

**PENAL CODE NO. 111 OF 1969**  
**(AS AMENDED TO 14 MARCH 2010)**

Law Number 111 of 1969

In the name of the people

The Presidency

Based on the provisions of the fiftieth article of the temporary constitution and derived from the submissions of the Minister of Justice and what has been approved by the Council of Ministers and ratified by the Revolutionary Command Council.<sup>1</sup>

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- ¶ 451 Theft, unlawful use of force to procure items of legal significance (documents, seals, thumbprints, etc.)
- ¶ 452 Theft, use of threats or force to obtain items other than those specified in ¶ 451  
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- ¶ 453 Wrongful use of an item lawfully in one's possession
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SECTION FOUR: Deception
- ¶ 456 Acquisition of property through fraud
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- PART FOUR:  
Infractions  
CHAPTER ONE: Offenses relating to public highways and places set aside for the public benefit
- ¶ 487 Disrupting traffic on public highways or waterways
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- ¶ 489 Removal or defacement of traffic signs
- ¶ 490 Disruption of, or failure to post, excavation warning signs
- ¶ 491 Placement of materials on a public highway which cause harm or obstruct the flow of traffic
- ¶ 492 Unauthorized posting of bills
- ¶ 493 Careless driving of an animal or vehicle  
CHAPTER TWO: Offenses against the public peace
- ¶ 494 Failure in one's duty to demolish or renovate a dangerous building
- ¶ 495 Prohibited actions related to fireworks, firearms, animals, causing a nuisance, etc.  
CHAPTER THREE: Offenses against the public health
- ¶ 496 Prohibited actions relative to human and animal remains
- ¶ 497 Public urination/defecation, littering, or other types of nuisance
- ¶ 498 Failure of medical professional to notify authorities of indications of criminal injury
- ¶ 499 Improper use of dung and public displays of meat  
CHAPTER FOUR: Offenses against property
- ¶ 500 Unlawful disturbance of agricultural land  
CHAPTER FIVE: Offenses against the public decency
- ¶ 501 Indecent exposure
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CONCLUDING PROVISIONS

- ¶ 504 Baghdad Penal Code is hereby superseded
- ¶ 505 When Code becomes operative

## INTRODUCTION

The University of Utah, SJ Quinney College of Law, Global Justice Project: Iraq is funded by a grant from the US State Department, Bureau of International Narcotics and Law Enforcement Affairs.

The Penal Code 111 of 1969 replaced the Baghdad Penal Code of 1919. It was modelled on the Egyptian Criminal Code, which itself was based upon the Napoleonic Codes adopted in Egypt in the late 19th Century.

The original translated text of the Penal Code 23 of 1971 was taken from the version incorporating amendments up to 1984 which is freely available in a number of places including:

[http://law.case.edu/saddamtrial/documents/Iraqi\\_Penal\\_Code\\_1969.pdf](http://law.case.edu/saddamtrial/documents/Iraqi_Penal_Code_1969.pdf)

The translation was revised in part by GJPI; omissions and errors were identified and amended; all post-1971 amendments were checked against the texts in the Arabic Official Gazette, the English language Official Gazette, published between 1959 and 2002, the CPA era Official Gazette published in English and Arabic in 2003 – 2004 and GJPI English translations of the post CPA era Official Gazette where relevant. The translation is still far from perfect.

*Some anomalies remain:*

The CPA Orders would appear to have been written in English and then translated into Arabic. Sometimes the translation gives a different result when the order is applied to an English translated text compared to the Arabic text. We have tried to capture the effect on the Arabic text.

With effect from 10 June 2003, CPA Order 7 Section 2(1) provided that “the Third Edition of the 1969 Iraqi Penal Code with amendments, registered in Baghdad on the fifth day of Jumada I 1389 or the nineteenth day of July 1969, shall apply”. This effectively turned back the clock and applied the Penal Code as it existed at the beginning of 1985, incorporating only amendments made up to that date. Other amendments were thereby effectively repealed such as that made by RCC Resolution 840 of 1986, amending Article 225 of the Penal Code to impose harsh punishments on those convicted of insulting the state.<sup>2</sup> Inexplicably CPA Order 31, section 1(2) refers to Amendment Law 1 of 2002 which would presumably have been repealed by CPA Order 7.

