



## **The Anfal Trial and the Iraqi High Tribunal Update Number Three:**

### **The Defense Phase and Closing Stages of the Anfal Trial**

*This update series is designed as a brief summary of developments in the Anfal trial. Information is taken directly from observer notes, detailed media reporting, or the trial documents themselves. This update does not reflect ICTJ legal analysis or ICTJ policy positions; for these please visit our website at <http://www.ictj.org> (English) or <http://198.170.242.9/Arabic> (Arabic).*

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## 1. Overview

This is the third update by the International Center for Transitional Justice (ICTJ) on developments in the *Anfal* trial before the Iraqi High Tribunal (IHT). It covers the trial’s defense and closing phases, from 7 February to 10 May 2007 (Trial Sessions 40-59).

Following the conclusion of the documentary evidence phase on 29 January, the defendants made their opening statements on 7 February (Trial Session 40). Defendant statements spanned five sessions, and on 20 February formal charging instruments were introduced (Trial Session 46). Presentation of defense witnesses commenced on 26 February (Trial Session 47) and lasted just two sessions, after which point several sessions were devoted to procedural and administrative issues.

The prosecution began its closing statements on 2 April (Trial Session 53), and the defense began its closing statements on 6 May (Trial Session 55). Following the conclusion of defense closing statements on 10 May (Trial Session 59), the trial adjourned. A judgment was handed-down on 24 June (Trial Session 61) convicting five of the six defendants to multiple life sentences or death. At the time of writing this update, the case was before the Cassation Chamber.<sup>1</sup>

## 2. Background

### A. Establishment of the Iraqi High Tribunal (IHT)

For an overview of the establishment, jurisdiction and case history of the Iraqi High Tribunal, please refer to the English and Arabic tribunal-related materials on the ICTJ Iraq web page. See also the ICTJ’s first and second Anfal updates.<sup>2</sup>

### B. Defendant Profiles and Details of Allegations<sup>3</sup>

The Anfal trial of Saddam Hussein, his cousin Ali Hassan al-Majid, and five other co-defendants began on 21 August 2006. The defendants were referred to trial based on their alleged roles in planning, authorizing and executing the 1988 Anfal campaign – a series of large-scale, coordinated attacks targeting the Kurdish population of northern Iraq.<sup>4</sup> According to the Chief Prosecutor in the Anfal trial, Iraqi forces repeatedly used chemical weapons, killed up to 182,000 civilians, forcibly displaced hundreds of

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<sup>1</sup> For details of the verdicts, see ICTJ Press Release, “Iraq Tribunal Issues Verdict in *Anfal* Case” (24 June 2007), available online at [http://198.170.242.9/arabic/PR070624Anfal\\_Verdict.html](http://198.170.242.9/arabic/PR070624Anfal_Verdict.html) (Arabic) and <http://www.ictj.org/en/news/press/release/1240.html> (English).

<sup>2</sup> Available online at <http://198.170.242.9/arabic/AnfalUpdateOne.arb.pdf> (Arabic) and <http://www.ictj.org/static/MENA/Iraq/AnfalUpdateOne.eng.pdf> (English).

<sup>3</sup> Defendant profiles and descriptions of the crimes with which they are charged draw largely from the ICTJ’s “The Anfal Trial and the Iraqi High Tribunal Update Number One.” See *id.*

<sup>4</sup> The Iraqi Code of Criminal Procedure (Law 23 of 1971) stipulates a two-step charging process. Defendants are first referred to trial (art. 131), and a charging instrument is then drawn up by the court after prosecution has presented its evidence (art. 181).

thousands more, and almost completely destroyed local infrastructure.<sup>5</sup> The Anfal campaign has been well-documented by human rights groups.<sup>6</sup>

The Anfal trial is being conducted before the five judges of Trial Chamber Two. The defendants are:

- Ali Hassan al-Majid al-Tikriti, alleged architect of the Anfal campaign and cousin of Saddam Hussein, Secretary General of the Arab Ba'ath Socialist Party's Northern Bureau from March 1987 to April 1989, with authority over all state agencies in the Kurdish region during this period;
- Sultan Hashem Ahmed al-Ta'i, former commander of the Army First Corps, which was based in northern Iraq and involved in several, but not all, of the eight Anfal operations. Also former Army Chief of Staff, and former Minister of Defense 1995-2003;
- Tahir Tawfiq al-'Aani, former Governor of Mosul during the Anfal campaign, Ba'ath party official. Prior to the Anfal campaign, al-'Aani was also Secretary of the Northern Affairs Committee, which was subordinate to al-Majid;
- Sabir Abd al-Aziz al-Douri, former general director of Iraq's Military Intelligence Service;
- Farhan Mutlaq al-Jabouri, former director of the Military Intelligence Service of the northern and later eastern regions; and
- Hussein Rashid al-Tikriti, Army Deputy Chief of Staff for Operations during the Anfal campaign.

Saddam Hussein al-Majid al-Tikriti, former President of Iraq from 1979 until 2003, was also a defendant in the al-Anfal trial. After his execution on 30 December 2006, however, the Tribunal announced that all legal proceedings against him would be halted according to Articles 300 and 304 of the Iraqi Law of Criminal procedures No. 23 (1971).

Allegations and charges in the Anfal trial include:

- Genocide, meaning any number of specified acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such.<sup>7</sup> The prohibition against acts intended to destroy a group of people—in this case, Iraqi Kurds—based on their group identity is one of the most fundamental norms of international law. Under Article 11, First, (A), (B) and (C) of the IHT Statute,

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<sup>5</sup> Prosecutor's opening statement, 21 August 21 2006 (ICTJ Observer Notes).

<sup>6</sup> See, e.g., GENOCIDE IN IRAQ: THE ANFAL CAMPAIGN AGAINST THE KURDS, Human Rights Watch (1993), available online at <http://www.hrw.org/reports/1993/iraqanfal/>.

<sup>7</sup> Supreme Iraqi Criminal Tribunal Law No. 10 of 2005, *al-Waqa'ia al-Iraqiyya* (the official gazette of the Republic of Iraq), no. 4006, October 18, 2005 ("IHT Statute") art. 11, available online at <http://www.ictj.org/static/MENA/Iraq/IraqStatute.ara.pdf> (Arabic) and <http://www.ictj.org/static/MENA/Iraq/iraq.statute.engtrans.pdf> (English).

the defendants were charged with: killing members of the group; causing serious bodily or mental harm to members of the group and deliberately inflicting living conditions calculated to bring about the group's physical destruction in whole or in part.

