

## IHT Part 4 Translation

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

### **Verdict Convicting Saddam Hussein in the “Dujail” Incident**

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

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

Saddam Hussein responded to a question posed by the interrogator regarding the Revolutionary Court’s unrestricted authority to appeal a given decision: “Every one of these trial[s] were initiated by law, this law. The authorities were aware of the type of appeal that must be filed.” Regarding his approval of the death sentences, Saddam Hussein responded, “Approval means that I have the necessary constitutional authority to cancel and amend sentences to thereby ‘pardon’ individuals who have been convicted by the court and sentenced to death.” Thus, based on this response, Saddam Hussein had the authority to refrain from approving the execution of the death verdicts issued by the Revolutionary Court against 148 persons from Dujail. However, he knowingly and with design summarily approved the execution of the death sentences, and a republican decree concerning the wholesale execution of the death sentences was issued.

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

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

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

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

The accused had prior knowledge of the removal of the orchards of Dujail, which caused psychological suffering, harsh economic effects, and damage to the economy of the area. Another piece of evidence, Revolutionary Command Council Decree No. 1283 of 14 October 1998, indicates that the accused ordered the registration of the orchards and land in Dujail [and] al-Balad.<sup>1</sup> Regarding the removal of orchards in the village, in the 1 March 2006 session, a compact disk was presented to the court. The disk contains a voice recording of the meeting between the accused, Saddam Hussein and ‘Abd-al-Ghani ‘Abd-al-Ghafur, a member of the Regional Command. Saddam Hussein states in the recording that “he borrowed the removal of orchards in Dujail from the removal of forests in Basra.” This is indicated in the case documents and in the judgment.

Last but not least, the Intelligence Service command submitted—in Letter No. 1220 of the Office of the Head of the Intelligence Service of 21 May 1982—the names of six Intelligence Service staff members to the Office of the Secretariat (Saddam Hussein’s office) [requesting that] honor and favor be granted them “in appreciation for the brave stances demonstrated by

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

Intelligence Service members during their counteraction against elements of the mercenary Da'wah Party in the Dujail area and their effective pursuit, besieging, and arrest of them.”

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

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

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

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

[Signature]  
Member

[Signature]  
Judge  
Ra'uf Rashid  
President, Higher Criminal Court

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

The charges made against the accused Barzan Ibrahim:

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

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

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

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

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

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

investigate the matter. He also ordered the protection unit to move to the same location. We indeed moved to the Dujail area. We adopted the party division [headquarters] as an operating location. It was at the entrance to the Dujail area. We all went without exception and began the investigation.

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

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

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

continued for three days. The transport of families and individuals continued until the second day. On the third day, no person was transported. The units, whether from the Army, protection unit, police, security, or the Popular Army, who were present along with the accused Samir al-Shaykhli, all received orders from the accused Barzan, who was commanding the operation. The communication and orders were verbal, because Barzan had settled into the party division and was issuing orders verbally and directly to this unit. Because the area was very small, the orders were direct. I did not hear the orders issued to the accused Barzan. However, I gathered that they were issued directly by the accused Saddam. On the evening of the first day, when we were present at the headquarters of the party division, Barzan asked me for an initial report on the reasons for the occurrence of this incident. I in fact wrote a report that covered the history of the area. I informed him that there are families that hate the party. I submitted a two or three-page report the next day. Hussein Kamil came and asked him [Barzan] about the report. I gave it to him. Hussein Kamil was working at the time as an escort for the accused Saddam Hussein (i.e., the report was sent to Saddam Hussein). In addition, the accused Barzan ordered that anyone capable of bearing an arm be referred to the court.

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

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

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

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

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

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

“On the date of the incident, 8 July 1982, I was the director of interrogation and investigation in the Intelligence Service headed by the accused Barzan at the time. He informed me that the procession of the accused Saddam Hussein had been subjected to gunfire in the Dujail area during his visit there as president of the republic at the time. I went to Dujail accompanied by a number of directors in the Intelligence Service, including ‘Ali Mahmud, Hussein Muhsin, Muhammad Sab’awi, and Mani’ ‘Abd-al-Rashid. We arrived at the [Ba’th] party division [headquarters] there. The party official was Ahmad Ibrahim, who is also known as Abu-Nabil. The investigations into the incident commenced. I went to the site, which was near the court in Dujail. It consists of a mud wall. I believe that the persons who fired were behind this wall. They numbered between 7 and 12 persons. I inferred this based on the traces left by their rifle magazines on the wall. The wall was of such a height that one can assume that a person standing behind the wall could raise his head to see on the other side of the wall. When I went, I saw that other governmental forces, army, party, and contingency forces were present. Each group had an estimated 100-150 persons. They were present in Dujail with a Republican Guard special forces brigade. These groups included contingency, security, intelligence, and party forces. Sometime after my arrival, on the same date as the incident, the accused Barzan went to the party division headquarters with the former minister of interior, Sa’dun Shakir, whose role was merely to be present, as he remained silent.

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

The witness Waddah al-Shaykh continued:

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

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

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

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

In response to another question from the public prosecution, he responded, “Barzan issued orders directly to us regarding the investigations that were conducted, as I mentioned earlier. Most likely, the search of the orchards and the deployment of forces in the area were based on orders from the accused Barzan. The witness also said, “I heard from Judge ‘Abd-al-‘Aziz Dawud, who held the position of presidential palace judge at the time, that Saddam Hussein had issued a decree to refer whoever could bear an arm to the court. Barzan asked me to refer to the court any person [capable of] bearing an arm at the time of the incident and any person connected to the incident. All of this was carried out in coordination with the party and security. However, I do not remember details concerning the plan of the committee headed by Taha Yasin Ramadan. I learned recently that the detained families sent to the governorate of al-Muthanna were released three or more years later, because I was

imprisoned at that time.” In response [to a question] regarding the people who were executed, he said, “They were executed despite their innocence.” Then, he said that he handed over responsibility for the Hakimiyah [Investigation and Interrogation Department] after he was transferred to the Intelligence Service Security Department to an Intelligence Service officer named Khalil Ibrahim Mahmud on 28 January 1984.

Regarding the letters to which the public prosecutor referred, which were [written] in 1987, and which state that a number of detainees died during interrogation, he said, “The tension in the relationship between Barzan and Fadil Al-Barrak, who was then director of security, was the reason why he wrote that information, which is contained in those reports. I doubt its credibility, because, during my presence, no one was tortured.” In response to a question from the court, he responded, “On the day of the incident or the day following the incident, we arrested a person who had been hit in the orchards and was among those who shot at the procession of cars. His name was Hussein Hasan al-Hajj Muhammad. He is from Dujail. When he was arrested, he confessed to having assembled individuals, whom he did not know, except for one person, namely, one of the sons of Kazim Ja’far, to fire at the procession.” Then, the witness Waddah al-Shaykh, stated that “a non-military helicopter was exposed to gunfire from the orchards, and the pilot was hit.” In response to another question, he stated, “Most of those who were referred to the Revolutionary Court denied any connection to the shooting or to the supply of weapons, and I do not know why they were brought before the court.”

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

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

The witness Ahmad Hasan stated that he was in the hall, where he was detained with his father and brothers (Muhammad, Salim, Mahmud, Muhsin ‘Ali, Jawad, and Ibrahim), his

mother (Majudah Shakir Mahmud), and his sisters (Najdiyah, Su'ad, Zaynab, Asma' and Layla).

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

The detainees told the interrogators that they were prepared to sign anything, so that their women or sisters would be left alone. "After about 70 days in the Intelligence Service, we were sent to Abu Ghraib Prison. The situation there was not as bad as at the Intelligence Service. However, the guards beat us constantly. On the night they forcibly sent us for medical treatment, we were standing in lines. When one of us complained of water on a part of his body, such as his head for example, they beat that place specifically." At Abu Ghraib Prison, the complainant, Ahmad Hasan, also known as Mujbil Hasan 'Aziz al-Marsumi, who was detained with them, observed the guard beating that person on the head, and the person died immediately from the beating. His age at that time was 65. He does not know the fate of the killed person's corpse. The witness states that the guards at Abu Ghraib Prison tortured them in front of the women. The guards fired rounds at night to frighten them. They placed the children in quarantine. The witness remembers the death of a child, Hisham Fakhri Sabri Asad, born 6 June 1982, whose mother requested milk from the prison guard, so that he would not die. The guard told her to give him the child through the window if the child died. When the child died, she gave the child to the guard, who threw him into a trash basket. The witness remembers cases of pregnant women giving birth and miscarrying in those poor conditions at Abu Ghraib Prison. The guards permitted the detainees to sleep from 3 a.m. until 6 a.m. (three hours).

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

The complainant Jawad 'Abd-al-'Aziz Jawad stated the following in his testimony before the court on 5 December 2005: "After the procession of the accused Saddam Hussein reached al-Ibrahimiyyah School, I noticed gunshot in all directions. The protection personnel were heavily armed. I observed the presence of cars filled with machine guns. They began to fire

at the people. A curfew was imposed in the area. This was in the afternoon. The army began to pour in densely. They carried out a broad attack. I saw helicopters bombing the area. Many citizens were killed, including 'Uqayl 'Ali Al-Khayyat al-Makdami and Jamil al-Marsumi. They were killed as a result of the helicopter bombardment. They were members of the Ba'th Party. They were considered martyrs at the time. This indicates the random nature of the firing. The helicopters bombardment by lasted for four days. I saw the army firing in all directions from atop the walls of the orchards, and I observed the arrest of many young people.”

The public prosecutor asked the complainant if he recalled from his statement given in the initial interrogation whether he saw the accused Barzan with a sniping [rifle] in his hand, firing randomly. He responded, “my father saw him, not me.” The complainant remembers that three of his siblings, Faris, Masir, and Qays, were executed, even though they had no connection to the incident and did not belong to any political entity. On 6 December 2005, the court heard the statements of the protected complainant A, including the following: “On the day of the incident, when we were fasting in the month of Ramadan, we heard noise. We knew that Saddam had come to Dujail. We went out to see him. A short time later, we saw a large military force and planes bombing the area, causing citizens to flee. The security forces arrested citizens and transported them in darkened vehicles. They were arrested. Among the arrestees was an elderly woman. They were lead to the party division accompanied by a party official, Abu-Nabil. The party division was filled with families. Then, vehicles with cages came and took them to the Intelligence Service. They arrested those located in the direction of the wall. Then, they detained them in hall no. 58. There were about 85 families. The place was crowded. They slept in shifts. The water was very hot as it was July. The witness remembers the following: “They took my mother for interrogation. They placed my brother in front of her. She was 60 years old. My brother sustained a head injury due to the intensity of the torture. Then they brought me for interrogation. They tortured me with electricity. Then, they brought me up to the hall the next day and brought me down again for interrogation.”

The witness continues, mentioning details of the torture, insults, and abuse, including that she was compelled to take off her clothes and was suspended by her hands. Electricity was also used in the torture. Her legs were lifted up to strike her, and she was placed in a red room. She remembers that the elderly and children were subsequently transported to Abu Ghraib Prison, and the young girls were kept in the Intelligence Service until the end of the interrogation. Then, they sent them to Abu Ghraib Prison. There, the suffering continued. The place was dirty, and their heads and bodies were filled with lice. The water was very cold in the winter. They tortured the men in front of the women. They did not permit them to remain in the bathrooms for more than five minutes. Her sister was also beaten with rubber hoses. Then, she remembers that they were later transported to the Security Department in al-Samawah and from there to the desert Lea Prison, where she learned that her maternal aunt, Sabriyah, had died there. The witness describes the poor conditions and lack of food at the Lea desert complex. The court asked who beat her. The complainant responded: I do not know, because I was blindfolded. In another question, she was asked about the type of assault. She responded: The most repulsive types of assault. Can you

imagine that they raised a woman's legs and removed her clothes. They tortured us with electricity and beatings. They told me, "Praise your God, you are in the Intelligence Service. Were you in General Security, no girl would remain, and most of the girls did not marry because of the effects of the torture (an indirect reference to the fact that they were raped, resulting in the loss of their virginity).

This complainant stated that four of her brothers, who are..... were executed. The second complainant, whom the court heard on 6 December 2005, stated that on the day after the Dujail incident, she and her family, comprising her husband and 4 daughters, ....., and their six sons were arrested. "Then, they transported us to the Intelligence Service, and we were detained in a hall. I saw the rest of my relatives, all of them, detained in the hall. They gave us very hot water. It was from a boiler. They took the young women for interrogation. They beat them and insulted them. They took pictures of us. We stayed in the Intelligence Service for about one month. Then, they transported us to Abu Ghraib Prison and placed us with other detainees. We were about 30 persons in a very small room with a length of about 3 m and a width of 1 m. We were a total of four families. The room was too small for us. The small girls slept in the bathrooms. We stayed at Abu Ghraib Prison for one year. Then, they transported us to the desert near Saudi Arabia, where we remained for three years at a prison is located in the governorate of al-Samawah. My four daughters were with me. My husband and six sons were not with us. I have not found out their fate since they transported us from the Intelligence Service to Abu Ghraib Prison. I am petitioning to submit a complaint against Saddam Hussein, Barzan Ibrahim, the security officer of Dujail, who is named Abu-Ahmad, and against Majid Hamid Nasir and 'Umran Hasan 'Umran, as these persons detained us."