Other RCC Resolutions which dealt with areas of criminal law but which did not specifically amend the Penal Code must be presumed to stand unless otherwise repealed.

CPA Order 7 Section 2(1) went on to suspend the operation of Article 200 (party members belonging to a party other than the Ba’ath party) and Article 225 (publicly insulting the President).

CPA Order 7 Section 3(1) suspended the operation of capital punishment. Capital punishment was re-introduced for some offences by the Interim Government on 8 August 2004 by Decree Number 3 including for some offences that had not previously carried the death sentence such as most forms of kidnapping.

CPA Order 7 Section 3(2) prohibited torture and cruel, degrading or inhuman treatment or punishment.

CPA Order 31 Section 2(1) modified the maximum sentences for kidnapping under Articles 421, 422 and 423 increasing them to life imprisonment which means life. These penalties were subsequently increased to the death penalty by Decree 3 of 2004.

CPA Order 31 Section 2(2) suspended the mitigation of sentence provisions in Article 426.

CPA Order 31 Section 2(3) suspended the provision in Article 427 that if a kidnapper married his victim, his criminal action is voided and any investigation is suspended.

CPA Order 31 Section 3(1) modified the maximum sentence for rape under Article 393 increasing it to life imprisonment.

CPA Order 31 Section 3(2) modified the maximum punishment for indecent assault under Article 396 increasing it from 7 years (or 10 years if the victim was under 18) to 15 years.

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<sup>2</sup> A full list of all of the post 1984 amendments which were thereby repealed is contained later in this text

CPA Order 31 Section 4(1) modified the maximum punishment for wrecking, destroying or otherwise damaging water, electricity or oil installations or other public utilities under Article 353(1) increasing it from 7 years (or 10 years if the installation is caused to close) to life imprisonment.

CPA Order 31 Section 5(1) modified the maximum penalty for theft involving aggravating factors in Articles 440 to 443 increasing it to life imprisonment if the offense involved the use of force to commit the theft of a Means of Transportation.

CPA Order 55, establishing the Commission on Public Integrity (now the Commission of Integrity) amended Articles 135 and 136 of the Penal Code to accommodate the new Commission.

There are a number of references to the Ministry of Justice or the Minister of Justice within the text of the Penal Code which are clearly designed to refer to the Ministry in its former role in authority over the judiciary. CPA Order 35 re-established the Council of Judges independent of the Ministry of Justice (the Council of Judges later evolved into the Higher Judicial Council pursuant to CPA Order 100 Section 3(13) and Article 45 of the Transitional Administrative Law). Section 7 of CPA Memorandum 12, signed on 8 May 2004, published in the Official Gazette, issue 3985 of July 2004 rather unhelpfully states:

*References in Iraqi law to the Ministry of Justice or the Minister of Justice shall, where necessary and proper in light of CPA Order 35 or the Law of Administration for the State of Iraq for the Transitional Period, or where otherwise necessary and proper to maintain the independence of the judiciary, be construed to refer to the Council of Judges or its President, or to the Court of Cassation or its Chief Judge, or to the Supreme Federal Court or its Presiding Judge, as appropriate. The courts shall have sole jurisdiction to adjudicate disputes in this connection.*

We have made reference to this change wherever relevant.

A separate text contains the law as it applies in the Kurdistan Region of Iraq. Following Kurdish Decree 11 of 1992, the view of Kurdish lawyers, judges and legislators is that save for laws relating to the exclusive federal powers as listed in Article 110 of the 2005 Constitution, post 1992, new laws and amendments to existing law originating from Baghdad are not recognised as applicable in the Kurdistan Region of Iraq unless expressly endorsed by legislation of the Kurdistan Parliament. This includes the CPA orders issued in 2003 / 2004 - despite the wording of Articles 26 and 54(B) of the Transitional Administrative Law.

It may be noteworthy that the recommendations presented to the Council of Representatives by the sub-committee to the Constitutional Review Committee have proposed that Criminal (and Civil) Procedure matters become part of the exclusive federal jurisdiction. Only time will tell if these amendments are passed.

