

**LAW NUMBER ( ) 2005  
THE IRAQI HIGHER CRIMINAL COURT**

**PURSUANT TO THE PROVISIONS OF ARTICLES 30, 33 AND 48 OF THE  
LAW OF ADMINISTRATION FOR THE STATE OF IRAQ FOR THE  
TRANSITIONAL PERIOD**

**WE HAVE DECIDED TO PROMULGATE THE FOLLOWING LAW:**

**SECTION ONE  
The Establishment, Organization and  
Competence of the Court**

**PART ONE  
Establishment**

**Article 1:**

**First:** A specialized court is hereby established and shall be known as The Iraqi Higher Criminal Court (the "Court"). The competencies of the Court and of the bodies complementing its work shall be according to the provisions of this law. The Court shall be fully independent.

**Second:** The Court shall have jurisdiction over any Iraqi national or resident of Iraq accused of one of the crimes listed in Articles 11,12,13 and 14 below, committed since July 17, 1968 and up until and including May 1, 2003, in the territory of the Republic of Iraq or elsewhere. It includes the following crimes:

- A. The crime of genocide;
- B. Crimes against humanity;
- C. War crimes
- D. Violations of certain Iraqi laws listed in Article 14 below.

**Third:** The Court shall have jurisdiction over natural persons.

**Article 2:**

The Court shall have its seat in the city of Baghdad and in such sessions in other provinces of Iraq, following a decision by the Council of Ministers pursuant to a proposal from the President of the Court.

**PART TWO**  
**Organizational Structure of the Court**

**Article 3:**

The court shall consist of:

**First:**

- A. One or more criminal courts.
- B. A Cassation Commission, which shall specialize in reviewing the provisions and decisions issued by criminal and investigative courts.
- C. Investigative judges.

**Second:** Public Prosecution Commission

**Third:** An administration, which shall provide administrative and financial services to the Court and the Public Prosecution.

**PART THREE**  
**Criminal Court and Cassation Commission**

**Article 4:**

**First:** Each Criminal Court shall be composed of five judges. The Judges in each Criminal Court shall elect a president for amongst them to supervise their work.

**Second:**

- A. The Cassation Commission shall be composed of nine judges who shall select its President from amongst them.
- B. The President of the Cassation Commission shall be the Senior President of the court and shall supervise its administrative and financial affairs.

**Third:**

The Council of Ministers may, if deemed necessary, upon the President of the Court's proposal, appoint non-Iraqi judges who have experience in conducting trials of crimes stipulated in this law, and who shall be persons of very high moral standard, uprightness and integrity to work in the Court, in the event that a State is one of the parties in a complaint. Those judges are assigned with the help of the International Community and the United Nations.

**PART FOUR**  
**Selection of Judges, Public Prosecutors and End of Service**

**Article 5:**

**First:** Judges and public prosecutors shall be of high moral character, integrity and uprightness. They shall possess experience in criminal law and shall meet the appointment conditions stipulated in the Judicial Organization Law No.160 of 1979 and the Public Prosecution law No.159 of 1979.

**Second:** The candidates for the positions of judges at the Cassation Commission, the Criminal Court, the investigative judges and public prosecutors shall not have to be active judges and public prosecutors. Retired judges and members of public prosecution may be nominated without compliance to age requirement as well as Iraqi lawyers who possess a high level of competence and experience, of class (C) of the Bar Law, and have served in judicial or legal fields or the law profession for no less than (15) years.

**Third:** The Higher Judicial Council shall nominate all judges and public prosecutors to this Court. The Council of Ministers after approving their nomination, shall issue their appointment order from the Presidency Council and will be classified as class (A) judges, in exception to the provisions of the amended Judicial Organization Law No.160 of 1979 and the Public Prosecution Law No.159 of 1979 as amended, including salaries and rewards which shall be specified by guidelines issued by the Council of Ministers.

**Fourth:** The Council of Ministers shall obtain a decision from the Presidency Council to reassign Judges and Public Prosecutors from this Court to the Higher Judicial Council.

