

Justice is the Foundation of Governance

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Resolution No. (10)

**In the Name of the people
The presidency Council**

Pursuant to what has been approved by the National Assembly and in accordance with Article No. (33) Paragraphs A and B and Article No. (30) of the Law of Administration for the State of Iraq for the Transitional Period.

The presidency Council decided in the session of October 9, 2005 to promulgate the following resolution:

**Law No. (10) 2005
Law of
The Iraqi Higher Criminal Court**

**SECTION ONE
The Establishment and Organization
Of the Court**

**PART ONE
Establishment**

Article 1:

First: A court is hereby established and shall be known as The Iraqi Higher Criminal Court (the “Court”). The Court shall be fully independent.

Second: The Court shall have jurisdiction over every natural person whether Iraqi or non-Iraqi resident of Iraq and accused of one of the crimes listed in Articles 11 to 14 below, committed during the period from July 17, 1968 and until May 1, 2003, in the Republic of Iraq or elsewhere, including 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.

Article 2:

The Court shall have its **main office** in the city of Baghdad and may hold its sessions in any governorate, on the basis of a proposal 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. A Cassation Panel, which shall specialize in reviewing the provisions and decisions issued by **one of the criminal or** investigative courts.
- B. One or more criminal courts.
- C. Investigative judges.

Second: Public Prosecution.

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

Fourth:

- A. The Cassation Panel shall be composed of nine judges who shall elect a president for amongst them. The president of the Cassation Panel shall be the senior president of the court and shall supervise its administrative and financial affairs.**
- B. The felony court shall be composed of five judges who shall elect a president from amongst them to supervise their work.**

Fifth:

The Council of Ministers may, if deemed necessary, based upon a proposal by a President of the Court, appoint non-Iraqi judges who have experience in conducting criminal trials stipulated in this law, and who are of very high moral character, honest and virtuous to work in the Court, in the event that a State is one of the parties in a complaint, and the judges shall be commissioned with the help of the International Community and the United Nations.

PART THREE

Selection of Judges, Public Prosecutors and their retirement

Article 4:

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

Second: As an exception to the provisions of paragraph (First) of this Article the candidates for the positions of judges at the Cassation Panel, the Criminal Court, the investigative judges and public prosecutors do not have to be active judges and public prosecutors. Retired judges and members of public prosecution may be nominated, without restrictions age requirement and Iraqi lawyers who possess a high level of experience, competence and efficiency and of absolute competence, in accordance with the Legal Profession Code No. 173 of 1965 and have served in judicial, legal and the legal profession fields for no less than (15) years.

Third:

- A. The Supreme Juridical 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 an exception to the provisions of the Judicial Organization Law and the Public Prosecution Law. Their salaries and rewards shall be specified by guidelines issued by the Council of Ministers.
- B. The judges, public prosecutors and the employees appointed in accordance with the provisions of law before this legislation shall be deemed legally approved starting from the date of their appointment according to the provisions of paragraph (Third/A) of Article (4) taking into account the provisions of Article (33) of this law.

Fourth: The Presidency Council in accordance with a proposal from the Council of Ministers shall have the right to transfer Judges and Public Prosecutors from the Court to the Higher Judicial Council for any reason.

Fifth:

The term of service of a judge or a public prosecutor covered by the provisions of this law shall end for one of the following reasons:

1. If he is convicted of a non-political felony.
2. If he presents false information.
3. If he fails to perform his duties without a legitimate reason.

Article 6:

First: 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 panel 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 the Judicial Organization Law and Public Prosecution Law. It shall consider disciplinary matters and the service of Judges and the members of the public prosecution. Its decisions shall be appealable before the extended panel of the Federal Court of Cassation if it decides to terminate the service of the judge or a member of the public prosecution.

Second: The committee shall submit a recommendations, after the appeal before the extended panel of the Federal Court of Cassation is denied, to the Council of Ministers to pass a resolution from the Presidency Council terminating the service of a judge or a public prosecutor, including the chief justice in case the provisions of Article (6) of this Law are met.