## **List of Amendments and Supplements to the Penal Code No. 111 of 1969**

- \*Law 35 of 1977 (Legal System Reform), published in the Official Gazette, issue 2576 of 14 March 1977
- \*Law 159 of 1979 (Public Prosecutor Law), published in the Official Gazette, issue 2746 of 17 December 1979
- \*Law 160 of 1979 (Judicial Organisation Law), published in the Official Gazette, issue 2746 of 17 December 1979
  
- \*(First Amendment to the Penal Code No. 111 of 1969) Law no. 207 of 1970/ Iraqi official gazette no. 1937 dated 18/11/1970.
- \*(Second Amendment to the Penal Code No. 111 of 1969) Law no. 107 of 1974/ Iraqi official gazette no. 2390 dated 22/8/1974.
- \*(Third Amendment to the Penal Code No. 111 of 1969) Law no. 130 of 1975/ Iraqi official gazette no. 2486 dated 25/8/1975.
- \*(Fourth Amendment to the Penal Code No. 111 of 1969) Law no. 165 of 1975/ Iraqi official gazette no. 2496 dated 3/11/1975.
- \*(Fifth Amendment to the Penal Code No. 111 of 1969) Law no. 63 of 1976/ Iraqi official gazette no. 2533 dated 14/6/1976.
- \*(Sixth Amendment to the Penal Code No. 111 of 1969) Law no. 145 of 1976/ Iraqi official gazette no. 2561 dated 6/12/1976.
- \*(Seventh Amendment to the Penal Code No. 111 of 1969) Law no. 111 of 1969/ Iraqi official gazette no. 2659 dated 19/6/1978.
- \*(Eighth Amendment to the Penal Code No. 111 of 1969) Law no. 80 of 1980/ Iraqi official gazette no. 2773 dated 12/5/1980.
- \*(Ninth Amendment to the Penal Code No. 111 of 1969) Law no. 8 of 1984/ Iraqi official gazette no. 2977 dated 23/1/1984.
- \*(Tenth Amendment to the Penal Code No. 111 of 1969) Law no. 77 of 1984/ Iraqi official gazette no. 3009 dated 3/9/1984.
  
- \*RCC Resolution no. 488 dated 11/4/1978 (RCC no. 488 was published in the Iraqi official gazette no. 2650 on 24/4/1978)
- \*RCC Resolution no. 977 dated 30/7/1978 (RCC no. 977 was published in the Iraqi official gazette no. 2667 on 7/8/1978)
- \*RCC Resolution no. 215 dated 20/2/1979 (RCC no. 215 was published in the Iraqi official gazette no. 2700 on 5/3/1975. It was later amended by RCC Resolution no. 206 on 22/11/1994, published in the Iraqi official gazette no. 3540 dated 5/12/1994. That amendment included that the amount of fine set forth in Para 1 (to become which is IQD 1000). Under RCC Resolution no. 218 on 20/2/1979, the word “Judge/ Kadi” replaced the word “Ruler/ Hakim”. The phrase “Misdemeanor Judge” replaced the phrase “Misdemeanor Ruler”, and this last amendment was made under Article 65 of the Judicial Regulation Law no. 160 of 1979.
- \*RCC Resolution no. 218 dated 20/2/1979 (RCC no. 218 was published in the Iraqi official gazette no. 2699 on 26/2/1979)
- \*RCC Resolution no. 827 dated 30/6/1979 (RCC no. 827 was published in the Iraqi official gazette no. 2721 on 16/7/1979)
- \*RCC Resolution no. 1477 dated 15/9/1980 (RCC no. 1477 was published in the Iraqi official gazette no. 2796 on 29/9/1980)
- \*RCC Resolution no. 1631 dated 30/10/1980 (RCC no. 1631 was published in the Iraqi official gazette no. 2802 on 10/11/1980)
- \*RCC Resolution no. 58 dated 12/1/1982 (RCC no. 58 was published in the Iraqi official gazette no. 2868 on 25/1/1982. The Resolution took its current wording under its amendment resolution no. 1124 on 12/10/1983, which is published in the Iraqi official gazette no. 2964 on 24/10/1983). Prior to the amendment resolution, the monies seized under RCC 58 were considered confiscated. These monies shall then be registered in the name of the Ministry of Finance, provided that the Resolution must be implemented as of its date of publication in the official gazette. Competent ministers and the Governor of the central Bank of Iraq are hereby requested to implement this Resolution.
- \*RCC Resolution no. 570 dated 27/4/1982 (RCC no. 570 was published in the Iraqi official gazette no. 2884 on 17/5/1982.) An RRC Resolution no. 169 was issued on 9/11/1997, whereby shooting firearms was prohibited in illegal circumstances. The Minister of Interior and Governors were thereby authorized to detain the violator for a period not less than one month and not more than six months. A fine between at least fifty thousand Iraqi Dinars but not more than one million Iraqi Dinars may also be imposed on the violator. The personal firearm and the ammunition seized would thereby be confiscated, and its ownership would be transferred to the Ministry



