

In the Name of Allah the Most Compassionate and Merciful

Law No. () for the year 2005

The Supreme Iraqi Criminal Tribunal

In accordance with the provisions of Articles 30, 33 and 48 of the Transitional Administrative Law, we have promulgated the following Law:

Section One

The Establishment, Organizational Structure and Competence of the Tribunal

Part One

Establishment

Article – 1 –

First: By virtue of this Statute, a jurisdiction court shall be established known as the Supreme Iraqi Criminal Tribunal (the “Tribunal”). The jurisdiction of the Tribunal and its associated bodies shall be in accordance with the provisions of this Statute. The Tribunal shall enjoy complete independence.

Second: The Tribunal shall have jurisdiction over any Iraqi national or non-Iraqi residing in Iraq accused of committing any of the crimes stipulated in Articles 11, 12, 13 and 14 of this Statute committed between the period 17/07/1968 and 01/05/2003 in the Republic of Iraq or elsewhere. The aforementioned crimes consist of the following:

- a. Genocide.
- b. Crimes against humanity.
- c. War crimes.
- d. Violations of Iraqi laws stipulated in Article (14) of this Statute.

Third: The Tribunal shall have jurisdiction over natural persons.

Article – 2 –

The Tribunal shall have its seat in the City of Baghdad. It can hold its sessions in any governorate in Iraq according to a decree issued by the Council of Ministers, upon the recommendation of the President of the Tribunal.

Part Two

Organizational Structure of the Tribunal

Article – 3 –

The Tribunal shall consist of:

First:

- a. One or more Trial Chambers.
- b. An Appeals Chamber with the power to review the rulings and decisions of the Trial Chambers and the Investigative Courts.
- c. The Investigation Judges.

Second: The Prosecutions Department.

Third: The Administration Department, which shall provide administrative and financial services to the Tribunal and to the Prosecutions Department.

Part Three The Trial Chambers and the Appeals Chamber

Article – 4 –

First: Each Trial Chamber shall consist of five judges. Judges in each of the Trial Chambers shall select one of its members as President to supervise their work.

Second:

- a. The Appeals Chamber shall consist of nine judges, who shall select one of its members as President.
- b. The President of the Appeals Chamber shall also be the President of the Tribunal and shall supervise its administrative and financial affairs.

Third: The Council of Ministers can, if it deems it necessary and upon the recommendation of the President of the Tribunal, appoint non-Iraqi judges who have experience in the crimes stipulated in this Statute, and who shall be persons of high moral character, impartiality and integrity, if one of the plaintiffs in the case is a State. These judges shall be appointed with the assistance of the international community, including the United Nations.

Part Four Selection of Judges and Prosecutors and Termination of Service

Article – 5 –

First: Judges and prosecutors shall be persons of high moral character, impartiality and integrity, and shall have experience in the field of criminal law and meet conditions for appointment stipulated in the Judicial Organization Law 160 of 1979 and the Public Prosecution Law 159 of 1979.

Second: Candidates for judges in the Appeals Chamber and the Trial Chambers, and for investigative judges and prosecutors, need not be serving judges and prosecutors. Retired judges and prosecutors can be nominated regardless of age, as can Iraqi lawyers from Category (C) as defined by the Legal Profession Law with high qualifications and experience, and service of a judicial or legal nature or in the field of legal practice. of not less than 15 years.

Third: The Supreme Judiciary Council shall nominate all judges and prosecutors to the Tribunal. The Council of Ministers, after approving the nominations, shall render a decision for their appointment by the Presidency Council. The appointments shall of the first category, as an exception to the provisions of the Judicial Organization Law 160 of 1979 as amended and the Public Prosecution Law 159 of 1979 as amended, to include salaries and bonuses specified through instructions issued by the Council of Ministers.

Fourth: The Council of Ministers may render a decision by the Presidency Council .for the transfer of judges or prosecutors from the Tribunal to the Supreme Judiciary Council.