On 6 December 2005, the court also heard the statements of another complainant, complainant C. He said, among other things, that he was arrested with his family, comprising his father, mother, and sisters, on the day following the incident. They took them to the party division in Dujail. They remained there for about an hour. Other detainees were with them. Then, vehicles were brought to transport them to the Hakimiyah Building of the Intelligence Service. The witness explains the types of torture to which his sister was subjected, including the use of electric shock, even though she was only 12 years old at the time. His sister was young. The interrogation of them continued from 11 am until 2 am, without food. After remaining for 19 days in the Intelligence Service, they were transported to Abu Ghraib Prison, where they remained for 11 months, during which they were tortured. Women, children, and men were with them there. They required the men to bark like dogs in front of the women, and they beat them with rubber hoses.

He states that he witnessed the guards beating the head of 'Amir Dahham al-Sattan, who developed epilepsy as a result of being struck by a cable. This occurred in front of him, and he was an eyewitness to it. They tortured another person named Ibrahim Salih Kazim. He went insane due to the torture. They took the children out in front of their mothers and tortured them. They compelled them to wake up early in the morning after going to sleep at 3 am. He states that the children died as a result of malnutrition and lack of medicine. The pregnant women miscarried. He also states that his father was killed at Abu Ghraib Prison as a result of being beaten and tortured. He learned of his father's death at Lea Prison in the

desert from a number of persons who were brought there later Abu Ghraib Prison. He said that his brother was brought by a soldier from his military unit. They began to torture him, even though he was not in Dujail on the day of the incident but rather in his military unit. He then states that they were transported to the desert of al-Samawah. The witness goes on to state details of the miserable health and living conditions at the Lea compound and the death of a number of detainees there. He petitioned to submit a complaint against Saddam Hussein, Barzan Ibrahim, etc.

The accused Barzan asked the complainant if he spent a long time in the prison and whether he saw him [Barzan]. The complainant responded that he had seen him at Dujail, but that he had been blindfolded at the Intelligence Service. He saw him at Dujail, at the party headquarters, on the day after the incident.

Two other complainants were heard by the court on 6 December 2005. Witness E stated information similar to the information mentioned by witness C, whose statements were previously quoted in full.

On 7 December 2005, complainant no. 1 gave testimony before the court. He testified that he and his family were arrested after the failed assassination attempt. He was taken to the party headquarters at Dujail to be presented to the accused Barzan, who interrogated all of the detainees. The complainant reported that he was detained in a red room for two or three days in the prison of the Intelligence Service's Hakimiyah Building. Before that, he was detained in another room containing five or six persons whose hands were bound, and they were deprived of water to satisfy their needs for a period of four or five days. Then, he was transferred to chamber 69 inside the headquarters of the Hakimiyah Building subordinate to the Intelligence Service. Chamber 69 is where he was tortured continuously for 70 days. Then, he was sent to Abu Ghraib Prison. He testified that a detainees who requested food was beaten and kicked. The complainant added that, at Abu Ghraib Prison, he was detained with members of his family. There, he was prevented from sleeping or sitting for a number of days. If one of them fell asleep, they beat him. The witness states that he and others were tortured and beaten at Abu Ghraib Prison. They were placed in the "special" section, in a room 1.5 x 2 meters without any bathroom facilities. Five detainees were placed in each such room.

One day they were given food. Two hours later, all of the detainees had diarrhea. When they asked to be taken out to the bathroom facilities, [they were denied], which compelled some of them to relieve themselves in the same room. Then, they were transferred to the desert Lea complex near the Saudi border. This complainant stated that he did not see the accused Barzan in the Intelligence Service. Rather, he heard his voice. When the complainant asked whose voice it was he was told it was the voice of Barzan. Complainant no. 1, who gave his testimony before the court on 21 December 2005, stated that his family was arrested after the failed assassination attempt. They were taken to the party headquarters in Dujail. There, they saw nine bodies and many bound and blindfolded persons. This witness added that when he entered the hall, he saw Barzan Ibrahim surrounded by an armed guard. He stated that he had not seen Barzan before. However, he had a beard and he was

able to recognize him from a photograph in Barzan's book [in Arabic] on the seven attempts to assassinate Saddam Hussein. All of the detainees were sent to the Intelligence Service in Baghdad, where they were tortured and forced to sleep amid the filth of others. He drank boiled water. A girl aged 16 who was tortured with him said she saw Barzan. Complainant no. 1 added that he heard the screaming voice of Ya'qub Yusuf al-'Ubaydi before it suddenly ceased. An Intelligence Service officer came and took Ya'qub from his prison cell. He also said that he saw the body of Jasim Muhammad Latif after a group of armed persons had passed before him led by Barzan. [The witness said:] "At this time, I was suffering with fever, because I had been left, thrown onto the ground, and I was leaning against a wall, with my legs spread out in front of me, because I did not have enough strength to bear my body weight. Despite my poor health condition, they required me to sit on my knees to be treated. I believe there was a doctor. Barzan came and stood over my head, asking the guards about my status. They told him that I was suffering from fever. He asked me my name, and I responded that my name is 'Ali. He, the accused Barzan, asked, 'Are you Hussein's brother?' I responded yes. At that point, he delivered a strong blow to my feet, which caused me to forget the fever. At that point, the accused Barzan said, "Leave him be and do not treat him. This family does not deserve to live." Then, they took me to my cell again. I continued to suffer there for weeks from the pain in my feet before I was transferred to Abu Ghraib Prison. I was placed in a prison belonging to the Intelligence Service. In this prison, called Abu Ghraib, families from Dujail were tortured and children died. Those who survived, remained there for 7-9 months, until they were transferred to Lea Prison near the Saudi border, where they remained for three years." This witness stated that a number of rape incidents occurred during the detention, and he knows two of the persons whose torture was supervised by Barzan.

This witness was released from the Lea Prison. He then returned to Dujail. He found his house destroyed. This complainant filed a complaint against Barzan, because Barzan tortured him and his brothers at the Intelligence Service. This witness explained that Barzan was present at the party headquarters in Dujail and at the Intelligence Service building. All of the guards surrounding Barzan feared him, because he was the man who gave the orders. [The witness said:] "I saw him in the Intelligence Service, and he is the one who struck me." This witness was 14 years old at the time of the incident.

The second complainant, who gave his testimony before the court on 21 December 2005, said that he was arrested in the evening of the failed assassination attempt. He was taken to the Ba'th Party headquarters at Dujail, where he saw 11 bodies, four in the corridor and seven in a room. He was asked to identify the body of his son. However, he could not do so, because the bodies were disfigured. When he was taken to another room with 50 other persons from the population of Dujail, he saw Barzan there. Then, he was transferred to a pickup truck outside the party team headquarters, where he saw two bodies inside the truck. He recognized the bodies of his son and another person. Then, he was transported to the Intelligence Service Hakimiyah Building in Baghdad, where he was placed with 140 persons in a room that could accommodate no more than 30 persons. There were feces everywhere. They tortured him and interrogated him regarding his son for 17 days. The witness said, "I will never forget Barzan. He was sitting on a chair, eating grapes during the interrogation

and torture. I am dying, and he is eating grapes.” Then, he said, “Then, I collapsed due to the torture. He took me and placed me with the others for two days. I was unconscious.” Then, he was transferred to Abu Ghraib prison for 14 months, where he was also tortured.

This witness saw, in Abu Ghraib Prison, guards beating an old man to death. The old man’s name was Mujbil Hasan. He had complained of a beating and died two days later from his wounds. Then, this witness was transferred to Lea Prison near the Saudi border, where he remained for three years and six months. Then, he was released. After he returned to Dujail, he was arrested again and taken to the Intelligence Service, where he was placed in a cell by himself. He was released three days later. The witness said that he recognized Barzan, because any person would recognize him immediately. “I saw him previously on television.” He said that he is petitioning to file a complaint against Barzan, because Barzan was responsible for the death of his son.

Another complainant gave testimony on 21 December 2005. The witness said that he was a soldier in the 1145<sup>th</sup> Detachment, Special Operations Unit. He left the detachment 20 days before the incident in the village of Dujail. He was arrested and sent to the party headquarters in Dujail, where he was interrogated and asked to confess that he was a member of al-Da’wah Party. He also said that he was tortured with electricity and asked to confess that he is a member of al-Da’wah Party. He said, “They tortured me using electric shock when I was hanging from the ceiling of the room. My mouth was drooling and foaming like soap due to the intensity of the torture. The torture sessions continued until I was transferred one day to a fourth room, where I met Barzan, the head of the Intelligence Service. I met with him face to face. He asked the guards and other officers to remove the mask from my face. They removed the mask. Barzan informed me of the following: You must now confess everything. If you do not confess, I will remove your intestines and show them to you. As a result of the harsh, difficult-to-bear, continuous torture, I constantly hoped that I would die or be killed. I responded to Barzan by saying that he was being unacceptable for a person in this position, that he should utter such words. He then asked the guards and the rest of the team to finish me off. They tortured me using electric shock. They removed my fingernails and toenails. Then, they left me hanging. It was difficult to know whether it was day or night. I lost consciousness as a result of the electric shocks. Then, they left me until I regained consciousness, and the interrogation continued in the same manner on ten other occasions. They used various types of torture.”

“After the end of these ten occasions, they were finished with me. I was left in a room until they finished interrogating me. This torture continued for eight or nine days. I did not know what would happen to me.” Then, the witness was transferred to Abu Ghraib Prison where he saw many people from Dujail. He remained there for one year and seven months. He was tortured repeatedly. Then, he was transferred to the Intelligence Service Directorate and asked to confess. They informed him that he must say and sign something or return to his military unit and work as an informant for them. When they returned him to his unit, he visited Dujail during his leave. There, he saw destroyed trees and orchards. The witness filed a complaint against Barzan. He said that he recognizes Barzan, because he had a beard when he appeared in magazines and newspapers, and we know that he is Barzan. The

witness said that when he saw Barzan for the first time, “They placed me in a room, where he was sitting, near the door. He then told them to remove the mask from my face, so that he could see me. We stood face to face. I swear to God the almighty that I am telling the truth. I again met you (Barzan) there face to face, and we knew that we were in the Intelligence Directorate.”

Witness no. 2 gave her testimony on 1 February 2006 before the court. She stated that she was arrested and taken to the party center in Dujail and to the intelligence headquarters in Baghdad. She tortured, because she refused to confess that she was a member of al-Da’wah Party. She said: I do not know anything. He said: Bring clothing for here to wear. He ridiculed me. An electric shock device was brought to me. It was placed on my ear. He said, do you not wish to confess? When I responded to him that I had nothing to say, he said, take her to the operations room. When they took me to the operations room, they removed my clothes, and I was hung from my hands. I did not know from where I would receive blows with a rubber stick. Two persons beat me. One of them called them and informed them of Barzan’s arrival. When he arrived, I pleaded with him. I told him that I did not know anything and had nothing to say. Why are they treating me in this way? Barzan asked the guard: Has she not confessed yet? The guard responded: No sir. He, Barzan, told him: Change the way in which she is suspended. They changed the way in which I was suspended. They suspended me from my feet. They placed wires in my ear, on my fingers, my toes, and all parts of my body. Barzan screamed and said keep her suspended for a full hour. I was beaten from all sides during that hour. I pleaded with the guards to undo my fetter. My neck was broken. Before Barzan left the room, he struck me on my chest, causing a fracture. A sign of this fracture can still be seen today. Barzan turned to the guard and said, keep her this way for an hour. Then, the witness was transferred to Abu Ghraib Prison, where she and her father contracted diarrhea. She and her family were subsequently summoned to the headquarters of the Intelligence Service Hakimiyah. She stated that Barzan tortured her father. Her paternal aunt witnessed. She added: At that headquarters, the daughter of my paternal uncle was summoned with my uncle. Barzan tortured her too. After 15 months, she was brought again to Abu Ghraib, where she was detained for one year before being sent to the Lea complex near the Saudi border. Three and a half years later, she returned to the Dujail area, where she found her house and the orchards destroyed. She filed an action against Barzan, in which she declares that Barzan supervised and participated directly in the torture of her.

