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ICTJ Releases Analysis of First Iraq Trial

Briefing Evaluates Proceedings and Offers Concrete Remedies to Correct Shortcomings

NEW YORK, November 7, 2006—The International Center for Transitional Justice (ICTJ) today released a detailed briefing on the Iraqi High Tribunal’s (IHT) first trial, “Dujail: Trial and Error?” On the heels of the judgments against former President Saddam Hussein and seven of his associates on November 5th, this timely paper offers an incisive evaluation of the trial, as well as concrete steps that the Tribunal should take to increase its capacity to deliver fair trials in the future.

“Dujail was the beginning of a series of trials,” said Miranda Sissons, head of the ICTJ’s Iraq program and one of the co-authors of the paper. “The Tribunal attempted to deliver a new standard of justice for Iraq, but its efforts have fallen short in important ways. In the interests of victims whose cases have yet to be heard by the Tribunal, we have issued recommendations that we believe would benefit Dujail and future trials.”

The 17-page briefing draws heavily on the Center’s experience in interacting with the Tribunal since its establishment and monitoring courtroom proceedings in the Dujail trial.

The ICTJ evaluated the efficacy and fairness of the Dujail trial on the basis of whether it had: *improved* respect for the independence and impartiality of the judiciary; *uncovered* the full extent of “system” crimes committed by the various institutions of the Hussein regime; *demonstrated* and *preserved* minimum fair trial standards; *contributed* to restoring victims’ dignity; and *bolstered* the effectiveness and institutional capacity of the Tribunal itself.

In its analysis, the ICTJ concludes that, despite its genuine attempt at justice, a number of flaws contributed to the Tribunal falling short in guaranteeing fair trial standards and in several other important areas. In particular, the briefing cites problems with political manipulation by Iraqi politicians and external interference from the Higher National De-Ba’athification Commission, which has repeatedly attempted to remove judges. The deteriorating security situation and the controversial role played by the United States were other serious complicating factors.

The Center urges that in light of the gravity of the recent judgments and the likely impact of the Dujail case on the current Anfal case and future trials, the Tribunal should take swift, concrete steps to rectify the errors in its proceedings and also to make structural adjustments to benefit future trials, including:

Engage in a robust appeals process and consider a retrial: The Tribunal's appeals process should take into account all of the substantive and procedural errors made during the investigative and trial phases. The Tribunal should consider the possibility of referring the case back for retrial to correct the trial's procedural flaws as well as the evidentiary gaps—its two major deficiencies.

Learn lessons from the Dujail case by: Concentrating on adequate charging; arguing why the evidence satisfies the elements of the crime; and linking high-level accused with the crimes described by the complainants.

Retain more external experts and strengthen administration: Experts could include former judges, lawyers, or administrators from international or hybrid tribunals, and others with substantial experience in crimes against humanity or war crimes tribunals. The court's administration should be similarly strengthened.

Bolster security arrangements for the defense and all other trial participants: Effective witness and victim protection programs should be institutionalized and more effort should be made to address the specific concerns of defense counsel and defense office employees.

Respect and enforce the rights of the accused more rigorously: Judges should ensure that charges more specifically relate to the role of the accused in the crimes committed; that defense counsel are allowed proper opportunities for examining witnesses; and that adequate time and facilities are given to the defense.

Develop a comprehensive outreach strategy: Live broadcasts of the trial without further explanation of the proceedings could worsen confusion and foster discontent in terms of public expectations of justice. The court should remedy this as the trial presents a crucial opportunity to engage Iraqis in building a society based on respect for the rule of law.

“The Tribunal should not necessarily be judged on a single trial,” said Marieke Wierda, head of the ICTJ's prosecutions program and one of the co-authors of the paper. “But it should also not allow a single verdict to stand if it is based on an unsatisfactory process.”

The briefing is available at <http://www.ictj.org/images/content/5/9/597.pdf>

Additional Resources from the ICTJ

Publication: "[And Now From the Green Zone....](#)," *Ethics & International Affairs*, Winter 2006.

ICTJ briefing paper: "[The Creation and First Trials before the Supreme Iraqi Criminal Tribunal](#)," November 2005.

The Tribunal Statute of October 18, 2005

([English](#), ICTJ translation)
([Arabic](#))

The Tribunal's Rules of Procedure and Evidence of October 18, 2005
([English](#), ICTJ translation)
([Arabic](#))

For more information, go to the ICTJ's [Iraq page](#)

The Role of the ICTJ in the Dujail Trial

The ICTJ has played a crucial role in monitoring the Dujail trial, being one of only two organizations to formally observe the trial throughout. Prior to the trial, the Center commented on the Statute and the Rules of Procedure and Evidence. The organization's Arabic-speaking observers were present from the trial's opening and attended nearly all of the hearings. The ICTJ has engaged in many discussions and interviews with key participants in a series of four missions, including one with international expert Robin Vincent, former Registrar of the Special Court for Sierra Leone.

Apart from a consistent presence on-the-ground, the Center organized a pre-trial dialogue on international standards in London with IHT prosecutors and judges; evaluated the trial dossiers; maintained an informal transcript; and corresponded with Tribunal staff. The ICTJ has given extensive media commentary throughout the trial. The Center also worked in Iraq prior to the beginning of the trial, and in 2003, with the University of California, Berkeley, conducted a country-wide survey on Iraqis' expectations of transitional justice.

About the ICTJ

The International Center for Transitional Justice (ICTJ) assists countries pursuing accountability for past mass atrocity or human rights abuse. The Center works in societies emerging from repressive rule or armed conflict, as well as in established democracies where historical injustices or systemic abuse remain unresolved.

In order to promote justice, peace, and reconciliation, government officials and nongovernmental advocates are likely to consider a variety of transitional justice approaches including both judicial and non-judicial responses to human rights crimes. The ICTJ assists in the development of integrated, comprehensive, and localized approaches to transitional justice comprising five key elements: prosecuting perpetrators, documenting and acknowledging violations through non-judicial means such as truth commissions, reforming abusive institutions, providing reparations to victims, and facilitating reconciliation processes.

The Center is committed to building local capacity and generally strengthening the emerging field of transitional justice, and works closely with organizations and experts around the world to do so. By working in the field through local languages, the ICTJ

provides comparative information, legal and policy analysis, documentation, and strategic research to justice and truth-seeking institutions, nongovernmental organizations, governments, and others.

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