Fifth:

- a. The services of a judge or prosecutor shall be terminated for any of the following reasons:
 1. If he is convicted for a felony unless the felony is a political or false charge made by the former Ba’thist regime.
 2. If he has made a material misrepresentation.
 3. If he fails to fulfill his duties without good reason.
- b. A committee comprised of five members, chosen from among the Tribunal’s judges and prosecutors under the supervision of the Tribunal’s Appeals Chamber, shall elect a president and shall be known as the (Committee for Judges and Public Prosecutors’ Affairs). The Committee shall operate for one year and shall have the powers stipulated in Article (58) of the Judicial Organization Law 160 of 1979. It shall review matters relating to disciplinary measures and conditions of service pertaining to judges and prosecutors. Its decisions can be appealed before the full chamber of the Federal Appeal Court where they involve the termination of the services of a judge or prosecutor.
- c. The Committee shall, if the appeal before the full chamber of the Federal Appeal Court is rejected, submit a recommendation to the Council of Ministers for the issuance of an order by the Presidency Council to terminate the services of the judge or prosecutor. This shall include the President of the Tribunal if the conditions in Article 5(1) of this Statute are met.
- d. The President of the Tribunal may refer members of the Tribunal, other than judges and prosecutors, to the disciplinary committee established by the Tribunal in accordance with the State Employees Disciplinary Law.

Article – 6 –

Upon completion of the work of the Tribunal, the judges and prosecutors shall be transferred to the Supreme Judiciary Council to work in the federal courts. Those who have reached retirement age shall be pensioned off in accordance with the provisions of the Judicial Organization Law and the Public Prosecution Law in force.

**Part Five
The Presidency of the Tribunal**

Article – 7 –

First: The President of the Tribunal shall:

- a. Preside over the sessions of the Appeals Chamber.
- b. Assign the permanent and reserve judges to the Trial Chambers.
- c. Assign a judge to a Trial Chamber in case of absence.
- d. Ensure the administrative work of the Tribunal.
- e. Appoint a Public Relations Director and terminate his services.
- f. Appoint an Archives and Documentation Director and terminate his services.
- g. Assign an official spokesperson for the Tribunal from among the judges or prosecutors.
- h. Appoint an Administrative Director and a Security Director for the Tribunal and terminate their services.

Second: the President of the Tribunal may appoint non-Iraqi experts to work in the Trial Chambers and the Appeals Chamber to provide assistance in the field of international law and similar areas, whether international or otherwise. The appointment of these experts shall be with the assistance of the international community, including the United Nations.

Third: Non-Iraqi experts provided for in paragraph Second of this article shall be persons of high moral character, impartiality and integrity. The non-Iraqi expert shall preferably be a person who has previously worked in the judiciary or public prosecution in his country or at international war crimes tribunals.

**Part Six
Tribunal Investigative Judges**

Article – 8 –

First: Tribunal Investigative Judges shall be responsible for investigating those accused of committing crimes stipulated in this Statute.

Second: A sufficient number of Investigative Judges shall be appointed.

Third: Investigative Judges shall select a Chief Investigative Judge and a Deputy from among them.

Fourth: The Chief Investigative Judge shall assign cases to individual Investigative Judges.

Fifth: Each Office of the Investigative Judge shall be composed of an Investigation Judge and such other qualified staff necessary as may be required.

Sixth: The Investigative Judge shall have the right to gather evidence from whatever source he considers suitable, and to communicate with all relevant parties directly connected.

Seventh: The Investigative Judge shall act with complete independence as a separate organ of the Tribunal. He shall not be subject to or respond to requests or instructions from any governmental body or any other party.

Eighth: The decisions of the Investigative Judge can be appealed by cassation before the Appeals Chamber within fifteen days of the notification or deemed notification of the decision.

Ninth: The Investigative Judge, after consultation with the President of the Tribunal, may appoint non-Iraqi experts to provide judicial assistance to the Investigative Judges in the investigation of cases provided for in this Statute, whether international or otherwise. The Chief Investigative Judge may appoint these experts with the assistance of the international community, including the United Nations.

Tenth: The non-Iraqi experts and observers referred to in paragraph Ninth of this article shall be persons of high moral character, impartiality and integrity. The non-Iraqi expert or observer shall preferably be a person who has worked in the judiciary or public prosecution in his country or at international war crimes tribunals.

Section Two Other Departments

Part One The Prosecutions Department

Article – 9 –

First: The Prosecutions Department shall be responsible for the prosecution of persons accused of committing crimes within the jurisdiction of the Tribunal.

Second: Each Prosecutor shall act with complete independence as a separate organ of the Tribunal. He shall not be subject to or respond to requests or instructions from the government or any other party.

Third: A sufficient number of Prosecutors shall be appointed.

Fourth: Prosecutors shall select a Chief Prosecutor and a Deputy from among them.