**Fifth:**

- A. The term of service of a judge or a public prosecutor shall end for one of the following reasons:
1. If he is convicted of a felony that is not a political felony nor an accusation fabricated against him by the former Baath regime.
  2. If he presents false or fake information.
  3. If he fails to perform his duties without a legitimate reason.
- B. A committee comprised of five members elected from among the Judges and public prosecutors shall be established in the Court under the supervision of the Cassation Committee of the Court and they shall select a President for a term of one year. This committee shall be called “Judges and Public Prosecutors Affairs Committee”. The Committee shall enjoy the authorities stipulated in Article (58) of the Judicial Organization Law No.160 of 1979. It shall consider disciplinary and employment issues pertaining to the Judges and the members of the public prosecution. Its decisions shall be appealable before the extended commission of the Federal Court of Cassation if it decides to terminate the service of the judge or the member of the public prosecution.

- C. The committee shall submit a recommendation, after the appeal before the extended commission of the Federal Court of Cassation is denied, to the Council of Ministers to obtain an order from the Presidency Council terminating the service of a judge or a public prosecutor, including the chief justice in case the provisions of Article (5) paragraph (A) of this Law are met.
- D. "The appointments of judges, prosecutors, and employees who were hired according to the provisions of the IST statute before this legislation are legally approved from the date of their appointment to the post in accordance with Article 5 paragraph (Third) (A), with due consideration to the provisions of Article 33 of this Statute."
- E. The chief justice shall have the right to refer employees of the court, who are not judges or public prosecutors, to the above-mentioned disciplinary committee, which will be formed in the court in accordance with the state employees disciplinary law.

**Article 6:**

At the end of the Court's work, the judges and the Public Prosecutors shall be reassigned to the Higher Judicial Council to work in the Federal Courts. Those reaching the legal age for retirement shall be retired in accordance with the statutes of the applicable Judicial and Public Prosecution Organization Law.

**PART FIVE  
Presidency of the Court**

**Article 7:**

**First:** The president of the court shall:

- A. Chair the proceedings of the Cassation Commission.
- B. Name the original and alternate judges of the Criminal Court.
- C. Name any of the judges to the Criminal Court in case of absence.
- D. Do the Court's administrative work.
- E. Appoint and end the service of the director of public relations.
- F. Appoint and end the service of the director of the archive and documents.
- G. Name the official spokesman for the Court from among the judges or public prosecutors.
- H. Appoint and end the service of the Court's Administrative Director and its Security Director.

**Second:** The President of the Court shall have the right to appoint non-Iraqi experts to the Criminal Court and the Cassation Commission. The role of the non-Iraqi nationals shall be to provide assistance with respect to international law and the experience of

similar Courts (whether international or otherwise). The secondment of these experts is to be done with help from the International Community, including the United Nations.

**Third**: The non-Iraqi experts referred to in paragraph (Second) of this Article shall also be persons of high moral character, uprightness and integrity. It would be preferable that such non-Iraqi expert should have worked in either a judicial or prosecutorial capacity in his or her respective country or at the International War Crimes Courts.

## **PART SIX**

### **Investigative Judges of the Court**

#### **Article 8:**

**First**: The Court's Investigative Judges shall undertake the investigation of those accused of crimes stipulated in this law.

**Second**: Sufficient number of Investigative Judges shall be appointed.

**Third**: The Investigative Judges shall choose the Chief Investigative Judge and his deputy from amongst them.

**Fourth**: The Chief Investigative Judge shall refer cases to Court investigative judges individually.

**Fifth**: Each of the Investigative Judges' Offices shall be composed of a Judge for investigation and qualified staff as may be required for the work of an investigative judge.

**Sixth**: Each Investigative Judge shall have the right to gather evidence from whatever source he deems appropriate and to question all relevant parties directly.

**Seventh**: Each Investigative Judge shall act independently as a separate entity from the court. He shall not be under nor receive requests or orders from any of the Government Departments, or from any other party.

**Eight**: The decisions of the Investigative Judge can be appealed in cassation before the Cassation Commission within fifteen days after the notification or deemed notification of the decision in accordance with the law.

**Ninth**: The Chief Investigative Judge, after consulting with the President of the Court, have the right to appoint non-Iraqi nationals to assist the Investigative Judges with respect to cases covered by this law, whether international or otherwise. The Chief

Investigative Judge has the right to second these experts with help from the International Community, including the United Nations.

**Tenth:** The non-Iraqi experts **and observers** referred to in paragraph (Ninth) of this Article are required to be persons of high moral character, uprightness and integrity; it would be preferable that such non-Iraqi expert should have worked in either a judicial or prosecutorial capacity in his or her respective country or in the International War Crimes Courts.

