

A legal sham: first charges laid against Saddam Hussein

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The decision announced July 17 to file the first charges against deposed Iraqi president Saddam Hussein has set the stage for what can only be called a political show trial later in the year. Confronting deep popular hostility and fierce armed resistance, US authorities and the puppet regime headed by Prime Minister Ibrahim al-Jafaari have decided to put Hussein on trial in a bid to both cow public opposition and garner support from sections of the Shiite and Kurdish communities that suffered most under the Baathist dictatorship.

So blatant are the political machinations that the *New York Times* reported: “The tribunal officials said they had faced a swirl of pressures that have been more overtly political. Some government officials, they say, have been insistent that Mr. Hussein face trial before elections scheduled for December in which Iraqis are to vote for a full, five-year government. Their assumption, the tribunal officials say, has been that a detailed recounting of Mr. Hussein’s atrocities in court will consolidate popular support behind the Shiite and Kurdish leaders, and isolate Sunni Arab hardliners.”

Raeed Juhi, the 35-year-old judge handpicked for the task, told the media that Hussein would be tried over the 1982 massacre of more than 150 people in the Shiite village of Dujail. Juhi is the chief investigative judge for the Iraqi Special Tribunal established in December 2003 by US occupation authorities following the capture of the former Iraqi president. If found guilty, Hussein faces the death penalty.

The choice of the little known Dujail massacre is no accident. The village, about 80 km north of Baghdad, is a Shiite enclave in a predominately Sunni area and has long been regarded as a stronghold of Jafaari’s own Islamic fundamentalist Dawa Party. On July 8 1982, several of Dawa’s gunmen attempted to assassinate Hussein by firing on his motorcade as it passed through the area.

The Hussein regime ruthlessly cracked down on Dujail to try to intimidate the Shiite population and the Dawa Party, which had been engaged in anti-government guerrilla attacks. Within hours of the attempted assassination, helicopter gunships strafed the village and hundreds of its inhabitants, including men, women and children, were rounded up. Scores of houses were destroyed and much of the village’s cultivated land and orchards were bulldozed.

About 1,500 villagers were held for years in terrible conditions at the Nagra as-Salman prison, a British-built fort near the Saudi Arabian border. More than 140 men and boys, some as young as

13, were put on trial, found guilty of anti-government crimes and executed. Hussein’s half-brother and former intelligence chief Barzan Tikriti, former vice-president Taha Yassin Ramadan, and former chief judge Awad Haman Bander Sadun, who presided in the Dujail trial, have also been charged over the incident.

Jafaari and the Dawa Party have been pushing for, and hope to politically exploit, charges laid over the Dujail massacre, but the case would not have proceeded without the Bush administration’s approval. While Juhi is nominally in charge of proceedings, there is no doubt that Washington is calling the shots. The Iraqi Special Tribunal has been paid for by the US Justice Department and is “assisted” by a large team of US lawyers and investigators known as the Regime Crimes Liaison Office and housed in the American Embassy. Liaison office head Greg Kehoe is a direct Bush administration appointee.

For the Bush administration, a prosecution over the Dujail massacre may be politically safer than many other charges. Cases are also being prepared against Hussein over the “ethnic cleansing” of Kurds in the late 1980s, the chemical gassing of the Kurdish village of Halabja in 1988 and the crushing of the Shia and Kurdish uprisings in 1991. The Iranian government demanded this week that Hussein also be prosecuted for initiating the Iran-Iraq war. But, in all of these crimes, US high officials, past and present, are deeply implicated.

Most of the charges being prepared by the tribunal against Hussein involve actions carried out by his regime during the period when it enjoyed growing support from the US government. Washington’s ties to Saddam Hussein strengthened in line with Hussein’s increasing turn to the right at the end of the 1970s and early 1980s, marked by attacks on leftist forces in Iraq and the expulsion in 1979 of the Iraqi Communist Party from government positions, followed by bloody repression against CP members.

The Bush administration is well aware that, like former Yugoslav president Slobodan Milosevic, Hussein could use his trial to embarrass the US. He is, for instance, intimately familiar with the two visits of the then-presidential envoy Donald Rumsfeld to Baghdad in 1983 and 1984 to cement US ties with the dictatorship, despite Iraq’s use of chemical weapons. He is also aware of the military assistance the US provided to Iraq during the war with Iran, and of details of US and European companies that assisted in Iraqi chemical and biological weapons programs. These political minefields are among the reasons why Washington has insisted that the trial remain under firm US control in Baghdad,

rather than at the International Criminal Court in The Hague.