Fifth: Each Office of the Prosecutor shall be composed of a Prosecutor and such other qualified staff as may be required.

Sixth: The Chief Prosecutor shall assign to the Prosecutor cases requiring investigation and subject to court proceedings in accordance with the powers granted to the Prosecutors by law.

Seventh: The Chief Prosecutor, after consultation with the President of the Tribunal, may appoint non-Iraqi experts to provide assistance to the Prosecutors with regard to the investigation and prosecution of cases provided for in this Statute, whether international or otherwise. The Chief Prosecutor may appoint these experts with the assistance of the international community, including the United Nations.

Eighth: The non-Iraqi experts and observers referred to in paragraph Seventh of this article shall be persons of high moral character, impartiality and integrity. The non-Iraqi expert or observer shall preferably be a person who has acted in a prosecutorial capacity in his country or at international war crimes tribunals.

Part Two The Administration Department

Article – 10 –

First: The Administration Department shall be responsible for the administrative, financial and servicing affairs of the Tribunal and the Prosecutions Department.

Second: The Administration Department shall consist of the Director of the Administration Department who shall have obtained a B.A. degree in Law and possess judicial and administrative experience, and such other staff as may be required.

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 9 December, 1948, as ratified by Iraq on 20 January 1959, “genocide” means any of the following acts

committed with intent to destroy, 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 conditions of life calculated to bring about its physical destruction in whole or in part;
- d. Impose measures intended to prevent births within the group; and
- 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; and
- 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. 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 enslavement, enforced 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 Tribunal;
- i. Enforced 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 implementing paragraph First of this article:

- a. “Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph First of this article 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 of 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. “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 Statute, “war crimes” shall mean the following:

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 conflict, 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 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 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 advantage anticipated;
- e. Intentionally launching an attack in the knowledge that such an 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 by an instrumentality of the dissolved 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 quarter will be given;
- 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 asphyxiation, 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, 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, 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;
- z. Conscripting or enlisting children under the age of fifteen years in to 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 the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or nay other cause:

- a. Violence to 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; and

- 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 quarter will be given;
- 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 be imperatively demanded by the necessities of the conflict.

Part Four **Violations of Iraqi Laws**

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

First: Interference in the affairs of the judiciary or attempting to influence its functioning;

Second: The wastage or squandering of the national wealth, pursuant to Article 2(g) of the Punishment of Conspirators against Public Safety and Corrupters of the System of Governance Law 7 of 1958.

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 7 of 1958.

Fourth: If the Tribunal finds that the special elements of crimes are absent with regard to any of the crimes stipulated in Articles 11, 12 and 13 of the Statute, and establishes that the acts constitute a crime punishable under the Penal Code or any other penal law at the time of its commission, the Tribunal shall be competent to hear the case.

Section Four Individual Criminal Responsibility

Article – 15 –

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

Second: In accordance with this Statute and the provisions of the Penal Code, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Tribunal if that person:

- a. Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
- 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 contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 1. Be made with the aim of furthering the criminal activity of criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Tribunal; or
 2. Be made in 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 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 of the State, chairman or member of the Revolutionary Command Council, prime minister or member of the cabinet, or a member of the leadership of the dissolved Ba'ath Party, shall not relieve such person of criminal responsibility 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 Statute.

Fourth: The fact that any of the crimes was committed by a subordinate does 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 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 Tribunal determines that justice so requires.

Sixth: Persons accused of committing any of the crimes stipulated in this Statute shall not be included in amnesty decrees issued before the coming into force of this Statute.

Section Five Rules of Procedures and Evidence

Article – 16 –

First: The Tribunal shall follow the rules of procedure provided for in the Criminal Procedure Law 23 of 1971 as amended, and the Rules of Procedures and Evidence appended to this Statute, of which it shall be considered an integral part.

Section Six General Principles of Criminal Law

Article – 17 –

First: In the absence of provisions 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 persons shall be those contained in:

- a. For the period 17/7/1968 to 14/12/1969, the Baghdadi Penal Code of 1919.
- b. For the period 15/12/1969 to 1/5/2003, the Penal Code No. 111 of 1969, without regard to any amendments made thereafter.
- c. The Military Penal Code No. 13 of 1940 as amended, and the Code of Military Procedure No. 44 of 1941 as amended.

