



# Official Gazette of Iraq

Al-Waqai' Al-Iraqiyya

الوقائع العراقية

وهقايعى عىراقى

## الجريدة الرسمية لجمهورية العراق

رؤژنامهى فهرمى كوّمارى عىراق



### تصدر عن وزارة العدل

وهزارهتى داد دهرى دهكات

Legislation

No. 10

## Iraqi Supreme Criminal Court Law

With its Amendments

No. (10) of 2005

قانون المحكمة الجنائية العراقية العليا

مع تعديلاته

Translated in

Ministry Of Justice

Iraqi Official Gazette Department

Translation Section

2023





## Laws

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### RESOLUTION NO. (10)

**In the name of the people**

**Presidency Council**

Based on what had been approved by the National Assembly, in accordance with Article (33) Paragraphs (a-b) and Article (37) of the Iraqi State Administration Law for the transitional period, the Presidency Council in its session held on October 9, 2005 decided to issue the following law:

**NO. (10) OF 2005**

**IRAQI HIGH CRIMINAL COURT  
LAW**

**CHAPTER ONE**

**THE ESTABLISHMENT OF THE COURT AND  
ITS ORGANIZATIONAL STRUCTURE**



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### SUBSECTION ONE

### ESTABLISHMENT

#### ARTICLE 1

First: A court called (Iraqi Supreme Criminal Court, later known as the (Court), shall be established and enjoy complete independence.

Second: The jurisdiction of the court shall be applied to every natural person, whether Iraqi or non-Iraqi, residing in Iraq and accused of committing one of the crimes stipulated in Articles (11), (12), (13) and (14) of this law, committed from July 17, 1968 until May 1, 2003 in the Republic of Iraq or any other place, and shall include the following crimes:

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

#### ARTICLE 2

The seat of the court is in the city of Baghdad, and it may hold its sessions in any of the governorates of Iraq by a decision of the Council of Ministers <sup>(5)</sup> based on a proposal from the president of the court.



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### SUBSECTION TWO THE ORGANIZATIONAL STRUCTURE OF THE COURT

#### ARTICLE 3

The court shall be consisted of:

First:

- a. A cassation body its competence is examining rulings and decisions issued by a criminal court or an investigative judge.
- b. One or more criminal courts.
- c. Investigation judges.

Second: Public Prosecution body.

Third: An administration that provides administrative and financial services to the court and the public prosecution.

Fourth:

- a. The cassation body shall be consisted of nine judges who shall elect a chairman from among them. The cassation body' chairman shall be the supreme head of the court and shall supervise its administrative and financial affairs.
- b. The Criminal Court shall be composed of five judges, who shall elect from among themselves a chairman who shall supervise their work.



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Fifth: The Council of Ministers may, when necessary and upon a proposal from the chairman of the Court, assign non-Iraqi judges who have experience in the field of trials in the crimes stipulated in this law and who have a high degree of moral highness, uprightness and integrity to work in the court in the event that it is one of the parties to a state, and these judges shall be delegated with the help of the international community, including the United Nations.

### SUBSECTION THREE

### SELECTION OF JUDGES AND PROSECUTORS AND TERMINATION OF THEIR SERVICES

#### ARTICLE 4

First: It shall be required that judges and public prosecutors possess a high degree of moral highness, integrity and uprightness, and that they shall have experience in criminal law and the conditions for appointment 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 Item (First) of this Article, candidates for the positions of judges in the Cassation Body and in criminal courts, investigation judges and public prosecutors shall be judges and public prosecutors who continue to serve, and retired judges and members of the Public Prosecution (without adhering to the age condition) and Iraqi lawyers who enjoy high competence and experience and



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have absolute authority in accordance with Law no (173) of 1965 and who have a judicial or legal service or in the field of law for not less than (15) fifteen years may be nominated to the court.

Third:

- a. The Supreme Judicial Council shall nominate all judges and public prosecutors in this court, and who shall be appointed by a decision of the Presidency Council after the approval of the Council of Ministers and they shall be in the first category as an exception to the provisions of the Judicial Organization Law and the Public Prosecution Law, and their salaries and bonuses shall be determined by instructions issued by the Council of Ministers.
- b. Judges, public prosecutors and employees appointed in the court pursuant to the provisions of the law prior to this legislation shall be considered legally approved as of the date of appointment in accordance to the provisions of Para (Third/ a) of Article (4), taking into account the provisions of Article (33) of this law.

Fourth: The Presidency Council may, based on a proposal by the Council of Ministers, transfer any judge or public prosecutor from the court to the Supreme Judicial Council for any reason.

### ARTICLE 5

The service of the judge and public prosecutor covered by the provisions of this law shall be terminated for one of the following reasons:

First: If he/ she is convicted of a non-political felony.

Second: If he/ she provides false or fake information.

Third: If he/ she fails to perform his/ her duties without a legitimate reason.



