

In the Name of God All Merciful All Compassionate

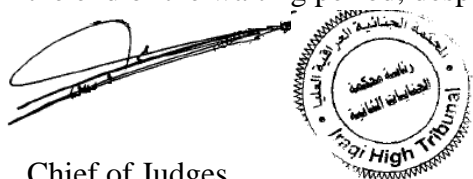
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In this situation, it seems that ignorance of law does not apply to the intent of contravention, consequently the logic impose annulations of the intentional responsibility due to the lack of criminal aim. However, the nature of criminal laws does not get along with such logical result because it is hard or impossible to be aware of all these laws. Hence, it had been agreed upon the law acknowledgement presumption rule regarding each person as no excuses are accepted so that no one gets away with his crime by allegation of unawareness of such laws. By acknowledgement is meant to show the righteous pattern followed by law as it never forgive an offender for mistakenly understanding the law, even if his view of ignorance of law had been shared by some intellectuals and jurists. As an example: if someone managed to rob an amount of money from his creditor to pay his debts, he is considered a thief, since his personal explanation is meaningless as well as his misinterpretation facing the legal text.

Rule of law acknowledgement presumption scope:

The scope of this rule, according to dangerous consequences, is limited to criminal laws only. This is clearly understandable as per indicated text which denies an excuse due to ignorance (in this law - Penal Code - and other Penal Laws). Therefore, ignorance in other law classifications, such as Administrative, Commercial and Civil Laws, forgive the offender as such allegation can be referred to dismissing charges. One of the French law applications, regarding such case, is that it rendered innocent an offender who found, as example, a treasure in another individual's property and took it as he considered such behavior a legal right. As he ignores that civil law permits him the half, as the other part remains the right of the land owner, the man took advantage of his unawareness, getting away with the criminal charges (theft). If the individual ignores Personal Status Laws as well, then all charges will be lifted such as a divorced woman (revocable divorce) got engaged in a sexual intercourse, thinking that she had been freed from marital bounds, although her ties remain until the end of the waiting period, despite the revocable divorce ...



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...she will not be charged for adultery if her ignorance had been proved. Another scenario is if someone sold his real estate, his house, and after clearance, managed to take some statues, drawers, and mirrors considering them exempted from the deal, unaware that Civil Law identifies such items as part of the real estate, he must not be charged.

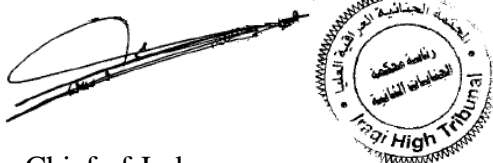
Exceptions correlated to law awareness presumption:

There are some cases where allegations of law's ignorance are valid as law recognized such reasons (in specific cases) lifting criminal charges:

Coercion of Irresistible Force: the last part of the designated Article in the research includes a main exception for "non-accepting allegation for law's ignorance" rule, let's read the whole article: (M 1/37) "no one is alleged to ignore this code articles or those of any other penal code as long as such ignorance is not due to coercion of irresistible force". This means, if it was impossible for the offender to acknowledge the issuance of a code, due to coercive circumstances, he is not to be prosecuted if he breaches the aforementioned code. Justifying irresponsibility in such cases is supported by the non-conception of contravening a law which is not acknowledged (by the offender). A practical example: a group of people besieged in a city or village due to floods, natural disasters, or something alike. In such circumstances, an irresistible force prevents them from recognizing the state penal law. Therefore, they are to be discharged upon violation as per the legislator's clear text.

Second: Factual Ignorance

Factual ignorance is the lack of acknowledging the factual main basics constituting a crime, the conditions forming its ambiance, and the victim's character. Therefore, if an individual committed an incident ignoring ...

The image shows a handwritten signature in black ink on the left, and a circular official seal on the right. The seal contains the text "القضاء الجنائي العراقي" (Iraqi Criminal Court) at the top, "رئاسة محكمة" (Chairmanship of Court) in the center, and "الضمانات القانونية" (Legal Guarantees) at the bottom. The words "Iraqi High Tribunal" are written around the bottom edge of the seal.

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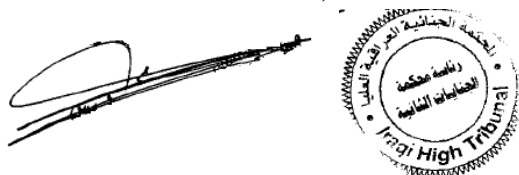
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... one of the following pillars, is he considered responsible, criminally, as per a presumption of his legal cognizance despite what he really knows. The originality, in the case of factual ignorance doesn't assume the person's awareness; hence, the intentional responsibility will be annulled in some cases, to be replaced by an unintentional one, if the basics were identified. In spite, the issue needs elaboration as we say that factual ignorance focuses on one of the following:

- 1- Unaware of one of a crime basics.
- 2- Unaware of one of its strict circumstances.
- 3- Ignoring the victim's character as each case bears its own verdicts.

State of ignoring one of the main crime basics:

The crime is constituted of general and special main basics. Therefore, if the person commits an incident, ignoring one of the crime main basics, he will be discharged from criminal intention. As an example: an individual fires a shot on a farm, hitting a person mistaking him for a wolf. The shooter will not be charged for premeditated murder. Another scenario: a pharmacist who spill poison in the patient's medicine taking it as the prescription. If the patient drinks it and ends up dead, the pharmacist will not be charged for premeditated murder for the dismiss of an intention to put an end to the victim's soul. The third scenario is about a traveler who took the wrong bag, while in the metro station, thinking that it is his, is not to be charged for theft as per the dismiss of criminal intention. The reason behind dropping down premeditated responsibility in such cases is elaborated as the awareness of a human being (rather than a wolf), poisoned medicine or looting another's property is a main basic in each crime (murder, poisoning and robbery). However, if the intention, as per assaulting a human soul, had been dismissed, it will be replaced by negligence, shortage, non-precautionary measures, and omission. Hence, an unintentional responsibility, based on unintentional mistake, will be considered ...



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... and the shooter, who murdered a human taking him for a wolf, will be prosecuted for accidental homicide. The same procedure must be applied vis-à-vis the pharmacist who spill poison instead of the cure.

Crime's Strict Circumstance's Ignorance

The offender may commit his crime and one of the strict circumstances stick in. Usually, this imposes a grosser penalty. Does this condition apply if the offender was unaware of them (strict circumstances)? The Iraqi legislator considered such issue in the following Article:

Legal text (M-36) "if the actor was unaware of strict circumstance's presence, which will affect the whole crime's description, he must not be legally questioned about it. However, he (the offender) benefits from the exemption even if he was unaware of it".

By analyzing the text, it becomes understandable that the offender will not be submitted to strict circumstance's responsibility, correlated to the crime and able to modify the whole crime's description, if he ignores its existence. As example: a servant stole fixed asset (watch) which belongs to his employer, thinking it belongs to someone else. The strict circumstance here is the fact that the robbery occurred from the servant against the employer's property is committed by the servant thought contrary that the stolen watch fixed asset. Hence, the servant thought, contrary to the truth, that the stolen item pertains to a foreigner. Due to the nature of such condition which will affect the whole crime's description, between light and heavy crime, the offender will be prosecuted as per light penal laws, as long as he ignores the strict circumstance. Another scenario is that of an offender who rapes the victim thinking the latter is bigger in age. A minor age in such offense is considered strict circumstance, changing the whole criminal description. Therefore, the offender can get rid of these heavy sentences if he proved to ignore the real age at the time of perpetration. As well, the relativity between the offender and victim in rape cases is a strict condition which can not hit the first unless he is fully aware. It is clear that the proof of unawareness is strictly limited to denying the intention, as per strict circumstances which can change the crime's description, submitting it to a heavier sentence...



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On the other side, personal circumstances which do not affect crime's description, limiting their influence on the sentence itself, are not essential if ignored. As example: the one who ignores his return or that who thinks he is under legal criminal age. In both cases, such ignorance can not be used because both are far from interfering in the constitution of a crime as per appropriated law.

- **Victim's identity confusion**

This occurs when the offender murder, conceived, a different person than the one intended to be killed, as example: if the actor intended to murder Zayd shooting him down to discover that this was the wrong individual. The confusion is in the victim's identity far from affecting the offender's criminal responsibility.