Complainant no. 1 who gave testimony on 2 February 2006 before the court. He stated that all of the members of his family were arrested and taken to the party headquarters in Dujail, where Barzan beat his father. The witness said, “I asked my father, why did Barzan beat you? He responded, saying, your brother was killed in the aircraft bombardment when he was in the orchard. The witness’s father stated that Barzan beat and tortured him. He stated that, despite his unfamiliarity with Barzan, his father, who was middle-aged, had informed him that Barzan beat him and caused his forehead to strike the ground. The witness added, “I heard Barzan vilifying my father and pushing him onto the ground. Barzan was wearing civilian clothing. Barzan said, take them. Then, they brought my father and the husband of my paternal aunt. They took us in a vehicle and transferred us to the Intelligence Service

Hakimiyah headquarters in Baghdad, where they were tortured during their presence there. He stated that Barzan burned the fingers of Hajji Mahir, a 60-year-old man from Dujail.

Complainant no. 2, who gave testimony on 2 February 2006. The witness stated that he was arrested after the failed attempt to assassinate Saddam Hussein. He was transported to the Hakimiyah headquarters in Baghdad. He said that when he was there, he saw persons and told his father to come and see who was present. He got up from his seat and looked. He told me that Barzan was being accompanied by civilians. The witness said that a man named Sanir and a guard later tortured him with electricity. They brought two pincers and placed them on my ear. The guard tortured me with electricity. The guard, named Ra'id, kicked me. At times, he placed two pincers on my ear. At other times, on my nose. After about 10 minutes, when I was screaming, Barzan entered the room where I was and asked the interrogator about me. The interrogator responded that I refused to confess. There were two persons with Barzan. He asked one of them to give him a cigarette. He placed it on my head, behind my ear. The marks are still obvious. The witness was subjected to harsh torture for a number of days. Then, he was transferred to Abu Ghraib Prison and the Lea complex. The witness has filed a complaint against Barzan, because Barzan tortured him with his own hands and extinguished a cigarette on his head.

Numerous complaints were recited during the trial on 13 February 2006:

Witness no. 4, in his statement, says that he was nine years old at the time of the incident and that "after we were arrested at home, they took us to the party headquarters in Dujail, where we saw Barzan al-Tikriti." Statement no. 1 contains the following: "On the day of the incident, Saddam Hussein and Barzan al-Tikriti, who supervised the arrests and headed the Intelligence Service, were present." Statement no. 17 was given by an army conscript. He states that, after the attack against Saddam, there were collective arrests in Dujail. All of his brothers were arrested. He said, "I heard that Barzan Ibrahim was with a group and gave arrest orders."

Numerous complaints were cited on 1 March 2005:

The accused Barzan al-Tikriti was at Dujail after the incident. He ordered Intelligence Service elements and party members to arrest suspects in Dujail. Another witness added that "my brother and a large number of the inhabitants of the area were arrested. I learned that the accused Barzan Ibrahim was in the city at that time, but I did not see him."

#### **Statements of Other Accused in the Action Regarding the Accused Barzan Ibrahim:**

The Court of Cassation in Iraq generally does not admit a accused's statement against another accused in the same case. However, if the first accused is involved in a second action, and he makes a recorded statement against another accused in the first action, the court will admit the statement of the first accused against the other accused in the same action. In this case, the statement is admitted as a presumption, not as evidence. Moreover, it must be supported or corroborated by facts, because greater support and corroboration are

needed in this case compared to other evidence. This is particularly the case if the statement may be construed as an attempt by the first accused to evade liability by casting it on another accused in the same action. Therefore, below, we will publish the most important content of the statements of the other accuseds regarding the role the accused Barzan Ibrahim's role in the Dujail case. In doing so, we will take into account the rules to which we refer above. We will also take into account that the statements given by these accuseds in the initial investigation period are closer to the facts and reality than the statements given subsequently before the court for the reasons that we mentioned previously. This is consistent with the principle to which the judicial authorities of the Court of Cassation Iraq adhere in this regard. In addition, this matter will facilitate ascertainment of the truth and the achievement of justice, far from the influence of one accused over other accuseds, particularly if one accused has considerable psychological influence over the other accuseds or their families in difficult security conditions, such that the other accuseds would fear to make statements in front of him that might damage him or his interest in the action.

#### **Statements of the Accused Ali Dayih 'Ali Regarding the Accused Barzan Ibrahim:**

In his statement recorded before the investigation panel on 25 May 2005, the accused's Ali Dayih 'Ali stated the following: "I returned to the Dujail area in the afternoon. I found the city surrounded by armed forces and security. I believed that the Intelligence Service and the party apparatus were all present. Among them was a party official at the time, the accused (fugitive) Ahmad Ibrahim Hassun, nicknamed Abu-Nabil. Also with us were the accuseds 'Abdallah Ruwayd, a member of the party division at that time, and his son, Muzhir 'Abdallah. I learned that the officials who are accuseds and were in the area included the accused Barzan Ibrahim al-Hasan. However, I did not meet him. I also learned during my presence that a group of corpses had been brought. These corpses belonged to persons who were killed in the area of the orchards by helicopters in the area. On 8 July 1982, a group of entire families from the population of Dujail was arrested. The families consisted of women, children, and men. After they were arrested and placed in the Dujail party division headquarters, darkened vehicles resembling buses came. They boarded these families on the buses. The families were transported to a location unknown to me. My duty at the time was to protect the party division. Because of the presence of the accused Barzan Ibrahim al-Hasan, who was commanding the operations, particularly the arrest operations, in Dujail, I believe that the orders to transport the suspects were carried out through him. A group of persons and families were tortured inside the party division, specifically inside the room that was occupied by the accused Barzan Ibrahim, the accused Ahmad Ibrahim, and a group of leaders at that time."

#### **Statements of the Accused Muzhir 'Abdallah Regarding the Accused Barzan Ibrahim:**

The accused Muzhir 'Abdallah gave his statements before the investigation panel on 21 February 2005. He stated the following regarding the accused Barzan Ibrahim: "At this time, I saw a force from the security agencies riding in vehicles toward the area of the orchards. Among them was the accused Barzan Ibrahim, who held the position of Intelligence Service chief. At this time, I was still standing in front of the door of the party

division. Regarding the removal of the earth and cutting down of trees, I was assigned a mission by the party apparatus that was ordered by Barzan Ibrahim. The order was conveyed to us through the party. The mission was to escort power shovels, steamrollers, and graders tasked with cutting down the trees and removing earth. I in fact went with the power shovels, which carried out the operation...etc.”

**Statements of the Accused ‘Abdallah Kazim Ruwayd Regarding the Accused Barzan Ibrahim:**

The accused ‘Abdallah Kazim Ruwayd made statements before the investigation panel on 21 May 2005. [He said:] A number of rounds were fired at the procession. I heard them. They were intermittent. There were not more than 10 or 12 rounds. I am a farmer. I am well aware of what a round sounds like. Regarding the speech given by Saddam Hussein, I did not hear it myself. However, I heard it through others. It was said that there were only a few [who heard it]. After the gunfire, I returned to the party division [headquarters] and remained there. Sometime later, major forces from Baghdad, including military forces, came and encircled the city. A number of Intelligence Service personnel came. Also present was the accused Barzan Ibrahim, whom I saw at the party division. A number of members of the command were present. Helicopters began to fire at the orchards. The orders to arrest were not based on arrest warrants issued by an official authority. I do not know the arrest mechanism [used] at that time. However, of course, they [the arrestees] had no connection to the incident, and I do not know why they were arrested.”

**Statements of the Accused Muhammad ‘Azzawi ‘Ali Regarding the Accused Barzan Ibrahim:**

On 1 June 2005, the statements of the accused Muhammad ‘Azzawi ‘Ali were recorded by the investigation panel. Among other things he said: “When I was in the party division, I saw the accuseds Barzan Ibrahim al-Hasan, ‘Abdallah Ruwayd, and the official in charge of the party division Ahmad Ibrahim al-Hassun al-Samara’i. I also saw Sa’dun Shakir and ‘Ayyadah Kan’an al-Sadid in the same location, where a group of families had been detained. They put them in large vehicles and transported them to a destination unknown to me. Among these families were women and children. I did not arrest any of the inhabitants of Dujail. I did not participate in any operation. I did not torture any person from among the inhabitants of Dujail. The arrest operation in Dujail at the time was conducted by Barzan Ibrahim.”

**Statements of the Accused Taha Yasin Ramadan Regarding the Accused Barzan Ibrahim:**

The statements of the accused Taha Yasin Ramadan recorded by the investigation panel on February 9, 2005, include the following paragraphs:

“In 1982, as I recall, I held the position of vice-president of the Council of Ministers in the former regime. I was contacted by telephone by the accused Saddam Hussein, who held the position of president of the republic at that time. He informed me that he had been subjected to an assassination attempt in the Dujail area. He asked me to go meet the security agencies. He informed that he had ordered them to be present at the headquarters of the National Council. As far as I remember, it was Friday. I did indeed go and found Fadil al-Barrak, who held the position of director of security. He was executed subsequently for other reasons. I also found a person whose name I do not remember. He informed that he

represented the director of the Intelligence Service. He informed me that the director of the Intelligence Service had gone to meet with Saddam Hussein after the incident and two or three persons whom I do not precisely remember. The recommendation issued to me was that I listen to what the officials of the security agency had to say and provide my remarks and direct them as to how to act if I had any instructions, etc.

“As is known, the security agencies are not linked to a ministry. They are linked to the office of the president directly. Agencies such as the Intelligence Service or security under the previous regime were linked directly to the person of the president of the republic, as was military intelligence. The communication channel was the office of the secretary.

“These agencies usually received orders directly from the accused Saddam Hussein, because they were linked to the office of the president of the republic, and he held the position of president of the republic at that time.”

### **Summary of the Statements of the Accused Barzan Ibrahim al-Hasan in the Investigation and Trial:**

Generally, the accused, Barzan Ibrahim, denied the charges made against him in the investigation and trial. However, the statements of the accused Barzan in the investigation and trial are not devoid of important details that help shed light on what happened at Dujail on the day of the incident and the crimes against humanity that ensued.

The accused Barzan Ibrahim states in his statement recorded by the investigation panel on 25 January 2005, in the presence of his attorney at the time and the public prosecutor, that on the day of the incident he went to the area of al-Radwaniyah, where he congratulated the accused Saddam Hussein on his well being after the incident. He then went to Dujail. Sa'dun Shakir accompanied him. There, he questioned those present about the incident. Some persons, whom I do not remember, informed him that, during the passing of the procession of the accused Saddam Hussein, shots were fired by several persons whom they did not know. The accused Barzan also states that the accused Saddam Hussein asked him to go to the Dujail area to ascertain the reasons for the incident and to conduct an investigation in the area to identify suspicious persons. Barzan said that this was his mission, because he was responsible for the president's security. Upon going to Dujail, the accused Barzan Ibrahim found Republican Guard forces from the army, forces from security and the police, and several members of the Ba'th Party. He states that he saw army troops encircling the area. Every quarter was under their command. The accused Barzan, as head of the Intelligence Service and the person responsible for the president's security, arrived in Dujail two or three hours after the incident. When he asked about the incident, he was informed that persons outside the law had fired at the procession of Saddam Hussein. The accused Barzan states, “I was the official present in the area. I spent the daylight hours of the day of the incident and the night in the Dujail area until the following day. After I learned details of the case, I requested the encirclement of the orchards. Military forces encircled the orchards. Helicopters also hovered in the area. An exchange of fire occurred between persons concealed in the orchards and the military forces. As a result, two or three persons were

killed. In addition, three or four persons were arrested and interrogated. I heard that the director of security at that time—I just heard, I do not have official information—was taken to Dujail and that he arrested a large number of persons and many with their families. He also cut down trees and date palms. I informed the accused Saddam Hussein, who held the post of president of the republic, that this action was not in accordance with regulations and was to be rejected.” In response to a question by the investigation panel, the accused Barzan responded, “The persons who were arrested in my presence and by my order and sent to the Intelligence Service Hakimiyah at that time for interrogation numbered no more than three or four persons.” He does not know about the arrest of groups of families, women, and children. He also denies that the Intelligence Service has any connection to the sending of detainees to Abu Ghraib Prison and the desert complex of Lea, where they remained until 1986.

He was asked about the case that was referred to the Revolutionary Court by the Intelligence Service by order of the office of the president of the republic. The case number in the Intelligence Service was 1984/40. The referral was made under order no. 762/6 on 27 May 1984. The investigation departments in the Intelligence Service were the authorities responsible for the interrogation process, while you [Barzan] stated that the Intelligence Service had no connection to the matter. What is your response? Barzan responded that “the Intelligence Service had no knowledge of or connection to the matter. It could be that the case, after it was abandoned, belonged to the office of the chief of the Intelligence Service in 1983.” He repeated that he had no connection to the matter. He emphasized that “the referral of suspects to the Revolutionary Court, he believes, occurred after he left his post in the Intelligence Service. He stressed that the General Security Directorate at that time exploited the name Intelligence Service in many cases.