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### ARTICLE 6

First: A committee composed of five members elected from among the judges and public prosecutors in the court under the supervision of the Cassation Body in which shall be formed, these judges and public prosecutors shall elect a chairman from among them, and this committee called the (Judge and Public Prosecutor Affair Committee) for a period of one year, and it shall have the powers stipulated in the Judicial Organization Law and the Public Prosecution Law. It shall look into disciplinary affairs and job service of judges and members of the public prosecution, and its decisions shall be subjected to appeal before the expanded body in the Federal Court of Cassation if it adjudicates to terminate the service of the judge or a member of the Public Prosecution.

Second: The committee shall submit its recommendations after rejecting the appeal by the expanded panel in the Federal Court of Cassation to the Council of Ministers to obtain a decision from the Presidency Council to terminate the service of the judge or the public prosecutor, including the president of the court, in the event that one of the cases stipulated in Article (6) of this article (We think there is a mistake here. Translator) shall be fulfilled.

Third: **Repealed** <sup>(1)</sup>

At the end of the court's work, the judges and public prosecutors shall be transferred to the Supreme Judge Council to work in the federal courts, and those who have completed the legal age shall be pensioned off in accordance with the law.

Fourth: **Added** <sup>(1)</sup>



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### SUBSECTION FOUR PRESIDENCY OF COURT

#### ARTICLE 7

First: The President of the Court shall undertake the following tasks:

- a. Presiding over the sessions of Cassation Body.
- b. Nominating original and reserve criminal court judges.
- c. Nominating any of the judges of the Criminal Court in case of absence.
- d. Completing administrative work in the court.
- e. Appointing the court administration manager, the security director, the public relations director, the archiving and court's document-keeping manager, and terminating their services in accordance with the law.
- f. Nominating an official spokesperson for the court from among the judges or members of the public prosecution

Second: The President of the Court may appoint non-Iraqi experts to work in criminal courts and Cassation Body to provide assistance in the field of international law and similar fields, whether international or otherwise. The assignment of these experts shall be with the assistance of the international community, including the United Nations.

Third: The non-Iraqi experts stipulated in Item (Two) of this Article shall have a high degree of moral highness, uprightness and integrity. It shall be preferable for a non-Iraqi expert to have worked in the judiciary or public prosecution in his/ her country or in international war crimes courts.





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### SUBSECTION FIVE INVESTIGATIVE JUDGES

#### ARTICLE 8

First: A sufficient number of investigative judges shall be appointed.

Second: Investigation judges in the court shall be responsible for investigating those accused of committing the crimes stipulated in Item (Two) of Article (1) of this law.

Third: Investigation judges shall elect a president and vice president from among themselves.

Fourth: The president shall refer the investigative cases to the investigation judges, individually.

Fifth: Each investigation judge's office shall be consisted of an investigation judge and qualified personnel who are necessary for the work of the investigative judge.

Sixth: The investigation judge may collect proof from any source he/ she deems appropriate and address the relevant authorities directly.

Seventh: The investigation judge in the court shall act in complete independence as agency separate from the court and shall not subject to or respond to any requests or orders issued by any of the governmental entity or others.

Eighth: The decisions of the investigation judge shall be subject to appeal by cassation before the Cassation body within (15) fifteen days as of the date of notification or considering them notified in accordance with the law.



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Ninth: The Investigation Judge chief may, after consultation with the President of the Court, appoint non-Iraqi experts to provide judicial assistance to the investigation judges in the field of investigation regarding cases covered by this law, whether international or otherwise. The Investigation Judge Chief may assign these experts with the assistance of the international community, including the United Nations.

Tenth: It shall be required that the non-Iraqi experts and observers stipulated in Item ( Ninth) of this Article to have a high degree of moral highness and integrity. It shall be preferable for the non-Iraqi expert and observer to have worked in the judiciary or public prosecution in his/ her country or in international war crimes courts.



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### SUBSECTION SIX PROSECUTION BODY

#### ARTICLE 9

First: Sufficient number of public prosecutors shall be appointed.

Second: The Public Prosecution Body shall be consisted of a number of public prosecutors who shall be responsible for the prosecution against persons accused of committing crimes within the jurisdiction of the court.

Third: Prosecutors shall elect from among themselves a president and a vice-president.

Fourth: Each Public Prosecution Office shall be consisted of a Public Prosecutor and qualified personnel required for the work of the Public Prosecutor.

Fifth: Each public prosecutor shall act in complete independence as agency separate from the court and shall not subject to or respond to any requests or orders issued by the government or any other party.

Sixth: The Chief of the Public Prosecution Body shall entrust public prosecutor with the case to be investigated and to plead at the trial stage based on the powers granted to public prosecutors in accordance with the law.



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Seventh: The Chief of the Public Prosecution Body may, after consultation with the President of the Court, appoint non-Iraqis as experts to provide assistance to the public prosecutors with regard to the investigation and prosecution of cases covered by this law in the international field or otherwise. The Chief of Public Prosecutor Body may assign these experts with the assistance of the international community, including the United Nations.

Eighth: It shall be required that the non-Iraqi experts stipulated in Item (Seventh) of this Article to have a high degree of moral highness, uprightness and integrity, and it shall be preferable for the non-Iraqi international expert to have worked in the public prosecution in his/ her country or in international war crimes courts.