- **Pointing Confusion**

It occurs when the offender murders Khalid instead of his opponent Zayd due to poor aim. The sentence does not affect the actor's responsibility which remains considered, as the offender will be prosecuted for premeditated murder due to the fact that the crime, killing a living human being, occurred in all its elements while the confusion is caused by the offender's inaccuracy to point, changing nothing in the concept. That's on one side, on the other, the law imposes protection on all people whether Zayd was shot or Khalid, the offender must be subdued to punishment for putting an end to a human being, as the mediation of killing the other person is useless. The intention of murder is fair enough to draw all the crime's basics and prosecute him.

The image shows a handwritten signature in black ink over a circular official seal. The seal contains the text 'القضاء العالی' (Al-Qadaya al-A'la) at the top, 'الهيئة القضائية' (Al-Hay'at al-Qadaya) in the middle, and 'Iraqi High Tribunal' at the bottom. To the left of the seal, the word 'الرئيس' (Ar-Rays) is written in Arabic.

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Personal criminal responsibly in Iraqi High Tribunal Law No [10] for the year 2005

Article (15)

First- Any person who commits a crime, enclosed within the court jurisdiction, is considered responsible of his act, as in personal attribution, and subject to prosecution as per this code.

Second- The person will be considered responsible as per this code and other penal codes, if he carried the following:

- (A) If he commits the crime as in personal attribution, by contribution, or via another individual, regardless whether the latter is responsible or not facing the law.
- (B) Order to commit a crime that occurred in fact, instigating, enticing or urging its perpetration.
- (C) Offer assistance, instigate or urge, in any other way, to facilitate the implementation of the crime, launching it, or even provide the criminal tools.
- (D) Participate in any other way, with a group of individuals, aiming at a contributory criminal, whether committing or instigating a crime, as long as this participation is premeditated and targeting to:
 - 1- Enhance the criminal activity or purpose, of a given group, if they enclosed committing a crime within the court jurisdiction.
 - 2- Acknowledge the intent to commit a crime, among a given group.
- (E) Public and direct urging to commit a crime as concerning genocide.



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(F) Attempt to commit a crime through instigating an act's implementation, aiming to execute the crime which did not occur for reasons the actor carrying has nothing to do with. However, this will be considered an excuse of exemption if the actor's activity prevented the crime from happening. He won't be prosecuted for instigation, as per this code, the actor if he completely abandons, willingly, his criminal intent.

Third- The official character of an offender is not considered fair reason to exempt from punishment, neither to lighten it, whether the offender was a President, Head or Member in the Revolutionary Command Council, Prime Minister or Minister in the Cabinet, or a member in Ba'th Party Command, as it is not allowed to allege by immunity to get rid of criminal charges already mentioned in Articles [11, 12, 13 and 14] of this code.

Fourth- The Supreme Head is not to be pardoned from crimes committed by personnel operating under his command, if he was aware, has doubts that the commanded may have carried such things, or had been at the verge of perpetration and the higher commander did not take necessary measures to prevent such acts or to lift the case to appropriated authorities, as to conduct investigation and prosecution.

Fifth- In case any offender carried on an act as per governmental or higher command's (the offender's in charge) orders, he will not be exempted from excuse criminal responsibility. However, it may be possible to consider his case for lighter punishment if the court foresees in that an application of justice.

Sixth- Amnesties issued before the validation of this code will not include any of the convicts charged for committing crimes already stipulated.

To specify the criminal responsibility and its correspondence to aforementioned legal texts, in the submitted Article, as well as convicts' criminal perpetration (11, 12, and 13) stipulated in ...



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... Iraqi High Tribunal, it is a must to review the following subject until reaching the suitable legal adaptation of tangible facts for which the court's law had been legislated, guided through all that by Iraqi amended Penal Code No [111] for the year 1969 and International Tribunal Law, as not to interfere with this code.

The court foresees through analyzing submitted texts, especially Articles [1] and [2] with their Clauses [(A, B, C, D, E)] of the designated Article, which text stated "An individual, who commits a crime within the court's jurisdiction, is considered responsible and exposed to prosecution as per this code". The legislator goes to the equilibrium of all factors contributing to create the crime's result. In other words, the causative relation is provisionary between action and result, at the time of proving that the criminal behavior constitutes a cause of occurrence, even if its contributory role was minimal. In other terms, all factors, which contributed in creating the crime's result, are considered equal and covalent, as each factor is taken as a reason behind the crime's occurrence. Therefore, the actor, despite his role and legal - official description, is reckoned in-charge in perpetrating one of the crimes which falls under the court's jurisdiction, whether the offender was the Head or authorized (civil or military), a commander or commanded, whether he committed the crime by personal attribution, contribution or via another individual, even if the latter was not criminally responsible (for any reason), enticed, urged, assisted, instigated, or helped in whatsoever mean, to facilitate the execution of the crime, provided its tools, instigated or contributed with other individuals, aiming a joint criminal contribution conditioned by premeditation and effectively granting:

- 1-Enhancement of criminal activity or purpose, of a given group, if this activity or purpose enclosed committing a crime within the court's jurisdiction



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2- Acknowledging the intent of committing a crime, among a given group. Under all circumstances, the individual will not be prosecuted for a crime within the court's jurisdiction, far from being punished, unless the tangible basics were provided along with intent and awareness.

The criminal intent of a person is provided, when his will is guided to commit an action constituting a crime, aiming the offense's result which occurred, or any other crime, acknowledging that it will make results in the regular path of action (acknowledging that his act frames a legally prohibited action or a crime punished by law).

Excuse Exempting from punishment as per Clause [Second/(F)] of Article [15]

In addition to other reasons, exempting criminal responsibility, stipulated in Articles [60-65] of Penal Code, Clause [Second/(F)] of Article [15] stated "instigating a criminal perpetration through carrying out action aiming to commit it, (but the crime did not occur) for reasons the actor has nothing to do with, will be considered an excuse exempting from punishment if the actor performed an activity trying to prevent its occurrence or completion. Therefore, the offender will not be prosecuted because he completely, and willingly, abandoned his criminal project.

What's the meaning of Instigation?

Article [30] of Iraqi Penal Code defined the meaning of instigation as "commencing to carry out an action aiming to commit a felony or misdemeanor, and if it is stopped that for reasons the actor has nothing to do with"

From the above text it becomes understandable that the provision of certain conditions is a must to include the actor within the exemption from criminal responsibilities.

These conditions are:

- 1- To commence carrying out the action is a must.
- 2- To stop the action for reasons out of the actor's reach.



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- 3- If the actor performed an activity without committing or completing it.
- 4- If the actor abandoned completely, and by his freewill, his criminal project.
- 5- Intent to commit a felony.

As the last condition does not impose difficulty because instigating is only performed in premeditated crimes. That is the reason why we will tackle other conditions briefly.

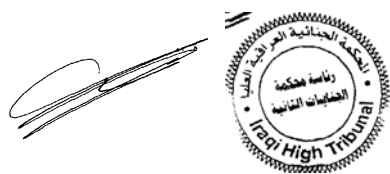
First Condition- Commencing an Act

It's undisputable that the implementation stage is a successor for preparation in which the actor would have clearly shown his vicious. Therefore, he will be prosecuted for a whole crime if the intended criminal result occurred, as well as instigating if the crime was stopped as per conditions enlisted legally.

There is no doubt that the difference between those two stages (Preparation and Execution) is so vital, because when preparatory acts do not lead to criminal charges, execution is, on the contrary, an equivalent to punishment. To focus on whether a certain act is considered preparatory or commencement, there are 2 theories:

First: Objective theory also known by "Materialism School":

It states that the offender will not be prosecuted for instigation, unless he started carrying out the concrete action shaping the crime as per law. So, if the crime is constituted of many actions, instigation will be accomplished by committing or commencing by one of these actions. If the crime is constituted of one action, instigation will be commencing the execution of the action. In other term, the offender should come from actions intercepted within the crime's tangible basic.



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To differentiate between instigation and preparation, the theory states that preparatory act is not considered as crime as no necessary ties between both exist. However, the implementing act is a crime's commencement and a complementary part of it, which can not be separated. Following such tangible caliber, the judge must wonder whether the act committed by the offender is considered as a tangible basic element. If the answer came affirmative, the offender is the crime's instigator, or else it will be taken as preparatory and no charges will be issued.