The statements made by the accused Barzan Ibrahim before the court are to a large degree similar to his statements before the investigation panel. However, they contain additional details. In addition to the statement heard by the court, which the accused Barzan gave on 15 March 2006, the court allowed him in many sessions to give his statements, comments, and arguments regarding the case and the charges made against him. On 15 March 2006, the accused Barzan stated that he submitted his resignation from the top post in the Intelligence Service for the second time in August 1983, and that his resignation was accepted on 6 October of the same year. He severed his tie with the state. He also explained that he visited Dujail on the day of the incident and the day after it, and that the General Security Directorate had received the case. He further stated that, on the first day, he (Barzan) released detainees at the party division and shook their hands. He stated that he placed the blame on the security agencies and the party, because they detained, on the basis of suspicion, and that he placed such blame in front of dozens of people, including the accused Muhammad ‘Azzawi al-Marsumi. Barzan stated that he did not detain anyone, as evidenced by the fact that they were referred to the court two years after his resignation. He said that he did not supervise the interrogation and did not see any memorandum by Waddah al-Shaykh. He stated that those who gave testimony against him were false witnesses who had been prompted, because the Investigation Department could not accommodate this large number of people, as it is a small, two-story building, with the first story for offices and the second

containing only three cells, which were left in this state until the start of 1983. No one had been arrested. The arrest of people is not the purview of the Intelligence Service. It did not assign Waddah al-Shaykh to prepare a report and submit it to Hussein Kamil, because “Hussein Kamil was subordinate to me, in his capacity as one of Saddam Hussein’s protection personnel, and I am responsible for protecting President Saddam. Waddah al-Shaykh is an unreliable person. As events have proven, he has priors and fabricates. The accused Barzan also emphasized that “the director of general security established a camp and struck strongholds of al-Da’wah Party. He cut down trees and detained others. Dujail is one of the strongholds of al-Da’wah Party and one of their refuges. Weapons, explosives, mortars, medical supplies, canned food, printers, paper, etc. were seized. The accused Barzan said that the letters whose signatures are attributed to him are forged. He stressed that he released a large number, around 80 persons, from among the detainees at the party’s Dujail division on the first day of the incident when he arrived at Dujail. Generally, the accused denies that the Intelligence Service had any connection to the events at Dujail. He denies the charges made against him, particularly that he committed crimes against humanity in the Dujail case.

#### **Summary of the Statements of Defense Witnesses for the Accused Barzan Ibrahim:**

The court heard the statements of nine defense witnesses for the accused Barzan Ibrahim al-Hasan. The first was given on 22 May 2006. The defense witness, Sab’awi Ibrahim al-Hasan, who is the brother of the accused Barzan, stated that on the day of the incident, which was determined during the trial to be 8 July 1982, he went to his younger brother, Barzan, and found him in his home at 9 pm. Barzan told him that he heard of an attempt to assassinate the president. Barzan told him, “I was in the department, and we received the news. I went to Dujail,” because, at the time, he, Barzan, was responsible for protecting the president, because there was no special security agency. Rather, Barzan supervised protection. He went to Dujail to see the situation and to see whether there was any shortcoming in the protection [personnel’s] performance of their mission. Barzan told me, I went and surveyed the location. There was no shortcoming on the part of protection. It seems that the matter [the assassination attempt] was planned and prepared in advance. He told me that the director of general security came. I asked him if he would have a role in the matter. He told me that he had no role and that you, Sab’awi, know the jurisdictions. He said that this is the jurisdiction and area of security, and that the political parties were prohibited. It is the jurisdiction of security. I went to survey the location. Perhaps there was a shortcoming on the part of the protection [personnel]. I did not find any shortcoming.”

The court interjected, telling the witness that he is a defense witness for the accused Barzan, and that when we hear his testimony regarding the accused Saddam, we will give him an opportunity to speak about Saddam. The witness responded that he had mentioned the subject of Barzan to the court: Barzan told me that this is not my purview and not the purview of the Intelligence Service, but rather that he went to see how the situation occurred and to see if there was any shortcoming in the performance of the protection mission. He said: This is security’s jurisdiction; the director of general security was present in the area, and I will convey to the president whether there is any shortcoming on the part of security

and the party. Khalil al-Dulaymi, the lawyer for the accused Saddam Hussein, and the accused Barzan Ibrahim, asked whether a number of witnesses, particularly witnesses from the population of Dujail, mentioned that Barzan released more than 70 detainees when he visited Dujail, and whether he informed you [Sab'awi Ibrahim al-Hasan] of this? The witness Sab'awi responded in the affirmative, saying: He told me this, and someone was there who can confirm it (Muhammad al-Marsumi, a accused in the same case). He came to me and asked me to mediate in a tribal issue. He told me of Barzan's position with him when he released him with the detainees. That was two years ago.

Another defense witness, given the symbol, "2," gave his testimony before the court on 22 May 2006. This witness worked in the Intelligence Service during the incident. He stated that he does not remember the date of the incident. However, he specified the date during the trial as 8 July. (The proceedings of the trial sessions were broadcast directly over television channels.). [He stated:] I went to the intelligence department shortly before the close of business. I learned that members of the intelligence department were present in the department. One or two hours after the official close of business, the members of the Intelligence Service were permitted to go down (leave the department). The next day, we learned that there was an attempt to assassinate the president in the Dujail area. I do not see any abnormal or precautionary measures in the Intelligence Service. I did not see any arrests or interrogations in the initial days or in the following days in the service. In response to a question posed by the court, this witness said that he was not assigned anything and no other person whom he knows was assigned anything. He added that he had no direct contact with the accused Barzan at the time. In response to another question posed by the court, he responded that he did not see detainees in the Intelligence Service. In response to another question, he responded that he had no connection with the Investigation Department, because the Investigation Department was separate, and that his work was in the Counterespionage Department.

The accused Barzan asked the witness the following: When you went, because of your work, to the Investigation Department, did you sense that there was anything abnormal, or did anyone accompanying you inform you directly or indirectly that there was a case of this type at the time? The witness responded: We have requests that occasionally come to the Investigation Department to follow up in an investigation. During this period, I did not hear anything out of the ordinary in the investigation building, which we would frequent from time to time. In response to a question from the public prosecutor, the witness said he would go every two or three months to the investigation department (Hakimiyah) in 1982 and 1983.

One of the defense witnesses, assigned the symbol "4," gave his testimony before the court on 29 May 2006. He was among the personnel who protected the accused Barzan at the time of the incident. He stated that, after he had gone with another witness from among the protection personnel on the day of the incident to the farm of the accused Saddam in al-Radwaniyah, where the accused Barzan was, the two went with Barzan to Dujail and entered the headquarters of the party division. There were close to 70 to 80 persons there. When the accused Barzan asked a party division member, the member responded that the people there were detainees from Dujail. After he met with them, he released them. Even one of the

women wanted to kiss his hand. He told her, we are at your service. We came to see the situation out of fear that a mistake or wrong would be committed. After eating the break-the-fast meal, as it was the month of Ramadan, they returned to Baghdad. The witness also went with the accused Barzan on the following day, at noon, to the party division headquarters in Dujail, and they found matters calm. They returned to Baghdad before the break-the-fast meal.

The witness confirmed that he observed detainees who said that the accused Barzan had released them on the day of the incident inside the room in the party division, because its door was open. In response to a question from the public prosecution as to whether these 70-80 detainees had been released by the accused Barzan, and whether there was mixing of men, women, and children, the witness responded, “Yes, the men, women, and children were mixed. Some were 15 years old, some were 20 years old, and there were 5 to 10 women detainees.”

On the same day, 29 May 2006, the court heard the statements of another defense witness for the accused Barzan Ibrahim. These statements included the following: “We headed for Dujail. When we arrived at the party division headquarters, I was near the door. I saw the Popular Army [Iraqi Ba’th Party Militia] in front of the party division. People were present. They were annoyed. At the entrance to the party division hall, there were many detainees. He [Barzan] greeted them, apologized, and released them. One of those present invited him to the break-the-fast meal. After the meal, we returned to Baghdad.” The witness stated that he went with the accused Barzan and another person (the previous defense witness) to Dujail on the following day and left Dujail before the break-the-fast meal (before sunset).

This witness, who is the son of the accused Barzan’s paternal uncle, was asked by the public prosecution whether he saw detainees when he arrived at the party division in Dujail, in the hall. The witness responded affirmatively. There were detainees in the hall in the party division. They numbered 70 or more. They were subsequently released. The public prosecution also asked whether the detainees included women and children. The witness responded, “all of them were men.” This contrasts to what the witness said previously regarding the presence of women and children in addition to men.

On 12 June 2006, the court heard the statements of another defense witness for the accused Barzan Ibrahim. The witness was given the symbol “1.” He also was one of the personnel protecting the accused at the time of the incident, as he claimed. This witness stated that he was among those who went to Dujail with the accused Barzan on the first day of the incident. He remained outside the party division headquarters. After about an hour, people came out of the division cheering the president, the party, and the chief of the Intelligence Service in reference to their release. One of the Popular Army guards present at the division gate informed him that the president had been subjected to an assassination attempt but was not hit. This witness states that they, the protection personnel, were carrying weapons consisting of machine guns. They were wary, because the area is dangerous. After the break-the-fast meal (during Ramadan), the Intelligence Service chief (the accused Barzan) went out and returned to his home in Baghdad. The witness went with the accused on the following day to

Dujail. They arrived at around 4 pm and returned to Baghdad before the break-the-fast meal [at sunset]. In response to a question posed by the public prosecution, the witness responded, “All of the detainees who were released from the division by the accused Barzan were men according to one of the guards. There were no children or women among them.”

On the same day, 12 June 2006, another defense witness for the accused gave his statements before the court. He stated that he went with the accused Barzan to Dujail on the day of the incident. They went to the party division. There, after an hour or less, citizens came out from the division cheering the president. When he asked one of the guards, he was told that the president had been subject to an assassination attempt, and that Barzan had released them. The witness said that, after the break-the-fast meal, they returned to Baghdad. The witness also said that he went with the accused Barzan to Dujail. They remained there for two or three hours. They returned to Baghdad before the break the fast meal. On 13 June 2006, the court heard the statements of another defense witness for the accused Barzan Ibrahim. This witness was assigned the symbol “3.” His statement is similar to the statement given by the previous witness. He repeated that the accused Barzan freed about 50 detainees on the first day of the incident from the party division headquarters in Dujail. He said they were all men. He said that, during his work with the accused Barzan, he did not go again to Dujail and “we did not go to the Hakimiyah [Building of the Intelligence Service].” He did not see detained families, neither at the general headquarters of the Intelligence Service nor at the Hakimiyah! Another witness whom the court heard on 13 June 2006 did not have eyewitness testimony concerning the Dujail incident or what occurred in Dujail after the incident. In response to a question posed by Barzan’s attorney Khamis al-‘Ubaydi, he responded that he did not see detained families, either at the general headquarters of the Intelligence Service or at the Hakimiyah [Building].

### **Evidence Against the Suspect Barzan Ibrahim:**

The accused Barzan Ibrahim held the position of Intelligence Service chief from 1979 until autumn 1983. He was also the senior official responsible for protecting the security of the accused Saddam Hussein, who held the post of president of the republic and chairman of the Revolutionary Command Council at the time. The accused Barzan is Saddam Hussein’s half brother (they have the same mother). At noon on 8 July 1982, he met the accused Saddam Hussein at al-Radwanayah farm. He received an order from Saddam Hussein to go to Dujail to conduct an investigation of the incident. The evidence available in this action against the accused Barzan Ibrahim includes the following:

1. The statements of the accused Barzan Ibrahim recorded by the investigation panel comprising three examining magistrates on 25 January 2005, in the presence of his attorney and the public prosecutor. This statement contains the following: “I was requested to go to the Dujail area (i.e., the accused Saddam Hussein asked him to do so). This was my duty, as I was responsible for the security of the president at the time. When I went, I found army forces from the Republican Guard and forces from security and the police as well as several Ba’th members. At that time, the military forces were encircling the area. I saw them myself. The entire area was under their command. I was in the area as the Intelligence

Service chief and the person responsible for the president's security. I was the official present in that area. I spent the day and night in the Dujail area until the following day." The accused Barzan Ibrahim went on to say: "After I learned the details of the case, I requested the encirclement of the orchards, which were encircled by military forces. Helicopters also hovered in the area. An exchange of fire occurred between persons concealed in the orchards and the military forces, resulting in the killing of two or three persons. In addition, three or four persons were arrested and interrogated." The accused also said the following in his statements before the investigation panel: "The persons who were arrested in my presence and by my order and sent to the Intelligence Service Hakimiyah at that time for interrogation numbered no more than three or four persons."

2. Confession of the accused Barzan Ibrahim before the court on 15 March 2005 stating that he went to Dujail and was present at the party division headquarters for two consecutive days (the day of the incident and the day following it).