Third: 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 Law.

PART FOUR

Presidency of the Court

Article 7:

First: The president of the court shall:

- A. Chair the proceedings of the Cassation Panel.
- B. Name the original and alternate judges of the Criminal Courts.
- C. Name any of the judges to the Criminal Court in case of absence.
- D. Accomplish the Court's administrative work.
- E. Appoint and end the service of the Administrative Director, security director, public relations director and archive and documents keeping director in the court.
- F. Name the official spokesman for the Court from among the judges or public prosecutors.

Second: The President of the Court shall have the right to appoint non-Iraqi experts to act in an advisory capacity for the Criminal Court and the Cassation Panel. 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 paneling of these experts is to be done with the 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 Court.

PART FIVE

Investigative Judges

Article 8:

First: Sufficient number of Investigative Judges shall be appointed.

Second: The Court's Investigative Judges shall undertake the investigation with those accused of crimes stipulated in paragraph (Second) Article (1) of this law.

Third: The Investigative Judges shall elect a Chief and his deputy from amongst them.

Fourth: The Chief shall refer cases under investigation to investigative judges individually.

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

Sixth: An Investigative Judge shall collect evidence from any source he deems appropriate and question all relevant parties directly.

Seventh: An Investigative Judge shall act independently in the court since he is considered as a separate entity from the court. He shall not fall under nor receive requests or orders from any Government Department, or any other party.

Eight: The decisions of the Investigative Judge can be appealed in cassation before the Cassation Panel within fifteen days from the date of receipt of notification or from the date notification is considered received pursuant to law.

Ninth: The Chief Investigative Judge, after consulting with the President of the Court, have the right to appoint non-Iraqi nationals experts to assist the Investigative Judges in the investigation of cases covered by this law, whether international or otherwise. The Chief Investigative Judge can commission 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, honest and virtuous; it is preferred that the non-Iraqi expert and observer had worked in either a judicial or prosecutorial capacity in his or her respective country or in the International War Crimes Court.

PART SIX

The Public Prosecution

Article 9:

First: Sufficient number of prosecutors shall be appointed.

Second: The Public Prosecution shall be **composed of a number of public prosecutors who** shall be responsible for the prosecution of persons accused of crimes that fall within the jurisdiction of the Court.

Third: Public prosecutors shall elect a Chief and his Deputy from amongst them.

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

Fifth: Each prosecutor shall act with complete independence since he is considered as a separate entity from the Court. He shall not fall under, nor receive instructions from, any government department or from any other party.

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

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 public prosecutors in the investigation and prosecution of cases covered by this law whether in an international context or otherwise. The Chief Prosecutor can commission these experts with the help of the international community, including the United Nations.

Eighth: The non-Iraqi experts, referred to in Paragraph (Seventh) of this Article are required to be persons of high moral character, honest and virtuous. It is preferred that such non-Iraqi experts had worked in a prosecutorial capacity in his respective country or in the International War Crimes Court.

PART SEVEN

The Administration Department

Article 10:

First: The Administration Department shall be managed by an officer with the title of Department Director who holds a bachelor degree in law and have judicial and

administrative experience. He shall be assisted by a number of employees in managing the affairs of the department.

Second: The Administration Department is responsible for the administrative, financial and service affairs of the court and the Public Prosecution.

SECTION TWO **The Court Jurisdictions**

PART ONE **The Crime of Genocide**

Article 11:

First: For the purposes of this law and in accordance with the **International** 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 abolish, in whole or in part, a national, ethnic, racial or 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 Law, “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, forcible prostitution, forced pregnancy, or any other form of sexual violence of comparable gravity;
- H. Persecution against any specific party or group of the population on political, racial, national, ethnic, cultural, religious, gender or other grounds that are impermissible under international law, in connection with any act referred to as a **form of sexual violence of comparable gravity**.
- I. Enforced disappearance of persons.
- J. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to the mental or physical health.

