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Iraq: Flaws in the first trial before the Supreme Iraqi Criminal Tribunal should not be repeated

The trial of Saddam Hussain and seven others before the Supreme Iraqi Criminal Tribunal was a deeply flawed process and urgent changes are needed to ensure that future trials before the Tribunal conform to international standards for fair trial, Amnesty International said today. In particular, safeguards are needed to ensure the judicial independence of the tribunal; the safety of lawyers, witnesses and others involved with the court; defendants' rights and due process, and that defendants are not subject to the death penalty.

The organization made this call as the former Iraqi leader was due to stand trial for a second time, together with six others, accused in connection with mass killings and enforced "disappearances" of members of Iraq's Kurdish minority in 1988 in the so-called Anfal Campaign. Commencing 21 August, this trial, like the first one, is being held within Baghdad's heavily-fortified Green Zone due to the continuing high level of violence and insecurity in Iraq.

The first trial, which ran from 19 October 2005 to 27 July 2006, considered accusations that Saddam Hussain and seven co-defendants were responsible for the deaths of 148 people from the largely-Shi'a village of al-Dujail in 1982. The verdict is expected to be delivered on 16 October 2006, following which the case is expected to go to appeal. In the event that Saddam Hussain or any of the other accused are convicted, they are likely to be sentenced to death. Amnesty International opposes the death penalty in all cases.

The al-Dujail trial should have been a major contribution to establishing the truth and ensuring accountability for the massive human rights violations that occurred under Saddam Hussain's rule but in practice it was marred by serious flaws that call into question the capacity of the tribunal, as currently established, to administer justice fairly and in conformity with international standards. Given the compelling nature of the trial, every effort should have been made by the new Iraqi authorities, assisted by the international community, to ensure that the trial was fair and seen to be fair - Saddam Hussain and the seven defendants, like any other individuals, have a fundamental right to fair trial and to justice. This effort was needed to serve the interests of justice for the victims of past human rights violations and in order to set the necessary precedent for the future.

After more than 30 years during which the right to a fair trial was routinely abused under Saddam Hussain's government, the first trial offered a crucial opportunity for those in power in Iraq to turn a page on the past and to entrench new standards for the future, which conform to the requirements which the government of Iraq is bound by international human rights treaties and standards to uphold.

Amnesty International expressed concern about the statute establishing the Iraqi Special Tribunal (see AI Index MDE14/007/2005) and called for it to be amended to ensure fair trial guarantees before the al-Dujail trial began in October 2005, but many of these concerns were not addressed. The trial itself was marred

by key breaches of international standards of fairness, from the time that Saddam Hussein and his co-accused were detained through the close of hearings, including:

Failure to provide effective security measures

The security and safety of all parties involved in the Tribunal were frequently at risk and the problem remains unresolved. Defence lawyer Sa'dun al-Janabi was killed in October 2005, during the first week of the trial, while two other defence lawyers, 'Adil al-Zubeidi and Khamis al-Ubeidi were killed in November 2005 and June 2006 respectively. A number of lawyers reportedly received anonymous threats.

The tribunal also failed to ensure that there were adequate guarantees to protect others involved in the case, including witnesses. It is essential that measures are taken to facilitate the participation of witnesses and their representatives by ensuring their safety and that of their families from intimidation or retaliation, inconvenience to them or unlawful interference with their privacy, before, during and after judicial, administrative, or other proceedings that affect the interests of the witnesses.

Ensuring the independence and impartiality of the judges

A fair trial requires independent and impartial judges. In the al-Dujail trial, however, the first presiding judge, Rizgar Muhammad Amin, resigned four months after it began complaining that he had come under pressure by government authorities to adopt a more forceful approach to handling the defendants on trial. Judge Sayeed al-Hamashi, who was initially designated to replace him, was then ruled ineligible through the intervention of the De-Ba'athification Commission established to exclude former members of the Ba'ath Party from public office. The impartiality of Judge Ra'uf Rashid 'Abdul Rahman, who presided over the subsequent stages of the trial, was questioned by the defendants on the grounds that he had opposed Saddam Hussein's government and comes from Halabja, where thousands of Iraqi Kurds were killed in a gas attack by Saddam Hussein's forces in 1988.