## **SECTION TWO** **Other Departments of the Court**

### **PART ONE** **The Public Prosecution Department**

**Article 9:**

**First:** The Public Prosecution Department shall be responsible for the prosecution of persons responsible for crimes within the jurisdiction of the Court.

**Second:** Each public prosecutor shall act with complete independence and is considered as a separate entity from the Court. He shall not be under nor receive instructions from any government department or from any other party.

**Third:** Sufficient number of public prosecutors **shall** be appointed.

**Fourth:** Public prosecutors shall choose a Chief Prosecutor and his Deputy from amongst them.

**Fifth:** Each office of a public prosecutor shall be composed of a prosecutor and such other qualified staff as may be required for the work of a Public Prosecutor.

**Sixth:** The chief prosecutor shall assign individual cases to a prosecutor to investigate and to try in court. This is based on the authority granted to public prosecutors pursuant to the Statue.

**Seventh:** The Chief Public Prosecutor, in consultation with the President of the Court, shall have the right to appoint non-Iraqi nationals to act as experts helping the prosecutors concerning the investigations and prosecution of cases covered by this Statue whether in an international context or otherwise. In appointing such advisors, the Chief Prosecutor shall have the right to request the secondment of these experts with the help of the international community and the United Nations.

**Eighth:** The non-Iraqi advisors, referred to in Paragraph (Seventh) of this Article shall also be persons of high moral character, uprightness and integrity. It would be preferable that such non-Iraqi experts should have worked in a prosecutorial capacity in his or her respective country or in the International War Crimes Courts.

## **PART TWO**

### **The Administration Department**

**Article 10:**

**First:** The Administration Department shall be responsible for the administrative, financial and services' affairs of the Court and the public prosecution department.

**Second:** The Administration Department shall consist of the Director of the Administration department on the condition that he should have a bachelor's degree in law and judicial and administrative experience, and a qualified staff for the department's work.

## **SECTION THREE**

### **PART ONE**

#### **The Crime of Genocide**

**Article 11:**

**First:** For the purposes of this Statute and in accordance with the Convention on the Prevention and Punishment of the Crime of Genocide dated December 9, 1948 as ratified by Iraq on January 20, 1959, "genocide means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or a religious group as such:

- A. Killing members of the group.
- B. Causing serious bodily or mental harm to members of the group.
- C. Deliberately inflicting on the group living conditions calculated to bring about its physical destruction in whole or in part.
- D. Imposing measures intended to prevent births within the group.
- E. Forcibly transferring children of the group to another group.

**Second:** The following acts shall be punishable

- A. Genocide.

- B. Conspiracy to commit genocide.
- C. Direct and public incitement to commit genocide.
- D. Attempt to commit genocide.
- E. Complicity in genocide.

## **PART TWO**

### **Crimes Against Humanity**

#### **Article 12.**

**First:** For the purposes of this Statute, “crimes against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- A. Willful Murder;
- B. Extermination;
- C. Enslavement;
- D. Deportation or forcible transfer of population;
- E. Imprisonment or other severe deprivation of physical liberty in violation of fundamental norms of international law;
- F. Torture;
- G. Rape, sexual slavery, forced prostitution, forced pregnancy, or any other form of sexual violence of comparable gravity;
- H. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- I. Forced disappearance of persons; and
- J. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

**Second:** For the purposes of paragraph First of this Article, the below listed terms shall mean the stated definitions:

- A. "Attack directed against any civilian population" means a course of conduct involving the multiple commissions of acts referred to in the above paragraph “First” against any civilian population, pursuant to or in furtherance of a state or organizational policy to commit such attack;
- B. "Extermination" includes the intentional infliction of conditions of life, such as the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- C. "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

- D. "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- E. "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions;
- F. "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity; and
- G. "Forced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, the State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

### **PART THREE** **War Crimes**

#### **Article 13.**

For the purposes of this Statute, "war crimes" means:

**First:** Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- A. Willful killing;
- B. Torture or inhuman treatment, including biological experiments;
- C. Willfully causing great suffering, or serious injury to body or health;
- D. Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly;
- E. Compelling a prisoner of war or other protected person to serve in the forces of a hostile power;
- F. Willfully denying the right of a fair trial to a prisoner of war or other protected person;
- G. Unlawful confinement;
- H. Unlawful deportation or transfer; and
- I. Taking of hostages.