Second: For the purposes of implementing the provisions 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 panel 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" means the intentional infliction of living conditions, such as the deprivation of access to food and medicine, with the intent to bring about the destruction of part of the population;
- C. "Enslavement" means the exercise of any or all of the powers attached to the right of ownership over a person and includes the exercise of such power in the course of human trafficking, in particular women and children;
- D. "Deportation or forcible transfer of population" means forced displacement of the concerned persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- E. "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
- F. "Enforced 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 Law, “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 (which includes for clarification any of the instruments of the Arab Ba'ath Socialist 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 one remained 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 hostile 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 it is taken by force;
- R. Using poison or poisoned weapons;
- S. Using asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- T. Using 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, enforced 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 and medical units, 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 persons, 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: **Other** 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 civilian individuals not taking direct part in hostilities;
- B. Intentionally directing attacks against buildings, materials, medical transportation units and **means**, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- C. Intentionally directing attacks against personnel, installations, materials, units, or vehicles **used** in **humanitarian assistance** or peacekeeping missions in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian **targets** under the international law of armed conflict;
- D. Intentionally directing attacks against buildings that are dedicated to religious, educational, artistic, scientific or charitable purposes, and historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- E. Pillaging any town or place, even when taken **over** by assault;
- F. Committing rape, sexual slavery, forced prostitution, forced pregnancy, or any other form of sexual violence of comparable gravity;

- G. Conscripting or listing 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 **is still** alive;
- K. Subjugation persons who are **under** the power of another party of 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, **causing death to such person or persons, or seriously endangering their health; 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: **Intervention in** the judiciary or the attempt to influence the functions of the judiciary.

Second: The wastage and squander of national resources, pursuant to, **item G** of Article 2 of the Law punishing those who conspire against the security of the homeland and **corrupt the regime** No. 7 of 1958.

Third: The abuse of position and the pursuit of policies that were about to 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 of the crimes stipulated in Articles 11, 12, 13 of this law, and it is proved to the Court that the act **constitutes** 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 THREE Individual Criminal Responsibility

Article 15

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

Second: In accordance with this Law, and the provisions of Iraqi criminal law, a person shall be criminally responsible if that person:

- A. Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that 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 **by any other means** assists in its commission or its attempted commission, including providing the means for its commission;
- D. **Participating** by any other way with a group of persons, with a common criminal intention to commit or attempt to commit such a crime, such **participation** shall be intentional and shall either:
 1. Be made **for** the aim of **consolidating** the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
 2. Be made **with** the knowledge of the intention of the group to commit the crime;
- E. In respect of the crime of genocide, directly and publicly incites others to commit genocide;
- F. Attempts to commit such a crime by taking action that commences its execution, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Law 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, chairman or a member of the Revolution Command Council, prime minister, member of the **counsel of ministers**, a member of the Ba'ath Party Command, shall not relieve such person of criminal penal, nor mitigate punishment. No person is entitled to any immunity with respect to any of the crimes stipulated in Articles 11, 12, 13, and 14 of this law.

Fourth: The **crimes that were** committed by a subordinate do not relieve his superior of criminal responsibility if he 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 **appropriate** 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 **the** Government or of **his** 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 law coming into force, do not apply to the accused in any of the crimes stipulated in it.

SECTION FOUR

Rules of Procedure and Evidence

Article 16

The Court shall apply the Criminal Procedure Law No. 23 of 1971, and the Rules of Procedure and Evidence appended to this law, which is an indivisible and integral part of the law.

SECTION FIVE

General Principles of Criminal Law

Article 17

First: In case a stipulation is not found in this Law and the rules made there under, the general provisions of criminal law shall be applied in connection with the **accusation** and prosecution of any accused person shall be those contained in:

A-The Baghdadi Penal Law of 1919, for the period starting from July 17, 1968, till Dec. 14, 1969.