To elaborate the above practically, we mention the following incident: Zayd was caught trying to steal other people's money. The act, committed by the offender, is included in the definition of thievery's tangible basic (embezzling money). Therefore, Zayd is an instigator and must be legally questioned about the incident. But, if the money, aimed to be embezzled, is in a house, and Zayd broke the door, climbed the wall, or made a hole in the wall to infiltrate the house and reach the money, and was arrested before getting inside the house, is he considered an instigator? As an implementation of tangible advanced caliber, the answer is negative as breaking the door, climbing or perforating the wall is not included in identifying the embezzlement.

Second: Personal theory (Self):

This theory relays on personal criterion in estimating the reaction expressed by the offender, taking into consideration the dangerous peculiarity of the convict. This theory states, briefly, that it is difficult, to differentiate between preparatory and implementing acts, to ignore the offender's personal character of the committer. Carrying out the act is considered, according to this theory, legible when the offender perpetrates an act – thinking mentally – that it leads directly and immediately to the intended criminal aim. If such act was stopped, the offender will be considered as instigator. If the act revealed another truth

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... it will be that the offender's volition is not applicable all along the criminal path, then it should be considered as a preparatory act.

Difference between the two theories:

The personal theory foresees in the act committed by the offender an evidence of criminal intention, as the subjective theory tackles the nature of the act itself as evidence framing its specs. Hence, differentiation between preparatory act and instigation, as per personal criterion, is correlated to differentiating between acts which do and do not lead directly to crime.

Iraqi legislator stance:

Analyzing the Iraqi text, appropriated for legislative definitions, indicates that the personal theory was the pillar in codifying it. The issue, which is considered as a penalized legislation, is the act perpetrated by the offender to commit a crime. Based on this, any revealed act with an intention to carry a crime is framed as instigation rather than preparatory act. So, it is not conditioned on the offender to commence an act intercepted in shaping a crime, but rather it is enough to perpetrate an act of criminal orientation to prosecute him.

Second Condition: Suspended Execution:

The second condition, which must be provided to have a penalized instigation, is the obligation of a suspended execution, for reasons beyond offender's reach. So, if the stop of carrying on with the crime is due to actor's free choice (no prosecution). In other words, commencing execution is carried by offender though the intended criminal result will reach the criminal result sought after. If the previous is totally due to his freewill there will be no punishment. However, if the situation occurred due to other independent circumstances, instigation is applied and penalty decided.



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Third Condition: If the offender made an effort preventing the occurrence or completion of a crime:

In this section, voluntary deviation from complete instigation is tackled, described by an actor who perpetrates positive executive activity ruining the whole criminal intent, preventing the occurrence of its result. Hence, if he was able to stop his former acts and hold up the damage, then the disappointment of the attempt is due to the convict will, and in return he is not to be prosecuted. Iraqi legislator followed such opinion. As example: in homicides, the individual who throws his opponent in the sea aiming to finish him, then rescue him preventing his death, and to justify the saying of non prosecution is to be considered as of an instigation annulled by the offender's freewill and choice. For this to be adopted, the offender's actions which lined the commencement of the crime must be preventive, even after they occur, before formulating the intended criminal result. If it was not like that, which means not naturally preventive, but fair enough to carry the intended criminal result, but its effect vanished for reasons beyond the offender's reach, instigation is considered complete and punishable as it is useless for the offender to pretend not to do it again, as example: an individual shoots at his opponent one bullet but missed him (however, instigation had already occurred when shooting the bullet) or thief who desired to return back the stolen items. In the latter case, the crime already occurred and it is useless to try and fix the situation, even if the offender willingly decided to abandon his criminal intentions. The renunciation issue, as per law, means if the actor stopped, from his own-self, influenced by his will, from carrying on the execution. For the offender, to get rid of criminal responsibility, his renunciation must be a willing truth (by choice) occurred by itself. Maybe, the wisdom of non-punishment in such case relies, with no doubts, on the necessity to permit the offender to revise his own conscience, getting back from what he got involved in. Everybody has interest in preventing a crime instead of being charged after committing a crime as the reasons behind stopping the execution of a crime preventing its occurrence to three reasons; tangible – accidental reasons (external) which presses on the offender's will, preventing him from carrying on with his crime. It's influence

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... prevents the accomplishment of a crime due to tangible barriers as an external force halting the offender from completing his job, or optional reasons (Internal) which render instigation unpunished. In other words, the deviation from reaching the target as long as the crime was not executed yet, as exemption from criminal responsibility, in this case, will be limited to instigation (in the crime which had been intended to be executed). The third category of influences is constituted of moral (psychological) and accidental reasons achieved via a factor influencing the actor's will, imposing another process as a new-breed factor emerges, encircling the actor though not rooted to his character. Due to these fluctuated factors, each case must be dealt aside, if the convict's will is able to refrain or if external factors are more effective. In the first case, instigation advances headlining the convict's will to refrain. In the second, instigation is reached and punishable. In other words, a comparison, in each incident, between the will's role and that of coincidence or coercive force, must be applied as well as a search in which of the two roles is stronger. In case of doubt, refrain must be considered voluntary as per the doubt principle illustrated for the offender.

Responsibility of the Supreme Leader:

From analyzing the text of Clause [Fourth] of Article [15] dedicated to approve the criminal responsibility of a higher leader – Civilian or Military – the following conditions must be provided according to International Criterion and International Tribunal Verdicts:

First: The Existence of Leader-Subordinate connection

- 1- The existence of a hierarchical official relationship in which the Leader is higher than his Subordinate. Special International Tribunal Court for Former Yugoslavia (ICTY) regarding Symanza case, dated 2003 May 15, Article [401] where the Appeal Commission headlined this hierarchical relationship as well as emphasizing on the organizational chart within a civil or military establishment.



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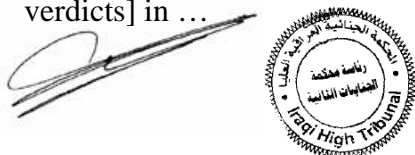
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- 2- The Leader should be in a commanding post within a Leader-Subordinate relationship.
- 3- The Leader should possess actual power over controlling his subordinates' actions as included in International Tribunal Court for former Yugoslavia (ICTY) verdict regarding Oritch case, dated 2006 June 30, Article [307].
- 4- The Leader should possess power to issue orders insuring his subordinates obedience to the aforementioned orders as included in International Tribunal Court for former Yugoslavia (ICTY) verdict regarding Blaskich case, dated 2004 July 29, Article [69].
- 5- The leader should possess tangible power (Effective) to prevent and punish any crimes committed or about to be committed.

Second:

The leader should be aware of or had any reason to believe that his subordinates had committed or about to commit acts which can be categorized within court's jurisdiction.

It will not be questioned whether the convict (Leader) acknowledges if he had enough reasons to consider that his subordinate had committed or about to commit a crime as no suitable or personal actions had been carried to prevent or punish the offenders. If the convict (Leader) issued such orders himself, it is vital to ask whether the convict tried to prevent or to punish incase he did not issue such orders, even if it was better for the court, under all circumstances, to take into considerations elements of awareness and failure in preventing or punishing. The guide which assures that a leader already knows or have reasons to know that his subordinates, either committed previously or will do, in the future, a crime (crimes), is the element of command's criminal intention since only assumption of knowledge form the center is not enough [(ICTY) verdicts] in ...



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the case of Oritsh on 2006 June 30 Paragraph (319), and incase of non-existence for a direct proof which confirms the Knowledge in the form of a document or a witness, for example it is possible to prove the (Actual) knowledge basing on any circumstantial lead. The Law of the International Tribunal Court for former Yugoslavia (ICTY) had considered the following lead that would guide to the existence of an actual knowledge. the type and scale of the crimes committed, periods of the committed crimes, participation of the Armed Forces, the number of the joint forces, the range of the Armed Forceps's participation, geographical locations of the acts, if members of the Civil Organization committed crimes. The nature of such crimes, if those crimes were on large scale, if those crimes were publicly known, the relation between the crime location and the Leader's presence location, if the location is within the Leader's authority, and if the individual who had committed a murder is under the Leader's authority. For more information, look into the trial Judgments of the International Tribunal Court for former Yugoslavia (ICTY) Blaskish on 2004 July 29 Paragraph (57) of the Criminal Court (193) and due to prevailing conditions at that time. The Leader is assumed to be knowledgeable of acts committed or about to be committed by his Subordinates as provided in Paragraph (1/A) from the Penal Code (28) of the International Tribunal Court. Finally, the knowledge of committing a previous crime of an identical nature in an identical location; might be enough for the Leader to know and to conduct further investigations; (As proposed in the legislation of the International Criminal Courts. The Courts of Appeal Commission, International Tribunal Court for former Yugoslavia (ICTY) in the case against Dilalish on 2001 February 20 Paragraphs (386, 197, 196, and 195). The International Tribunal Court for Rwanda (ICTY) in the case against Baghlishmia on 2001 June 07 Paragraphs (46, 43, 42) and the trial of the International Tribunal Court for Rwanda in the case against Musima on 2000 January 27 Paragraphs (141, 148)

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A handwritten signature in black ink, consisting of several fluid, overlapping strokes.