of defense if it was a military weapon, and to the Police Public Department, if it was a non-military firearm. If it was the belonging of one of the ministries or non-ministry organizations, it would be sent to the organization that owns it. The law enforcement member who arrests the violator shall be granted a reward equaling half the value of violator's seized weapon. Another RCC Resolution no. 240 of 3/11/2001 particularly addressing the Baath party, whereby this RCC was repealed, was issued.

\*RCC Resolution no. 1133 dated 2/9/1982 (RCC no. 1133 was published in the Iraqi official gazette no. 2902 on 20/9/1982)

\*RCC Resolution no. 8 dated 15/1/1983 (RCC no. 8 was published in the Iraqi official gazette no. 2921 on 20/9/1982) It was amended by RCC Resolution no. 977 on 28/12/1987, which was published in the Iraqi official gazette no. 3184 on 11/1/1988, whereby Para (2), which did not permit releasing on bail the perpetrators of crimes set forth in this Resolution at both stages of investigation and trial.

\*RCC Resolution no. 160 dated 5/2/1983 (RCC no. 160 was published in the Iraqi official gazette no. 2927 on 28/2/1983). This Resolution took its current form after it was amended by RCC Resolution no. 703 dated 16/6/1983, which was published in the Iraqi official gazette no. 2946 on 4/7/1983. Then, Paragraph 2/ Clause 1 was amended by RCC Resolution no. 813 dated 19/10/1986, which is published in the Iraqi official gazette no. 3132 on 3/11/1986. Clause 1 of Paragraph 1 was repealed, and a new text replaced it under RCC Resolution no. 102 dated 4/7/1998, published in the Iraqi official gazette no. 3730 on 13/7/1998. Look at the RCCs no. 18 dated 10/2/1993 and no. 120 dated 27/8/1994. These RCCs prevented the release of the perpetrators of the crimes of bribery and embezzlement at the investigation and trial stages. It reads: "Second: If the subject of a counterfeiting crime or use of faked records was a document or identification card that belongs to the armed forces, internal security or intelligence services, that will be regarded an aggravating circumstance "

\*RCC Resolution no. 846 dated 6/8/1983 (RCC no. 846 was published in the Iraqi official gazette no. 2955 on 22/8/1983)

\*RCC Resolution no. 131 dated 28/1/1984 (RCC no. 131 was published in the Iraqi official gazette no. 2980 on 13/2/1984)

\*RCC Resolution no. 212 dated 15/2/1984 (RCC no. 212 was published in the Iraqi official gazette no. 2983 on 5/3/1984)

\*RCC Resolution no. 458 dated 21/4/1984 (RCC no. 458 was published in the Iraqi official gazette no. 2992 on 7/5/1984). An RCC Resolution no. 201 dated 10/9/2001, published in the Iraqi official gazette no. 3896 on 17/9/2001, under which Article 156 was applied against an individual who is proved to be affiliating with the Wahabist Movement.

\*RCC Resolution no. 794 dated 10/7/1984 (RCC no. 794 was published in the Iraqi official gazette no. 3003 on 23/7/1984)

\*RCC Resolution no. 1237 dated 11/11/1984 (RCC no. 1237 was published in the Iraqi official gazette no. 3021 on 26/8/1984)

\*RCC Resolution no. 133 dated 29/1/1985 (RCC no. 133 was published in the Iraqi official gazette no. 3032 on 11/2/1985)

\*RCC Resolution no. 436 dated 10/4/1985 (RCC no. 436 was published in the Iraqi official gazette no. 3042 on 22/4/1985). Governors were authorized to confiscate sheep under RCC Revolution no. 11 dated 17/5/1997, published in the Iraqi official gazette no. 3659 on 3/3/1997.