Underscoring the hypocrisy pervading the entire process, Iraqi Justice Minister Abdel Hussein Shandal alleged last month that US officials were delaying Iraqi efforts to interrogate Saddam Hussein. "It seems," he said, "there are lots of secrets they want to hide."

A deeply flawed process

Despite the claims of the Bush administration and the Baghdad regime that justice is being served, nothing can disguise the fact that the entire proceedings are deeply flawed. There is no doubt that Hussein is responsible for many crimes. But if he is to be tried for the invasion of a country [Iran], the brutal suppression of armed opposition, murderous reprisals against unarmed civilian populations and the perversion of justice, then the Bush administration is just as guilty of all these crimes in its illegal invasion and subjugation of Iraq, and should be prosecuted as well.

If one deleted the names and dates from a description of the Dujail massacre, it could just as easily be the description of an untold number of US military operations in Iraq. A convoy comes under attack, helicopter gunships strafe the neighbouring village or suburb, squads of heavily armed troops kill or detain hundreds of suspected "terrorists", and the arrested are held in detention centres without trial and tortured.

The scale of atrocities in Dujail pales in comparison to the US military's levelling of Fallujah, in which hundreds of innocent civilians were killed and the population of 300,000 transformed into refugees.

There is another parallel. The prosecution case against Hussein rests on the fact that trial and execution of the 143 Dujail men and boys was rigged for political purposes. But exactly the same charge is true of the Hussein trial. There is a clamour in government circles for him to be swiftly tried and executed. His legal defence team has repeatedly complained that basic legal procedures are being openly flouted. They have not been granted access to their client or to the evidence against him. Their client has been held incommunicado, until now without charge, since December 2003.

A lengthy document prepared by the US-based Human Rights Watch (HRW) organisation in December 2003 demonstrated that many areas of the Special Tribunal's statute failed to meet the standards set by international law. It does not guarantee that the presiding judges are independent and impartial, or have the necessary experience to hear complex human rights cases. It does not rule out confessions obtained by torture, guarantee the right to remain silent or ensure that guilt has to be proven beyond reasonable doubt.

More fundamentally, the illegal character of the US invasion of Iraq calls into question the legitimacy of the court itself. Writing in the *Al-Ahram Weekly* in February, one of Hussein's defence team, Curtis Doebbler, commented: "[B]efore any members of the Iraqi government headed by Iraqi President Saddam Hussein can stand

trial, a determination should be made about the legality of the United States' use of force against the Iraqi people. To put the leaders of the Iraqi people on trial when the aggressors against the Iraqis are not held responsible for their actions is the worst kind of vengeance. It is vengeance based on a violation of international law and mocking the rule of law in a manner that will damage it severely for decades to come."

The last thing that the Bush administration wants is to have to defend all of the lies that it used to justify its act of aggression. By insisting that the trial take place in Baghdad, the White House has ensured that the US invasion will never become a courtroom issue. All of the parties that comprise the Jafaari government are complicit in the US subjugation of Iraq and the entire Iraqi court system has been carefully vetted. In the event that Hussein's defence lawyers are allowed to attend and question the competency of the court, there is no doubt that the presiding judges will quickly rule them out of order.

The blatant manner in which this kangaroo court is being organised is creating unease even among close supporters of the US occupation. Already there is widespread suspicion and disgust in Iraq and throughout the Middle East over Washington's trampling on basic democratic rights. If Hussein's case is widely perceived as what it is—a show trial—the outcome will be a political disaster, not a triumph, for the Jafaari administration. In a timid attempt to assert Iraqi sovereignty over proceedings, Hussain Shahrastani, deputy chairman of the National Assembly, insisted this week that the assembly had to pass a law legitimising the special tribunal before the trial proceeds.

A blunter message was delivered by US-based international law expert M. Cherif Bassiouni in a memorandum addressed to Jafaari and posted on the foreignpolicy.com web site this month. Bassiouni, who has been involved in restructuring legal education in Iraq, offered various suggestions for lending the process a more credible veneer and warned: "Unfortunately, the trials of Saddam and his associates are in serious danger of appearing illegitimate to the Iraqi population and the broader Arab and Muslim worlds. The Iraqi Special Tribunal, which will try Saddam and other high regime officials, has serious legal, political, and public relations defects. A trial that could be one of the most important in Arab history now may seem as little more than an American show trial and an exercise in victor's justice."



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