B-The Penal law no.111 of 1969, which was in force in 1985 (third version), for the period starting from Dec.15, 1969, till May, 1, 2003.

C-The Military Penal Law no.13 of 1940, and the military procedure law no.44 of 1941.

Second: To interpret Articles 11, 12, 13 of this law, the Cassation Court and Panel may resort to the relevant decisions of the international criminal courts.

Third: Grounds for exclusion of criminal responsibility under the Panel Law shall be interpreted in a manner consistent with this Law and with international legal obligations concerning the crimes within the jurisdiction of the Court.

Fourth: The crimes stipulated in Articles 11, 12, 13, and 14 shall not be subject to limitations that terminate the criminal case or punishment.

SECTION SIX Investigations and Indictment

Article 18

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

Second: The Court-Investigative Judge shall have the power to question suspects, victims and witnesses, **or their relatives** to collect evidence and to conduct on-site investigations. In carrying out **his task** the Court Investigative Judge may, as appropriate, request the assistance of the relevant governmental authorities concerned, who shall be required to provide full co-operation with the request.

Third: Upon a determination that a *prima facie* case exists, the Investigative Judge shall prepare an indictment containing a concise statement of the facts of the crime with which the accused is charged under the Statute and shall refer the case to the criminal court.

PART ONE **Guarantees of the Accused**

Article 19

First: All persons shall be equal before the Court.

Second: The accused shall be presumed innocent until proven guilty before the Court in accordance with **this** law.

Third **Every** accused shall be entitled to a public hearing, **in pursuance with the provisions of this law and the Rules issued according to it.**

Fourth: In **directing any** charge against the accused pursuant to the present **Law**, the accused shall be entitled to a **just fair trial in accordance with** the following minimum guarantees:

- A. To be informed promptly and in detail of the content nature and cause and of the charge against him;
- B. To have adequate time and facilities for the preparation of his defense and to communicate freely with counsel of his own choosing **and to meet with him privately**. The accused is entitled to have non-Iraqi legal representation, so long as the principal lawyer of such accused is Iraqi;
- C. To be tried without undue delay;
- D. To be tried in his presence, **and to use a lawyer of his own choosing, and to be informed of his right assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance and to have the**

- right to request such aid to appoint a lawyer without paying the fees, case if he does not have sufficient means to pay for it; if he does not have the financial ability to do so.
- E. The accused shall have the right to request the defense witnesses, the witnesses for the prosecution, and to discuss with them any evidence that support his defense in accordance with the law.
 - F. The defendant shall not be forced to confess and shall have the right to remain silent and not provide any testimony and that silent shall not be interpreted as evidence of conviction or innocence.

SECTION SEVENTH

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 Investigative Judge, be taken into custody, immediately informed of the charges against him and transferred to the Court.

Second: The Criminal Court shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with this Statute and the Rules of Procedure and Evidence **annexed to this Law**, with full respect for the rights of the accused and due regard for the protection of the victims, their relatives and the witnesses.

Third: The Criminal Court shall read the indictment, satisfy itself that the rights of the accused are respected **and guaranteed**, insure that the accused understands the indictment, with charges directed against him 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 **annexed to this Statute, and no decision shall be adopted under the session secrecy unless for extreme limited reasons.**

Article 21

The Criminal Court shall, in its Rules of Procedure and Evidence **annexed to this Statute**, provide the protection for victims or their relatives and witnesses and also for 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 through their actions constituting crimes according to the provisions of this Statute. The court shall have the power to adjudicate these claims

in accordance with the Iraqi Criminal procedure Code No. 23 for the year 1971, 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 issued by a majority of the judges of the Criminal Court, and shall announce it in public. The judgment shall not be issued except pursuant to the indictment decision. The opinion of the dissenting Judges can be appended.