- Crimes against humanity, meaning certain specified acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the general context of the attack.<sup>8</sup> Under Article 12, First, (A), (B), (C), (D), (E), (F), (H), (I) and (J) of the Statute, the defendants were eventually charged with: willful killing; extermination, enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental norms of international law; torture, persecution against any specific party or population on political, racial, national, ethnic, cultural, religious, gender or other grounds that are impermissible under international law, in connection with any act referred to as a form of sexual violence of comparable gravity; enforced disappearance of persons and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to the mental or physical health.
- War crimes, which is a broad category of prohibited acts related to armed conflict, by which civilian persons or places are harmed.<sup>9</sup> The defendants were charged, under Article 13, Fourth, (A), (D), (E), (H) and (L) of the Statute, with: intentionally directing attacks against the civilian population or against civilian individuals not taking direct part in hostilities; intentionally directing attacks against buildings such as schools and hospitals which are not military objectives; pillaging any town or place, even when taken over by force; ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand and destroying or seizing the property of an adversary, unless such destruction or seizure is imperatively demanded by the necessities of the conflict .
- Willfully killing another person using toxic substances or explosives.<sup>10</sup>

In pre-trial documents, Hussein and al-Majid were the only defendants charged with genocide, and al-'Aani was not charged with war crimes.<sup>11</sup> During the trial's first session, however, presiding Judge Abdallah al-Amiri asked each defendant to enter a plea to crimes under all three categories. All seven defendants pled not guilty on all counts.<sup>12</sup>

On 20 February 2007, after the Prosecution had presented its evidence, the Court drew up charging instruments against the defendants. The defendants were charged with a broader range of crimes than indicated in the pre-trial documents; all six remaining defendants were charged with genocide, crimes against humanity, and war crimes.

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<sup>8</sup> *Id.* at art. 12.

<sup>9</sup> *Id.* at art. 13.

<sup>10</sup> Iraqi Penal Law (Law No. 111 of 1969) art. 406(1)(B).

<sup>11</sup> IHT Press Release, April 4, 2006.

<sup>12</sup> ICTJ Observer Notes, Trial Session 1, 21 August 21 2006.

The prosecution was officially headed by Chief Prosecutor Jaafar al-Mussawi, with Prosecutor Munqidh al-Fir'an taking the lead role in this case. With the exception of al-'Aani, each defendant had retained private counsel by the first session.<sup>13</sup> Al-'Aani later retained private counsel as well. Defense lawyers were provided by the defense office to step in if private attorneys were dismissed or did not attend trial sessions.<sup>14</sup>

### C. The Complainant Phase<sup>15</sup>

The first phase of the Anfal trial, the complainant phase, lasted for twenty-three sessions from 21 August to 27 November 2006. Sixty-five complainants presented testimony regarding their experiences during the Anfal campaign.

During this phase of the trial, the complainants – some identified in court and some not – testified in harrowing terms to what befell them during the Anfal campaign. Some complainants offered testimony against only a few defendants, while others testified against all of the defendants. The testimony apparently constituted the factual basis of war crimes, and indicated crimes against humanity including willful killing and imprisonment. As for the charge of genocide, complainant testimony seemed to establish the factual basis for the constituent acts required by the charge, but did not seem to establish the requisite intent.<sup>16</sup>

In its examination of complainants, the defense argued that the Anfal campaign was part of Iraq's strategy in the Iran-Iraq war and was directed at Iranian forces and the Kurdish "saboteurs" allegedly fighting alongside them.

It was during this complainant phase of the trial that Presiding Judge Amiri stated in court that that Saddam Hussein was "not a dictator," and was then promptly replaced, within just three sessions, by Muhammad Uraybi al-Khalifa as the new Presiding Judge. The decision to replace Judge Amiri came amidst an intensely political discussion which marked a severe challenge to the independence of the Tribunal. Such encroachments upon the independent functioning of the Tribunal recalled the instances in which the *Dujail* trial was nearly crippled by pressure from the Executive and repeated ousting of court employees by the De-Ba'athification Commission.<sup>17</sup>

### D. The Prosecution Witness Phase

During the second phase of the Anfal trial, prosecution witnesses and documentary evidence were presented. Prosecution witnesses were presented across five trial sessions

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<sup>13</sup> ICTJ Observer Notes, Trial Session 1, 21 August 21 2006

<sup>14</sup> Non-Iraqi lawyers may advise defense counsel or defendants. *See* IHT Statute, *supra* note 7 at art. 19(4)(b).

<sup>15</sup> Details relating to the complainant, prosecution witness, and documentary evidence phases of the trial draw heavily upon the ICTJ's "The Anfal Trial and the Iraqi High Tribunal Update Number Two: The Prosecution Witness and Documentary Evidence Phases of the Anfal Trial," available online at <http://198.170.242.9/arabic/AnfalUpdateTwo.arb.pdf> (Arabic) and <http://www.ictj.org/static/MENA/Iraq/AnfalUpdateTwo.eng.pdf> (English).

<sup>16</sup> *See supra* note 2.

<sup>17</sup> *Id.*

(28 November to 7 December 2006) and nine individuals provided testimony during that time.

The testimony of the prosecution witnesses was general in nature, focusing on proving the existence of the Anfal campaign and locations of mass graves, as well as the campaign's use of chemical weapons against the Kurdish civilian population. Complainant testimony did not focus on proving the individual liability of the defendants, and the prosecution focused more specifically on issues of individual liability during the documentary evidence phase. Most of the evidence was from ballistic and forensic experts, and related more clearly to the facts of the crimes than to the culpability of those who orchestrated them.

#### *E. The Documentary Evidence Phase*

The documentary evidence phase of the Anfal trial lasted for nine sessions, from 18 December 2006 to 29 January 2007. Some 4935 documents were presented in the referral file (dossier). Although disclosure to the defense improved since *Dujail*, documents were nevertheless introduced during trial sessions as evidence even when they had not been previously disclosed. This constitutes a departure from international norms of criminal procedure that seriously threatens fair trial rights and the ability of the defense to mount a case against the evidence before it in a considered and timely manner.

The prosecution introduced documentary evidence in two phases. The first phase involved the introduction of evidence designed to prove the general existence of the Anfal campaign, as well as the use of chemical weapons against the Kurdish civilian population. This was similar to the strategy employed during the prosecution witness phase. The second phase involved the introduction of documentary evidence specifically targeted to prove the responsibility of the individual defendants. The defendants were then provided with an opportunity to respond to the evidence introduced against them.

The documentary evidence introduced primarily included official communications (eg: letters, and memorandums of instruction) between different arms of the Saddam Hussein regime relating to the Anfal campaign. The prosecution used the documentary evidence in an effort to demonstrate a clear and functional chain of command from the President, to Military Intelligence, and then to specific elements of the Armed Forces tasked with carrying-out various aspects of the Anfal campaign.

### **3. Defendant Statements**

#### *A. Introduction*

Each defendant's statement followed the same procedure, and each was allowed one court session. The judge ordered all the defendants to leave the courtroom, except for the defendant whose statement would be taken. The defendant would make his statement, and then face questioning by the judge, the prosecution and the complainants' lawyers. They would be examined about their statements, their testimony before the Investigative Judge, and the witness testimony and documentary evidence presented against them by

the prosecution. The judge concluded by asking the defendants whether they were satisfied with or regretted what happened during the Anfal campaign, an issue which was not, strictly speaking, relevant to their guilt or innocence.