Failures to respect the basic rights of the accused before and during the proceedings

Although Saddam Hussein was arrested in December 2003, he did not have access to his lawyers until 16 December 2004. Furthermore, on several occasions, including during the closing arguments, the tribunal imposed counsel whom the defendants had rejected, despite guarantees in law that the defendants may be represented by counsel of their choice. In certain instances, defendants' counsel of choice were dismissed by the court or decided to boycott the court proceedings, accusing the court of ignoring their demands. The court then appointed substitute lawyers for the defendants from the Tribunal's Defence Office (public defenders). Saddam Hussein and some of his co-defendants refused to cooperate with the new lawyers and requested a trial without lawyers.

The tribunal also appears to have failed adequately to investigate allegations of torture and ill-treatment by the defendants. For example, on 13 March 2006 Taha Yassin Ramadhan, former Iraqi vice-president, alleged that he had been beaten and subjected to sleep deprivation, extreme temperatures and forced positions during interrogation following his arrest in August 2003, but the tribunal is not known to have ordered an investigation. If there was one, its results have not been made public.

Throughout the proceedings, serious concerns arose regarding the ability of the defence to receive and test evidence submitted to the court by the prosecution. The defence team repeatedly claimed that the Prosecution introduced to the court evidence that had not been provided to the defendants beforehand, thereby preventing them from preparing a proper defence.

Death penalty

Amnesty International has been concerned from the outset that the tribunal can impose the death penalty and that the tribunal's statute fails to provide essential safeguards for people facing a possible death sentence. Amnesty International opposes the death penalty in any circumstances and considers that the death penalty violates the right to life and is the ultimate cruel, inhuman and degrading punishment. The imposition of the death penalty in a trial that falls short of international standards of fairness compounds these concerns.

It is vital that the deficiencies of the al-Dujail trial are not replicated when the tribunal convenes to hear the

Anfal case, one whose magnitude and complexity significantly exceeds that of the first trial, and future cases. The interests of justice will not be served by a process that is manifestly unfair or improper and leaves the trial open to question, undermining its credibility for future generations. The Iraqi authorities must take all necessary steps to ensure:

the independence and impartiality of the court, including by making provision for the participation of international judges and an enhanced role for international advisers and observers from diverse backgrounds who have demonstrated experience and skills in trials of crimes under international law. Such international involvement could help to ensure that the judges are, and are seen to be, independent and impartial and compensate for any lack of expertise within the Tribunal in issues pertaining to the crimes under its jurisdiction.

the security of all those involved with the tribunal, including the judges and lawyers for the prosecution and defence, witnesses, court officials and others. All possible measures to be taken to ensure the safety of those involved. The judge who is president of the court should use his good offices to arrange for appropriate measures of protection to be made available to the officials and lawyers engaged in this and future cases, on the basis of consultation with these officials and lawyers, including defence lawyers, regarding their specific needs, and to ensure adequate protection of witnesses. In the event that security conditions continue to deteriorate and effective security measures for all those involved remain out of reach, the Iraqi authorities should consider relocating the tribunal to a more secure location, in another country, at least temporarily, in order to ensure that trials can be conducted in conformity with international fair trial standards.

Amnesty International has extensively documented the massive and gross violations of human rights under the government of Saddam Hussein, and had repeatedly called on the international community to act. Amnesty International has also welcomed the arrest and detention of Saddam Hussein and called for him to stand trial.

It is vital that suspected perpetrators of past violations and crimes are brought to justice. It is equally important that in bringing them to justice and securing justice for the victims and their relatives, human rights law and standards are respected and seen to be respected.