil and political rights issued by the United Nations on December 16, 1966 which went into effect on March 23, 1969 and was ratified by the Iraqi government in February 18, 1969. Article 6, paragraph of the List of Civil and Political Rights prohibits execution for crimes attributed to people who are less than 18 years old.

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

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

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

In your capacity as the Supreme head of the ruling Revolutionary Command Council, President of the Republic, the Commander in Chief of the Armed Forces, and in view of your high responsibility, you are directly responsible for crimes committed against those victims and their families. Also, during investigation and trial sessions you explained clearly and with a kind of arrogance that you are the sole person responsible for all these measures and orders issued in this respect by you. You explained in your testimony

before the court in March 1, 2005, (Since the Commander bears responsibility why do you look for details) and you said, (It is not my habit to rely on others). And in view of your position in the regime and in issuing laws, republican decrees and sovereign orders, and in view of your position in the regime, and in government and your ability to issue republican laws and decrees and sovereign orders, and in view of your position as being responsible for issuing orders to carry out a death sentence and repercussions of such strange measures, you bear full criminal responsibility in this respect.

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

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

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

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

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

number of the civilian population at whom the attack was directed included all families of the small town.

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

Regarding the application of severe punishment against the accused and killing a large number of them during detention as it is explained, and the death of other members of families as a result of torture, subjugation and deprivation of health services and means of living necessary to prolong life, and since these actions against the people of Dujail were part of a large scale organized and systematic measure that continued for several years, and then an expanded engineering project was organized affecting properties and homes and destruction of fields calling the digging out operation (town development) plan, and issuing of sovereign decisions by the “President of the Republic” concerning re-registration of fields and agricultural land within the borders of the towns of Dujail and Bald in the name of the state under a resolution by the Revolutionary Command Council number 1283 dated October 12, 1984.

On the basis of the aforesaid and in light of established facts, the criminal body in this court finds unanimously that the former regime with its head Saddam Hussein and its team the President and others, Barzan Ibrahim, Taha Yassin Ramadan have committed a series of crimes that lie within the provisions of article 12 of the law of the High Iraqi

Criminal Tribunal number 10, year 2005 as a large scale systematic and programmed attack with the aim of punishment and intimidation.

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