### *B. Details of Defendant Statements*

The ICTJ regularly observed the trial in Baghdad, and details of defendant statements draw from observer notes as well as BBC Monitoring reports of the al-Iraqiyah television feed of the trial. Details of defendant statements which do not cite to a particular source are taken directly from ICTJ notes.

- Ali Hassan al-Majid

When questioned about the Anfal campaigns, al-Majid argued that the military operations in Northern Iraq were necessary to save the country from internal and external enemies.<sup>18</sup> He said he had declared a state of emergency because there was “internal rebellion” and “external invasion,” and compared the civilian casualties under investigation to those being witnessed at the moment in Iraq as a result of the American military presence.

- Hussein Rashid

Rashid stated that he was just following orders (the “Nuremberg defense” of superior orders) and that he did not have command authority to issue orders of his own.<sup>19</sup> Rashid also said that his statement to the Investigative Judge was inaccurate, and that he signed it without readings its content; nevertheless, he said that he did not expect protection by the law.<sup>20</sup> Finally, he argued it was not the policy of the Iraqi state or army to destroy villages and displace people in Northern Iraq.<sup>21</sup>

- Sultan Hashem Ahmed al-Ta’i

Al-Ta’i testified to his role in the First Anfal (23 February to 19 March 1998). He claimed it was a purely military operation against the Iranian army and its *Peshmerga* allies, and that he was acting under the orders of the Chief of Staff. The goal was to secure the boarder, and to protect the dam and oil fields of Kirkuk. He said all attacks were military attacks against Iran and Iranian allies (and not against civilians), shown by the fact that all of the military operations were within 40km of the Iranian border. When questioned by the prosecutor about the attacks on Sergalou and Bergalou he maintained that they were within that 40km border area.

Although the actual language of Northern Bureau Command directive SF/4008 directs the military to “kill the largest number of persons present in those prohibited zones,”<sup>22</sup> al-

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<sup>18</sup> AP Worldstream, “‘Chemical Ali’ draws parallel between U.S. military action and regime’s efforts to suppress Kurdish uprising,” 7 February 2007 (Trial Session 40).

<sup>19</sup> ICTJ Observer Notes, Trial Session 41, 8 February 2007. See BBC Monitoring, al-Iraqiyah television broadcast, 8 February 2007 (Trial Session 41).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Supra* note 6 at 82.

Ta’i stated the order only required them to take civilians out of prohibited areas and bring them to Kirkuk, and that anything else which happened to them (as described by the complainants) were “accidents” that could not be attributed to the military.

As for the weapons that he was authorized to use, al-Ta’i said that he was permitted only the use of regular ammunition. He did not have permission to use the air force or chemical weapons.

The judge pointed out that he was the only commander to receive a medal specifically for Anfal, and asked him if he was satisfied with the outcome of the campaign. He replied that he could only answer from the perspective of a military officer. From this perspective, they had succeed in pushing back the *Peshmerga* forces.

- Sabir al-Douri

Al-Douri argued that he could not be held responsible under Article 15 of the Tribunal’s Statute. He was not directly responsible for Anfal, did not issue any orders presented as documentary evidence indicating support or facilitation of war crimes, and did not have the requisite common purpose and knowledge of the crimes committed to be held liable under a theory of joint criminal enterprise.

Al-Douri emphasized that as Military Intelligence Director he did not give attack orders; rather, his orders were restricted to intelligence gathering only. Any injuries to civilians were the result of them being caught in the middle of the fight between Iraqi and Iranian/*Peshmerga* non-civilian forces. When asked by the prosecution about the hospital and school bombed in Sergalou and Bergalou, he simply said that they were prohibited and had to be destroyed.

Al-Douri was presented with a number of documents, several bearing his signature, implicating Military Intelligence in the plan to use chemical weapons against civilians. He stated either that documents were forged or that there was not enough time for him to read all the documents that came across his desk, particularly with so much fighting to occupy the military. He also stressed that the army was taking its orders from al-Majid. He said that when approval was given on 25 March 1987 to use “special” weapons, the role of Military Intelligence was merely to pass on that approval to the appropriate military branches.

The judge asked al-Douri if he was satisfied with the outcome of Anfal. Al-Douri said he was satisfied that they had “liberated” the North, and that the campaign had been a military necessity, since Iran had planned to occupy Suleimaniyeh and Kirkuk. He said, though, that no one should ever create mass graves.

- Tahir Tawfiq al-‘Aani

Al-‘Aani (appearing without private counsel and supported only by the Defense Office) provided documents indicating that, although he was Secretary of the Revolutionary Command Council Northern Affairs Committee, RCC Resolution 160 transferred



authority to al-Majid.<sup>23</sup> Al-‘Aani then said that, after becoming governor of Mosul, he had been absent for the entirety of the Anfal campaign. He therefore had no knowledge of the Anfal beyond that of any ordinary Iraqi. He also emphasized that no one was relocated to or from Mosul during the time of Anfal, and he vehemently denied having any knowledge of the al-Hadar mass graves 80km from Mosul until 2003. “As a man who has been to Mecca twice,” had he known he certainly would have certainly done something.

When asked if he was satisfied with the results of Anfal, he said that if the allegations of displacement and mass graves were true, then no, he was not satisfied. He called such acts “shameful” and said that “no Muslim could do that.” When asked if he would have been able to stand up against orders to participate in those acts, even during the time of Saddam Hussein, he said yes. He said that if he had known what was happening at Suleimaniyeh he would have gone and released the Kurds himself.

- Farhan Mutlaq al-Jabouri

Al-Jabouri testified to the role of the Military Intelligence Bureau (MIB) in gathering general intelligence related to enemy forces, such as their size and weapons capabilities. He said that he had no knowledge of documents related to the gas attacks and village destruction in Badinan. The documents authorizing the razing of villages were from June 1987 (nine villages were destroyed in the last two weeks of August) and he did not join the Eastern Bureau until November 1987. Al-Jabouri also emphasized that it was the army which carried out al-Majid’s orders; his bureau had only been responsible for information-gathering. The Military Intelligence Bureau was not mentioned in other documents related to the relocation/demolition strategy, and had not even been included in the distribution list for those documents. This demonstrated the Bureau was not involved in the Anfal operations.

Under Revolutionary Command Council Resolution 160, all orders originated with al-Majid. According to al-Jabouri, when he stated before the Investigative Judge that he instructed his bureau to do everything they could to carry out al-Majid’s orders, it was because al-Majid would have executed him had he disobeyed.

When the judge asked him if he was comfortable with what happened in Anfal, and offered to turn off the microphone, al-Jabouri said although he found the photos of mass graves and chemical weapons unacceptable, he had not been involved in their use.

### *C. Observations and Concerns*

The defendants made repeated reference to the fact that the military was attacking prohibited areas, and presumed, therefore, that all of the targets within said areas must necessarily be *military* targets. The tautology that “everything which was the target of a military strike must therefore be a non-civilian, military target” was common to most of the defendants’ statements, particularly that of al-Douri.

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<sup>23</sup> *Id.* at 56-57.