### SUBSECTION SEVENTH

### ADMINISTRATIVE DEPARTMENT

### ARTICLE 10

First: The Administrative Department shall be managed by an employee titled department director who holds a bachelor's degree in law and has judicial and administrative experience, assisted by a number of employees to run the department's work.

Second: The Administrative Department shall be responsible for the administrative, financial and service affairs of the Court and the Public Prosecution Authority.





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### CHAPTER TWO COURT JURISDICTIONS

#### SUBSECTION ONE GENOCIDE CRIME

##### ARTICLE 11

First: For the purposes of this law and in accordance with the International Convention for the Prevention of the Punishable Crime of Genocide on December 9, 1948, ratified by Iraq on January 20, 1959, genocide shall mean the acts listed below committed with view of destroying a national, ethnic, racial or religious group as such in whole or in part.

- a. Killing members of the group
- b. causing serious physical or mental harm to members of the group
- c. Deliberately subjecting the group to living conditions intended for its actual destruction in whole or in part.
- d. Imposing measures aimed at preventing childbearing within the group
- e. Forcibly transferring children from the group to another group

Second: The following acts shall be punished:



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- a. Genocide
- b. Conspiring to commit genocide
- c. Directly and publicly inciting to commit genocide
- d. Attempting to commit genocide
- e. Participating in genocide



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### SUBSECTION TWO

### CRIMES AGAINST HUMANITY

#### ARTICLE 12

First: Crimes against humanity mean, for the purposes of this law, any of the acts listed below when committed as part of a widespread or systematic attack directed against any group of the civilian population and with knowledge of such attack.

- a. Murder.
- b. Extermination.
- c. Enslavement.
- d. Deportation or forcible transfer of population.
- e. Imprisonment or other severe deprivation of physical liberty in contravention of the basic rules of international law.
- f. Torture.
- g. Rape, sexual slavery, enforced prostitution, forced pregnancy or any other form of sexual violence of such level of gravity.
- h. The persecution of any specific group of population on political, racial, national, ethnic, cultural, religious, gender or other grounds not permitted by international law, in connection with any referred act of sexual violence of such level of gravity.
  - i. enforced concealment of persons.
  - j. Other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health



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Second: For the purposes of applying the provisions of Item ( First) of this Article, the terms listed below shall have the definitions indicated thereto:

- a. An attack directed against any group of civilian population shall mean an approach of conduct that includes the repeated commission of acts set forth in Item (First) of this Article against any group of civilian population pursuant to a state or an organization's policy orders committing such an attack or strengthening such policy.
- b. Extermination means the deliberate imposition of living conditions such as deprivation of access to food and medicine with the intent of destroying part of the population.
- c. Enslavement means the exercise of any or all of the powers conferred by the right of ownership over a person, including the exercise of these powers for the purpose of trafficking in persons, especially women and children.
- d. Deportation or forcible transfer of population means forcible transfer of the persons concerned from the area in which they are lawfully present, by expulsion or other coercive act, without justifications permitted by international law.
- e. Torture means the intentional infliction of severe pain and suffering, whether physical or intellectual, on a person who is under detention or control of the accused, provided that torture does not include pain or suffering arising from or related to legal penalties.
- f. Persecution means the deliberate and severe deprivation of fundamental rights in contravention of international law because of the identity of the group.
- g. Enforced concealment of persons shall mean the arrest, detention or abduction of persons by the state or a political organization or with the authorization or support of it for this act or its silence on it and then its refusal to acknowledge the deprivation of these persons of their liberty or to give information about their fate or their possible existence with the aim of depriving them from the protection of the law long period of time.





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### SUBSECTION THREE

### WAR CRIMES

#### ARTICLE 13

For the purposes of this law, war crimes shall mean the following:

First: Grave breaches of the Geneva Conventions on August 12, 1949, in particular any of the acts listed below committed against persons or property protected under the relevant provisions of the Geneva Convention.

- a. Murder.
- b. Torture or inhumane treatment, including biological experiments.
- c. Intentionally causing great suffering or serious harm to body or health.
- d. Extensive destruction and appropriation of property without military necessity justifying it, unlawfully and in a frivolous manner.
- e. Compelling a prisoner of war or a protected person to serve in the forces of a hostile power.
- f. Deliberately depriving a prisoner of war or a protected person of his/ her right to a fair and regular trial.
- g. Unlawful detention.
- h. Unlawful deportation or transfer.
- i. Hostage taking.



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Second: Other serious violations of the laws and customs applicable to international armed conflicts within the established scope of international law, in particular any of the following acts:

- a. Intentionally directing attacks against the civilian population as such or against civilian individuals not directly participating in war actions.
- b. Intentionally directing attacks against civilian targets, including sites that are not military targets.
- c. Intentionally launching attacks against users, facilities, material, units or vehicles used in humanitarian assistance or peacekeeping, missions in accordance with the Charter of the United Nations, insofar as such missions merit the protection afforded to civilians or civilian objects under the law of armed conflict.
- d. Intentionally launching an attack, knowing that such attack shall result in consequential loss of life, injury to civilians, or civilian harm that be an obvious excess in comparison to the overall expected tangible and direct military gains.
- e. Intentionally launching an attack, knowing that such attack shall result in extensive, long-term and severe damage to the natural environment that is clearly excess in relation to the overall expected tangible and direct military gains.
- f. Attacking and bombarding, by any way, towns, villages, houses, buildings that have not defenses and they are not military targets.
- g. Killing or wounding a combatant who had given up his/ her weapon or who no longer possessed the means to defend himself/ herself and surrendered clearly.
- h. Misusing the flag of truce, the flag of the enemy or its military insignia and military uniform or the flag of the United Nations or its military insignias or uniforms as well as the distinctive emblems of the Geneva Conventions, which results in the death of individuals or severe injuries to them.