3. The statements of the witness Waddah al-Shaykh before the examining magistrate on 25 January 2005, which included the following: "On 8 July 1982, I was in my office. The accused Barzan Ibrahim telephoned me and requested that I go to his office in the Intelligence Service at al-Mansur. When I went to his office, I noticed that the atmosphere was charged, and things seemed abnormal there. When I entered the secretary's room, before entering the room of the accused (Barzan), the accused came out to us and met us in the secretary's room. There were no more than 12 persons present there. Of those present, I remember Muhammad 'Ulaywi; Hasib Sabir, who used to hold the position of deputy director-general for counter espionage; Ali Mahmud Hashim, who used to work in the Secret Service Corps; Khalil Ibrahim Mahmud, who I believe held the position of director of security or something else; and Mani' 'Abd-al-Rashid, who served as the director of security of the department. The accused Barzan, who held the position of chief, General Intelligence Service, informed us that the accused Saddam Hussein, who held the position of president of the republic, had been subject to a failed assassination attempt in the Dujail area, which is 60-65 km north of Baghdad. Barzan ordered us to move immediately to the Dujail area and investigate the matter. He also ordered the protection unit to move to the same location. We indeed moved to the Dujail area in our cars. We adopted the party division as an operating location. We all went without exception and began the investigation...."

The witness Waddah al-Shaykh also said: "At around seven o'clock, specifically at sunset, the accused Barzan and Sa'dun Shakir, who held the position of minister of interior, were present at the party headquarters in the party division, which was our headquarters. At this time, a large number of people, officials from the area of the village al-Kazimiyah, and Dujail came to us. All of them settled down in the garden of the party division... By virtue of my work, during the investigation, I found 12-15 empty Kalashnikov cartridges. I did not take into account that subject, because no person or vehicle had been hit in the incident... however, I asked in the accused Barzan, and he informed me that no person or car had been hit... As the commander of operations in the area, Barzan ordered police, party, and security personnel to arrest suspects and their families, including women and children. Also present at the time was a Republican Guard unit, a special forces brigade. I do not remember the unit

number. The Intelligence Service had not participated up until that moment, because there were only a few intelligence personnel, numbering 10-12. The executing agencies arrested women and children no older than 12. The investigators thought that if there had been an assassination operation, the perpetrators would not have returned to their houses... I informed the accused Barzan, who was commanding operation in the area, that these were children, old people, and women who had no connection to the incident. I asked the accused Barzan what I should do with them, as there were many of them and there are no service resources. He requested that I send them to Baghdad... Large jumbo Mercedes vehicles were in fact sent. Each one accommodated approximately 50 passengers. The accused Barzan Ibrahim stood at the door of the hall of the party division. We began to take the people out and put them in the vehicles. The accused Barzan put them on the vehicle. He released many of the detainees. The release was conducted based on appearance... This situation continued for three days. The transport of families and individuals continued until the second day." The witness Waddah al-Shaykh went on to say: "They all received orders from the accused Barzan, who was commanding the operation. The communication and orders were verbal, because Barzan had settled into the party division and was issuing orders verbally and directly... I did not hear the orders issued by the accused Barzan. However, I gathered that they were issued directly by the accused Saddam. On the evening of the first day, when we were present at the headquarters of the party division, Barzan asked me for an initial report on the reasons for the occurrence of this incident. I in fact wrote this report[...] I submitted a two or three-page report the next day. Hussein Kamil came and asked him [Barzan] about the report. I gave it to him. Hussein Kamil was working at the time as an escort for the accused Saddam Hussein (i.e., the report was sent to Saddam Hussein). In addition, the accused Barzan ordered that anyone capable of bearing an arm be referred to the court..."

4. The statements of witness Waddah al-Shaykh recorded by the three-judge panel from the court at the military hospital at Abu Ghraib on 23 October 2005. These statements, which were recited during the court session of 28 October 2005, are similar to the same witness's statement before the investigation panel on 25 January 2005.

5. The statements of a large number of complainants in the investigation and trial, who witnessed the accused Barzan Ibrahim personally supervising the interrogation of them in the Intelligence Service Hakimiyah [Department of Investigation and Interrogation]. He also supervised the torture during the interrogation. Some of these witnesses witnessed the accused Barzan personally torturing them.

6. The statements given by several of the aforesaid accuseds in this action in the investigation phase, including the statements of 'Ali Dayih 'Ali, 'Abdallah Kazim Ruwayd, Muzhir 'Abdallah, Muhammad 'Azzawi, and Taha Yasin Ramadan.

7. Official documents and letters between the Intelligence Service, the office of the president of the republic, and Revolutionary Command Council, including:

- a. Letter no. 1220 issued by the office of the chief of Intelligence Service to the accused Saddam Hussein in the latter's capacity in the chairman of the Revolutionary Command Council, to which the Intelligence Service and its chief are directly subordinate. This letter contains a request to honor several Intelligence Service officers for their role in pursuing and arresting inhabitants of Dujail. The signature of the accused Barzan Ibrahim on this letter has been verified pursuant to the report of the Criminal Evidence Experts Committee of 13 April 2006 and 23 April 2006.
- b. The report submitted by the accused Barzan Ibrahim to the accused Saddam Hussein dated 13 July 1982, which includes the measures taken regarding the inhabitants of Dujail.
- c. Two internal memorandums, no. 5682 of 23 September 1982 and no. 6282 of 25 October 1982, issued by the investigation directorate in the Intelligence Service. The criminal evidence experts' report substantiates that the marginal note and signature on both memoranda belong to the accused Barzan Ibrahim.
- d. Referral Decree No. 762 Issued on 27 May 1984, issued by order of the accused Saddam Hussein, which states: "In view of the grounds for referring investigative case no. 40/1984 – Intelligence Service."
- e. The statements of the accused Awwad al-Bandar before the investigation panel on 9 February 2005, which contain the following: "The interrogation was in the Intelligence Service."
- f. The report of the committee formed under the chairmanship of Hussein Kamil, which was submitted to the accused Saddam Hussein in 1982. The fifth paragraph of that report states, "The committee undertook the following: It examined all of the essential elements of the Dujail incident in the possession of the Intelligence Service."
- g. Letter No. 1282 of the Intelligence Service issued to the Office of the Chief of the Administration, Office of the President of the Republic on 31 March 1982, paragraph 3, which states that the Intelligence Service is responsible for investigating the inhabitants of Dujail. The letter states, "Implementation was carried out regarding the remaining convicts, because a number of them died during the interrogation."
- h. The memorandum of the Intelligence Service to the MM7 [expansion unknown], signed by the committee comprising a chairman and four members, all of them members of the Intelligence Service, whose paragraph 3 states, "Among the convicted persons against whom judgments were issued are 46 persons who were liquidated or died in the interrogation." This memorandum contains other paragraphs concerning what befell the population of Dujail in a detailed manner.

- i. Verdict to Convict No. 26/1987 of 21 September 1987 issued by the Intelligence Service Court, subordinate to the Intelligence Service, against Intelligence Service member Hikmat ‘Abd-al-Wahhab for failure to execute the death sentence against to two victims of Dujail, Jasim Muhammad Rida al-Hatu and ‘Ali Habib Ja’far. The names of the latter two appear in the Verdict to Convict issued by the Revolutionary Court (abolished), no. 944/C/1984 of 14 June 1984 and in Republican Decree No. 778 of 16 June 1984, authorizing the death penalty for the inhabitants of Dujail. Page 2 of the Verdict to Convict issued by the aforesaid Intelligence Service Court states, “In view of the shortness of time, and the fact that 96 convicts remain from the total number of convicted persons as a result of the liquidation of the others during the interrogation...”
- j. The report of the panel headed by Hussein Kamil submitted to the accused Saddam Hussein in 1982-paragraph 5 reads: “The panel undertook the following; reviewed all preliminaries of Al Dujail incident, at the Department of Intelligence”.
- k. The letter from the Department of Intelligence to the head of office of cabinet affairs, at the presidency of the republic numbered 1282, dated 1987, paragraph 3 of which reads: “The remaining guilty ones, were executed, a number of them died during the interrogation”.
- l. Letter of the Department of Intelligence headquarters dated May 8, 1983, under number 1106, the letter of Department of Intelligence headquarters, dated April 28, 1983, the letter of Department of Intelligence headquarters No. 2291, dated Oct. 27 1983, and its letter No. 568 dated March 25, 1984, and its letter No. 998 dated June 17, 1984, its letter No. 841 dated May 17, 1984, to Almuthana province security directorate. A copy of which was also sent to the directorate of public security, containing information of sending Al Dujail families to the above mentioned security directorate in Almuthana province; attached with them was a list of the names of individual members belonging to those families and the total number in that group.
- m. Letter of Almuthana province security directorate No. 647 dated Feb. 11, 1984 addressed to public security directorate and to the revolutionary command council/ intelligence apparatus. It included a reference made to the letter of Department of Intelligence No. 322 dated Feb. 6, 1984, stating the receipt of 49 persons from the people expelled from Al Dujail, and also other hand over notes, some of them hand written and others typed, bearing signature of Almuthana security director. On Oct. 29, 1983 and Feb. 11, 1984, stating the reception of a number of expelled people of Al Dujail in Almuthana province, who were sent from there (Al Dujail) to (Lea) desert camp.

n. Letter of the National Security Council, which was under the (dissolved) Revolutionary Command Council, No. 173, dated April 13, 1985 addressed to the director of the Department of Intelligence containing the cancellation of detention order of the expelled people of Al Dujail.

o. Letter of the Department of Intelligence No. 1253 dated March 2, 1985, addressed to Adult Correction Center, department of Extended Sentences, which made reference to the Republican Decree No. 778 of 1984, which contained directives to send those sentenced to death (148) names, according to the above mentioned letter, and carry out the death sentence immediately.

**Extent of liability of the accused Barzan Ibrahim of the crimes leveled against him, according to the indictment sheet.**

We earlier made reference that this court had pressed charges against the accused Barzan Ibrahim for crimes against humanity on May 15, 2006 in accordance with Article XII, I section 12/first of the court law.

In the following we will come to specify to the extent of liability (guilt) of the accused on each count:

**Extent of Liability of the Accused Barzan Ibrahim for Deliberate Murder, as a Crime Against Humanity**

There is no direct evidence in the case that the accused Barzan Ibrahim (personally) killed with his own hands any of the victims of Al Dujail. But there is direct and indirect evidence that establish that the said accused gave orders to the military sectors, intelligence and security units, party apparatus, and the popular forces in Al Dujail to kill the victims of Al Dujail who were in the orchards during the early days of the incident. There are also so many pieces of evidence that he verbally ordered, during those days, the arrest of hundreds of Al Dujail people; women, children, old people, and youth, to be sent to Hakimiya intelligence prison; first to Abu ghraib prison, then to Lea Desert [prison] camp. Transfers were made through the directorate of Almuthana province security where many had died during the torture or as a result of extremely bad living conditions in the camp. The reality becomes apparent when sitting through the abundant evidence in the case file of the accused Barzan as we mentioned earlier. The material includes documentary evidence and testimonies of complaints and witnesses, including even the defense witnesses, of some of those who are accused in the case. In the first two days of the incident, which the accused Barzan confirmed himself, that he was present at Al Dujail branch of the party and when the accused Barzan was at Al Dujail issuing orders to military forces, intelligence, security and party units to attack the people of Al Dujail.

Those forces, units and organizations, which since proof was made that they were receiving orders from him. Those people are (nine); (Abas Jasmin Mohamed, Redha Hato Alsalami,

Karim Kazim, Ja'afar Alebidi, Emad Hassan, Mahdi Ja'faar, Alsaudi Alkarbalani, Mohamed Abdul, Jawad Alzurbidi, Mahroz Mohammad, Hadi Alkiladi, Hashim Adnan, Jasim Alkhazali, Sadik Mujeed, Hamed Alkhazidi, and Satar Tawfik Yahya Alkhataji).

A large number of Al Dujaili families were also arrested and detained those days; the total number reached 399 people. They were put in the custody of the interrogation and investigation section of (AlHakimiya prison) which was a branch of the Intelligence Apparatus, under the direction & instructions of the accused Barzan Ibrahim. This was confirmed by the witness Wadhah Alshiekh, who was a director of that section at the time of the incident until the beginning of 1984. This was also confirmed by the documentary evidence in the form of notes and letters attached to the particulars of this case, exhibited before the court. A number of people were also killed, due to torture, which was practiced on a large scale in AlHakimiya prison, by the intelligence officers of that directorate (of interrogation & investigation). Those killed were; (Yakoub Yosif Alebadi, Jasim Mohammed Latif AlSalami, Salih Mohammad Jasim, Kasim Ali Asad Al-Hideri, and Alwan hassan Husein Al Salami). A large number of Al Dujail victims including children were also killed or have died at the special branch of the intelligence section in Abugareb prison, as a result of torture and bad living conditions as mentioned earlier. Those killed were: (Mujbal Hassan Aziz AlMorsomi) who died as a result of a blow with the iron bar of a belt end – on the head, by one of the prison wardens (Yasin Hassan Hato Al Salami, and Nofa Hassan Agha AlZubidi, and the children: (hisham Fakhri Asad ALHideri, Zina Mohammad Hassan Alhideri, and Ali Mujeed AlKharbatli) also killed or died as a result of bad conditions, subjected to expelled Al Dujail people in Lea desert camp (Hamid Mahdi AlKhazabli, AbdulWahab Ja'afar Habib Alebidi, Sabria Abass Ahmad Alebidi, and Sabri Asad Abdallah AlHaidari), and the two children: (Methni Mujeed Yakoub, and Thabit Asad Abdallah AlHaideri).