The manner in which defendants attempted to define their professional roles emphasized their lack of connection to the activities of the Northern Affairs Bureau (and, by extension, to al-Majid). Defendants often portrayed the image of an Iraqi state in which different bureaucratic parts had such clearly-defined functions that no part had overlapping responsibility with any other. Defendants frequently argued, in the alternative, that they were merely following orders. Under that strategy, the accused claimed RCC Resolution 160 vested all power in al-Majid and that they could not be held responsible for acts carried out in compliance with his orders.<sup>24</sup>

#### 4. Charging

The Tribunal formally charged all six defendants with genocide, crimes against humanity, and war crimes on 20 February 2007 (Trial Session 46).<sup>25</sup> As was the case in *Dujail*, the Tribunal used umbrella charges whereby all of the defendants were charged with the same charges, and were alleged to have perpetrated those crimes through all modes of criminal liability. The charging instruments have been criticized by external observers as being so vague and poorly-constructed that they prejudice the defendants' basic right to defend themselves.<sup>26</sup> The shortcomings of the charging instruments are discussed at greater length, below, in the section on defense closing statements. Each of the six defendants pleaded not guilty to all charges.

In response, defense counsel brought motions on 14 March 2007 not only challenging the legality of the indictments, but also seeking the right to examine yet-unproduced documents, as well as the exhumation and independent inspection of bodies recovered from mass graves. The details of those motions are briefly analyzed, here.

- Motion on Exhumation and Inspection<sup>27</sup>

The defense argued that, due to the allegations that some of the alleged Anfal victims died as a result of the use of chemical weapons, exhuming a percentage of the alleged victims for submission to forensic toxicological analysis was necessary for both the prosecution and the defense. In addition, the defense requested an examination of documents seized from the Ministry of Defense, the Ministry of the Interior, and the Presidential Palace, and held by the FBI and the Iraqi Survey Group in Qatar, which it believed could contain exculpatory evidence that had not been produced by the prosecution (as part of a greater problem related to disclosure of evidence).

- Motion Challenging the Legality of the Indictments<sup>28</sup>

Pursuant to Arts. 19(4)(a) and 20(2) of the IHT Statute, as well as Par. 187(a) of the Criminal Proceedings Law, the defense challenged the legality of the indictments on

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<sup>24</sup> *See id.*

<sup>25</sup> ICTJ Observer Notes, Trial Session 46, 20 February 2007.

<sup>26</sup> *See* Human Rights Watch Open Letter to the President of the Iraqi High Tribunal, 25 March 2007; *see also* ICTJ Letter to Presiding Judge Muhammad al-Uraibi al-Khalifa, 11 April 2007.

<sup>27</sup> *See* Defense Motions Seeking (1) Inspection of Documents and (2) Exhumations of Deceased, 14 March 2007 (ICTJ file).

<sup>28</sup> *See* Defense Motion Challenging the Legality of the Indictments, 14 March 2007 (ICTJ file).

three grounds: first, they failed to adequately plead the material facts; second, they failed to adequately plead the alleged modes of liability; and third, they failed to adequately plead the alleged crimes. For this reason, the defense argued that all six indictments violated the guaranteed minimum fair trial rights of the accused. Each count should have the material facts pertinent to the crime alleged, as well as the mode or modes of criminal responsibility alleged with respect to that particular crime. Reference to an article listing multiple forms of individual criminal responsibility is insufficient, and the facts stated must be distinguished according to what sort of responsibility they give rise to. According to the defense, the indictments, in the form in which they were presented, did not meet those requirements.

## 5. Defense Witnesses

During the prosecution phase of the trial, prior to bringing charges, the Tribunal heard testimony from sixty-five complainants and nine witnesses. During the defense phase, however, only five witnesses appeared, none of whom could speak specifically to the substance of the crimes alleged.

It is well-known that the Tribunal has faced numerous security challenges, including the killing of three defense counsel in the *Dujail* trial. Despite multiple requests by the defense, however, the Tribunal repeatedly refused to facilitate the testimony of defense witnesses by videolink or other non-traditional means, irrespective of the fact allowing such testimony is expressly within the power of the Tribunal. Art. 21 of the IHT Statute specifically mandates that “[t]he Trial Chamber shall provide for the protection of victims or their relatives, and witnesses,”<sup>29</sup> and Rule 57 of the IHT Rules of Procedure and Gathering of Evidence gives the Trial Chamber the power to hear evidence submitted “via such media communications, including video or satellite channels, and as the Tribunal may order.”<sup>30</sup> As a result, the defense opened with four character witnesses who did not testify to the substance of the evidence presented (for example, the driver of al-Jabouri appeared to testify to al-Jabouri’s belief in God) on 26 February 2007 (Trial Session 47).<sup>31</sup>

Defendants, especially al-Douri, Rashid, and al-Ta’i, repeatedly requested assistance from the court in procuring defense witness testimony. The issue arose in at least three sessions. They stated that security concerns prevented witnesses from coming to Baghdad to testify, particularly the many individuals who were living outside Iraq. They also asked for immunity arrangements, akin to safe passage, for witnesses who were former high-ranking officials who feared arrest and prosecution under Article 15 of the Tribunal Statute.

The judge repeatedly refused to allow defense witness testimony by any means other than live testimony before the court. He said defendants had been inconsistent in the reasons they presented for not being able to call witnesses (even though they were not under any obligation to provide consistent reasons). First they had said they needed more time for

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<sup>29</sup> IHT Statute, *supra* note 7 at art. 21.

<sup>30</sup> IHT Rules of Procedure and Gathering of Evidence (18 Oct. 2005) Rule 57.

<sup>31</sup> All of the information related to the opening of defense witness testimony is taken from ICTJ Observer Notes, Trial Session 47, 26 February 2007.

the security situation to improve, and then they had said it was not an issue of timing but of fear that defense witnesses could face arrest if they appeared in person. The prosecution pointed out that witnesses who had testified before the investigatory judge had not been arrested. When defense counsel suggested that witnesses be given immunity for the purposes of providing testimony, the judge said that this would be a violation of the law. The Tribunal could only assist in providing protection and transportation.

The fifth and final defense witness to testify was Tariq Aziz, former Deputy Prime Minister. Aziz appeared as a general defense witness during Trial Session 48. He testified that the Halabja chemical attacks were beyond the capability of the Iraqi army, and pointed to US military intelligence reports from the late 1980s (since discredited) that blamed Iran for the attack.<sup>32</sup> Aziz also implied that some attacks on Kurds could have been the result of Turkish military strikes under a 1984 Iraqi-Turkish reciprocal agreement that allowed hot pursuit of militants across borders. The judge dismissed both pieces of testimony as irrelevant. He stated that Halabja was not part of the case at hand, and that the attacks Aziz attempted to tie to the Turkish military occurred 150 km inside the border, many times beyond the zone allowed under the reciprocal agreement.