\*RCC Resolution no. 472 dated 23/4/1985 (RCC no. 472 was published in the Iraqi official gazette no. 3044 on 6/5/1985)

\*RCC Resolution no. 526 dated 5/5/1985 (RCC no. 526 was published in the Iraqi official gazette no. 3047 on 27/5/1985)

\*RCC Resolution no. 841 dated 24/7/1985 (RCC no. 841 was published in the Iraqi official gazette no. 3057 on 27/5/1985)

\*RCC Resolution no. 1386 dated 28/11/1985 (RCC no. 1386 was published in the Iraqi official gazette no. 3075 on 9/12/1985)

\*RCC Resolution no. 120 dated 29/1/1986 (RCC no. 120 was published in the Iraqi official gazette no. 3085 on 17/2/1986)

\*RCC Resolution no. 930 dated 2/12/1986 (RCC no. 930 was published in the Iraqi official gazette no. 3128 on 15/12/1986)

\*RCC Resolution no. 517 dated 18/7/1987 (RCC no. 517 was published in the Iraqi official gazette no. 3160 on 27/7/1987)

\*RCC Resolution no. 609 dated 12/8/1987 (RCC no. 609 was published in the Iraqi official gazette no. 3164 on 24/8/1987)

\*RCC Resolution no. 715 dated 9/9/1987 (RCC no. 715 was published in the Iraqi official gazette no. 3168 on 21/9/1987)

\*RCC Resolution no. 850 dated 27/11/1987 (RCC no. 850 was published in the Iraqi official gazette no. 3232 on 12/12/1987)

\*RCC Resolution no. 463 dated 22/7/1989 (RCC no. 463 was published in the Iraqi official gazette no. 3266 on 31/7/1989)

\*RCC Resolution no. 294 dated 18/7/1990 (RCC no. 294 was published in the Iraqi official gazette no. 3319 on 6/8/1990)

\*RCC Resolution no. 341 dated 24/8/1990 (RCC no. 341 was published in the Iraqi official gazette no. 3322 on 27/8/1990)

\*RCC Resolution no. 147 dated 25/5/1991 (RCC no. 147 was published in the Iraqi official gazette no. 3356 on 3/6/1991)

\*RCC Resolution no. 286 dated 22/8/1991 (RCC no. 286 was published in the Iraqi official gazette no. 3369 on 2/9/1991)

\*RCC Resolution no. 460 dated 30/12/1991 (RCC no. 460 was published in the Iraqi official gazette no. 3387 on 6/1/1992)

\*RCC Resolution no. 13 dated 11/1/1992 (RCC no. 13 was published in the Iraqi official gazette no. 3389 on 20/1/1992)

\*RCC Resolution no. 27 dated 4/2/1992 (RCC no. 27 was published in the Iraqi official gazette no. 3393 on 17/2/1992)

\*RCC Resolution no. 18 dated 10/2/1993 (RCC no. 18 was published in the Iraqi official gazette no. 3446 on 22/2/1993) Also, consider RCC Resolution no. 120 dated 27/8/1984

\*RCC Resolution no. 23 dated 7/3/1994 (RCC no. 23 was published in the Iraqi official gazette no. 3501 on 14/3/1994). A Paragraph 2 was added to this RCC Resolution, and the order of the paragraphs was rearranged under RCC Resolution no. 33 dated 4/5/1997, published in the Iraqi official gazette no. 3670 on 1/5/1997. Also, RCC Resolution no. 187 dated 25/10/1994 was issued and published in the Iraqi official gazette no. 3535 on 7/11/1994, whereby courts were prevented from considering cases arising from the application of the provisions of RCC Resolution no. 23 dated 7/3/1994, and whereby cases filed in contravention to the provisions of this RCC Resolution were dismissed. It also rescinded the verdicts issued thereon, unless they had already been final and binding, provided that RCC Resolution no. 187 was to be implemented as of its publication in the official gazette.

\*RCC Resolution no. 36 dated 29/3/1994 (RCC no. 36 was published in the Iraqi official gazette no. 3505 on 11/4/1994).