The arrest, detention, and torture of the civilian population of Al Dujail was carried out from the beginning by orders issued by the accused Barzan. Murder was very possible under those circumstances. Even after the resignation of accused Barzan from the head of the intelligence organization, on Oct. 6, 1983, he will remain legally liable of killing (148) of Al Dujail people. Those were whose names were submitted to the revolution court, which passed sentences of death to all of them without trial; 46 of whom were confirmed killed during interrogations by the intelligence operatives in unspecified places. The 46 people of Al Dujail were killed before the alleged trial, at unspecified periods, between July 1982 and May 1984. That the accused Barzan had left the head of the intelligence in October 1983 does not exonerate him from the liability, because even if they were not killed while he was the head of the intelligence apparatus, he caused their death, when he arrested them and incarcerated them at AlHakimiya intelligence prison. Adding to this, some of the present complainants were at the detention with the dead victims, had testified, confirming that some of the victims had been killed due to torture, while they were there with them in the detention and that the accused Barzan was himself there, not only supervising the torture, he was also actually participating himself. For instance, see the testimonies of complainant No.1 and complainant No. 2 and complainant No. 3.

No. 3 at the court session of Dec. 21, 2005 and the testimony of the lady complainants No. 2 and No. 3 at the court session of Feb. 1, 2006, and the testimony of the complainant No. 1 at the court session of Feb. 2, 2006.

It is useful here to cite the decision of the international criminal court on former Yugoslavia on Dec. 10, 1998, paragraph 199, which reads: (it is not essential that the aiding and abetting of a commission of the ill deed to be materially liable. It could be in the form of moral support to the actual perpetrators of the crime).

The above decision refers to the British case (Rod) where six people appear to be involved in the killing of 4 British prisoners, who were in the hands of Germans. The women were killed by lethal injection; their bodies were disposed of by cremation, in the prison crematory.

Regarding the definition of the phrase: “implicated in killing” the referred judge explained it in the court martial: that actual presence at the scene of crimes is not necessary for a person to be (implicated in the killing). Reference was also made in the (Antoferndjia) case, to the decision of the (Jewish shrine), and to the decision of (pig's wagon procession), which stated: presence if supported by influence could constitute aiding in moral form. That is the act of the accused constituted by attack. The supporter must have a particular center, for the evidence to be sufficient enough to constitute criminal responsibility for the person purported to have rendered aiding and abetting. This principle became entrenched in the decision of the (Zilatco Alxofiski) case of June 25, 1999 (referred to above) which stated that “the mere presence could constitute sufficient participation under certain circumstances, if proved that the presence had effective effect on the commission of the crime through encouragement, and the presence of the person at the scene in itself rove that he had the criminal intent (Mensrea) required.” The same decision also stated that the criminal intent could be inferred from the circumstances; and the position of authority could constitute one of these circumstances, which could be taken into consideration when establishing that the accused knew that his presence could be interpreted as a sign of encouragement or support for the person actually doing the illegal act. Therefore, the authority of the person must be taken into consideration, as important evidence, to establish that his mere presence constitutes the action of deliberate [participation. (See paragraph 65 of the decision in Zelatco Alexofeski).

This court firmly believes that the accused Barzan had a very extensive influence. This influence emanated from a large number of positions, such as being the head of the intelligence organization in a dictatorial regime, and a brother of the former president of the Republic (the accused Saddam Hussein) who also held the number one position in the state and the party in addition to the presidency of the Republic. The accused Barzan himself also was in high position in the party that led the country. In addition, the accused Barzan was not only present at the place of the commission of the crimes, he was actually taking part in the torture of the victims.

All 148 victims of Al Dujail people, whether the 96 people that were executed after words (after the decision for education by the dissolved revolution council) or the 46 people who were killed under torture while being interrogated at the intelligence centers. The accused

Barzan bears the liability for their deaths. Along side other accuseds in this case, and along with the officers and operatives of the intelligence, who committed the act of killing with their own hands (the original perpetrators), with the assumption that the accused Barzan Ibrahim even though there is no direct evidence that he killed them by himself, there is evidence that he knew that some of them were killed by the officers, operatives and guards of directorate at the time of interrogation and investigation (AlHakimiya), and he was present at the time, and did not take any measure to prevent the commission of these crimes. He did not also take any action to question any one of them after he learned of the crimes. Moreover, he encouraged the commission of those criminal acts.

The accused Barzan also caused the killing of those remained alive people of Al Dujail), whose names were listed in the decision of reference to the revolutionary court; because the concept of the international criminal law, which is also inconsonant with Islamic criminal jurisprudence, and also inconsonant with other divine legislations, extends to questioning a person criminally, on any crime, including murder if the person intentionally caused the criminal result, which is the death of the victim or victims, that's if he other elements of crime are present. From the documents of the execution of Al Dujail victims, there is proof that execution was carried out on the remaining victims of Al Dujail on March 23, 1985 and also on January 16, 1989.

This court has the total conviction, that a great deal of the testimonies of the witness Wadhah AlSheikh, during the investigation and the trial were true. His testimonies were strengthened and consolidated by statements of many complainants (who testified at the investigation and the trial), and who were also detainees at AlHakimiya prison (and Abugareb prison, and Lea desert camp). The testimonies were also strengthened by documentary evidence attached to the particulars of the case exhibited before the court.

With regard to the testimony of the witness Wadhah AlSheikh, as to his obliviousness to acts of torture, during his presence, as director of interrogation and investigation at AlHakimiya prison, the intention is clear, which is evasion of responsibility. The court has the right to consider only part of his testimony, if satisfied by it, and disregard the other part that is not satisfactory, in accordance with section 215 of the law of penal trials No. 23 of 1971.

If without reasonable doubt, that Wadhah AlSheikh enjoyed direct control over the investigations of the failed assassination attempt, by order of the accused Barzan Ibrahim, and he submitted his reports to the accused Barzan (as confirmed by the witness Wadhah at the investigation and the trial). This meant that the accused Barzan was aware of what was going on in AlHakimiya and Abughraib prisons.

In another respect, not recovering the bodies of the victims - buried secretly in unknown locations – does not absolves the accused and should not be a precondition to constitute the crime of killing - then liability - since killing is proved by an abundance of material and tangible evidence, such as the decision of death sentence by the revolution court, assent by the accused Saddam Hussein (the then president of the Republic) to the death sentence, and the notes of the carried out executions death certificates of those executed, issued by relevant

medical bodies of the time, in addition to death affidavits issued by family courts, not to mention the registry of the civil registration that confirms the death of the victims.

In respect of the legal authority and the actual power that enables a person to prevent the occurrence of crimes, and question their perpetrators in case of commission, the accused Barzan Ibrahim enjoyed that legal authority in his capacity as the head of the intelligence apparatus in accordance with intelligence law. He also had the actual power, which he himself had confirmed in this court on Dec 21, 2005 when he stated that: if not for him, the entire people of Al Dujail would have been annihilated, and that he had set more than 70 detainees of Al Dujail victims free on the first day of the incident of Al Dujail. This was confirmed by the accused Barzan himself and his defense witnesses, and also by the prosecution witness Wadhah AlSheikh. What could be more actual authority than this?

The evidence of actual authority for the accused Barzan emanates also from that fact that he is the brother of the accused Saddam Hussein, who was president of the Republic, and chairman of the armed forces, prime minister, and number one official of Al-Baath Party in Iraq. Barzan himself was one of the prominent members of the party, under a dictatorial regime. This accused Barzan was in a position to stop the commission of these crimes committed in Al Dujail on the day of the incident, he was also in a position to stop the crimes committed afterwards in AlHakimiya and Abughraib prisons, and at the Lea desert concentration, in his capacity as the head of the coercive organization of a dictatorial regime, but he did not do it because he knew it, and wanted it to happen. His liability, or the criminal intent of accused Barzan emanated from this, the commission of killing as a crime against humanity. The general elements of murder as a crime against humanity are assembled.

The accused Barzan Ibrahim was aware of the collective arrests and imprisonment of the people of Al Dujail. It has been proven that the order for doing that came from the accused Barzan Ibrahim. Those who transferred the detainees were following the orders of Barzan. This was done using the vehicles belonging to the intelligence. The place of their detention also belonged to the intelligence Apparatus. Dozens of victims testified that he himself was the one torturing many of the detainees in the prison of Al Dujail as well as supervising the torturing of others.

Among the evidence showing the criminal intention of the accused Barzan Ibrahim was that he knew the number of people who attempted the assassination of the accused Saddam Hussein, being very few. No one was injured in that incident. The number of shots at the convoy of vehicles did not exceed 15 shots as reported in the testimony of witness Waddah Al-Sheikh during the investigation and trial. No damage was done to any of the vehicles at that time. This information about the number of bullets was based on the number of shells found in the orchid from where the shots were fired. The reaction of the former Baath regime about launching that wide-scale programmed attack against the people of Al Dujail was not exaggerated a lot. It was intended to achieve certain goals through these crimes against humanity. This is why the accused Barzan wanted to achieve these criminal acts including intentional killings.

This crime was perpetrated by several people by orders initiated by the accused which were in turn received from the accused Saddam Hussein. This crime was perpetrated by the accused together with other partners.

The participation of the accused Barzan Ibrahim in these criminal objectives, which included intentional killings, did not spring from only his being the head of the intelligence apparatus. This court is in accordance with the international courts' resolutions, which say that being a member of any oppressive government apparatus or in a criminal organization is not enough to conclude that this member took part in implementing a joint plot in some way or another. It is supposed that each member has some kind of role to play either directly or indirectly leading to a criminal act in the final round. Yes, Barzan Ibrahim, in addition to being the head of the intelligence at that time, he did participate in very highly important roles in killing and torturing the people of Al Dujail. He gave the orders of killing in Al Dujail in the first few days of the incident. He gave the orders to arrest and detain people, which led to the criminal acts of torturing and killing. This was proven to the court by the submitted evidence in the case.

The testimony of the witness Waddah Al-Sheikh, was not the only evidence or source of information of the criminal acts perpetrated by the accused Barzan Ibrahim. There were other evidence and information that confirmed the acts of that accused in intentional crimes against humanity. There were the testimonies of those who testified in addition to the documentation submitted and whose authenticity has been proven to the court. All these proved that Barzan Ibrahim was aware of what being perpetrated by those officers. The fact of this is that Barzan requested honoring those officers for their efforts in the case of Al Dujail from the beginning.

This court is convinced, beyond any reasonable doubt, that the accused Barzan Ibrahim ordered the arrest and supervised the torturing and even did torture some victims himself. These acts of torturing resulted and led to the logical findings that these were intentional crimes as proven by the savage methods used in torturing and the scars left on the bodies of the victims leading to the intentional crimes, including intentional killings. Among those who participated in the perpetration of these crimes was the accused Barzan Ibrahim.

There are many pieces of evidence that show the main and very important role played by the accused Barzan Ibrahim. This court can conclude that this plot was planned through many facts, among them are: the meeting of Radwaniya with the accused Saddam Hussein, the meeting of the national council which was attended by Mohamed Alawi representing the accused Barzan Ibrahim from the intelligence apparatus, the quick and direct move of the accused Barzan to Al Dujail on the day of the incident and the days that followed, the orders and supervising the arrests and the transfer of the detainees residing in Al Dujail to the prison of Hakimiya using the vehicles of the intelligence apparatus, initiating the interrogation by intelligence officers in the prison of Hakimiya. The objective of this plan was so obviously shown by the illegal acts and reaction to just firing few shots which injured nobody.

The accused Barzan Ibrahim was in control of the intelligence apparatus and its officers and members. He gave the orders to arrest a huge number of the citizens of Al Dujail and supervised many of those officers as well as other members of the security forces, the army and the popular army in arresting the people of Al Dujail. He supervised the interrogation process. Several officers worked on implementing a coherent plot. Their efforts were organized as they exchanged information. There were some overt approval of some and covert approvals of some others. This court can conclude from the available evidence that there was a joint plot implemented on different phases working in concordance leading to the same objective.