The Chairman

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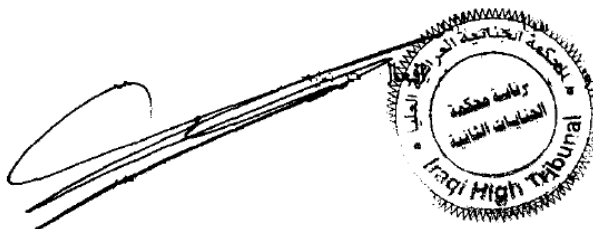
Third: The leader didn't take necessary and suitable procedures to prevent these actions from being carried out (crimes) or presenting the case in front to the specified authorities for investigation and prosecution; this is the third element in the responsibility of the commander (supreme leader) and correlates with proving the existence of the leader- subordinate relationship, and the actual power within the authority of this leader to prevent his subordinates from committing future and panelizing them for their past crimes, whenever he had a full perfect knowledge as a (necessary condition) of the case when the leader is supposed to take necessary and reasonable procedures as just a duty. To proceed in accordance with that, the International Tribunal Court for Rwanda (ICTY) decided that the decisions which the leader must take are connected essentially with the matter of the leader's position in power in Baghilishimya case on 2001 June 07, paragraph (48).

In a most recent decision made by the International Tribunal Court for former Yugoslavia (ICTY) regarding the matter of the procedures that must be taken, three standards are considered:

- 1 – The actual control degree of the president on his subordinates.
- 2 – Degree of the crime's danger.
- 3 – Current circumstances (the leader is not required to do the impossible).

The International Tribunal Court for former Yugoslavia (ICTY) in Ortish case on 2006 June 30 in the paragraph (329) concerning the concept of breaching these standards and in case when the leader doesn't have the authority to prevent his subordinates from committing crimes in the future or panelizing them for crimes they committed in the past and didn't have definite information to be fully aware of those crimes and their seriousness, with no circumstantial evidence confirming that, then he will not be held responsible for committed a crime.....

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or about to be committed by his subordinates. But what will be the verdict if all those conditions are shown up in the leader who did not take the necessary measures to foil these crimes or present the case to the specialized authorities to make an investigation and prosecution intentionally or mistakenly?

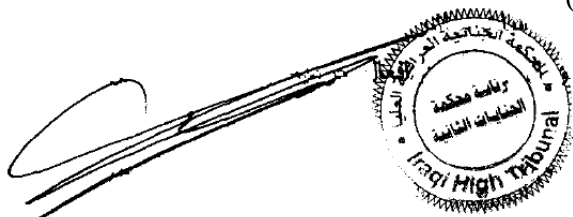
The premeditated ignorance doesn't make a problem for us because we are in front of the free will that is represented by the criminal intention which means the devotion of the offender's will into achieving the criminal event that is included in the law.

Consequently, the discussion of the international tribunals settled on (the leader is not allowed to premeditatedly ignore the crimes committed by his subordinates; therefore the leader is fully and criminally responsible of the committed crimes by his subordinates. But, what will be the verdict if the leader did not take the necessary measures to foil these crimes or present the case to the specialized authorities to make an investigation and prosecution for being negligent?

The article numbered (35) of the Iraqi Penal Code mentioned all the mistakes that could be imagined and enumerated some cases that could lead to the unpremeditated criminal responsibility stating (the crime could be unpremeditated if it led to the criminal result because of the criminal fault either this mistake is a negligence, carelessness, lack of caution or not complying with the rules, systems and orders). The basic of the criminal responsibility in such unpremeditated mistaken crimes is due to the offender's mistake that will cause a particular harm. The punishment for the mistake (in both concepts) is an obligatory and necessary matter as it is a defect in the will and choice. As long as the tangible action was performed by the offender's free will and choice, therefore his mistake was a result for not taking precautions to halt the harm that was resulted from that action.

Consequently, the basic of the criminal responsibility in both premeditated and unpremeditated crimes is the normal human will. So, the criminal responsibility.....

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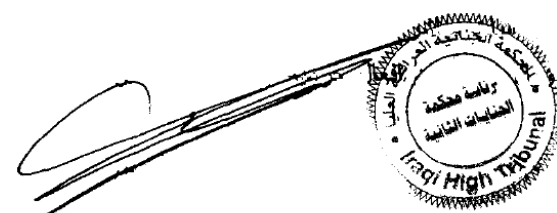
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in the modern law must be as result of a freewill action which is a committed action by a human having a free and conscious will. Based on that, the bad will is existed either from the desire in doing the evil or from premeditatedly doing an action where the offender mistook in estimating the bad consequences that are resulted from this action whose perpetrator couldn't be punished unless he is mistaken. In other words, that criminal action has no meaning but a freewill act whereas the human is always mistaken if he desired doing both the forbidden action and its harmful consequence. The example is all premeditated crimes and their premeditated mistake base, it is also considered mistaken who desired doing the criminal action without the bad result as he didn't pay attention for its occurrence, and the example of the unpremeditated crimes is the unpremeditated mistake base.

The Responsibility for the Unpremeditated Mistakes

Criminal responsibility in unpremeditated crimes is based on the theory of the defect in caution and attention duty whereas the law comprehensively imposes an obligation for all the individuals to take cautions and pay attention in their behavior. So, the mistake is defined as a breach of the legal commitment considering that the social society which is organizing the human is obligating every individual not to assault others. The individual who doesn't pay attention in his behavior is considered mistaken. The law commonly determines the manners basics along with pointing at the necessary of taking the appropriate precautions that help in halt carrying out the dangerous acts. Hence the negligence in following this duty will lead to create the element of the crime. In addition to the law as a main source for the behavior bases, there's another source which is the general and technical experiences that the humanity gained during its development and advancement. The people in their daily behaviors practice their vocational and handicraft works in different fields. It's no doubt that they are all committed to comply with profession or handicraft familiar basics whereas the breach or carelessness in the compliance will be a mistake leading to a punishment as long as this mistake is a cause for occurring a harmful result.

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- **Could the criminal be investigated for the expected mistake?**

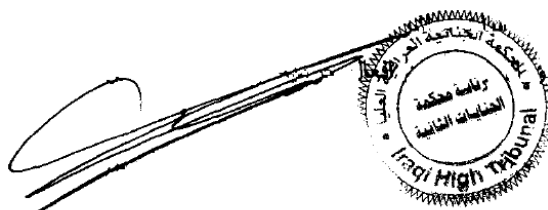
In this case, the accused expects the criminal result that is a consequence of his freewill behavior, the thing that leads his carelessness in paying attention and caution to prevent it from occurring, however he could expect its occurrence and he was supposed to do and take it in to consideration. Consequently, he is mistaken because of not expecting the resulted consequence and his negligence of precaution measures to prevent its occurrence. When the person ignores expecting the consequences of his activity and mistakes, despite he was capable of doing so and was also obliged to estimate the consequences of his work, he then makes a punishable mistake. Consequently the result was expected and it was possible to halt it. Therefore the accused that is ignoring is essentially mistaken and the result is expected within the normal procedures.

Standard of the Mistake

The person is mistaken if he didn't take the appropriate precautions and attention in his manners but what is the criterion that regulates the extent of the required precautions and attention to be taken to get rid of the criminal responsibility.

This criterion or standard is based on objective foundation and this is a conception for a cautious and reasonable person in his behavior if he is found in the same circumstance where the accused was existed at the action occurrence, he would behave just like the accused did or could behave differently. If the answer is yes or in other words, the behavior of the cautious and reasonable person is the same behavior of the accused. At then, it is supposed to say that the latter's mistake does not count. But if the answer is no or in other words, the behavior of the cautious and reasonable person is different from the accused behavior whereas he is characterized by paying attention and caution, then the mistake of the accused must be estimated on the basis of that objective standard is not always unlimited and the circumstances of the accused have to be taken in to consideration.....