Second: In interpreting Articles 11, 12 and 13 of this Statute, the Tribunal and Appeals Chamber may resort to the relevant decisions of international courts or tribunals as persuasive authority for their decisions.

Third: Grounds for exclusion of criminal responsibility under the Penal Code shall be implemented in a manner consistent with this Statute and with international legal obligations concerning crimes within the jurisdiction of the Tribunal.

Fourth: The crimes stipulated in Articles 11, 12, 13 and 14 of this Statute shall not be subject to any statute of limitations.

Section Seven Investigations and Indictment

Article – 18 –

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

Second: The Tribunal Investigative Judge shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Tribunal Investigative Judge may, as appropriate, request the assistance of the relevant governmental authorities concerned, who shall be required to provide full cooperation with the request.

Third: Upon being questioned by a Tribunal Investigative Judge, the suspect shall be entitled to assistance by counsel of his choice, including the right to have legal assistance assigned to him without payment by him if he does not have sufficient means to pay for it. The suspect is entitled to have non-Iraqi legal representation, so long as the principal lawyer of such suspect is Iraqi.

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

Part One

Rights of the Accused

Article – 19 –

First: All persons shall be equal before the Tribunal.

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

Third: The accused shall be entitled to a public hearing, having regard to the provisions of this Statute and the rules of procedure 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 and in detail of the nature, cause and content 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 in confidence. 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 be assisted by counsel of his own choosing, or to be informed of his right to request legal assistance if he does not have sufficient means to pay for it; to have legal assistance assigned to him without payment by him;
- e. to obtain the attendance of witnesses on his behalf, and to examine these witnesses and the witnesses against him; and to present any evidence in his defense admissible under this Statute and Iraqi law;
- f. not to be compelled to confess guilt, and to remain silent, and not to testify 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 issued by the Tribunal Investigative Judge, be taken into custody, immediately informed of the charges against him and transferred to the Tribunal.

Second: The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with this Statute and the rules of procedures and

evidence stipulated in Article 16 of this Statute, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

Third: The Trial Chamber shall read the indictment, satisfy itself that the rights of the accused are respected and guaranteed, confirm that the accused is aware of and understands the charge or charges against him, and instruct the accused to enter a plea.

Fourth: The hearings shall be public unless the Trial Chamber 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 Trial Chambers shall provide for the protection of victims and witnesses, in accordance with the rules of procedure and evidence stipulated in Article 16 of this Statute, including the protection of the identity of the victims or witnesses.

Article – 22 –

Iraqis who are family members of victims or who were harmed may bring civil suits against the accused for damages resulting from acts which constitute crimes under this Statute. The Tribunal shall adjudicate such cases in accordance with the Code of Criminal Procedure 23 of 1971 as amended and other relevant laws.

Article – 23 –

First: The Trial Chambers shall pronounce judgments and impose sentences and penalties on persons convicted of crimes within the jurisdiction of the Tribunal.

Second: The judgment shall be rendered by a simple majority of the judges of the Trial Chamber, and shall be delivered by the Trial Chamber in public. The judgment shall be issued on the basis of a decision to convict, to which the opinions of dissenting judges may be appended.

Article – 24 –

First: The penalties that shall be imposed by the Tribunal shall be those prescribed by the Penal Code No. 111 of 1969, save that sentences of life imprisonment shall mean the remaining natural life of the convicted person.

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

Third: Taking into account paragraphs Fourth and Fifth of this article, the Trial Chambers shall determine the penalties for the crimes under Articles 11, 12 and 13 of this Statute.

Fourth: A convicted person shall be punished with the penalties stipulated in the Penal Code if he committed:

- a. Murder or rape as defined under the Penal Code; or
- b. Complicity in the commission of murder or rape

Fifth: The penalty for any crimes under Articles 11, 12 and 13 which do not have a counterpart under Iraqi law shall be determined by the Trial Chambers, taking into account such factors as the gravity of the crime, the individual circumstances of the convicted person and relevant international precedents.

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

Seventh: In accordance with Article 307 of the Code of Criminal Procedure, the Trial Chambers have the authority to confiscate any goods prohibited by law regardless of whether the case had been discharged for any lawful reason.

Section Nine Appeals Proceedings

Part One Appeal by Cassation

Article – 25 –

First: The Appeals Chamber shall hear appeals by cassation of verdicts and decisions from convicted persons or from the Prosecutor on the following grounds:

- a. an error on a question of law invalidating any decision;
- b. an error of procedure; or
- c. an error of material fact which has occasioned a miscarriage of justice.