**Second:** Other serious violations of the laws and customs applicable in international armed conflicts, within the established framework of international law, namely, any of the following acts:

- A. Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- B. Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
- C. Intentionally directing attacks against personnel, installations, material, units or vehicles used in a peacekeeping missions in accordance with the Charter of the United Nations or in a humanitarian assistance missions, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflicts;
- D. Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects which would be clearly excessive in relation to the concrete and direct overall military advantages anticipated;
- E. Intentionally launching an attack in the knowledge that such attack will cause widespread, long-term and severe damage to the natural environment, which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
- F. Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
- G. Killing or wounding a combatant who, having laid down his arms or having no longer means of defense, has surrendered at discretion;
- H. Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
- I. The transfer, directly or indirectly, by the Government of Iraq or any of its instrumentalities (including as an illustration any of the disbanded Arab Socialist Ba'ath Party), of parts of its own civilian population into any territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- J. Intentionally directing attacks against buildings that are dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- K. Subjecting persons of another nation to physical mutilation or to medical or scientific experiments of any kind that are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- L. Killing or wounding treacherously individuals belonging to the hostile nation or army;
- M. Declaring that no person shall be kept alive;
- N. Destroying or seizing the property of an adverse party unless such destruction or seizure be imperatively demanded by the necessities of war;
- O. Declaring abolished, suspended or inadmissible in a court of law, or otherwise depriving, the rights and actions of the nationals of the adverse party;

- P. Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- Q. Pillaging a town or place, even when taken by assault;
- R. Employing poison or poisoned weapons;
- S. Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- T. Employing bullets, which expand or flatten easily in the human body, such as bullets with a hard envelope, which does not entirely cover the core or is pierced with incisions;
- U. Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- V. Committing rape, sexual slavery, forced prostitution, forced pregnancy, or any other form of sexual violence of comparable gravity;
- W. Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- X. Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- Y. Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under international law; and
- Z. Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

**Third:** In the case of an armed conflict, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:

- A. Use of violence against life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- B. Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- C. Taking of hostages;
- D. The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

**Fourth:** Serious violations of the laws and customs of war applicable in armed conflict not of an international character, within the established framework of international law, namely, any of the following acts:

- A. Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- B. Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

- C. Intentionally directing attacks against personnel, installations, material, units, or vehicles involved in a peacekeeping mission in accordance with the Charter of the United Nations or in a humanitarian assistance mission, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- D. Intentionally directing attacks against buildings that are dedicated to religion, education, art, science, or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- E. Pillaging a town or place, even when taken by assault;
- F. Committing rape, sexual slavery, enforced prostitution, forced pregnancy, or any other form of sexual violence of comparable gravity;
- G. Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
- H. Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
- I. Killing or wounding treacherously a combatant adversary;
- J. Declaring that no person will be kept alive;
- K. Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind that are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons; and
- L. Destroying or seizing the property of an adversary, unless such destruction or seizure is imperatively demanded by the necessities of the conflict.

#### **PART FOUR**

#### **Violations of Iraqi Laws**

**Article 14.**

The Court shall have the power to prosecute persons who have committed the following crimes:

**First:** The attempt to manipulate the judiciary or to influence the functions of the judiciary.

**Second:** The wastage and squander of national resources, pursuant to, *inter alia*, Article 2(g) of the Law punishing those who conspire against the security of the homeland and saboteurs of the regime No. 7 of 1958; and

**Third:** The abuse of position and the pursuit of policies that may lead to the threat of war or the use of the armed forces of Iraq against an Arab country, in accordance with Article 1 of Law Number 7 of 1958.

**Fourth:** If the court finds a default in the elements of any crime of the crimes stipulated in Articles 11, 12, 13 of the Court's law and it is proved to the Court that the act represents a crime punishable by the penal law or any other criminal law at the time of its commitment, then the court shall have jurisdiction to adjudicate this case.

## **SECTION FOUR**

### **Individual Criminal Responsibility**

#### **Article 15.**

**First:** A person who commits a crime within the jurisdiction of this Court shall be individually responsible and liable for punishment in accordance with this Statute.