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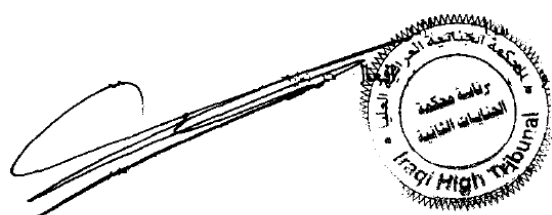
concerning the environment, culture and vocational, besides of the illiterate not to be equalized with the literate or between the villager and the city inhabitant, the personal circumstance of the accused should be take in to consideration like a disease or weakness.

The Responsibility of the Commanders and other Leaders

From analyzing the stipulate of clause (fifth) of the article (15), it's clear that the action which was carried out by the offender that caused the criminal result of any of the crimes within the jurisdictions of this tribunal will not be pardoned even if he was doing so complying with an order issued from the government or his designated leader either he is a military or civilian. However, in the end of the mentioned clause it allowed the tribunal when penalizing to take it in to consideration (reducing the sentence) if it sees that the presented circumstances and events and for achieving justice that the action of the accused in such case could lead to reduced excuse. Considering that the offender's action was based implementing an order issued to him and he had to obey the orders and regulations. But for the accused to benefit from such reduced punishment, the following conditions must be met, we can find it in the stipulates of article (33) of the International Tribunal Court's law, whereas the clause (Second) of the article (17) of the Tribunal's law allowed by stating (The tribunal and the appeal commission can benefit from the stipulates of the International Tribunal Courts verdicts when explaining the stipulates of article number 11, 12 and 13 of this law).

The article numbered 33 of the International Tribunal Law - in the chapter – Orders of the Presidents and Law Requirements. Stipulates in this regard:

1 – In case of any person committed a crime of those which fall under the responsibility of the Tribunal, he will not be exempted from criminal responsibility if his crime was carried out applying to an order from a government or a leader (civilian or military) except for the following cases:



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- (A) If the accused person has a legal commitment to comply with the government orders or the concerned leader.
- (B) If the accused person was not aware that the crime is illegal.
- (C) If the illegality of the crime was not clear.

2- Based on this article's requirements, the illegality is clear in case of issuing orders for committing genocides or crimes against humanity.

The first condition of the aforementioned conditions may lead to the following question: Do we consider the accused person, who committed a crime within the Tribunal's jurisdiction, to implement an order issued by the government or his designated leader to carry on a duty imposed by the law that leads to a legal commitment which must be obeyed, and at result being included with the stipulates of article(39) of the Penal Code that states, "No crime if it occurred while carrying on a duty imposed by law"? Also, do we accept this pleading from the accused person to get rid of the criminal responsibility?

The tribunal doesn't find a legal access to accept this pleading for the following reasons:

1 – The stipulate of clause – Third – of the article – 17 – of the Tribunal's law even if it allows the validity of the Penal Code's stipulates when applying the ones related to exemption from the criminal responsibility, but it stipulated in the meantime not to contradict with this law and International legal commitments that related to the crimes under the tribunal's jurisdiction.

2 – This tribunal's law is special law and will not be replaced with the General Law (Penal Code) during its application unless there's no stipulate in the special law and this is what the clause (First) states of the same aforementioned article.

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3 – In addition to the aforementioned, the phrase "It will not be exempted from the criminal responsibility" which is mentioned in the clause (Fifth) of the aforesaid article (15) is clear and decisive without confusion and leaving no room for interpretation in the article. Moreover, the acceptance of a light excuse for the accused – when applying the punishment – according to what's mentioned in the aforesaid article that states, "...if the tribunal sees that it will lead to justice".

The Punishment

1 – Goals of the Punishment (Briefly)

The achievement of justice requires the necessity of applying a punishment on the crime perpetrator as long as he is qualified to be responsible of his crime especially when he has awareness and freedom of choice. Additionally, the current definition of the international crime is not only representing an assault on the victim but also on the human community with its whole economic and social systems as well. The system of the national penal legislations currently depends on the saying that the punishment is not only imposed for the benefit of the victim and a satisfaction for him but it's also imposed for the benefit of the human community in the first place and considering the victim's benefit. The target of the punishment in addition to the aforementioned is not only causing pains for the criminal or revenge, but the goal is mainly to virtue him. So, it's said in the legislative, legal and doctrine fields that the punishment equals deterrence in addition to virtuous. The deterrence legally means preventing the criminal from committing the crime again by correcting and reeducating him to respect the society laws and joint life. Moreover, it is deterring the members of the society civilian through taking the punished criminal an example to avoid doing such crimes.



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2 – Characteristics of the Punishment

The penal punishment is characterized by several points; we mention some them as following:

(A) The legality of the Punishment (Principle of no punishment without a stipulate).

It means the difficulty to apply any criminal punishment in all cases for any action whatever it's dangerous or severe unless the law does mention it in an article as it's included in the punishment law.

(B) Equality in the Punishment

The purpose of this point is to achieve the generality and comprehension of the criminal punishment through the obligation of its appliance. So, this punishment is issued against the crime perpetrator whomsoever his position, category, social post or financial status and etc.

(C) Character of Punishment

The concept of this principle is that the punishment must be carried against except the perpetrator of the crime himself, not any one else of his family members. It's worth to mention in this regard that this principle has already bases in the Islamic Shari'ah especially what's mentioned in the holy Quran verses in Al-An'am Sura saying, "No one is responsible for other's crime", also in another sura of Al-Muddathir saying, "Every person is responsible of what he does".

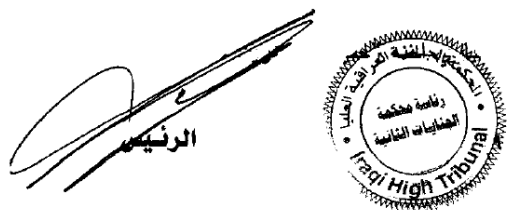
(D) The Judiciary of Punishment

It means that the order of imposing the criminal punishments on the crime perpetrators must be through the judiciary only. This characteristic is named by the principle of (No Punishment without a Verdict), the issue which all the current legislations take from.

Basic (65) Punishments

The aforementioned principle of the procedure principles and attached proofs collection, stated on the following:

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The image shows a handwritten signature in black ink on the left, which appears to be 'الرئيس' (The Presiding Judge). To the right of the signature is a circular official seal. The seal contains Arabic text: 'المحكمة العراقية العليا' (The Iraqi High Tribunal) at the top, 'رئاسة المحكمة' (Presidency of the Court) in the center, and 'القضايا الجنائية' (Criminal Cases) at the bottom. The English text 'Iraqi High Tribunal' is also visible at the bottom of the seal.

The Presiding Judge

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First: upon issuing the sentence the tribunal takes in to consideration the mentioned factors in Article (24) of the law, also the following factors:

- A- Strict circumstances.
- B-** Light circumstances include the cooperation of the convict with the attorney general or the investigation judge before and after conviction.
- C-** Applying the rules of clause (3) of the Article (30) of the law.

Second: The Criminal Court has to decide whether the numbers of the imprisonment sentences will be implemented by sequence or in interference.

Third: counting the convict's detention period from his arresting date until extraditing him to the Iraqi High Tribunal or to the trial or as result of the cassation. The detention period by other sovereign state government will not be included unless that state is working officially according to recommendation of the Cabinet or to the successor government, with taking into consideration the return of the sovereignty in 2004 Jun 01.

We previously mentioned the special reasons of the strict circumstances and the lightning circumstances for the criminal responsibilities as stipulated in the Iraqi Penal Code and that the tribunal must take into consideration those factors when penalizing. Therefore the tribunal sees that it is necessary in addition to what was mentioned to act upon what is decided of the lightening or intensifying factors from the criminal responsibility stipulated in International Tribunal Courts. The (1st) clause of Article (78) of the basic system for International Tribunal Court indicated the following regarding the punishment determination:

- 1- In determining the punishment the tribunal is considering factors such as seriousness of the crime and the convict's special circumstances and that's according to the procedural and evidentiary rules.



The President

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Complying by the mentioned stipulate, and what was stated in the rule No (145) of the procedural rule for the mentioned tribunal regarding the circumstances which lightening or intensifying the criminal responsibility whether it was related to the convict or to the crime its self such as its magnitude or seriousness, the extent of the damage particularly causing to the victim and his family, the nature of the illegal committed behavior, the means used for committing the crime, the extent of the convict's intent and participation, the circumstances related to the method, time, place and the convict's age and his social and economic status.


