

Mr. Abdel Aziz al-Hakim,  
Head of the Iraqi Governing Council  
C/o Rend Rahim Francke  
Representative of the Governing Council to the United States  
The Iraq Foundation  
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December 22, 2003

Dear Mr. Abdel Aziz al-Hakim:

The Lawyers Committee for Human Rights welcomes the high priority being given by the Governing Council to establishing an Iraqi Special Tribunal to prosecute those responsible for gross human rights crimes. We share your desire that Saddam Hussein and others be brought to justice in proceedings that centrally involve Iraqis. We welcome your commitment to conduct these proceedings in a manner consistent with international law and fair trial standards. It is very important that you have already signaled that the new Iraq will be founded on principles of justice and rule of law, and to let the victims know that the wrongs they have suffered will be acknowledged and redressed.

We have carefully reviewed the Statute for the Iraqi Special Tribunal for Crimes Against Humanity which you adopted on December 10. Consistent with our shared objective in developing a credible court to review these cases, we respectfully propose actions we hope you will take in three areas that we believe would help ensure that justice is done.

1. Seek international assistance

We propose that in the new tribunal, non-Iraqis should have a formal role in partnership with Iraqis, rather than acting as merely advisors and observers. We know Iraq has a rich legal tradition and many capable jurists. We also share your belief that Iraqis must play a central role in these tribunals if they are to contribute to a healing and reconciliation process and to the long rebuilding of the Iraqi justice system.

But trials against Saddam Hussein and others will focus on crimes against humanity, war crimes and genocide, which involve complex questions of law and procedure. Iraq is not the first to face these challenges. Others have gained valuable experience during the past decade in tribunals established to address serious crimes in former Yugoslavia, Rwanda, East Timor and Sierra Leone. The Iraq Special Tribunal could benefit from lessons learned in these similar prosecutions.

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Second, the Iraqi justice system has clearly been weakened during the last three decades, and needs time to recover from these years of degradation and repression. Given the complexity of the cases that will come before the Special Tribunal, the sheer volume of evidence, and the imperative that these cases be pursued expeditiously, formal participation by international judges, prosecutors and investigators makes sense.

Partnership with the international community need not involve surrendering Iraqi ownership and identity. It is possible to craft a solution that would give a central role to Iraqi jurists while at the same time securing meaningful international input.

We propose that the most efficient way to gain access to the best possible international expertise and experience would be to seek the partnership of the United Nations. The Special Court for Sierra Leone, established on the basis of an agreement between the government of Sierra Leone and the United Nations, provides one very useful model. In that court, Sierra Leonean judges and lawyers work side by side with international experts, and international judges, prosecutors and investigators are formally part of the process.

## 2. Work to establish the foundations to ensure fairness and due process of law

The Statute for the tribunal includes a number of fair trial principles. Setting these out is an important first step. The tribunal now needs to work to set in place the necessary guarantees for fair trial and due process of law, in accordance with international standards.

First, the Governing Council could declare its commitment to the principles set out in international human rights treaties. The International Covenant on Civil and Political Rights, for instance, sets out the rights of those facing criminal charges, and the United Nations Human Rights Committee as well as other international human rights instruments and bodies have provided guidance on how to protect those rights in practice.

Second, rules of procedure and evidence need to be drafted that will guarantee fair-trial procedures and due process of law. A number of models are available to assist in this process. These include the Rules of Procedure and Evidence of the International Criminal Court, the International Criminal Tribunals for former Yugoslavia and Rwanda, and the Special Court for Sierra Leone. The tribunal will need to address critical issues such as how to provide for effective protection of victims and witnesses who appear before the tribunal, the rights of suspects and accused persons and rules of evidence. The practice of the international criminal tribunals also provides invaluable experience in how these rules are applied.

## 3. Establish processes to ensure impartiality

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The tribunal's success will depend in large measure on its impartiality and credibility as an independent court. The conduct of the proceedings must leave no basis for critics to say that those prosecuting and judging the cases are not independent. It is vital that proceedings are independent of political interference, insulated from both internal and international political pressures.

In order to achieve this, there will be a need to develop detailed rules governing the appointment and removal of judges and their assignment to specific cases. Again, there are useful international standards and experience to draw upon in developing such structures.

We understand the pressures on the Governing Council to move quickly to begin trials for the abuses of the previous regime. Announcing the plan to establish a tribunal has sent a needed signal to help foster confidence that justice will be done.

But justice takes time and is difficult to deliver in a climate of political uncertainty and ongoing security challenges. There will only be one chance to bring Saddam Hussein and the other members of the regime to justice. We believe that while important preparatory steps can and should be taken in the coming months, steps to actually appoint the judges and other senior officials and to begin trials should await the establishment of a sovereign Iraqi authority.

The Lawyers Committee stands ready to support your efforts to achieve justice for the Iraqi people and other victims of the gross violations perpetrated against them.

Sincerely,

A handwritten signature in cursive script that reads 'Mike Posner'.

Michael Posner  
Executive Director  
Lawyers Committee for Human Rights

cc.

Paul Bremer  
Jeremy Greenstock  
Sandra Hodgkinson

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