**Second:** In accordance with this Statute, and the provisions of Iraqi criminal law, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

- A. Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether this person is criminally responsible **or not**;
- B. Orders, solicits or induces the commission of such a crime, which in fact occurs or is attempted;
- C. For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
- D. In any other way that contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution must be intentional and must either:
  1. Be made with the aim of furthering the criminal activity or criminal purpose of the group, and where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
  2. Have knowledge of the intention of the group to commit the crime;
- E. In respect to the crime of genocide, directly and publicly incites others to commit genocide;
- F. Attempts to commit such a crime **by commencing to execute an action with the intent to commit such crime**, but the crime did not occur because of circumstances independent of the person's intentions. **However, it is considered a pardonable excuse if a person exerts effort that otherwise prevents the execution or completion of the crime.** He shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

**Third:** The official position of any accused person, whether as president, prime minister, member of the cabinet, chairman or a member of the Revolutionary Command Council, a member of the dissolved Ba'ath Party Command or Government shall not relieve such

person of criminal responsibility nor mitigate punishment. No person is entitled to any immunity **to avert responsibility** for the crimes stipulated in Articles 11, 12, 13, and 14 of this statute.

**Fourth:** **A superior is relieved of criminal responsibility for the crimes committed by his subordinate if the superior** knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to submit the matter to the competent authorities for investigation and prosecution.

**Fifth:** The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the Court determines that justice so requires.

**Sixth:** Pardons issued prior to this Statute coming into force does not apply to the accused in any of the crimes stipulated in it.

## **SECTION FIVE**

### **Rules of Procedure and Evidence**

#### **Article 16.**

The Court shall apply the Rules of Procedure stipulated in the Iraqi Criminal Procedure Law No. 23 for the year 1971, as amended, and the Rules of Procedure and Evidence appended to this Statute, which is an indivisible and integral part of the Statute.

## **SECTION SIX**

### **General Principles of Criminal Law**

#### **Article 17.**

**First:** In case a stipulation is not found in this Statute and the rules made thereunder, the general principles of criminal law applicable in connection with the prosecution and trial of any accused person shall be those stipulated in the following laws:

- A. For the period between July 17, 1968 and December 14, 1969, the Baghdadi Criminal Code of 1919.
- B. For the period between December 15, 1969 and May 1, 2003, the Criminal Code No. 111 of 1969, without regard to any amendments made thereafter.
- C. The Military Criminal Code No. 13 for the year 1940, as amended and the Military Criminal Procedure Code No. 44 for the year 1941, as amended.

**Second:** In interpreting Articles 11, 12, 13 of this Statue, the Cassation Court and Committee may resort to the relevant decisions of International **Criminal** Courts.

**Third:** **When implementing the provisions relating to exclusion of criminal responsibility, the Iraqi Criminal Code shall be applied** in a manner consistent with this Statue and with international legal obligations relating to the crimes within the jurisdiction of the Court.

**Fourth:** The crimes stipulated in Articles 11, 12, 13, and 14 shall not be subject to any Statue of limitations of a criminal case or punishment.

## **SECTION SEVEN**

### **Investigations and Indictment**

#### **Article 18.**

**First:** The Investigative Judge shall initiate investigations on the basis of information obtained from any source, particularly from the police, and **any** governmental and nongovernmental organizations. The Investigative Judge shall assess the information received to decide whether there is sufficient basis to **commence the investigation**.

**Second:** The Investigative Judge shall have the power to question suspects, victims and witnesses in order to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Investigative Judge may, as appropriate, request the assistance of the concerned government authorities, which must fully cooperate and satisfy the request.

**Third:** If questioned by an Investigative Judge, the suspect shall be entitled to be assisted by counsel of his or her own choice, **including the right to ask for legal assistance to pay the fees for counsel** in any such case if he or she does not have sufficient means to pay. The suspect is entitled to have non-Iraqi legal representation, so long the principal lawyer is Iraqi.

**Fourth:** Upon a determination that a *prima facie* case exists, the Court Investigative Judge shall prepare an indictment containing a concise statement of the facts of the crime with which the accused is charged and **the legal article in accordance with** the Statute and shall refer the case to the court.

**PART ONE**  
**Rights of the Accused**

**Article 19.**

**First:** All persons shall be equal before the Court.

**Second:** **The accused is** presumed innocent until proven guilty before the Court in accordance with this Statute.

**Third:** Every accused shall be entitled to a public hearing pursuant to the provisions of this Statute and the Rules made hereunder.