Aziz praised Saddam Hussein as a “hero,” provoking the judge to admonish the witness: “I think you are a witness for the regime and not the defendants. If you have anything to say about the defendants then say it.” A complainants’ lawyer suggested that the witness should be tried for genocide along with the other members of the RCC. The defense pointed to that action as precisely why their witnesses were afraid to come to the Tribunal and testify.<sup>33</sup>

Following Aziz’s testimony, the judge agreed to receive a motion to have witnesses abroad deliver written testimony to their local Iraqi embassy. The motion was eventually denied because it would not be as reliable as in-person testimony; the court also reaffirmed its reluctance to allow testimony via videolink.<sup>34</sup> In Trial Session 51, the defense again reiterated its desire to have witnesses appear at their local embassies, but the judge said that the lawyers had undermined the rights of their clients to call witnesses and switched-off the microphone.<sup>35</sup>

## 6. Closing Statements

### A. Prosecution

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<sup>32</sup> All of the information related to the testimony of Tariq Aziz is taken from ICTJ Observer Notes, Trial Session 48, 5 March 2007. See also BBC Monitoring, Quds Press web report “Tariq Aziz says Iran, not Iraq, hit Kurds with chemical weapons,” 6 March 2007; AP Worldstream, “Former Saddam official: ‘No genocide’ against Kurds,” 5 March 2007.

<sup>33</sup> ICTJ Observer Notes, Trial Session 48, 5 March 2007 also indicate that complainants’ attorneys called for an investigation of one of the character witnesses for al-‘Aani who had testified during the previous session and who, during his testimony, admitted to signing-off on an execution.

<sup>34</sup> *Id.*

<sup>35</sup> ICTJ Observer Notes, Trial Session 51, 26 March 2007.

Following the conclusion of defense witness testimony, the prosecution presented its closing statement to the court across two sessions, on 2-3 April 2007 (Trial Sessions 53 and 54). The prosecution asked for the death penalty for five of the six defendants, and requested that al-‘Aani be released for insufficient evidence. The prosecution also asked that the court show leniency towards al-Douri because of the outpouring of support he had received from the people of Karbala.<sup>36</sup>

In its closing statement, the prosecution encouraged the court to “focus on the individual responsibility of each defendant,” and then provided a list of the defendants, their titles, and their alleged role in the Anfal operations.<sup>37</sup> The prosecution did not delve deeply into the legal or evidentiary aspects of “individual responsibility,” however.

The prosecution also requested new charges against the defendants, arguing that they should also be found guilty of rape under Art. 12(1)(g) of the IHT Statute – an apparent violation of fair trial rights under Art. 14 of the International Covenant on Civil and Political Rights and Art. 10(4)(a) of the IHT Statute, itself. Rape had not been alleged previously in the trial or charging instruments, and defendants had not been given the chance to defend themselves against such a charge.<sup>38</sup>

After discussing the individual responsibility of each of the defendants in general terms, the prosecutor described the material elements of the crimes charged. He discussed the crimes in general terms, however, without reference to specific defendants or pieces of evidence.

In conclusion, the prosecution asked the “honorably court to inflict the cruelest and most extreme punishment upon the defendants,” and said that not only old men, women, and children were victims of the defendants’ acts, but that “even other creations of Allah, such as animals, trees, and the natural environment were not spared their brutality and tyranny.”<sup>39</sup>

## *B. Defense*

### Closing Statements

Following the conclusion of the prosecution’s closing statement, each defendant had his defense counsel read a prepared closing statement to the court. Defense closing statements spanned five sessions, beginning on 6 May 2007 (Trial Session 55) and concluding on 10 May 2007 (Trial Session 59). The following details of those statements have been gathered from notes taken by ICTJ courtroom observers and various media reports on the trial:

- Tahir Tawfiq al-‘Aani <sup>40</sup>

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<sup>36</sup> ICTJ Observer Notes, Trial Session 53, 2 April 2007.

<sup>37</sup> Prosecution Closing Statement, 2-3 April 2007.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> See ICTJ Observer Notes, Trial Session 55, 6 May 2007. See also AP Worldstream, “Saddam Hussein’s former defense minister denies receiving order to use chemical weapons,” 8 May 2007.

The defense counsel for al-‘Aani reiterated to the court the fact that he and the prosecutor had requested that charges against al-‘Aani be dropped for lack of evidence. He emphasized that none of the witness testimony located al-‘Aani at mass grave sites or the Suleimaniyeh camp, and pointed out that the camp was under the control of the Popular Army, not the governorate of Ninevah. He also emphasized al-‘Aani did not have a decision-making role on any committees of which he was a part. Al-‘Aani’s role as secretary was purely administrative, and his involvement in any activities under evaluation by the court never extended beyond the transmission or archiving of memos written and signed by others.

- Sultan Hashem Ahmed al-Ta‘i<sup>41</sup>

According to defense counsel for al-Ta‘i, his client was merely following the orders of the Army Chief of Staff when he participated in the village destruction and population transfer efforts of Anfal. Because he did not have ill will towards the Kurds, he lacked the required mental state to sustain a conviction under the law. It was emphasized that the Kurdish *jahsh* played a major role in the transfer operations, and that it was the Popular Army that received the civilians upon transfer. The statement claimed that the motive for the transfer scheme was humanitarian – to save civilians from the violence of the battlefield as the Iraqi army fought Iranian and *Peshmerga* soldiers. In addition, al-Ta‘i’s lawyer attempted to distance his client from al-Majid, claiming that they never met during the Anfal campaign and that no Anfal-related orders or instructions passed between them. The lawyer criticized alleged procedural shortcomings of the trial, including the failure of the court to facilitate defense witness testimony, and the exclusion of exculpatory evidence.

- Sabir al-Douri<sup>42</sup>

Counsel for al-Douri leveled a number of structural criticisms against the Tribunal. He argued the lack of specificity of the charging instruments deprived the accused of the right to defend himself, and also argued that the inclusion of international crimes that had not previously been incorporated into Iraqi criminal law constituted a violation of the principle of *nulla poena sine lege* (no punishment without a law) and was retroactive criminalization of formerly-legal behavior. He also criticized the imbalance of testimony heard, as well as the failure of the Tribunal to appoint military expert witnesses who could have illuminated the structure and function of the Iraqi state military apparatus during Hussein’s regime.

As for the substance of the crimes, counsel argued al-Douri’s role as military intelligence official was merely to facilitate information sharing between the Ministry of Defense and the Army Chief of Staff. Al-Douri therefore had neither the capacity nor the expertise to carry out the crimes alleged. He also lacked the requisite intent, and could not deliberately decide to undertake something that was beyond his authority to begin with.

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<sup>41</sup> *Id.*

<sup>42</sup> See ICTJ Observer Notes, Trial Session 56, 7 May 2007.

Al-Douri’s defense attorney called the Tribunal’s logic “guilt by distant association,” and said it was a form of collective punishment.

- Hussein Rashid<sup>43</sup>

Counsel for Rashid opened by challenging the legitimacy of the proceedings. Nowhere in international law was there authority to have defendants appear before a tribunal while they were in the physical custody of an occupying power. The only time Rashid was not in American custody is when he was within the walls of the court.

Counsel also stated its ability to mount an effective defense had been weakened by the heavily-redacted transcripts it had received, in which blocks of witness testimony had been blacked-out, ostensibly for national security reasons. The insufficiently-specific charging instruments amounted to a violation of Rashid’s right, under ICCPR Art. 14, to be informed of the charges against him.