In the report to the accused Saddam Hussein dated July 13, 1982, the discontent of the accused Barzan Ibrahim about the efforts of some officers and their shortcomings prior to the incident of the assassination attempt against Saddam Hussein, gives another proof that there was a joint plot and concordance in the activities to achieve the goals of liquidating those in opposition to the Baath regime, as well as getting rid of those who reflect doubtful intentions about the regime. This was also intended to teach a lesson to others, as was proven by an audio tape, previously mentioned, of the accused Saddam Hussein talking about what happened in Al Dujail.

The common trend in the international courts goes that no need to have a joint plot drawn by several persons each with a certain role in order to hold them responsible of committing these crimes. This court is also fully convinced that this common plot was in existence and that the accused Barzan Ibrahim participated in drawing it and implementing very important steps in it.

This court believes that this is the only logical and reasonable deduction available in this case and in this regard. The accused Barzan Ibrahim and others had the intention of committing a crime against humanity. They were aware that their actions may lead to crimes. This intention and awareness were obvious and apparent to other participants including the accused Saddam Hussein, the intelligence officers and others.

Due to all that, this court is deeply convinced that the accused Barzan Ibrahim bears the full responsibility for intended killing as a crime against humanity, in accordance with Article 12, section "I" Paragraph "A", and in accordance with Article 15, Section "II", paragraphs "A", "B", & "C" of the same Law.

***The Extent of the Liability of the Accused Barzan Ibrahim  
For the Intentional Killing as a  
Crime Against Humanity According to  
Article 15, Section "II", Paragraph "D" of the Court Law.***

What was mentioned in the above paragraphs gives another proof that the participations of the accused Barzan Ibrahim with others including Saddam Hussein, Taha Yassin, and others who were in Al Dujail on the day of the incident especially the high officials in the government and the Baath Party, were intended to commit crimes against humanity including

intentional killing. These practices including those of the accused Barzan Ibrahim were intentional and aimed at re-enforcing the criminal objectives of the Baath Party Regime under the leadership of the accused Saddam Hussein (the brother of the accused Barzan Ibrahim). He is the one who came to power by force in 1968 and maintained his position by liquidating his opponents and those whom he had some doubts about their loyalty to the Party for over three decades. This regime was based on committing crimes that fall under the specialty of this court's authority as they are crimes against humanity.

As for the perpetrators of these crimes as members of the regime and the leadership of the Baath Party including the first of whom, the accused Saddam Hussein, being aware of what was going on, this stems from the presence of the joint plot which has become apparent to the court through its logical deductions. This plot which was engineered and implemented by those leaders, has become apparent and obvious by the actual acts of committing crimes against humanity. As we have indicated, the pieces of evidence of this plot are numerous. These include the discussions that took place in the Radwaniya meeting between Saddam Hussein and Barzan Ibrahim on the same day of the incident and directly in the following few days in the meeting of the national council attended by a representative of the accused Barzan Ibrahim, the head of his office.

The existence of this joint plot was an undoubtedly clear fact confirmed by the documentary evidence attached in this case file which included the facts (the above noted meetings), hence confirming its truth.

Knowing about the perpetration of these crimes has been clearly evidenced by the numerous phrases pronounced by the main suspects of this case before the court during the hearing sessions.

During the first few court sessions, accused Barzan Ibrahim described the victims of Al Dujail as criminals. When one of the complainants asked to read the Koranic Sura of "Al-Fatiha" for the victims of Al Dujail, Anfal, & Halabja, the accused Barzan said : "To the Hell Fire" instead of reciting "Al-Fatiha". Similar statements were uttered by other accuseds like Saddam Hussein, Taha Yassin Ramadan and Awwad Al-Bandar, describing the victims who were killed in Al Dujail as "traitors and criminals". The matter even went beyond that to reach even the members of this court and its judge, talking about them in the same manner, especially by Saddam Hussein and Barzan during the court hearings. Even though these things are not considered direct evidence of the intentions on the day of the incident and later on, they are still good addition to the evidence that the participants had the intention of committing these crimes, and the fact that accused Barzan was aware of everything.

Also the leaders of the Baath Regime and the heads of the main oppressive agencies being aware about the intentions of committing these crimes, stems from the fact that accused Barzan Ibrahim was one of the icons of this regime and the head of the most important apparatus. He was also very close to main political decision maker both family wise and position wise. The head of the intelligence is directly connected to the head of the Revolutionary council and the President of the Republic (the accused Saddam Hussein), who

is in turn also the brother of the accused Barzan Ibrahim. He is also in close contact with the other heads of the regime and the Baath Party, among them is Taha Yassin Ramadan. Accused Barzan was well aware of that intention because he received the orders from accused Saddam Hussein to commit these crimes. He is the same person who gave the orders to others including intelligence officers and used to supervise these crimes being perpetrated.

In light of the above, accused Barzan Ibrahim is fully responsible for these determined crimes of killing against humanity. He participated with others in the perpetration of this crime against humanity. His participation was predetermined aiming at enhancing the criminal activities of the intelligence and security apparatus of the regime and the Baath Party. He was also well aware of the perpetration of these crimes at the hands of the regime and Party members, based on Article 15, Section II, paragraph "D" of the court law.

Barzan Ibrahim's Extent of liability regarding his accusation in the commission of willful crime considered crime against humanity while the head of the intelligence agency as per article 15-4 of the court law:

The accused, Barzan Ibrahim, was the head of the intelligence agency. Thus, A relationship existed between him, the intelligence officers, and the subordinates within the secret service and investigative directorate of the agency. This relationship is that of an officer to subordinates type. That is to say that those responsible of willful criminal acts in Al-Hakimiya and Abu Ghraib prisons were under his control and were given orders executed under his legal and de facto authority. This control was real since Barzan Ibrahim was aware of the officers and subordinates commission of crimes among which that of intentional killings. In fact some of these killings took place in his presence. Moreover, he knew of intense use of acts of torture such as electric shocks, firing, severe head beating of the victims [with Sticks], iron bars, and the use of other means. Furthermore, he personally tortured some victims. These types of tortures could have led to their deaths. Even after his resignation as head of the intelligence agency on 10/6/1983, Barzan still did have the ability to know before that date that those officers and their subordinates committed similar acts. In fact, these criminal acts constituted activities that fell under his effective responsibility and control. However, he did not take the necessary and diligent measures within his power to stop or to punish the criminal acts or to refer the matter to the concerned authorities for investigation so as to insure accountability of the perpetrators. As a matter of fact, Barzan himself undertook such acts, gave orders, allowed these acts to occur, condoned them, and encouraged other crimes such as intentional killings. As a result, he is criminally responsible for such crimes in his capacity of head of the highest intelligence office as per article 15-4 of the court law.

The accused, Barzan Ibrahim had a legal responsibility over his subordinates. Likewise, he head a large de facto authority emanating from the fact that he is the brother of the president of the republic, head of the revolutionary council, and general secretary of the national Baath party in Iraq at that time. Thus, the government and the party were run by a dictatorial regime. The evidence is that Barzan Ibrahim enjoyed an effective de jure and a de facto authority that he exercised in fact and in a way that would have been possible only for a limited number of people belonging to the former key Baath party membership. This

authority has made it possible for him to order the release of 40 prisoners of Al Dujail detainees from the party's headquarter in Al Dujail during the first day of the incident.

This has been confirmed by the accused, Ibrahim Barzan more than once during the sessions of the court as confirmed by the defense witnesses and the witness for the prosecution [Waddah Asheiykh] in his testimony before the inquiry commission on 1/15/2005.

In the above mentioned [Zlatuco Alexosvski?] case [in paragraph 76 etc.] the court determined that the responsibility of the higher official is not confined to official powers only. In fact any person who is in de facto higher official position could bear responsibility under article 7/3 of the court law. The key criterion in determining the rank of a higher official as per international law is not only confined to the official legal position of the accused but extends to include his capacity and his duties, as well as his ability to exercise power. As the court has underlined in the case of [ALB?], the determining factor when it comes to responsibility as in this case of criminal liability is the de facto control or the lack thereof in terms of control and power over subordinates. In accordance to this, official appointment as a leader is not considered a necessary condition linked to said responsibility which can be derived from the de facto position of the person added to the de jure leadership in paragraph 77 of the same decision in the above mentioned case, the court asserted that "In most cases tried by the courts after the second world war, the relationship of the key leader and the subordinates" was necessary to trigger higher accountability. Thus, in the case of [Toyota], the level of responsibility was defined as the "de facto true authority in control is that which issued orders not to commit illegal acts so as to avoid prosecution".

In this case the accused, Barzan Ibrahim had the material capacity, power, and the legal control as well as the effective de facto authority which allowed him to stop and forbid the crime leading to these killings. Moreover, he had the capacity and the power to punish the perpetrators of these killings; nonetheless, he chose not to do so because, as we said, he was the one who gave orders, committed some of these crimes, encouraged, and condoned others. The evidence pertaining to the material capacity of the accused, Barzan, to punish the perpetrators of these crimes is equal to his ability to reward them. Therefore, whoever is able to reward is also able to issue procedures leading to accountability and punishment. Barzan has admitted before the court that it was within his power to reward intelligence officers, then why would he ask the chief of the revolutionary council for undertaking such a thing? This was contained in his statement before the court as presented in the report emanating from the intelligence addressed to Saddam Hussein in his capacity as the chief of the revolutionary council. This report included a reward request for the intelligence officers whose names were listed to extent to them one year seniority to further their ranks as well as a compensation for their efforts in Al Dujail incident. In addition, The evidence relative to the chief of intelligence's capacity to legally exercise control over accountability and punishment is the fact that he introduced the accused, Hikmat Abdelwahab, before the intelligence court for failing to implement the execution of the sentence concerning two of the Dujail's victims and instead falsely executing four others. Barzan knew of the intentional killings which occurred in Al Dujail. Even if this was not direct, there was a probable or indirect criminal intent and a knowledge of one of the factors involved. The probable or indirect criminal intent equals

direct intentional cause in accordance to article 34/b of the code of criminal procedure no. 111 of 1969.

It is true that knowledge is not function of the position itself, but a higher position is one of the factors which confers knowledge. Among the other sources of knowledge is the presence of the accused in the crime scene, his involvement in investigating the victims, as well as his carrying over of some of these crimes as has been established in the case of the accused, Barzan Ibrahim.

The accused, Barzan Ibrahim, had direct knowledge of these crimes because he was present in the crime scene, was personally involved in the commission of some of the crimes while other crimes were undertaken under his direct supervision.

The accused, Barzan Ibrahim, knew of the illegal arrest in Dujail at least during the first and second days of the event. He also knew of the imprisonment since the arrested people were transferred in an intelligence car in his presence. Then, the detainees were put in the Hakimiya prison with his knowledge since he was present. Moreover, he knew of the torture which was taking place in the Hakimiya prison since it occurred under his supervision and with his involvement in this prisoners' torture. Furthermore, he knew of the forced expulsion of the inhabitants in 1983. Likewise, he must have known of the killings "even if he did not know about this directly" which constituted a probable cause proven by the severe and extreme torture perpetrated in the Hakimiya and Abu Ghraib prisons.

There is nothing in these proceedings that shows that the accused, Barzan Ibrahim, has initiated any procedures to stop the commission of these crimes including murder. On the contrary, there is strong evidence that he was a participant in these crimes. In fact, a recourse to and review of the immense documents available to which the defense has referred to, there is no single proof showing that Barzan has undertaken any action to put an end to these crimes, nor did he contemplate any procedure for punishing the perpetrators. In addition, the accused did not refer to the existence of such procedures at the outset during the investigation or the trial.

The lack of evidence showing that Barzan had undertaken any actions to prevent the commission of these crimes, the failure to hold accountable those who committed these crimes, and the fact that Barzan did not refer to such procedures, emanates from the simple reason that Barzan has never ask for and is an indication that Barzan had in fact participated in the commission of these crimes. As a result, it cannot be said that Barzan had prevented the occurrence of these crimes or had worked out procedures to punish the perpetrators.

Based on the foregoing, the accused, Barzan, bears the criminal liability for intentional killings as a crime against humanity because he occupied he position of chief of intelligence as per article 15/4 of the court law.

God said in his sacred book: "Oh Lord! Because thou hast bestowed a favor on me, I shall never be a backer of the guilty" Quran: XXVIII-17, Al-Qasas.

**The accused Barzan Ibrahim's Liability regarding forced expulsion of the population as a crime against humanity**

The court has established that a great number of men, women and children inhabitants of Dujail [around 400 people] were forcibly transferred to the [Lea] center located in the Sahara governorate of Muthanna. This was evidenced by the statements of a large number of victims [who complained] who provided their testimony during the investigation as well as before this court. This was also evidenced by the above mentioned documentary proofs [letters] emanating from the intelligence agency [refer to the available proofs against the accused Ibrahim Barzan sent to the directorate of the governorate of Muthanna indicating the transfer of family members from Dujail, imprisoned in Hakimiya and Abu Ghraieb prisons with a list of names contained in letters originating from the intelligence agency]. Some of these letters were issued when Barzan was still the head of the intelligence agency and other letters came after Barzan retirement on 10/6/1983.