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- i. The government of Iraq or any of its agencies (including , for clarification, any agency of the Arab socialist Baath party) directly or indirectly, by transferring parts of the civilian population to any territory it occupies, or deporting or transferring all or some of the population of the occupied territory within or outside this territory.
- j. Intentionally directing attacks against buildings that do not constitute military objectives and are designated for religious, educational, artistic, scientific or charitable purposes, or against historical monuments, hospitals and places where the sick and wounded gather.
- k. Subjecting persons belonging to any country to physical mutilation or to any kind of medical or scientific experiment that is not justified by the medical, dental or hospital treatment of the person concerned and is not conducted in his/ her interest, causing the death of that person or persons or exposing their health to a grave danger.
- l. Killing or wounding any member of a hostile country or army in a treacherous manner.
- m. Declaring that no one still alive.
- n. Destroying or seizing the civilian property of the hostile party, unless the destruction or seizing is required by the necessities of war.
- o. Declaring the repeal, suspension or prohibition of resorting to the judiciary with the intention of depriving the citizens of the hostile party from claiming their rights.
- p. Forcing the nationals of the hostile party to participate in war operations against their country, even if they were serving the fighting country before the war broke out.
- q. Looting any town or place, even if it is seized by force.
- r. Using poisons or poisonous weapons.
- s. Using asphyxiating or poisonous gases or any other gases, as well as any other similar liquids, materials or equipment.



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- t. Using bullets that expand or flatten easily in the human body, such as solid-casing bullets that the casing in which do not completely cover the bullet body, or bullets with grooved casing.
- u. Violating human dignity, especially humiliating and degrading treatment.
- v. Rape, sexual slavery, forced prostitution, forced pregnancy, or any other form of sexual violence of such gravity.
- w. Exploiting the presence of civilians or other protected persons to make certain points, areas or military forces immune from military operations.
- x. Intentionally directing attacks against buildings, materials, medical units, means of transport and persons using the distinctive emblems of the Geneva Conventions in accordance with international law.
- y. Intentionally starving civilians as a method of warfare by depriving them of items indispensable to their survival, including deliberately impeding relief supplies and as provided under international law.
- z. Recruiting or registering children under fifteen years of age in the national army forces or using them to participate actively in hostilities.

Third: Cases of armed conflict of any kind, from the following acts committed against persons who are not actually participating in hostilities, including members of the armed forces who have laid down their arms and those who have become unable to fight due to illness, injury, detention or any other reason:

- a. The use of violence against life and persons, especially killing of all kinds, mutilation, cruel treatment and torture
- b. Violation of a person's dignity, especially humiliating and degrading treatment.
- c. Taking hostages.





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- d. Issuing sentences and carrying out executions without the existence of a previous ruling issued by a regularly constituted court that guarantees all recognized and indispensable judicial guarantees.

Fourth: Other serious violations of the laws and customs applicable to non-international armed conflicts, within the established scope of international law, and in particular any of the following acts:

- a. Intentionally directing attacks against the civilian population as such or against civilian individuals not directly participating in war actions.
- b. Intentionally directing attacks against buildings, materials, units, medical transportation and individuals of those who use distinctive emblems of Geneva's conventions pursuant to the International Law.
- c. Intentionally launching attacks against users, facilities, material, units or vehicles used in humanitarian assistance or peacekeeping, missions in accordance with the Charter of the United Nations, insofar as such missions merit the protection afforded to civilians or civilian objects under the law of armed conflict.
- d. Intentionally launching attacks against buildings designated for religious, educational, artistic, scientific or charitable purposes, or against historical monuments, hospitals and places where the sick and wounded gather, provided that they are not military targets.
- e. Looting any town or place, even if it is taken over by force.
- f. Rape, sexual slavery, forced prostitution, forced pregnancy or any other form of sexual violence of such gravity.
- g. Recruitment or registration of children under fifteen years of age in armed forces or groups or their use to participate effectively in war actions.



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- h. Issuing orders to deport civilians for conflict-related reasons unless for the security of the civilians concerned, or for urgent military reasons.
- i. Killing or injuring one of the hostile side's fighters treacherously.
- j. Declaring that no one is survival.
- k. Subjecting Persons under the authority of the other party in the dispute to physical distortion or to any kind of medical or scientific experiment that is not justified by the medical, dental or hospital treatment of the person concerned and shall not also be conducted for his/ her favour, causing the death of that person or persons or placing their health at serious risk.
- l. Destructing or seizing the enemy party's property, unless the destruction or seizure is of necessities of war.