In terms of substance, counsel argued that Rashid could not be individually connected to the charges against him relating to chemical weapons, civilian detention, and mass graves. Rashid was merely one of four aides of a Chief of Staff who oversaw 41 other directorates. Defense counsel stated that he did not have sufficient time to review all of the necessary documents, and that the evidence of a *study* related to the use of special ammunition is not evidence that such a program was ever implemented (or even totally understood).

In addition to making the argument that Rashid was merely following orders, per RCC Resolution 160, counsel also argued that civilian casualties could be explained by the fact that the Iraqi army may have come upon *Peshmerga* fighters using Kurdish civilians as human shields. When the defense attempted to situate the fighting within the greater context of the Iran-Iraq war, however, he was repeatedly stopped by the judge, who said that the Iran-Iraq war was not a topic for the Anfal trial.

At the conclusion of the defense counsel’s prepared statement, Rashid addressed the court. He praised the Iraqi army, and said that had defendants been tried under military law, it would have been understood that defendants had simply followed orders.

- Farhan Mutlaq al-Jabouri<sup>44</sup>

The defense statement on behalf of al-Jabouri was the most nuanced version of the defense of superior orders.

Counsel argued that Art. 15(5) of the IHT Statute is actually less amenable to an argument of superior responsibility as a defense than Art. 33 of the Rome Statute, because the IHT only recognizes following orders as a mitigating factor, whereas the Rome Statute allows it as a complete defense. (It should be noted that this is not an entirely accurate construction of the Rome Statute, however, because the Rome Statute

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<sup>43</sup> See ICTJ Observer Notes, Trial Session 57, 8 May 2007.

<sup>44</sup> See ICTJ Observer Notes, Trial Session 58, 9 May 2007.

does not permit such a defense in cases of genocide and crimes against humanity.<sup>45</sup> The differences between the two states are relevant only to charges of war crimes, and al-Jabouri was charged with genocide and crimes against humanity in addition to war crimes.)

In addition to claims of superior responsibility, counsel for al-Jabouri stated that none of the documents in evidence contained a signature by al-Jabouri that could connect him to the village destruction and relocation campaign against the Kurds. He had no knowledge of the Kirkuk operations, and al-Jabouri's leadership over the branch of the Military Intelligence Service alleged to have been involved in Anfal had not begun until after the period in question.

- Ali Hassan al-Majid<sup>46</sup>

Al-Majid addressed the court on 10 May 2007, during Trial Session 59, the last full session of the *Anfal* trial before verdicts were announced. A defense office lawyer also presented a statement, which is not summarized here.

In his brief address, al-Majid said that he had never participated in genocide, because he had never discriminated according to ethnicity or sect. He had not heard of mass graves before they were discussed in the Anfal trial. If chemical weapons had been used (and he did not know that they had been), then he had not issued the order to use them, nor did he know who would have. Al-Majid also discussed his relationship to the other defendants, saying that he had never before met Rashid or al-Douri and never addressed any orders to them. He had never met with al-Jabouri and never given him an assignment or mission. Al-Majid said that he had met al-Ta'i only once, when he had him as a guest after he took command of the First Corps, and he validated the testimony of al-'Aani. Al-Majid said that all were innocent of any involvement in mass graves or civilian transportation schemes, and that it was not the role of military intelligence to deal with civilians. Finally, al-Majid defended the Anfal campaign within the greater context of the Iran-Iraq war, saying that there was a military necessity to respond to Iran's occupation of a part of northern Iraq the size of Lebanon.

#### Closing Submissions of the International Defense Adviser

In addition to the official defense pleadings made on behalf of each defendant, the international adviser to the defense had prepared two submissions for the first day of the defense closing, 6 May 2007 (Trial Session 55), on behalf of al-Ta'i, al-Douri, and Rashid. One reportedly detailed the lack of material fact and proof of responsibility of the defendants with respect to each of the charges against them, and the second was reportedly a factual submission detailing the military operational context of the Anfal campaign. It is not clear whether defense counsel chose to submit these documents to the Trial Chamber.

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<sup>45</sup> Rome Statute of the International Criminal Court (June 1998) art. 33(2).

<sup>46</sup> See ICTJ Observer Notes, Trial Session 59, 10 May 2007. See also AP Worldstream, "Saddam Hussein's cousin denies using chemical weapons against Kurds as defense wraps up arguments," 10 May 2007; International Herald Tribune, "Chemical Ali denies role in gas attacks on Kurds," 14 May 2007.



## 7. Fairness Concerns

A number of threats to defendants' fair trial rights have already been noted in this update, including insufficiently specific charging instruments, and the Tribunal's unwillingness to facilitate the attendance of defense witnesses. Beyond such basic fair trial concerns, a number of other fairness-related issues are discussed, below, which highlight some of the challenges faced by the defense in attempting to mount a case on behalf of the accused.

Defense counsel and defendants stated that they had both faced hardships as a result of the difficult circumstances under which the trial took place. While some of these related to scheduling difficulties, of particular concern was defense counsel's statement on February 20 that it had not been able to access important experts because of the nature of security threats against defense counsel.<sup>47</sup>

ICTJ observers also noted in some five sessions that the judge had limited the defense's capacity to cross-examine complainants and defendants. They also noted the introduction of evidentiary, video, and audio evidence in apparent violation of the Tribunal's disclosure requirements.<sup>48</sup> The ability of defense counsel to successfully represent the accused was also challenged by the reticence of the court to permit examinations of the broader context of the Iran-Iraq war. During the defense statement on behalf of Rashid, for example, the judge threatened to hold the defense counsel in contempt if he continued to frame the Anfal operations in the broader context of the Iran-Iraq war, despite the fact that evidence of military necessity is potentially exculpatory for some of the crimes of which Rashid stood accused.<sup>49</sup>

On 15 March 2007 (Trial Session 49), defense counsel Badia Aref was cited for contempt of court and taken into detention.<sup>50</sup> Aref wanted to introduce as evidence a CD indicating that Iranians had used chemical weapons during the period of Anfal, as well as evidence that American researchers had confirmed that fact. The presiding judge dismissed the assertion that the Iranians used chemical weapons as "not true," at which point Aref said that it appeared that the judge had already decided the case.

The judge reacted strongly, and a short argument ensued over the proper respect to be shown to both individuals. The judge then cited media comments Aref had made on 28 December 2006 to al-Arabiya television comparing the Tribunal to a "slaughterhouse." He ordered Aref removed from the courtroom and put him in custody pending an investigation for contempt of court.

In a special press conference held on 17 March 2007, Chief Prosecutor Munqidh al-Fir'an defended the judge's actions. He stated the judge was obliged to punish Aref under Art.

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<sup>47</sup> ICTJ Observer Notes, Trial Session 46, 20 February 2007.

<sup>48</sup> See, e.g., ICTJ Report: Observer Mission to the Iraqi High Tribunal, [CONFIDENTIAL] 1 March 2007 at 7 and 9.