Article 24

First: The penalties that shall be imposed by the Court shall be those prescribed by the Iraqi Penal Code No (111) of 1969, except for sentences of life imprisonment that means the remaining natural life of the person. With considering the provisions of Article (17) of this Statute.

Second: It shall be applied against the crimes stipulated in article (14) of this Statute the sentences provided under the Iraqi Penal Code and other punishable laws

Third: The penalty for crimes under Articles 11, 12, 13 shall be determined by the Criminal Court, taking into account the provisions contained in paragraphs fourth and fifth.

Fourth: A person convicted of sentences stipulated under Iraqi Penal Code shall be punished if:

- A. He committed an offence of murder or rape as defined under Iraqi Penal Code.
- B. He participated in committing an offence of murder or rape.

Fifth: The penalty for any crimes under Articles 11, 12, 13 which do not have a counterpart under Iraqi law shall be determined by the Court taking into account such factors like the gravity of the crime, the individual circumstances of the convicted person, guided by judicial precedents and relevant sentences issued by the international criminal courts.

Sixth: The Criminal Court may order the forfeiture of proceeds, property or assets derived directly or indirectly from a 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 shall have the right to confiscate any material or goods prohibited by law regardless of whether the case has been discharged for any lawful reason.

SECTION EIGHT **Appeals Proceedings**

PART ONE **Cassation**

Article 25

First: The convicted or the public prosecutor has the right to contest the judgments and decisions before the Cassation Panel for any of the following reasons:

1. If a judgment issued is in contradiction with the law or there is an error in interrupting it.
2. An error in procedures.
3. Material error in the facts which has led to violation of justice.

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

Third: When the Cassation Panel issues its verdict to revoke the judgment of acquittal or release issued by the Criminal Court or the Investigative Judge, the case shall be referred back to the Court for retrial of the accused or for the Investigative Judge to implement the decision.

Fourth: The period of appeal shall be in accordance with the provisions of the Iraqi Criminal procedure 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 a new findings or facts have been discovered which were not known at the time of the proceedings before the Criminal Court or the Cassation Panel and which could have been a decisive factor in reaching the decision, the convicted person or the 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, **and for the purpose of reaching a modification of the court decision after hearing the parties in the case, may:**

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 Panel takes jurisdiction over the matter.

SECTION NINE

Enforcement of Sentences

Article 27

First: Sentences shall be carried out in accordance with the Iraqi legal system and its laws.

Second: 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 TEN

General and Final Provisions

Article 28

Investigative judges, Judge of the criminal courts, members of the public prosecution committee, the director of the administrative department and the court's staff must be Iraqi nationals with due considerations given to 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.

Fourth: 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 13, 14, 15, 16 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 **determining** 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 provisions of the civil service law No. (24) of 1960, Personnel law No. (25) of 1960, government and socialist sector employees disciplinary law No (14) of 1991 and civil pension law No.(33) of 1966 shall apply to the court's employees other than the judges and members of public prosecution.

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

The Council of Ministers in coordination with the President of the Court shall issue instructions to facilitate the implementation of this statute.

Article 40

This law shall come into force on the date of its publication in the Official Gazette.

Jalal Talabani
President of the Republic

Adil Abdul-Mahdi
Vice- President

Ghazi Ajil Al-Yawir
Vice-President

Justifying Reasons

In order to expose the crimes committed in Iraq from July 17, 1968 until May 1, 2005 against the Iraqi people and the peoples of the region and the subsequent savage massacres, and for laying down the rules and punishments to condemn after a fair trial the perpetrators of such crimes for waging wars, mass extermination and crimes against humanity, and for the purpose of forming an Iraqi national high criminal court from among Iraqi judges with high experience, competence and integrity to specialize in trying these criminals.

And in order to reveal the truth and the agonies and injustice caused by the perpetrators of such crimes, and for protecting the rights of many Iraqis and alleviating injustice and for demonstrating heaven's justice as envisaged by the Almighty God....

This law has been legislated.