### SUBSECTION FOUR

### VIOLATIONS OF IRAQI LAWS

#### ARTICLE 14

The jurisdiction of the Court shall be applied to the perpetrators of one of the following crimes:

First: Interfering in the affairs of the judiciary or attempting to influence its work.



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Second: Wasting and squandering national wealth based on the provisions of Article (g) of Article (2) of the Law on Punishing the Homeland Safety Conspirators and the Government System Spoilers No. (7) Of 1958.

Third: Misusing post and pursuing policies that almost led to the threat of war or the use of the Iraqi armed forces against an Arab state in accordance with Article (1) of Law No.( 7 ) of 1958.

Fourth: If the court finds that the special element of any of the crimes stipulated in Articles (11, 12 and 13) of this Law, and it is proved that the act constitutes a crime punishable by the Penal Code or any other penal law at the time of its commission, its jurisdiction shall be applied to hear the case.



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### CHAPTER THREE PERSONAL CRIMINAL RESPONSIBILITY

#### ARTICLE 15

First: A person who commits a crime within the jurisdiction of the Court shall hold the responsible for it in his/ her personal capacity and subject to punishment in accordance with the provisions of this Law.

Second: A person shall be considered liable in accordance with the provisions of this Law and the provisions of the Penal Code in the following cases:

- a. If he/ she commits a crime in a personal capacity jointly or by another person, regardless of whether this person is criminally responsible or not.
- b. If he/ she orders to commit a crime that has already occurred, attempts , entices or induces to commit it.
- c. If he/ she aids, abets or assists, in any other way, facilitating or attempting the commission of a crime, including the provision of means of committing it.
- d. If he/ she Contributes, in any other way, with a group of persons, with a joint criminal intent to commit or attempt to commit a crime, provided that this contribution is intentional and to be provided:



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1. Either with the aim of promoting criminal activity or the criminal purpose of the group, if such activity or purpose involves the commission of a crime within the jurisdiction of the Court.
  2. With the knowledge of the intention to commit the crime in this group.
- e. If he/ she incites directly and publicly to commit a crime in connection with the crime of genocide.
- f. If he/ she Attempts to commit a crime by starting to carry out an act with the intention of committing it, but the crime did not occur for reasons that did not enter the will of the perpetrator, however, it is considered an excuse exempted from punishment if the perpetrator makes an activity that prevents the commission or completion of the crime and the attempt to commit a crime shall not be punishable under this law if the perpetrator abandons, completely and of his/ her own free will, his/ her criminal project.
- Third: The official capacity of the accused shall not be considered an exempting or mitigating reason for punishment, whether the accused is president, head, member of the Revolutionary Command Council, head or member of the Council of Ministers or a member of the leadership of the Baath Party, and immunity may not be invoked to get rid of responsibility for the crimes mentioned in Articles (11, 12, 13, and 14) of this law.
- Fourth: The supreme head shall not be exempted from criminal responsibility for crimes committed by the persons who work at his/ her command, if the head has known or had reasons to know that his/ her subordinate committed these acts or was about to commit them and the head had not taken the necessary and appropriate measures to prevent the occurrence of these acts or to submit the case to the competent authorities in order to conduct an investigation and trial.
- Fifth: In case that any person accused of committing an act in implementation of an order issued by the government or his/ her superior, this shall not exempt him/ her from criminal responsibility and this may be taken into account in reducing the penalty if the court considers that the achievement of justice requires it.





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Sixth: The pardon orders issued before the entry into force of this law shall not include any of those accused of committing one of the crimes stipulated therein.

دائرة الوقائع العراقية / قسم الترجمة



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### CHAPTER FOUR RULES OF PROCEDURE AND COLLECTION OF EVIDENCE

#### ARTICLE 16

The Criminal Procedure Law No. (23) of 1971 and the rules of procedure and collection of evidence annexed to this law, which are an integral and complementary part thereof, shall be applied to the procedures followed by the court.



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### CHAPTER FIVE GENERAL PRINCIPLES OF CRIMINAL LAW

#### ARTICLE 17

First: In the absence of a legal provision in this law and the rules issued thereunder, the general provisions of the criminal law shall be applied to the accusation and trial of accused persons stipulated in the following laws:

- a. From July 7, 1968 to December 14, 1969, the Baghdadi Penal law of 1919.
- b. from December 15, 1969 to May 1, 2003, the penal law no.(111) of 1969, that was in force in 1985 (Third edition).
- c. Military Penal Law no.(13) of 1940 and Military Procedures Law no.(44) of 1941.

Second: The Court and the Cassation Panel may seek the assistance of the rulings of international criminal courts when interpreting the provisions of articles (11), (12) and (13) of this law.

Third: The provisions of the Penal Law shall be applied to the extent that they do not conflict with the provisions of this Law and the international legal obligations related to crimes within the jurisdiction of the Court when applying the provisions on exemption from criminal responsibility.



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Fourth: The crimes stipulated in Articles (11), (12), (13) and (14) of this Law shall not be subject to the statute of limitations for criminal case and punishment.