<sup>49</sup> See *supra* note 43.

<sup>50</sup> ICTJ Observer Notes, Trial Session 49, 15 March 2007.

159 the Iraqi Code of Criminal Procedure No. 23 of 1971.<sup>51</sup> Fir‘an said that Aref’s attempt to clarify that he had been referring only to the *Dujail* trial chamber when he spoke on television was tantamount to a confession of his crime, so the judge “had no option” but to take legal action against him.<sup>52</sup>

Art. 159 of the Criminal Procedure Code relates to the commission of crimes in court (akin to contempt), and the crime Fir‘an was likely referring to when he cited Art. 159 is the crime of insulting an Iraqi court, a crime made punishable by Art. 226 of the Iraqi Penal Law.<sup>53</sup> It should be noted that even where no overt crime has been committed, the Trial Chamber still has wide latitudes to sanction the behavior of lawyers. Under Rule 31 of the Tribunal’s Rules of Procedure and Evidence, the Trial Chamber is allowed to “take legal measures” against a lawyer if that lawyer’s conduct “has become offensive and harmful, or demeans the dignity of the [Tribunal].”<sup>54</sup>

Although several attempts were made to mediate the issue with the Presiding Judge, Aref was indeed referred for investigation and ordered to be held in Iraqi custody. Aware of the dangers such custody would pose to Aref’s safety, Aref remained under U.S. protection in U.S. facilities until he exited the country several days later. Aref appears to have been subsequently referred to trial for both the contempt charge and for failure to appear in court. At the time of writing this update, he continues to represent his client with the assistance of junior counsel, and is also counsel of choice for a number of defendants in a forthcoming trial. Counsel for another defendant was also referred for investigation regarding his Bar Association credentials, and has also left the country. While a detailed analysis of these events lies outside the cope of this update, it is clear that a number of serious issues affected Tribunal-defense relationships throughout the trial, and that the Tribunal continues to lack effective and transparent measures for dealing with them.

## 8. Verdicts

The Tribunal delivered its verdicts during Trial Session 61 on 24 June 2007 and sentenced five of the six defendants to either multiple life sentences or death; charges against the sixth defendant, al-‘Aani, were dismissed for lack of evidence. All of the decisions were unanimous except for that of al-Douri.

An ICTJ observer was present when the Tribunal read its decision, and the following summary of sentences describes the punishment prescribed by the Tribunal for each of the accused as heard, as well as the articles of the IHT Statute under which they were convicted. At the time of writing this update, the *Anfal* case is before the Cassation Chamber on appeal.<sup>55</sup>

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<sup>51</sup> ICTJ Observer Notes, IHT Press Conference, 17 March 2007.

<sup>52</sup> *Id.*

<sup>53</sup> Iraqi Code of Criminal Procedure, *supra* note **Error! Bookmark not defined.**, art. 159; Iraqi Penal Law, *supra* note 10, art. 226.

<sup>54</sup> IHT Rules of Procedure and Gathering Evidence (18 Oct 2005) Rule 31.

<sup>55</sup> ICTJ Observer Notes, Trial Session 61, 24 June 2007. *See also supra* note 1.

**Tahir Tawfiq al-‘Aani**

Charges dropped for lack of evidence (per prosecutor’s request).

**Farhan Mutlaq al-Jabouri**

1. Life imprisonment for willful killing as a form of genocide. Article 11 (1) a, b, c; Article 15 (1) and (2); Article 24.
2. Life imprisonment for willful killing as a crime against humanity. Article 12 (1) a; Article 15 (1) and (2); Article 24.
3. Ten years imprisonment for deportation/forcible transfer as a crime against humanity. Article 12 (1) (d); Article 15 (not heard); Article 24.
4. Confiscation of movable and immovable property.

Charges related to the following were dropped for lack of evidence:

Article 11 (1) b and c

Article 12 (1) b, c, e, f, h, j

Article 13 (4) a, d, e, h, l

**Sabir al-Douri**

1. Life imprisonment for participating in willful killing as a form of genocide. Article 11 (1) a, b, and (2) e; Article 15 (1) and (2); Article 24.
2. Life imprisonment for willful killing as a crime against humanity. Article 12 (1); Article 15 (1) and (2); Article 24.
3. Life imprisonment for intentionally directing attacks against a civilian population as a war crime. Article 13 (4) a; Article 15 (1) and (2); Article 24.
4. Ten years imprisonment for the destruction of property as a war crime. Article 13 (4) L; Article 15 (1) and (2); Article 24.
5. Confiscation of movable and immovable property.

Charges related to the following were dropped for lack of evidence:

Article 11 (1) c

Article 12 (1) c, e, f, h, i, j

Article 13 (2) j, q (faa’ in Arabic, but this has no English equivalent in the statute.

Probably a mistake)

Article 13 (4) h

**Sultan Hashem Ahmed al-Ta’i**

1. Death by hanging for killing members of a group and inflicting physical harm as a form of genocide. Article 11 (1) a; Article 11 (2) e; Article 15 (1) and (2); Article 24.
2. Death by hanging for killing as a crime against humanity. Article 12 (1) a and (2) e; Article 15(1)and (2); Article 24
3. Death by hanging for extermination as a crime against humanity. Article 12 (1) b; Article 15 detail not heard; Article 24
4. Ten years imprisonment for deportation/forcible transfer as a crime against humanity. Article 12 (1) d; Article 15 (1) and (2); Article 24.
5. Life imprisonment for forced disappearances as a crime against humanity. Article 12 (1) I; Article 15 (1) and (2); Article 24.
6. Life imprisonment for “other inhumane acts” as a crime against humanity. Article 12 (1) j; Article 15 (1) and (2); Article 24.

7. Death by hanging for intentional attacks against civilians as a war crime. Article 13(4) A; Article 15 (1) and (2); Article 24.
8. Seven years imprisonment for the crime of targeting of buildings used for religious and other purposes. Article 13 (4) d; Article 15 (1) and (2); Article 24.
9. Fifteen years imprisonment for the crime of issuing an order for the deportation of civilians as a war crime. Article 13(4) H , Article 15(1) and (2).
10. Seven years imprisonment for the destruction of property as a war crime. Article 13 (4) L; Article 15 (1) and (2); Article 24.
11. Confiscation of movable and immovable property.

Charges related to the following were dropped for lack of evidence:

Article 12 (1) h and one other not heard  
Article 13 (4) e

Response of al-Ta‘i: “I will leave you to God. I am innocent.”

### **Hussein Rashid**

1. Death by hanging for participating in/committing willful killing or physical and mental damage as a form of genocide. Article 11 (Judge did not say, was interrupted); Article 15 (1) and (2); Article 24.
2. Death by hanging for willful killing as a crime against humanity. Article 12 (1) a and (2) e; Article 1.
3. Death by hanging for intentional attacks against civilians as a war crime. Article 13(4) a; Article 15 (1) and (2); Article 24.
4. Seven years imprisonment for the crime of targeting of buildings used for religious and other purposes. Article 13 (4) d; Article 15 (1) and (2); Article 24.
5. Confiscation of movable and immovable property.