In additional to the above mentioned factors, the clause (2) of the mentioned Rule stipulated to takes the followings into consideration and according to the necessity:

A- The lightening circumstances:

- 1- The circumstances which doesn't form an enough base to remove the criminal responsibility such as (inability) or (coercion).
- 2- The convict's behavior after committing the crime including his effort to compensate the victim or to cooperate with the tribunal.

B- The intensifying circumstances:

- 1- Any past criminal convection in crimes of the court's jurisdiction or identical to it.
- 2- Abusing the authority or the official position.
- 3- Committing the crime with extra violence or many were victimized.
- 4- Committing the crime if the victim was bared from any self defense mean.



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5- Committing the crime with a motive implying discrimination according to any of the mentioned bases in (3rd) clause of Article (21).

6- Any non-mentioned circumstances but considered identical to the abovementioned according to its nature.

To be mentioned that clause (3) of Article (21) of the International Tribunal Court basic rule indicated that (Application and interpretation of the law for this Article must go consistent with the international approved human rights and have to be free from any harmful discrimination based on reasons such as gender as known in clause (3) of Article (7) or age, race, color, language, religion, belief, political or non-political opinion, national origin, ethnic, social, wealth, birth and any other situation.

"Summary of the Plaintiff's Statements"

1. The Plaintiff ' [NAME REDACTED]

Date of birth: 1953

Profession: Laborer

Address: Irbil, Shaqlawa County, Balisan.

He stated the following after taking the legal oath:

In the after noon and around 0615 hours dated 1987 April 16, the villagers came back to their houses and the livestock cattle also. A group of aircrafts were above (Balisan) at a sudden and they were (8-12) aircrafts which started bombarding Balisan and (Shaykh Wasanan) villages. The sound of explosives was low and the smoking spread in Balisan Valley. We smelt strange aromas, such as garlic and rotten apples, and after few minutes the side effects started to appear on the villagers where their eyes started to turn red and they started vomiting. After the sunset, helicopters came and attacked mountains tops which I don't know if the attack was by chemical weapon or not? We escaped to the mountains because we were afraid of another attack. When we arrived to the mountains at...

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...night, my family and I lost our sight and our bodies were burnt God with us. We asked the help of (Darsha) villagers and they helped us and carried us by the agricultural tractors. We were not capable of seeing but hearing the voices of bombing. They took us to (Bitwata) village where we received medical treatment and to (Ranya) then to (Al-Sulaymaniyyah). They took us to the hospital in Al-Sulaymaniyyah and took our official documents then they transferred us to one of our relatives' house but because of our bad health condition they took us back again to the hospital. After few days we knew that we are infected from the chemical weapons and they kept us in the hospital by authorities whom I don't know about. My health improved later on and I started to see. One of the Medical Aids took us out of the hospital and I complain against the roller of Iraq issuing the orders.

2. The Plaintiff [NAME REDACTED]

Date of Birth: 1961

Profession: Housewife

Address: Irbil, Shaqlawa, Balisan.

She stated the following after taking the legal oath:

On 1987 April 16, a group of (8-12) aircrafts started bombing our village. The sound of explosives was low and the smoke was black with aromas. When the helicopter came and attacked the village and the regions surrounding it from the mountains to prevent people from reaching the mountains, the villages lost their sight and they started vomiting. At 2300 hours, it started to rain and if the sky didn't rain many villagers would probably be dead. The villagers were screaming until the morning, we escaped to the mountains where we stayed there until the morning in one of the caves. My children were screaming because of starvation and I was wounded. We were transferred by the tractors to (Ranya) region and the view was as it's the resurrection day in Ranya. The people of (Ranya) gave us medical treatments and when the authorities knew about the help we are getting from the people, then, they took us to Irbil region. I went to the hospital for medical treatment and I stayed there for 10 minutes then they took us to (Rashkin) camp where we were detained there and stayed there...

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...for 9 days without medical treatment. I would like to mention the names of my family members who were lost and (anfalized) in these operations to the Court where the fate of our lost members is still unknown and some of them are my brother [NAME REDACTED], my son [NAME REDACTED] who's age was 3 and half years old and my niece [NAME REDACTED] where all of them were anfalized with unknown fate. Men and women were separated in the 9th day and men were carried by the vehicles and took them to an unknown side. While they kept the women there until noon then they carried us by IVA vehicles and took us to (Khalifan) camp where we were released. We came back to our village and we found it ruined and the animals were dead. I would like to mention the names of individuals passed away during the attack on Balisan village and they are (my uncle [NAME REDACTED], my uncle [NAME REDACTED]). I built a hut in our village and we lived there. Later on, (Al-Anfal Operation) started again and they attacked the village and men started to escape to the mountains. I request a complain against Saddam Hussein, 'Ali Hasan Al-Majid and his Lieutenants.

3. The Plaintiff [NAME REDACTED]

Date of Birth: 1950

Profession: Housewife

Address: Irbil, Shaqlawa, Balisan.

She stated the following after taking the legal oath:

On Thursday around 1600 hours I was at home planting, but I do not remember the date because I am an illiterate woman, our village was attacked by aircrafts. We escaped to the shelters until the attack was over and as a result we started vomiting and our eyes filled with tears. We stayed there until the night then they told us the government will attack again so we went to the caves and the cave we hid in named by [NAME REDACTED]. We lost our sight and we stayed there for the next day until the villagers of (Bitwata) came and helped us. They took us to the village by agricultural tractors and gave us medical aids. In the next day we were sent to Irbil and to the Security Directorate but I don't know who sent us there.

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They detained us for 8 days there where they separated men and women. They took us after that to (Khalifan) region where they released us there, but regarding the fate of men is still unknown (anfalized) and here are the names of my relatives (my brothers [NAME REDACTED], my father, my uncle [NAME REDACTED], my husband [NAME REDACTED], my son [NAME REDACTED] and my cousin [NAME REDACTED]). I lost 3 cousins in the prison [NAME REDACTED] as well as my mother ([NAME REDACTED]), my uncle's wife ([NAME REDACTED]) and their fate is still unknown. I request for complain against Saddam Hussein and everyone participated in the crime committed against them.

4. The Plaintiff [NAME REDACTED]

Date of Birth: 1961

Profession: Housewife

Address: Irbil, Shaqlawa, Balisan village.

She stated the following after taking the legal oath:

The villagers of our village were busy planting, dated 1987 April 16, and I used to live with my family that consists of 5 children in addition to my husband and his uncle ([NAME REDACTED]). While we were sitting at home in the after noon and I was busy preparing dinner, my husband came and I heard the sound of the aircrafts so I went with my husband and children to the shelter. I didn't see the aircrafts but I heard the attack and after that I smelt an aroma like the rotten apples. At the sunset, our health started to worsen where I started to vomit as well as my children then we knew that the weapon we were attacked by is a chemical weapon and my body started to burn. We were informed that the army started reinforcing to attack our village and the villagers started to leave the village taking food and medicine with them. During that time, helicopters came and attacked the mountains instead the village to hit the villagers heading towards the mountains. I went to the caves with my children and we were vomiting, my 5 children lost their sight, my leg was burnt, my body was burnt totally and my feet. We stayed one night in the cave and we lost our sight. In the cave next to us is the family of the husband of my father's aunt who is called...

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... ([NAME REDACTED]) where he could see a little so he went to (Dirashit) village and told the villagers about what happened. They came by the agricultural tractors to rescue us and took us while we were not able of seeing but hearing. I was screaming by saying "do not take my children from me". They took us to (Saru Chawa Bitwata) village where they gave us medical treatment then they took us to (Ranya) hospital. I lost my husband and his uncle there. They put me and my children in a room in which I don't know who did that. We saw in the hospital the villagers of (Shaykh Wasanan) village that were attacked by the chemical weapons. The doctors and (Ranya) inhabitants gave us medications there. When the government knew about us, they transferred us to (Irbil) where they took us to the hospital and we stayed there for 15 minutes then they took us to the jail. We stayed there with no medications or any medical aid where my health and my children's were really bad. After 9 days they gathered us and photographed us in the jail by a group of soldiers. They separated men, women and children and I have a paper that includes (29) individuals who were taken by vehicles. They took us to (Khalifan) region and 2 women died during the road one of them is called ([NAME REDACTED]) while I don't know the name of the other one. I request to complain against Saddam Hussein and 'Ali Hasan Al-Majid and everyone participated with them and this is my statement.