Second: The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chambers or the Investigative Judge.

Third: Where the Appeals Chamber reverses a verdict of acquittal or release issued by the Trial Chambers or the Investigative Judge, the case shall be referred back to a Trial Chamber for retrial or to the Investigative Judge for implementation of its decision.

Fourth: The period allowed for the lodging of appeals shall be in accordance with the provisions of the Code of Criminal Procedure 23 of 1971, unless otherwise provided for.

Part Two Retrial

Article – 26 –

First: Where new facts have been discovered which were not known at the time of the proceedings before the Trial Chamber or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit to the Tribunal an application for a retrial.

Second: The Tribunal shall reject the application if it considers it to be unfounded. If the Tribunal considers that the application has merit it may, after hearing the parties, and with a view to reviewing the judgment:

- a. Reconvene the original Trial Chamber;
- b. Constitute a new Trial Chamber; or
- c. Retain jurisdiction over the case with the Appeals Chamber.

Section Ten Enforcement of Sentences

Article – 27 –

- a. Sentences shall be carried out in accordance with the Iraqi legal system and the laws issued thereunder.
- b. No party, including the President of the Republic, shall have the authority to pardon or to reduce the penalties issued by this Tribunal. Penalties shall be enforceable within thirty days of the sentence or decision reaching finality.

Section Eleven General and Final Principles

Article – 28 –

The Tribunal judges, investigative judges, members of the Prosecutions Department, Director of the Administration Department and Tribunal personnel shall be Iraqi nationals, except as provided for under Article 4 (Third) of this Statute.

Article – 29 –

First: The Tribunal and the national courts shall have concurrent jurisdiction to prosecute persons accused of the crimes prescribed in Article 14 of this Statute.

Second: The Tribunal shall have primacy over all other Iraqi courts with respect to its jurisdiction over the crimes prescribed in Articles 11, 12 and 13 of this Statute.

Third: At any stage of the proceedings, the Tribunal may demand of any other court to transfer any case being tried by it involving any crimes prescribed in Articles 11, 12, 13 and 14 of this Statute, and such court shall be required to transfer such case.

Article – 30 –

First: No person shall be tried before any other Iraqi court for crimes for which he has already been tried by the Tribunal, in accordance with Articles 300 and 301 of the Code of Criminal Procedure.

Second: A person who has been tried by any Iraqi court for a crime or crimes within the jurisdiction of the Tribunal may be subsequently tried by the Tribunal only if the Tribunal determines that the previous court proceedings were not impartial or independent, or were designed to shield the accused from criminal responsibility. In taking a decision to order a retrial, one of the conditions contained in Article 196 of the Code of Civil Procedure and the requirements of Article 303 of the Code of Criminal Procedure must be met.

Third: In considering the penalty to be imposed on a person convicted of a crime under this Statute, the Tribunal shall take into account the extent to which any penalty imposed by an Iraqi court on the same person for the same act has already been served.

Article – 31 –

First: The President of the Tribunal, the Judges, the Investigation Judges, the Prosecutors, the Director of the Administration Department and the Tribunal staff shall have immunity from civil suits for their official acts.

Second: Other persons, including the accused, shall be accorded such treatment as is necessary for the proper functioning of the Tribunal.

Article – 32 –

Arabic shall be the official language of the Tribunal.

Article – 33 –

No Judge, Investigative Judge, Prosecutor, employee or any of the Tribunal's staff shall have been a member of the dissolved Ba'th Party.

Article – 34 –

The expenses of the Tribunal shall be borne by the regular budget of the State.

Article – 35 –

The President of the Tribunal shall prepare an annual report of the Tribunal for submission to the Council of Ministers.

Article – 36 –

The Council of Ministers shall issue the necessary instructions for the implementation of this Statute.

Article – 37 –

Law No. 1 of 2003, Statute of the Iraq Special Tribunal for Crimes against Humanity, and the rules of procedure issued thereunder shall be abolished, in accordance with the provisions of Article 16, effective from the date of the coming into force of this Statute.

Article – 38 –

All decisions and rules of procedures issued under Law No. 1 of 2003 are considered correct and in accordance with the law.

Article – 39 –

All ministers shall implement this Statute and act in accordance with it from the date of its publication in the Official Gazette.

Article – 40 –

This Statute shall be published in the Official Gazette.