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### CHAPTER SIX INVESTIGATION AND REFERRAL

#### ARTICLE 18

- First: The investigation judge shall initiate the investigation on his/ her own accord or based on information received from any source, especially information received from the police or from any governmental or non-governmental body. The investigation judge shall evaluate the information received to determine whether the evidence is sufficient to commence an investigation.
- Second: The investigation judge shall have the authority to interrogate the accused, the victims or their families and witnesses in order to in order to collect evidence and conduct the field investigation, and he/ she may, in order to carry out his/ her task, request assistance from the relevant government authorities whenever necessary, and the relevant government authorities shall fully cooperate and respond to the requests.
- Third: When the investigation judge makes his/ her decision on the sufficiency of the evidence, he shall refer the case to the Criminal Court, and the referral decision shall include a summary of the facts, the crime attributed to the accused, and the legal article under which he/ she was referred in accordance with this law.





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### CHAPTER ONE

### GUARANTEES OF THE ACCUSED

#### ARTICLE 19

First: All individuals are equal before court.

Second: The accused is innocent until proven guilty before the court in accordance with the law.

Third: Every accused person shall have the right to a public trial based on the provisions of this law and the rules issued thereunder.

Fourth: In case of any charge is brought against the accused in accordance with this law, the accused has the right to a fair and impartial trial in accordance with the following guarantees as a minimum:

- a. The accused shall informed immediately of the content, details, nature and reason of the charge against him/ her.
- b. The accused shall be allowed time and given sufficient facilities to enable him/ her to prepare his/ her defense and that he/ she be free to communicate with a lawyer of his/ her own choosing and meet him/ her apart, and the accused may seek the assistance of a non-Iraqi lawyer as long as the main lawyer is Iraqi in accordance with the law.
- c. The accused's trial shall take place without unjustified delay.
- d. The accused shall be tried in his/ her presence and with the assistance of a lawyer he/ she chooses of his/ her own free will or to inform him/ her that he/ she has the right to



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request legal assistance if he/ she does not have the financial ability, and has the right to request such assistance that allows him/ her to appoint a lawyer without incurring attorney fees.

- e. The accused may request and discuss with defense witnesses and prosecution witnesses and to present any evidence in support of his/ her defense in accordance with the law.
- f. The accused may not be forced to confess and has the right to remain silent and not to give a statement without interpreting this silence as evidence of guilt or innocence.



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### CHAPTER SEVEN

### TRIAL

#### ARTICLE 20

- First: The accused shall be placed in detention on the basis of an order or an arrest warrant issued by the investigation judge, he/ she shall be immediately informed of the charges against him/ her and transferred to the court.
- Second: The criminal court shall guarantee quick and fair procedures in accordance to the provision of this law, rules of procedures and evidence attached to this law, ensuring the rights of the accused and the considerations required to protect the victims or their families and witnesses.
- Third: The Criminal Court shall read the referral decision and be convinced itself of the respect and guarantee of the rights of the accused, and it shall ensure that the accused is knowing and aware of the charge or charges against him/ her, and it shall ask the accused whether he/ she is convicted or innocent.
- Fourth: The trial hearings shall be public, unless the court decides to make them confidential in accordance with the rules of procedures and evidence attached to this law, and the decision may not be taken that the hearing shall be confidential, excepted for limited reasons.



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### ARTICLE 21

The criminal court shall ensure protection to the victims or their families and witnesses in accordance with the rules of procedure and guides attached to this law, including ensuring confidentiality for the identity of victims or their families and witnesses.

### ARTICLE 22

The families of the victims and the affected Iraqis may sue civilly before this court against the defendants for the damage they suffered from the acts that constitute a crime under the provisions of this law, and the court may decide on these cases in accordance with the Code of Criminal Procedure No. (23) of 1971 and the relevant laws.

### ARTICLE 23

First: The Criminal Court shall announce and impose sentences and penalties on defendants convicted for crimes within the jurisdiction of the court.

Second: The Criminal Court shall issue its rulings by majority and pronounce them publicly, and the ruling shall not be issued only based on a conviction decision and it may attach the opinion of the dissenting judge to ruling.



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### ARTICLE 24

First: The penalties imposed by the court are the penalties stipulated in the Penal law no. (111) of 1969, except for the penalty of life imprisonment, which extends for the life of the convict, taking into account the provisions of Article (17) of this article.

Second: The penalties stipulated in the Penal Code and other penal laws shall be applied to the crimes stipulated in Article (14) of this Law.

Third: Subject to the provisions of Items (Fourth) and (Fifth) of this Article, the Criminal Court shall determine the penalties for the crimes stipulated in (11), (12) and (13) of this Law.

Fourth: A convicted person shall be punished by the penalties provided for in the Penal Code if:

- a. He/ she Commits murder and rape under the Penal Code.
- b. Or he/ she Contributes to the commission of murder and rape

Fifth: When determining the penalty for any crime stipulated in Articles (11), (12) and (13) of this law, which has no analogues in Iraqi law, the court takes into account certain factors such as the seriousness of the crime and the personal circumstances of the convicted, guided by judicial precedents and penalties of international criminal courts in this area.

Sixth: The Criminal Court may order the confiscation of any assets, property or proceeds obtained directly or indirectly from a crime without prejudice with the bona-fide third parties.

