



# INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

*" dedicated since 1952 to the primacy, coherence and implementation of international law and principles that advance human rights "*

19 October 2005

## **THE TRIAL OF SADDAM HUSSEIN AND THE RIGHTS OF VICTIMS**

### EXECUTIVE SUMMARY

Former President Saddam Hussein and seven other defendants are scheduled to be tried on 19 October 2005 for their alleged role in the massacre on 8 July 1982 of more than 140 people in the town of Dujail. This trial is expected to be the first of a dozen trials, each focussing on specific events. The Iraqi High Criminal Court is competent to try crimes of genocide, crimes against humanity and violations of certain Iraqi laws. The Court can impose the death penalty – a punishment that the International Commission of Jurists (ICJ) categorically and unconditionally opposes. The ICJ, just like the UN Special Rapporteur on the Independence of Judges and Lawyers, expresses strong concerns about the legitimacy and independence of the Court.

For more than three decades, the regime of Saddam Hussein has been responsible for gross and systematic violations of international human rights law, such as torture and ill-treatment, massacres, expulsion of thousands of people on the basis of their ethnic origin, extrajudicial, summary or arbitrary killings, enforced disappearances of tens of thousands of people, arbitrary arrests and incommunicado detention for months or years without access to lawyers or relatives, unfair trials and large-scale destruction of property. Under international law, such human rights violations, carried out in a massive, widespread or systematic way constitute crimes against humanity.

Iraq has an international obligation to bring to justice perpetrators of gross violations of international human rights law and serious violations of international humanitarian law through fair trial proceedings that respect international standards. The trial of Saddam Hussein and other persons responsible for gross violations of human rights by an impartial, independent and competent court would constitute a fundamental step in finally establishing the rule of law in Iraq. International attention has focused on the forthcoming trial on the Dujail case and the extent to which the Court guarantees the rights of the defence, but it has been practically silent on the rights of the victims. However, justice is not only a matter of prosecuting and sentencing the culprits: states also have the obligation to provide effective remedies to the victims, ensure they receive reparation for the injuries suffered and learn the truth about the violations they were subjected to, while taking other steps to prevent a recurrence of such violations.

In accordance with international law and standards, the right to effective and prompt reparation involves restitution, financial compensation for the damage inflicted (e.g. physical, mental, moral, etc), rehabilitation and measures of satisfaction, such as public apologies, official recognition, public memorials, guarantees of non-repetition and changes in relevant laws and practices. Victims are entitled to effective access to justice, on an individual or collective basis: collective access to justice is particularly important in Iraq where ethnic and

religious communities, such as the Kurds and the Shi'as, have been specifically targeted by the repression of Saddam Hussein's regime. In the case of disappeared persons, the state has the duty, in accordance with international law, to search for, locate and release disappeared persons and, in the event of death, to identify the victims or relatives, locate and return their remains. The Iraqi authorities have to ensure the right of the victims to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person.

International human rights standards also entitle victims to obtain information on the causes leading to their victimization and to learn the truth in relation to such violations. This right to know the truth would be irredeemably jeopardized if Saddam Hussein were to be executed after the trial on the Dujail case: not only would his execution be in flagrant contradiction of the international trend to abolish the death penalty, but his disappearance as a fundamental source of information would prevent other, countless, victims of crimes of genocide and crime against humanity from learning the truth about their beloved ones. As the gross and systematic human rights violations of the last decades in Iraq have never been officially and independently investigated, the implementation the right to truth is fundamental for the Iraqi victims and their relatives, as well as for Iraqi society as a whole.

However, the Iraqi government has made no serious attempt to inform the general public and the victims in particular about their right to reparation and truth, and has so far not set up any mechanism to implement it. The draft law creating a "Martyrs' Commission", presented as a truth and reconciliation commission, only defines the "martyrs' rights" in economic and financial terms, and is far from recognizing other major aspects of reparation, such as the right to rehabilitation and satisfaction, as well as other aspects of the right to restitution. The creation of an effective truth and reconciliation commission, with a mandate based on international human rights principles and standards, would represent a fundamental landmark in the history of justice and the rule of law in Iraq, and constitute a major step in implementing the victims' rights to a remedy, reparation and truth.

Such a commission, however, should fulfil basic conditions in order to be credible, and should only be created after broad public consultations involving the victims or their relatives. It should draw lessons from previous truth and reconciliation commissions, have a clear mandate ensuring its independence, impartiality and competence, benefit from adequate financial and human resources, offer guarantees for the protection and safety of the witnesses and make its report and recommendations public. Not only should it fully comply with the *UN Set of principles for the protection and promotion of human rights through action to combat impunity*, but it should only be set up when the country enjoys peace and security, with a stable government and effective national institutions. The current security, institutional and political environment in Iraq however does not meet such basic prerequisites and the establishment of such a commission would be premature. It should be stressed also that a truth and reconciliation commission would in any case not dispense the state from fulfilling its international obligation to prosecute and punish those responsible for human rights violations and from granting reparation to the victims and their relatives.

In addition to its concerns regarding the independence of the Court, the ICJ is extremely worried that in its endeavours to deliver justice and punish Saddam Hussein and other defendants, the Court and the Iraqi Government may trample the fundamental rights of victims to reparation, justice and truth. Iraqi victims have been ignored for more than 30 years: their rights cannot be violated once more.

## Recommendations

The International Commission of Jurists calls on the Iraqi authorities to:

- Implement the rights of the victims to justice, reparation and truth in accordance with international standards<sup>1</sup>, and to take all appropriate steps to make the public in general, and victims and their relatives in particular, aware of these rights, including petitioning the courts to assert them.
- Only set up a truth and reconciliation commission when the basic preconditions are met, notably at the political, security and institutional level, and - if creating such a body – to follow the principles on the establishment and role of truth commissions contained in the updated UN *Set of principles for the protection and promotion of human rights through actions to combat impunity*.
- Implement their international obligation to bring to justice and punish all persons found guilty of gross violations of international human rights law and serious violations of international humanitarian law before courts that fully respect international standards of fair trial. In particular, to implement the recommendation of the UN Special Rapporteur on the independence of judges and lawyers to request the expert assistance of the UN in order to set up an independent tribunal that complies with international human rights standards.<sup>2</sup>
- Abolish the death penalty for all crimes, including crimes of genocide and crimes against humanity and to follow the example of the International Criminal Court and the ad hoc tribunals set up by the Security Council, which reflect the international consensus on the abolition of the death penalty and to restrict punishments to prison sentence.

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(This report summarizes an 18-page report in English, “*The trial of Saddam Hussein and the Rights of the Victims*”, available on the ICJ website: [www.icj.org](http://www.icj.org))

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<sup>1</sup> UN Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law.

<sup>2</sup> Report of the Special Rapporteur of the Commission on Human Rights “Civil and political rights, including the questions of independence of the judiciary, administration of justice, impunity, UN Doc. (A/60/321) para. 43.