5. The Plaintiff [NAME REDACTED]

Date of birth: 1956

Profession: Employee in a company

Address: Bag Dawwud village, Kani Masi Sub District.

He stated the following after taking the legal oath:

In 1987, I was in (Ziwa Shikata) which is located in the Upper Zab. I was a member of the Pishmarga Forces and my duty was in this region. We heard the sound of some aircrafts in the morning dated 1987 May 01 as we heard the sound of an attack. One of our Detachments pursued the place of the event then I came back to my position. During the time of going and coming back, there was a weird smell in the air like the smell of cinnamon and straight away our eyes filled with tears and it's the first time I see this event. We knew that we were attacked by a chemical weapon.

The President



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In the second time dated 1988 August 24, Iraqi Forces helped of the National Defense Regiments headed for (Dahuk, Sarsanq and Al-'Imadiyyah) regions and bounded them as well as the mountains surrounding them. Another part of these Forces chose the opposite direction of the first ones where they went to (Dahuk and Sumil) as well as (Batufah, Zakhu, Yadar, 'Ajam, and Kani Masi). Thousands of families were besieged in this region where some of them got close to the Turkish Borders. The other families couldn't escape and large number of them was arrested by the Iraqi Forces where none of the Pishmarga Forces were among them because they were civilians. I was at my brother's house ([NAME REDACTED]), on 1988 August 25, in (Ikmala) village which is related to (Kani Masi) Sub District. I walked with the children of my brother 10 steps away from his house and we heard the sound of aircrafts and I saw two Sukhoi jet fighters which attacked a group of villages (Ikmala and Hamisa) as well as the christian village (Mirkaji). I saw the aircrafts going back after attacking the region and I headed with my brother's children to one of the shelters but before my arrival there was a smell like rotten apples and cinnamon. I asked the children to run away, put a piece of cloth on their nose and we ran until we reached down the hill. I kept the children of my brother with another family on top the hill and we went back to the village with my brother ([NAME REDACTED]) and one of our relatives ([NAME REDACTED]) to know the fate of my other brother [NAME REDACTED], his wife and his elder son ([NAME REDACTED]) but we couldn't reach the village. We were on a height and looked on the village but we didn't see anyone because most of the villagers went to the same place we headed to as we asked them if they saw my brother and his family but their answer was that they don't know anything about them. I saw a number of injured people and they were screaming, vomiting and their eyes were red where there was no medication. The people who were badly injured are ([NAME REDACTED]). I went back with my other brother, ([NAME REDACTED]) and ([NAME REDACTED]) to the village...

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...using pieces of cloth to know the fate of my brother and his family. When we got close to my brother's house, we noticed that water is getting out from the mouth of animals and birds then died. I saw my brother ([NAME REDACTED]) and his elder son ([NAME REDACTED]) dead on the ground (100) meters a part from each other and from the house as well as the body of his wife which was few meters away from them. The corpses were buried in the cemetery of the village. My brother [NAME REDACTED] with his children and my children were suffering from throat burn and they were vomiting. We went to (Awra) village because it was the closest village to the Turkish Borders where the villagers helped us and gave us food. We stayed on the Turkish Borders for a couple of days as well as thousands of people were there too. Then, I entered Turkey and lived there for 4 years. I request for complain against Saddam Hussien, 'Ali Hasan Al-Majid and the rest of the participants with them.

6. The Plaintiff [NAME REDACTED]

Date of Birth: 1954

Profession: Housewife

Address: Irbil, 94 Kulani.

She stated the following after taking the legal oath:

On Thursday during the spring and before Ramadan by couple of days in 1987, many Sukhoi jet fighters were flying before an hour of the sunset and their sound were loud. When they dropped the bombs, the sound of the bombing was low and we smelt a strange smell like apples or garlic as we felt nausea after they left. It was raining at night when we were in the house and when the aircrafts came back but there wasn't any kind of attack. I stayed with my family which consists of 12 members that night because I couldn't escape. We were drinking milk and vomiting and my children were screaming until the morning. We lost our sight and my other husband's brother ([NAME REDACTED])...

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... [NAME REDACTED]) came and he was not able to see and he was walking like children on hands and legs and he stayed with us.

At noon, they told us that we will be transferred to (Ranya) by tractors for medication purpose. I do not know who took us. Moreover, Ranya's people offered us food and drink. There was another family with us with seven children, and we stayed one night at the hospital. The inhabitants of Ranya were treating us until the government knew about us. Then they took us to (Irbil) and I did not know who did that. They told us that ZIL vehicles have transferred us and we did not get medication. From there they took us to the prison and I do not know the number of the days that I have stayed there. However, I heard the voice of the men and women were increasing. At the prison, my kids who were with me and could see, they told me that my sister and her children were died. Moreover, they also saw ([NAME REDACTED]) my husband's cousin, and my sister's family was died. They were seven people ([NAME REDACTED]) and her husband ([NAME REDACTED]), and her kids, where four of them died at the hospital and they are ([NAME REDACTED]). My husband was with us, then we were separated when they separated men from women and they took my husband ([NAME REDACTED]) and I do not know his fate till now as well as my husband's relatives whom they are ([NAME REDACTED]). I also do not know the fate of my relatives whom they are my cousins [NAME REDACTED] and [NAME REDACTED]. I do request a complaint against Saddam Hussein and 'Ali Hasan and against the people with him behind the bar.

7- Plaintiff: [NAME REDACTED]

Date of birth: 1950

Profession: a writer

Place of residence: United States of America, Virginia State, She stated the following after taking the legal oath:

On 1987 June 05, I was one of the Pishmarga. At four PM, Iraqi airplanes (Sikhuy) kind attacked us, and they were four. They attacked us by chemical bombs; meanwhile I left with the others to the shelter. There was a Comrade with me [NAME REDACTED] I do not know her full name, and another Comrade told [NAME REDACTED] that I smell something, so we left the shelter...

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... When the bombs fall down, there was a white to ashy smoke coming from the bombs. The Sound of the explosion was not strong. I saw a person his name is [NAME REDACTED], one of Zakhu Citizens, and he started to throw up, when people tried to carry him. After 12 at night, the Comrade ([NAME REDACTED]) came and woke me up, and she told me that we were attacked by chemical weapons. I saw the people around me with teary eyes, and they were throwing up and feeling pain in their stomachs. The supportive platoon was 30 minutes far from us, so we went there and we reached them at four at dawn, and the people with us were falling down because of their teary eyes. In the third day bubbles started to appear on my knee and the marks still exist until now. In the autumn of 1988, and I do not know the exact day and month, Iraqi airplanes came, then we went to the shelter, and after the attack with the bombs, it became clear that the bombs were not chemical. After that, we knew that there is a proceeding for the Iraqi military forces, so we left to the Turkish-Iraqi borders, and that lasted ten days. For that, I do request a complaint against Saddam Hussein and 'Ali Hasan Al-Majid and all the organizations and the international companies that provided the regime with the chemical weapons.

8- Plaintiff: [NAME REDACTED]

Date of birth: 1922

Profession: Farmer

Place of residence: Dar Barula Village. He stated the following after taking the legal oath:

I am one of (Dar Barula) citizens; we were working in farming, and in the year 1987, the harvest season was in the ninth months, so we went to the Ba'th Party Organization to take a permission to harvest. In the morning of 1987 September 03, the emergency forces attacked us, and surrounded our village and burned it and explode the electricity of the village, where we were outside the houses. Then they seized the livestock. Then they arrested us and took us to the emergency in Al-Sulaymaniyyah Governorate, and after that they took us to the Security Directorate then they brought us back to the emergency, where we stayed 4 months detained, and they investigated us several times. One time they came and announced nine names of the arrested and took them and they are ([NAME REDACTED]), ([NAME REDACTED]) and (.....

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... [NAME REDACTED] I do not know their full names. Moreover, they took two citizens of (Kalar) I do not know their names. They have been taken behind the prison's wall and I heard a fire shots, and I heard from the guards that they have been executed. Then were told by some of the guards that those people were arrested in the security prohibited zones, and according to the decision that issued by ('Ali Hasan Al-Majid) they were executed. Then I was released, and I do request a complaint against Saddam Hussein and 'Ali Hasan Al-Majid.