Seventh: The Criminal Court may confiscate any material or goods prohibited by law, regardless of whether the case or lawsuit has been closed or expired for any legal





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reason, in accordance with the provisions of Article (307) of the Criminal Procedure Law.

دائرة الوقائع العراقية / قسم الترجمة



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### CHAPTER EIGHT METHODS OF APPEAL

#### SUBSECTION ONE CASSATION

##### ARTICLE 25

First: The convict or the Public Prosecution may appeal by cassation the rulings and decisions to the cassation body for any of the following reasons:

- a. If the ruling is issued contrary to the law or has an error in its interpretation.
- b. Error in procedures.
- c. A fundamental error in the facts leads to a breach of justice

Second: The Cassation body may ratify, reverse or amend the ruling of the Criminal Court or the decisions of the investigation judge.

Third: When the Cassation body issues its verdict of reversing the acquittal or release issued by the Criminal Court or the investigation judge, it may return the lawsuit to the court for a retrial of the accused or for the investigation judge's following its decision.



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Fourth: The period of appeal shall be in accordance with the provisions of the Criminal Procedure Law No. (23) of 1971 in the absence of a provision related thereto.

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### SUBSECTION TWO

### RETRIAL

#### ARTICLE 26

First: When new facts are discovered that were not known at the time of the trial before the Criminal Court or at the time of hearing the case before the cassation body, which can be a decisive factor in reaching the decision, the convicted person and the Public Prosecution may submit a request to the court for retrial.

Second: The Court shall reject the request if it finds that it lacks legal grounds, but if the Court finds that the request based on convincing reasons, the Court may, in order to reach an amendment to the ruling decision after hearing the parties to the lawsuit:

- a . Return the lawsuit to the Criminal Court that issued the ruling for re-hearing.
- b. Or return the lawsuit to another Criminal Court.
- c. Or that the Cassation Body hears the lawsuit.



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### CHAPTER NINE EXECUTION OF RULINGS

#### ARTICLE 27

First: Rulings issued by the Court shall be executed in accordance with the Law.

Second: No party may, including the President of the Republic, exempt or reduce the penalties issued by this court, and the penalty shall be enforced by the passage of (30) thirty days as of the date the ruling or decision acquire the peremptory degree.





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### CHAPTER TEN GENERAL AND FINAL PROVISIONS

#### ARTICLE 28

The investigation judges, the Criminal Court judges, Public Prosecution members, the director of administrative department and Court members shall be Iraqis, taking into account the provisions of Item (Third) of Article (4) of this Law.

#### ARTICLE 29

First: The Court and the National Courts shall have a common jurisdiction to try persons who are accused of the crimes stipulated in Article (14) of this Law.

Second: The Court may have the priority over all Iraqi Courts with regard to its jurisdiction over the crimes stipulated in Article (11), (12) and (13) of this Law.

Third: The Court may, at any stage, request any of the Iraqi Courts to refer to it any case pending before it concerning any of the crimes stipulated in Article (11), (12), (13) and (14) of this Law, and the Court shall send the case upon request.

Forth: The Court may, at any stage, request any of the Iraqi Courts to refer to it any case pending before it concerning any of the crimes stipulated in Article (13), (14), (15) and



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(16) of this law, and the Court shall send the case upon the request.

### ARTICLE 30

First: No person may be tried before any other Iraqi Court for crimes for which he/ she was previously tried before the Court based on the provisions of Article (300) and (301) of Criminal Procedure Law.

Second: In the trial of a person before an Iraqi court for a crime or crimes within the court's jurisdiction, the court may not retrial him/ her for the same crime or crimes, unless it determines that trial proceedings were not fair and impartial, or those proceedings were designed to protect the accused from criminal liability. And when decisions on retrial are taken, they shall be available in the cases listed in the article (196) of the Civil Procedure law and Article (303) of the Criminal Procedure Law.

Third: In determining the penalty to be imposed on a person convicted of an offence in accordance with this law, the Court shall take into account the elapsed duration of any penalty imposed by an Iraqi court on the same person for the same crime.

### ARTICLE 31

First: Court's president and judges, investigation judges, prosecutors, director of the administrative department and Court's staff shall enjoy immunity from civil suits in connection with their official duties.

Second: The court shall treat other persons, including the accused, as necessary to ensure the performance of the Court's functions.



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### ARTICLE 32

Arabic language shall be the official language in court.

### ARTICLE 33

No person belonging to the Ba'ath Party may not be a judge, public prosecutor, employee or any of the Court's employees.

### ARTICLE 34

The State's general budget shall bear the expenses of the court.

### ARTICLE 35

The President of the court shall prepare an annual report on the work of the court and submit it to the Council of Ministers.

### ARTICLE 36

The provisions of the Civil Service Law No.(24) of 1960, the Staffing Law No.(25) of 1960, the State and Socialist Sector Employee Discipline Law No. (14) of 1991 and the Civil Retirement Law No.(33) of 1966 shall be applied to affiliates of the court other than judges and members of the public prosecution.



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### ARTICLE 37

The Iraqi Criminal Court Related to Crimes Against Humanity Law No.(1) of 2003 and the Rules of procedures issued in accordance with the provisions of Article (16) thereof shall be repealed as of the date of entry into force of this law.