Charges related to the following were dropped for lack of evidence:

Article 11 (1) c  
Article 12 (1) c, d, e, f, h, i, j  
Article 13 (4) e, h, l

Response of Rashid: “Thank God I will be executed by the Iraqi army. Long live the Arab nation, long live the Ba‘ath Party, long live the army.”

### **Ali Hassan al-Majid**

1. Death by hanging for killing, causing serious bodily or mental harm, deliberately inflicting living conditions intended to bring about death etc. as forms of genocide. Article 11 (1) a, b, c, and 11 (2) (a) and (e); Article 15 (1) and (2); Article 24.
2. Death by hanging for willful killing as a crime against humanity. Article 12 (1) a; Article 15 (1) and (2); Article 24.
3. Death by hanging for extermination as a crime against humanity. Article 12 (1) b; Article 15 (1) and (2); Article 24.
4. Ten years imprisonment for deportation/forcible transfer as a crime against humanity. Article 12 (1) d; Article 15 (1) and (2); Article 24.
5. Ten years imprisonment for torture as a crime against humanity. Article 12 (1) f; Article 15 (1) and (2); Article 24.

6. Death by hanging for forced disappearances as a crime against humanity. Article 12 (1) i; Article 15 (1) and (2); Article 24.
7. Life imprisonment for other inhumane acts as crimes against humanity, Article 12 (1) j; Article 15 (1) and (2); Article 24
8. Death by hanging for intentional attacks against civilians as a war crime. Article 13 (4) a; Article 15 (1) and (2); Article 24.
9. Seven years' imprisonment for the crime of targeting of buildings used for religious and other purposes. Article 13 (4) d; Article 15 (1) and (2); Article 24.
10. Ten years' imprisonment for pillage as a war crime. Article 13 (4) e; Article 15 (1) and (2); Article 24.
11. Ten years imprisonment for ordering the displacement of a civilian population as a war crime. Article 13 (4) h; Article 15 (1) and (2); Article 24.
12. Seven years imprisonment for the destruction of property as a war crime. Article 13 (4) L; Article 15 (1) and (2); Article 24.
13. Confiscation of movable and immovable property.

Charges related to the following were dropped for lack of evidence: Article 12 (1) c; e; and h.

Response by al-Majid: "Thanks be to God."

## 9. Further Information

### **First ICTJ Update on the *Anfal* Trial (Complainant Phase):**

Available in Arabic at: <http://198.170.242.9/arabic/AnfalUpdateOne.arb.pdf>  
Available in English at: <http://www.ictj.org/static/MENA/Iraq/AnfalUpdateOne.eng.pdf>

### **Second ICTJ Update on the *Anfal* Trial (Prosecution Witness and Documentary Evidence Phases):**

Available in Arabic at: <http://198.170.242.9/arabic/AnfalUpdateTwo.arb.pdf>  
Available in English at: <http://www.ictj.org/static/MENA/Iraq/AnfalUpdateTwo.eng.pdf>

### **ICTJ Press Releases on the *Anfal* Trial:**

“Iraq: Tribunal Must Improve Efforts in Anfal Trial” (17 August 2006),  
Available in Arabic at: [http://198.170.242.9/arabic/PR060817IraqAnfal\\_FINALar.html](http://198.170.242.9/arabic/PR060817IraqAnfal_FINALar.html)  
Available in English at: <http://www.ictj.org/en/news/press/release/995.html>

“Iraq Tribunal Issues Verdict in Anfal Case” (24 June 2007),  
Available in Arabic at: [http://198.170.242.9/arabic/PR070624Anfal\\_Verdict.html](http://198.170.242.9/arabic/PR070624Anfal_Verdict.html)  
Available in English at: <http://www.ictj.org/en/news/press/release/1240.html>

### **The Iraqi High Tribunal:**

#### **Tribunal Statute of October 2005:**

Available in Arabic at: <http://www.iraq-ihl.org/ar/abouttasesmahkama.html>  
<http://www.ictj.org/static/MENA/Iraq/IraqStatute.ara.pdf>  
Available in English at: <http://www.ictj.org/static/MENA/Iraq/iraq.statute.engtrans.pdf>

#### **Tribunal Rules of Evidence and Procedure of October 2005:**

Available in Arabic at: <http://www.iraq-ihl.org/ar/iraqi.html>  
<http://www.ictj.org/static/MENA/Iraq/IraqTribRules.ara.pdf>  
Available in English at: <http://www.ictj.org/static/MENA/Iraq/IraqTribRules.eng.pdf>

#### **Tribunal Official Website:**

Available in Arabic at: <http://www.iraq-ihl.org/ar/home.html>  
Available in English at: <http://www.iraq-ihl.org/en/orgenal.html>

#### **Background:**

ICTJ, *The Creation and First Trials of the Supreme Iraqi Criminal Tribunal* (October 2005),

Available in Arabic at: <http://198.170.242.9/arabic/ICTJ-SICT-Background-AR-20051118.pdf>  
Available in English at: <http://www.ictj.org/images/content/1/2/123.pdf>

### **The *Dujail* Trial:**

**Dujail Trial Chamber Judgment of November 2006**

Available in Arabic at: <http://www.iraq-iht.org/ar/22112006.html>

Available in English at: <http://www.ictj.org/static//MENA/Iraq/DujailJudgment.eng.pdf>

**Dujail Cassation Chamber Ruling of December 26, 2006**

Available in Arabic at: <http://www.iraq-iht.org/ar/doc/ihtdf.pdf>

Available in English at: <http://law.case.edu/saddamtrial/content.asp?id=88>

**Analysis of the Dujail Trial:**

ICTJ: *Dujail: Trial and Error?* (November 2006),

Available in Arabic at: <http://198.170.242.9/arabic/report.html>

Available in English at: <http://www.ictj.org/static/MENA/Iraq/ICTJDujailBrief.eng.pdf>

Human Rights Watch *Judging Dujail: The First Trial before the Iraqi High Tribunal* (November 2006),

Available in Arabic at: Summary and recommendations only available at  
[www.hrw.org/reports/2006/iraq1106/iraq1106sumandrecsar.pdf](http://www.hrw.org/reports/2006/iraq1106/iraq1106sumandrecsar.pdf)

Available in English at: <http://www.hrw.org/reports/2006/iraq1106/>

Human Rights Watch, *The Poisoned Chalice: A Human Rights Watch Briefing Paper on the Decision of the Iraqi High Tribunal in the Dujail Case* (June 2007),

Available in Arabic at: <http://hrw.org/arabic/backgrounder/2007/iraq0607/>

Available in English at: <http://hrw.org/backgrounder/ij/iraq0607/>

**The Anfal Campaign**

**Background**

Human Rights Watch, *Genocide In Iraq: The Anfal Campaign Against the Kurds* (1993),

Available in Arabic at: Not available online. For hard copies contact [ashrafa@hrw.org](mailto:ashrafa@hrw.org)

Available in English at: <http://www.hrw.org/reports/1993/iraqanfal/>