**Fourth:** In the determination of any charge against the accused pursuant to this Statute, the accused shall be entitled to a fair hearing conducted impartially and to the following minimum guarantees:

- A. To be informed promptly of the detail, nature, cause and content of the charge against him;
- B. To have adequate time and facilities to prepare his defense and to communicate freely with counsel of his own choosing in confidence. The accused is entitled to have non-Iraqi legal representation, so long the principal lawyer is Iraqi;
- C. To be tried without undue delay;
- D. To be tried in his presence, and procure legal counsel of his choosing; to be informed of his right to ask for legal assistance in case he does not have sufficient means to pay for it; and of his right to receive assistance that allows him to procure legal counsel without financial burden.**
- E. To call defense witnesses and the right to examine said witnesses and prosecution witnesses and to present evidence that enforces his defense pursuant to this Statute and Iraqi law; and
- F. Not to be compelled to testify against himself or to confess guilt, and to remain silent, without such silence being a consideration in the determination of guilt or innocence.

**SECTION EIGHT**  
**Trial Proceedings**

**Article 20.**

**First:** A person against whom an indictment has been issued shall, pursuant to an order or an arrest warrant of the Tribunal Investigative Judge, be taken into custody, immediately informed of the charges against him and transferred to the Tribunal.

**Second:** The Criminal Court shall ensure that a proceedings of the trial are conducted in fair and expeditious manner in accordance with this Statute and the Rules of Procedure

and Evidence stipulated in Article 16 of this Statute, and **guarantee** the rights of the accused and due regard for the protection of victims and witnesses.

**Third**: The Criminal Court shall read the indictment, satisfy itself that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea.

**Fourth**: The hearings shall be public unless the Criminal Court decides to close the proceedings in accordance with the Rules of Procedure and Evidence stipulated in Article 16 of this Statute. The decision to close the proceedings shall be exercised on a very limited basis.

#### **Article 21.**

The Criminal Court shall, in its Rules of Procedure and Evidence stipulated in Article 16 of this Statute, provide for the protection of victims and witnesses, including also the secrecy of their identity.

#### **Article 22.**

Families of victims and Iraqi persons harmed may file a civil suit before this Court against the accused for the harm they suffered from the actions that constitute crimes according to the provisions of this statute. The Court shall have the power to adjudicate these claims in accordance with the Iraqi Criminal Code No. 23 for the year 1971, as amended, and other relevant laws.

#### **Article 23.**

**First**: The Criminal Court shall pronounce judgments and impose sentences and penalties on persons convicted of crimes within the jurisdiction of the Court.

**Second**: The judgment shall be rendered by a majority vote of the judges of the Criminal Court, and shall be delivered by the Criminal Court in public. It shall be accompanied by a reasoned opinion in writing, to which a **judge's** dissenting opinion may be appended.

#### **Article 24.**

**First**: The penalties that are imposed by the Court shall be those prescribed by Iraqi law (especially Law Number 111 of 1969 of the Iraqi Criminal Code), except for life sentences that mean the remaining natural life of the **convicted**.

**Second**: **The penalties for crimes under Article 14 of this Statute shall be the same penalties prescribed under the Iraqi law.**

**Third:** The penalties for crimes under Articles 11, 12, 13 shall be determined by the Criminal Court, taking into account the provisions of paragraph fourth and fifth of this Article.

**Fourth:** A person convicted of crimes stipulated in the Criminal Law shall be punished if:

- A. He committed an offence involving murder or rape as defined under Iraqi law; or
- B. He committed an offence ancillary to such offence of murder or rape.

**Fifth:** **When the Court decides the penalty** for any crime under Articles 11, 12, 13 of this Statue that does not have a counterpart under Iraqi law, the Court must take into account such factors as the gravity of the crime, the individual circumstances of the convicted person and relevant international precedents.

**Sixth:** The Criminal Court may order the forfeiture of proceeds, property or assets derived directly or indirectly from that crime, without prejudice to the rights of the *bona fide* third parties.

**Seventh:** In accordance with Article 307 of the Iraqi Criminal Procedure Code, the Criminal Court has authority to confiscate any goods prohibited by law regardless of whether the case has been discharged for any lawful reason.

## **SECTION NINE Review and Appeals Proceedings**

### **PART ONE Cassation Proceedings**

#### **Article 25.**

**First:** The contest shall be done by way of bringing appeal for cassation against the decisions and rulings with the Cassation Committee by convicted persons or by the Public Prosecution on the following grounds:

1. An error on a question of law invalidating any decision;
2. An error of procedure; or
3. An error of material fact, which has occasioned a miscarriage of justice.

