

## **The Trial of Saddam Hussein**

### **Frequently asked questions**

#### **What model is the Hussein trial based on?**

Saddam Hussein will be tried by the Iraqi Special Tribunal for Crimes Against Humanity, which was created by the Iraqi Governing Council in December of 2003. This means that Saddam Hussein will be tried in an Iraqi court by Iraqis. Unlike other international criminal tribunals, the Iraqi tribunal was established without the assistance of the United Nations and without any international component.

#### **Why does the U.S. support this model?**

The U.S. hopes that this trial will help rebuild the Iraqi judicial system while reinforcing the idea that Iraq is truly sovereign. The current administration is also generally unfavorable towards international tribunals.

#### **Will it be fair?**

While all Iraqi officials involved in the special tribunal insist that Hussein will be afforded the rights that he denied his people, it remains to be seen if his trial will actually be fair. Numerous human rights organizations including Human Rights Watch have voiced several concerns about the trial. First, Iraqi courts have no experience with trials that last days, let alone months. Second, even though the rights of the accused in the Special Tribunal largely reflect recent international law, critics argue that the statute governing the tribunal falls short of ensuring that the entire process will be legitimate and fair. Finally, critics of the tribunal point out that it may simply be impossible to have a fair trial in a country where the majority of the population was negatively affected by the former regime's policies.

#### **What rights do the accused have?**

Some of the rights of the accused include, but are not limited to, the following: the presumption of innocence, the right of the defendants to a fair trial and a public hearing, the right to be notified of the charges, the right to a lawyer and to have that lawyer paid for by the court if the defendant cannot afford the cost, the right to confront witnesses, and the right to not incriminate oneself.

#### **Will Hussein be executed?**

If convicted, Hussein could face the death penalty. At his preliminary hearing, Hussein tried to argue that as President of Iraq, he cannot be given the death penalty. The judge responded that now that his regime has come to an end, he is a civilian and could be executed. While in charge, Paul Bremer had outlawed the death penalty; however, Iraqi officials later decided to reinstate it.

#### **Who has custody of Saddam Hussein?**

On June 30, 2004, the United States handed over legal custody of Saddam Hussein to Iraq. However, Hussein's physical person remains in U.S. custody because of concerns that he could escape from an Iraqi facility.

# FACT SHEET

## **When will the trial begin?**

An exact date has not been determined yet. It could take months for prosecutors to sort through all of the evidence against Hussein. Also, the trial may not actually begin until after other high-up officials have been tried so that evidence obtained from those trials could be used against Hussein. It may take anywhere from a few months to more than a year before the trial actually begins.

## **What is the U.S. role in the tribunal?**

Currently the United States government says that its role in this process is to support the Iraqi Special Tribunal by providing expertise and resources in an effort to ensure that the procedure is fair and effective. The U.S. government has contributed \$75,000,000 to this effort.

## **Could Saddam Hussein be tried by the International Criminal Court?**

The International Criminal Court has no jurisdiction to try Saddam Hussein. Iraq is not a party to the International Criminal Court treaty, and it is unlikely that the U.S. would allow the UN Security Council to refer the case to the ICC. Even if the ICC had jurisdiction, it could only step in if Iraq was either unwilling or unable to prosecute. The domestic tribunal thus would prevent the ICC from taking action.

Furthermore, the ICC would only be able to investigate and try crimes that were committed after July 1, 2002, which means that the ICC would not be able to prosecute Hussein for crimes committed during most of his rule.

## **What concerns do observers have about this trial?**

Observers worry that Iraq currently lacks the necessary judicial infrastructure for such a trial, as well as enough trained jurists who are neither tainted by the former regime nor harboring personal grudges against it. Also, there is a concern that the involvement of the United States may obscure the interpretation or even the facts regarding crimes committed by Hussein's regime in the 1980s, as a complete revelation of Hussein's crimes could reflect poorly on U.S. policy during that time period. Finally, observers worry about the lack of international involvement in the tribunal. International involvement could help rehabilitate Iraq's legal system more quickly by sharing "lessons learned" from other transitional justice efforts and expertise on human rights law and forensic documentation, and it would allow for professional exchange and development between Iraqi jurists and their peers from other countries.