9- Plaintiff: [NAME REDACTED]

Date of birth: 1950

Profession: Farmer

Place of residence: 'Azaban Village. He stated the following after taking the legal oath:

In 1987, a Republican Guard Brigade attacked our village, using tanks in their attack. Moreover, there were bulldozers and military trucks with them. Our village was destroyed, and that lasted from the morning until six at noon, knowing that our village was not security prohibited and it is almost half an hour far from Al-Sulaymaniyyah Governorate, and there was no reason to attack our village other than we were Kurds. On 1987 September 08, 20 detachment of the security forces attacked (Shar Bajir) village. I was with my brothers ([NAME REDACTED]) and ([NAME REDACTED]) in the village, and the security forces and the emergency arrested us. Our village has been plundered as well as the livestock. A car was brought to transport the livestock to Al-Sulaymaniyyah Governorate, and then we were extradited to Al-Sulaymaniyyah emergency. When we arrived to the prison, there were 16 people of ('Arbat) citizens in Al-Sulaymaniyyah. We stayed in the prison three months, and we were tortured severely. Then a committee from Baghdad came and interrogated us after three days, just because we were Kurds. They indicated that the names they will read are going to be released. The number of the arrested people was (126), and they only took (58) people and said it is the president's noble deed. My brother's ([NAME REDACTED] and [NAME REDACTED]) stayed, I do not know....

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... their fate until now, then I was released. For that, I do request a complaint against 'Ali aliased ('Ali Lut Masi) and ('Uthman Nawzad), I do not know their father's name, and Major Taha and Saddam Hussein and 'Ali Hasan Al-Majid.

10- Plaintiff: [NAME REDACTED]

Date of birth: 1965

Profession: Laborer

Place of residence: Al-Sulaymaniyah Governorate. He stated the following after taking the legal oath:

In 1987, I was in (Si Kanyan) village in Shaykh Bakh, and one day at 8 in the evening, our village was attacked by (500-600) bombs. The attack was in (Siwa) area, and the bombs were low voice and smelly. The residents started to escape to the heights. There was also an attack in the area that located between (Si Kanyan) village and (Sargalu) village, and we went back in the morning to know what happened. We saw the area, it was white, so we knew that it was attacked by chemical weapon, and the oak tree converted to white. In 1988 we were in the same village (Si Kanyan) we saw the reinforcement of Iraqi forces, they started bombing us airplanes and artillery from four directions, and the residents started to escape from the village including my mother and my family members whom they fed toward Iran. Then airplanes came and dropped leaflets contain the amnesty decision, so they returned to Iraq, but they were arrested in (Qal'at Ziza) area, and were taken to (Ranya) including my mother ([NAME REDACTED]).and my brothers and sisters ([NAME REDACTED]). And my sister in law ([NAME REDACTED]) with her kids [NAME REDACTED], whom they are the children of ([NAME REDACTED]). And my Aunts ([NAME REDACTED])and my wife's sister and ([NAME REDACTED]), and my wife's brother, he has two children ([NAME REDACTED]), they took them from Irbil to (Tupzawa), and we did not hear from them but I knew their fate after the return of my uncle [NAME REDACTED] and his wife from Nuqrat Al-Salman. There were two children with them, one of them called ([NAME REDACTED]), my uncle's grandson. He died in Nuqrat Al-Salman because of starvation, and he was buried in Nuqrat

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... Al-Salman and the black dogs ate his body, and when his cousin saw the scene, she became insane, and her name is ([NAME REDACTED]). After digging the mass graves by the investigation court in Al-Sulaymaniyyah, they have found IDs, which include the retirement ID that belongs to my father, and it was with my sister ([NAME REDACTED]), I do request a complaint against Saddam Hussein and his group.

11- Plaintiff: ' [NAME REDACTED]

Date of birth: 1953

Profession: Laborer

Place of residence: Si Kanyan Village. He stated the following after taking the legal oath:

I had two brothers and two sisters living in (Si Kanyan) village, and they are (' [NAME REDACTED]) and his wife ([NAME REDACTED]), and I had six kids [NAME REDACTED] kids. My brother ([NAME REDACTED]), had two kids, and his wife ([NAME REDACTED]) was pregnant. My widow sister ([NAME REDACTED]) had four kids, they were all living in (Si Kanyan) village. The Iraqi forces surrounded them, so they went toward the Iranian-Iraqi borders. After 20 days or almost one month, two people return from Iran to (Al-Sulaymaniyyah). I went to meet them to ask about my family. They told me that according to the amnesty decision that was issued by the government; they came back to Iraq, but they were arrested in (Suni and Shini) - Iraqi villages- so I went to (Aghjalar) area, and there was a person who confirmed that they were arrested and transferred to (Chwar Qurna). I came back to Ranya to ask about their fate and I was informed that they were taken to Irbil. After six months the elderly people came back from (Nuqrat Al-Salman), among them was my uncle ([NAME REDACTED]) and his wife. They mentioned that they stayed in Irbil for four months, then they were transferred to (Tupzawa) in (Kirkuk). Men were separated from women, children and elderly, and then we did not hear from them. In 2004-2005, I was requested by the investigation court in Al-Sulaymaniyyah, where they showed me six IDs related to ('Aziz) and his wife and for children. I have recognized them and I knew

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... that they belong to my family, and they told me that they found them in (Al-Hadar mass grave), I do request a complaint against Saddam Hussein and 'Ali Hasan Al-Majid and their group, and against who participated with them.

12- Plaintiff: [NAME REDACTED]

Date of birth: 1969

Profession: Farmer

Place of residence: Sidar Village- (Bingird) Sub District. He stated the following after taking the legal oath:

I am a resident of (Sidar) village, which related to (Bingird) Sub District. I was working in farming. In the second month of the year 1988, our village was attacked by artillery and airplanes, also the villages neighboring our village. The bombardment lasted seven days. Then the forces raided our village from three axes (Jila Karan, Qara Sard, and Dulimazali) mountains, 90 people of the village were arrested, and some of them escaped. All the properties and the livestock were stolen and burned by the government forces. So we left to the Iranian borders, it took us 3 to 4 days to get there. We stayed 6-7 months in Iran, and I knew from some people that some of the detainees were back from (Nuqrat Al-Salman), so I went back to Iraq illegally, and I met the people who returned from (Nuqrat Al-Salman). I asked them about my family, and they told me that they saw them, and they were with them in (Tupzawa) where they separated men from women and children. Then they took them to (Nuqrat Al-Salman). In 2004, the court called me and showed me some IDs, I recognized four of them and they belong to ([NAME REDACTED]) four years, (' [NAME REDACTED]) two years, and they are my bother ([NAME REDACTED]) children, he died in 1987 due to the bombardment. I do request a complaint against Saddam Hussein and 'Ali Hasan Al-Majid.

13- Plaintiff: [NAME REDACTED]

Date of birth: 1977

Profession: Laborer

Place of residence: Al-Sulaymaniyah Governorate, Dukan District, Sidr Village, Bin Gird Sub District

He stated the following after taking the legal oath:

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In 1988, I was in (Sidar) village with my family, which consists of seven people, my mother ([NAME REDACTED]), my brothers and sisters ([NAME REDACTED]). In the second month of the year 1988, our village and the neighboring villages were attacked. The First Al-Anfal operation had started in (Jafayati) valley, and the attack on our village came from two directions (Qara Sard) mountain, and (Jila Karan) mountain. The Iraqi forces came closer to our village. The attack was continual on the village in the evening. At midnight, we heard women and children crying and at dawn, I was able to escape from the village and meet my sisters and brothers ([NAME REDACTED]). One of the village's citizens told me that military vehicles transferred the people who stayed in the village, so we went to the Iranian borders and entered Iran through (Sar Dasht), after a while we return to Iraq to (Pishdar) area then to (Ranya) then to (Pira Magrun) complex. We stayed there for almost four months. I asked the people who were arrested with my mother in (Nuqrat Al-Salman) about my mother and my family; they told me that they were among the detainees in (Nuqrat Al-Salman) and the Iraqi forces separated men from women in (Tupzawa) and they do not know their fate. After the uprising in 1991, I went back to my village to find it destroyed and burned. The mosque was demplished and burned, so I went back disappointed to (Pira Magrun) complex, and then I went back to the village. Then, Al-Sulaymaniyyah Investigation Court showed me IDs that belong to my family, including my dead father's ID, which was with my mother. In addition, my mother and my sisters ([NAME REDACTED]) IDs and my sister ([NAME REDACTED]) ID whom were arrested with my mother. I found out that they were killed, because the IDs were found in (Al-Hadar) mass grave. I do request a complaint against Saddam Hussein and 'Ali Hasan and anyone participated in this crime

14- Plaintiff [NAME REDACTED]

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