### ARTICLE 38

All decisions and orders of procedures issued under law No.(1) of 2003 shall be valid and in accordance with this law.

### ARTICLE 39

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

### ARTICLE 40

This law shall be enforced once it published in the Official Gazette.

### ARTICLE 41

Added <sup>(3)</sup>



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### ARTICLE 42

Added <sup>(4)</sup>

### ARTICLE 43

Added <sup>(6)</sup>

### ARTICLE 44

Added <sup>(7)</sup>

### ARTICLE 45

Added <sup>(8)</sup>

### ARTICLE 46

Added <sup>(9)</sup>

### ARTICLE 47

Added <sup>(10)</sup>



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### ARTICLE 48

Added <sup>(11)</sup>

### ARTICLE 49

Added <sup>(12)</sup>

### ARTICLE 50

Added <sup>(13)</sup>

**Al-Sheik Ghazi Ajeel Al-Yawr**

Vice-President of Republic

**Adel Abdul Mahdi**

Vice-P resident of Republic

**Jalal Talabani**

President of Republic



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# AMENDMENTS





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### In the name of people

### Presidency Council

Based on what the Parliament had approved, in accordance with provisions of Item (First) of Article (61) of the Constitution, and for passage of the legal period stipulated in Provisions of Paragraph (a) of Item (Fifth) of Article (138) of Constitution, the following law was promulgated:

**NO. (13) OF 2009**

**THE AMENDMENT LAW OF IRAQI  
SUPREME CRIMINAL COURT LAW**

**NO. (10) OF 2005**

### **ARTICLE 1**

**1**

The provision of Item (Third) of Article (6) of Iraqi Supreme Criminal Court Law No. (10) of (2005) shall be repealed and replaced with the following:

Article 6

Third:



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- a. The judges and prosecutors in the court shall be included in professional allocations stipulated in Article (2) of the Judges' Salaries and General Prosecution Law No. (27) of 2008.
- b. upon ending of the court's work, the judges and prosecutors shall be retired to pension regardless of serving and age, and they shall be granted a pensionable salary (80%) eighty per cent of the last salary and allocation they were receiving during their service.

### ARTICLE 2

2

Item (Forth) shall be added to Article (Six) and read as following:

Article 6

Fourth: The judge and prosecutor who is retired to pension shall keep three of his/ her bodyguards and one of the cars he/she was using.

### ARTICLE 3

3

Article 3

The provisions of Articles (1) and (2) of this law shall be applied to judges and prosecutors who are retired to pension and deceased before the court's work indicated to in this law come to an end and before the law comes into force, and the deceased's heirs of the judges and



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prosecutors shall be entitled to their determined right from their testators in accordance with this law.

### ARTICLE 4

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



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**In the name of People**

**Presidency of the Republic**

**RESOLUTION NO. (37)**

Based on what had been approved by the Parliament in accordance with the provisions of Item (First) of Article (61) and Item (Third) of Article (73) of the Constitution, the President of the Republic decided on (December 27, 2011) promulgating the following Law:

**NO.(35) OF 2011**

**AMENDMENT LAW OF THE IRAQI SUPREME  
CRIMINAL COURT LAW**



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### ARTICLE 1

4, 5

The Iraqi Supreme Criminal Court shall be linked to the Supreme Judicial Council, and the phrase "Supreme Judicial Council" shall replace "Council of Minister", wherever it mentioned in the Law.

### ARTICLE 2

6

The Court shall continue with one investigative body and one criminal body to hear complaints within its jurisdiction and shall be subject in its procedures to the provisions of the Criminal Procedure Law No. (23) of 1971.

### ARTICLE 3

7

The rights, obligations and assets of the Court shall be transferred to the Supreme Judicial Council.



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### ARTICLE 4

8

The Supreme Judicial Council shall undertake preserve the archives and documents of the court.

### ARTICLE 5

9

The Supreme Judicial Council, in coordination with the General Secretariat of the Council of Minister, shall distribute the employees of the court to state institutions in accordance with the competence and need.

### ARTICLE 6

10

Employees who are bound by employment contracts with the Court shall be considered appointed to the permanent staff by virtue of the Law, and the Ministry of Finance shall establish job grades thereof.



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### ARTICLE 7

11

The Supreme Judicial Council, in coordination with the Council of Ministers, shall issue instructions to facilitate the implementation of the provisions of this Law.

### ARTICLE 8

12

Judges and prosecutors shall choose between continuing to serve or retire, regardless of service and age, and shall be granted a retirement salary of (80%) eighty per cent of the salary and allowances they were receiving during service.

### ARTICLE 9

13

The provision of Item (Second) of Article (4) of the Supreme Iraqi Criminal Tribunal Law No. (10) of 2005, as amended, shall be repealed and replaced with the following:

Second: (As an exception to the provisions of the Item (First) of the Article, candidates for the position of judges in the Court shall be from among judges, lawyers, judicial, legal investigators or jurists who have a legal or judicial service in courts or state departments for not less than ten years).





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### ARTICLE 10

This Law shall be implemented as of the date of its publication in the Official Gazette.

**Jalal Talabani**

**President of the Republic**