**Second:** The Cassation Committee may affirm, reverse or revise the decisions taken by the Criminal Court or the decisions of the Investigative Judge.

**Third:** When the Cassation Committee reverses a verdict of acquittal or release issued by the Criminal Court or the Investigative Judge, the case shall be referred back to the Court for retrial or **append the Investigative Judge to its decision.**

**Fourth:** The period of appeal shall be in accordance with the provisions of the Iraqi Criminal Code No. 23 for the year 1971 that is in effect, in case there is no specific provision in that regard

## **PART TWO**

### **Retrial**

**Article 26.**

**First:** Where new facts are discovered which were not known at the time of the proceedings before the Criminal Court or the Cassation Committee and which could have been a decisive factor in reaching the decision, the convicted person or the Public Prosecution may submit to the Court an application for a retrial.

**Second:** The Court shall reject the application if it considers it to be unfounded. If it determines that the application has merit, it may, as appropriate:

1. Send case back to the original Criminal Court that issued the ruling; or
2. Send case back to another Criminal Court; or
3. The Cassation Committee takes jurisdiction over the matter.

## **SECTION TEN**

### **Enforcement of Sentences**

**Article 27.**

- A. Sentences shall be carried out in accordance with the Iraqi legal system and its laws.
- B. No authority, including the President of the Republic, may grant a pardon or mitigate the punishment issued by the Court. The punishment must be executed within 30 days of the date when the judgment becomes final and non-appealable.

## SECTION ELEVEN General and Final Provisions

### **Article 28.**

The judges, investigative judges, members of the prosecution committee, the director of administrative department and the court's staff must be Iraqi nationals, taking into account the provisions of Article 4 (Third) of this statute.

### **Article 29.**

**First:** The Court and the national courts shall have concurrent jurisdiction to prosecute persons for those offences stipulated in Article 14 of this statute.

**Second:** The Court shall have primacy over all other Iraqi courts with respect to the crimes stipulated in Articles 11, 12, and 13 of this statute.

**Third:** At any stage of the proceedings, the Court may demand of any other Iraqi court to transfer any case being tried by it involving any crimes stipulated in Articles 11, 12, 13, and 14 of this statute, and such court shall be required to transfer such case upon demand.

### **Article 30.**

**First:** No person shall be tried before any other Iraqi court for acts for which the Court, in accordance with Articles 300 and 301 of the Iraqi Criminal Procedure Code, has already tried him or her.

**Second:** A person, who has been tried by any Iraqi court for acts constituting crimes within the jurisdiction of the Court, may **not** be subsequently tried by the Court **except** if the Court determines that the previous court proceedings were not impartial or independent, or were designed to shield the accused from criminal responsibility. When decisions are made for a retrial, one of the conditions contained in Article 196 of the Iraqi Civil Procedure Code and Article (303) of the Iraqi Criminal Procedure Code must be met.

**Third:** In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the Court shall take into account the time served of any penalty imposed by an Iraqi court on the same person for the same crime.

### **Article 31.**

**First:** **The President of the Court**, the Judges, the Court's Investigative Judges, the Public Prosecutors, the Director of the Administration Department and their staffs shall have immunity from civil suits in respect to their official functions.

**Second:** Other persons, including the accused, required at the seat of the Court shall be accorded such treatment as is necessary for the proper functioning of the Court.

**Article 32.**

Arabic shall be the official language of the Court.

**Article 33.**

No person who was previously a member of the disbanded Ba'ath Party shall be appointed as a judge, investigative judge, public prosecutor, an employee or **any of the personnel** of the Court.

**Article 34.**

The expenses of the Court shall be borne by the State's general budget.

**Article 35.**

The President of the Court shall prepare and submit an annual report on the Court activities to the Council of Ministers.

**Article 36.**

The Council of Ministers must issue the necessary instructions for the execution of the provisions of this statute.

**Article 37.**

Law No. 1 for the year 2003 the Iraqi Special Tribunal and the Rules of Procedure and Evidence issued in accordance with the provisions of Article (16) thereof are revoked from the date this statute comes into force.

**Article 38.**

All decisions and Orders of Procedure issued under law No. 1 for the year 2003 are correct and conform to the law.

**Article 39.**

All Ministers must implement and enforce this statute from the date of its publication in the Official Gazette.

**Article 40.**

This law shall be published in the Official Gazette.