Thus the expulsion of this civilian population occurred in phases. Likewise, it was established from exchanged letters and issued correspondence, signed by the director of intelligence of the Muthanna governorate that the displaced people of Dujail had arrived to his circumscription.

The issue at hand is the intricate situation that the Dujail inhabitants had gone through when they were forcibly transferred out of their area [without their consent of course] and were held in the Lea Sahara camp. Is the crime of population expulsion and forced transfer not considered as a crime against humanity? Does the situation in which the Dujail people were put in [camps or prisons] not constitute a serious privation of any type civil liberty, thus in violation of the fundamental rights of international law and constitute a crime against humanity.

The court has previously determined during the discussion of Saddam Hussein's extent of criminal responsibility relative to the transfer of the population and their forced expulsion. In spite of the letters issued by the intelligence agency which attest to the transfer of the populations and families of Dujail to the police directorate of the governorate of Muthanna, those letters spoke of [detention]. Detention in that area did not resemble the situation of prisoners who are strongly denied any civil liberty because in Dujail detainees enjoyed some freedom of movement even though they were in a Sahara camp. Despite the presence of guards of the governorate police directorate, the doors of the detainees' rooms were not closed from the outside. In fact, the detainees were able to close the doors from the inside using stones.

Based upon the foregoing, the court considered that the situation of the Dujail population in that detention center [Lea] in the Sahara is tantamount to an expulsion or forced transfer and not a prison or an extreme curtailment of civil liberties as was the case when they were held

in Hakimiya or Abu Ghraib prisons. It is true that the detainees were unable to freely leave the area and go where they wanted or return to Dujail. The limitations which were placed upon the detainees are an act found in both crimes [that is forced transfer of the population and imprisonment or serious civil liberties curtailment]. At least, the detainees were able to go outside the camp to gather wood even in the Sahara, something they were not allowed to undertake while in prison. Also, the fact that the detainees were able to close their doors from the inside using a stone to block them is something that is not possible in a prison. Likewise, the detainees were able to cook their own food. This choice was not available to them in the prisons of Hakimiya and Abu Graieb where they were supplied food by prison authorities whereby the portions were small and of poor quality.

Based upon the foregoing, the court believes that Barzan Ibrahim who held the position of chief of the intelligence Apparatus has issued the orders to carry out the expulsion of the civil population from Al Dujail to the governorate of Muthanna, along with their forced transfer to Lea camp. These orders were indeed executed by his subordinates in the intelligence apparatus, by the directorate of secret police, and the police office of the governorate of Muthanna as a part of a joint and criminal activity plan. The actions of Barzan were intentional and aimed at furthering criminal activities of the intelligence and security agencies as an extension of the criminal acts of the Baath regime, led by his brother Saddam Hussein. Barzan was therefore aware and intended to undertake these crimes against others because he participated in that plan, for that purpose, and for issuing the orders. He undertook all these activities while he was the chief of the intelligence agency while enjoying legal and actual authority to end these crimes or punish the perpetrators once the crimes occurred. This has been proven in the foregoing when we discussed the responsibility for the intentional killings as a crime against humanity. Barzan did not undertake such actions because he was indeed the one who ordered the crimes of forced transfer and expulsion of the civil population from Dujail to that area. This action constituted a scheme of a large methodical attack on the Dujail civil population. Barzan was well-aware of that, and for that reason he is criminally liable for the crimes of expulsion and forced transfer of the population which falls under article 12/1/d of the court law as stated in article 15/2/abd and article 15/4.

**Extent to which Barzan's Imprisonment and extreme denial of civil liberties to detainees constitutes a crime against humanity**

It has become clear to this court based upon the testimony of Mr. Waddah Al-kaiykh and other victims from Dujail that during the investigation and trial that Barzan has issued orders in the first two days of the Dujail incident at least for the troops, the intelligence, party, and security agencies, as well as to the national people's army to arrest a large number of men, women, and children among Dujail population. This order was effectively implemented and the arrested were first put in the rooms of a facility belonging to the local party in Dujail. It has also become clear to the court from testimonies provided by witnesses that Barzan has personally supervised the transfer of the detainees to the Hakimiya prison using vehicles of the intelligence agency. This prison was placed under the authority of the directorate of investigation and secret police within the intelligence agency where he jailed them. Then, Barzan held them in the section of the Abu Ghraib prison belonging to the intelligence

agency. The accused, Barzan, was seen by many victims in the Hakimiya prison as he was supervising interrogations and torture, and participating personally in the torture of some victims. In addition, it became clear that those victims were civilians who were entrusted to the intelligence agency presided over by Barzan. Many of the victims were presented before the revolutionary court [now banned] by decision of Saddam Hussein. This emanated from the office of national safety which was under the presidency of the republic, letter no. 762 issued on 5/27/1984 which included that [concerning the reasons for the transfer before the revolutionary court investigative issue no. 40/1984 – intelligence] the testimony of Mr. Awad Al-Bandar during the investigation committee report on 2/9/2005 [ as for the investigation, it had taken place at the intelligence agency’s location]. Likewise, It is also based upon paragraph 5 of the report of the investigation committee presided over by Mr. Hussein Kamil which included [ The committee has undertaken the following: It has consulted all the key elements concerning the Dujail incident which was available at the intelligence agency, the letter issued by the intelligence agency to the office of the president no. 1382 dated 3/31/1987 whose paragraph 3 stated that the intelligence body is in charge of conducting investigations of the Dujail inhabitants. Moreover, this letter contained the following: [implementation concerning the remaining civilians had taken place and some of them died during interrogations]. Based on the foregoing, Barzan, is criminally liable about imprisonment and extreme denial of civil liberties to detainees which constitutes a crime against humanity as per article 12/1/h of the court law as evidenced by article 15/2/ab of said law. The action of Barzan who issued those orders to imprison those victims means that he criminally and intentionally contributed and participated to commit a crime with the assistance of a group of his subordinates. This participation to commit the crime was intentional and aimed at reinforcing the collective activity of the intelligence agency, the secret service, and the party over which he presided. This was also undertaken to vindicate the satisfaction of the criminal activity of the Baath regime led by his brother, Saddam Hussein.

Barzan’s intent was to commit this crime on behalf of the regime and the party of which he was a pillar and to enforce an order issued by Saddam Hussein. Because his act was the outcome of a large attack; because the act was well-planned in so far as it was directed against civilians; because he knew of such attack and issued the orders; Thus, based upon the foregoing, Barzan is considered criminally liable regarding imprisonment and the extreme denial of the victims civil rights which amounts to a crime against humanity in accordance to article 15/2/d of the court law.

The legal requirements that trigger Barzan’s criminal responsibility abound because he was the chief of the intelligence agency and failed as such to put an end to the actions of his subordinates [officers, and members of the intelligence agency] and stop the occurrence of the crime. Yet, he had the capacity and the legal and actual authority to do so. Moreover, he did not undertake to issue procedures to hold these perpetrators liable for their actions. This was the result of the fact that he was indeed the one who gave orders to put the Dujail victims in Hakimiya and Abu Ghraib prisons. Barzan is considered criminally liable regarding imprisonment and the extreme denial of the victims civil rights, and this amounts to a crime against humanity in accordance to article 15/4 of the court law.

Extent of Barzan's responsibility in torture as a crime against humanity:

Most of the victims of the Dujail area who testified during the investigation and the court proceedings were arrested the first day of the incident and the following days. After their arrest, they were kept initially in the building of the party section in Dujail. They were then transported via intelligence vehicles on the orders and under the supervision of Barzan to Hakimiya then to Abu Graieb prisons, and finally to the Sahara camps of Lea. The victims testified that there were tortured in all detention centers by officers and subordinates of the intelligence agency in Hakimiya, the prison guards in Abu Ghraib who belonged to the intelligence agency, or the guards of Lea Sahara camps members of the Muthanna secret police. The torture was widespread in Hakimiya under the supervision of the accused, Barzan Ibrahim. In fact the latter has personally tortured many victims in the Hakimiya prison. This is evidenced by the testimony of many victims mentioned above [refer to: the section relative to the complaints against Barzan]. Many proofs can be found in the documents attached to this suit which were presented to the court which attested to this fact. Among these documents whose accuracy the court has asserted as per the criminal evidence commission report upon matching the handwriting and the signatures of the victims with samples of their writing and signatures referred to in paragraph (3) of the report issued by the intelligence agency.

This report was addressed to the presidency of the republic under no. 1282 on 3/31/1987 in which it was mentioned that [ the execution of the remaining convicted has been carried out but many of them died during interrogation]. The court has also asserted the accuracy of the information relying upon the previously mentioned aide-memoire of the intelligence agency addressed to MM7? in the evidence relative to Barzan and whose paragraph (3) stated that [among the convicted, 46 were eliminated or died during interrogation. Moreover, this accuracy of the information is found in the conviction report emanating from the intelligence court against the intelligence officer, Hikmat Abdelwahab who was a member of the directorate of investigation which reports to the intelligence agency. The latter conducted investigations at the Hakimiya prison with the Dujail detainees as referred to above in page 2 of the report which states:[the number of the remaining sentenced detainees is 96 because of the elimination of others during investigation]. In fact, these documents show that a large number, at least 46 detainees of the Dujail area were killed during torture in Abu Ghraib and Hakimiya prisons, and other unknown locations belonging to the intelligence agencies for the period between the date of the event on 7/8/1982 and the spring of 1984 when 148 people of the Dujail area were in the custody of the intelligence agency and presented to the revolutionary court [abolished].

Thus, the acts of torture perpetrated by Barzan in person as well as by officers and their subordinates and the guards at the Hakimiya and Abu Ghraib prisons – especially at least as far as Hamikia was concerned – took place under the direct supervision of Barzan. These acts of torture took the form of severe body beating using rubber sticks, by firing weapons in their direction, by electrical shocks, by attaching wires to the ears, nose, or genitals, and by obliging the victim to sit on a bottle. Psychological torture was also used by undertaking

these acts in front of a mother, a brother, or a father. This form of torture is corporal when applied to the detainee on the one hand; but, on the other hand, it is also psychological as far as the sufferings of these relatives are concerned. This torture was applied to women and men of different ages, and to 12 year old children. The torture took place before children of a lesser age. Other types of torture comprised extinguishing cigars on the head of the detainee, sleep deprivation for longer period of time, kicking. One of the witnesses said that Barzan had extinguished cigars by placing them behind the victim's ears. Another witness maintains that Barzan kicked him in the leg while the victim was sick to the point that the detainee lost consciousness. A third witness affirmed that Barzan was eating raisins while watching torture. Some female witnesses added that girls were raped and were interrogated until late in the night and when they returned to their cells, they showed signs of suffering and their faces were pale. Other female victims spoke of humiliation, insults, and were subjected to dishonoring acts such as removing the clothes, putting up their legs, and foot beatings. Men witnesses reported humiliation, degrading comments, and insults made by Barzan, intelligence officers and their subordinates, and the guards of Abu Ghraib prison section under the control of the intelligence agency.

As a result, there is comprehensive evidence showing the undertaking of acts of torture upon the victims of Al Dujail detainees by Barzan personally, by the officers and subordinates, as well as the guards of the Hakimiya intelligence section of the directorate of investigation. These acts took place in his presence and under his supervision most of the time and in many cases. Moreover, these acts were the outcome of a large and organized attack on the Dujail civil inhabitants. In addition, Barzan knew about the torture since he was the one who issued orders for the arrest, imprisonment, and torture of the inhabitants, as well as the one who supervised these actions. Indeed, Barzan participated in the torture of the victims in some cases. Therefore, Barzan is criminally liable for torture as a crime against humanity in accordance to article 12/1/f of the court law as evidenced by articles 15/2/abc and 15/4.

Since it has become clear that the actions of the accused, Barzan, relative to torture of civilian population in Al Dujail area has been perpetrated by the accused himself, assisted by a group of people for committing a criminal act. Considering that this participation was intentional because it met both criteria of knowledge and intent [i.e., knowledge of the criminal act [torture] and willingness to commit the crime. This intentional participation in the commission of the crime was undertaken with the objective of furthering the intelligence criminal activity and the Baath party in power of which Barzan was a key pillar as the brother of the head of the government, president of the revolutionary council, and the general secretary of the national Baath party in Iraq. Since he knew of the commission of the crimes by the key personalities of the regime for the already cited reasons and because he got his orders from Saddam Hussein to arrest and imprison a large number of women, men, and children without any legal grounds. Also, Barzan implemented the orders despite the fact that both Saddam Hussein and Barzan knew that the number of people who participated in the assassination attempt was limited to a small group. This is evidenced by the declaration of Saddam Hussein himself before the investigative commission on 6/12/2005 and by the witness, Waddah Al-Skeikh during investigation and court proceedings.

Based on the foregoing, Barzan is guilty of torture as a crime against humanity according to article 15/2/D of the law of the court.