\*RCC Resolution no. 39 dated 2/4/1994 (RCC no. 39 was published in the Iraqi official gazette no. 3505 on 11/4/1994). It became as it is today after it was amended by RCC Resolution no. 135 dated 2/11/1996, which is published in the Iraqi official gazette no. 3646 on 2/12/1996.

\* RCC Resolution no. 76 dated 29/6/1994 (RCC no. 76 was published in the Iraqi official gazette no. 3517 on 4/7/1994).

\*RCC Resolution no. 81 dated 5/7/1994 (RCC no. 81 was published in the Iraqi official gazette no. 3519 on 18/7/1994).

\*RCC Resolution no. 82 dated 7/7/1994 (RCC no. 82 was published in the Iraqi official gazette no. 3519 on 18/7/1994). See Instructions no. (4) of 1994 issued by the Minister of Interior, which are published in the Iraqi official gazette no. 3522 on 8/8/1994.

\*RCC Resolution no. 86 dated 25/7/1994 (RCC no. 86 was published in the Iraqi official gazette no. 3520 on 25/7/1994).

\*RCC Resolution no. 91 dated 21/7/1994 (RCC no. 91 was published in the Iraqi official gazette no. 3521 on 1/8/1994).

\*RCC Resolution no. 95 dated 27/7/1994 (RCC no. 95 was published in the Iraqi official gazette no. 3521 on 1/8/1994).

\*RCC Resolution no. 106 dated 3/8/1994 (RCC no. 106 was published in the Iraqi official gazette no. 3523 on 15/8/1994).

\*RCC Resolution no. 120 dated 27/8/1994 (RCC no. 120 was published in the Iraqi official gazette no. 3526 on 5/9/1994). Consider RCCs no. 18 and 38 on 10/2/1993 and 27/2/1993.

\*RCC Resolution no. 187 dated 25/10/1994 (RCC no. 187 was published in the Iraqi official gazette no. 3535 on 7/11/1994).

\*RCC Resolution no. 190 dated 30/10/1994 (RCC no. 190 was published in the Iraqi official gazette no. 3535 on 7/11/1994).

\*RCC Resolution no. 206 dated 22/11/1994 (RCC no. 206 was published in the Iraqi official gazette no. 3540 on 5/12/1994). This RCC covers the following laws and resolutions:

- 1) Customs Law no. 23 of 1984.
- 2) Stamp Fee Law no. 16 of 1974.

- 3) RCC Resolution no. 37 of 1987.
- 4) RCC Resolution no. 215 of 1979.
- 5) RCC Resolution no. 296 of 1990.
- 6) Garbage Collection Zones Law no. 67 of 1986.
- 7) Municipality Administration Law no. 65 of 1964.
- 8) RCC Resolution no. 1474 of 1983.
- 9) Weapon Law no. 13 of 1992.
- 10) Traffic Law no. 48 of 1971.
- 11) Censorship on Movies and Publication Law no. 64 of 1973.
- 12) Copyright Protection Law no. 3 of 1971.
- 13) Printing House Law no. 89 of 1969.
- 14) Offices of Publicizing, Publishing and Advertizing Law no. 45 of 1971.
- 15) Depository Law no. 37 of 1970.
- 16) Archeology Law no. 59 of 1936
- 17) Registration of Births and Deaths Law no. 148 of 1971.
- 18) Public Health Law no. 89 of 1981.
- 19) Trade Organization Law no. 20 of 1970.
- 20) Corporate Law no. 36 of 1983.
- 21) Telecommunication Law no. 159 of 1980.
- 22) Transportation Law no. 80 of 1983.
- 23) Railways Services of the Republic of Iraq Law no. 33 of 1965.
- 24) Industrial Investment law no. 25 of 1991.
- 25) RCC Resolution no. 595 dated 10/8/1987, which is amended by RCC Resolution no. 332 dated 18/8/1990.
- 26) Amended Central Bank of Iraq Law no. 64 of 1976.

\*RCC Resolution no. 16 dated 16/2/1995 (RCC no. 16 was published in the Iraqi official gazette no. 3552 on 27/2/1995). Also RCC Resolution no. 68 dated 23/6/1997, which reads: "any person who has lent money with visible or invisible interest that that more than the interest rate decided by the law shall be punished with imprisonment, and amount of loan, interest or money that was transferred to him shall be confiscated. It further considered this crime as one involving moral turpitude.

\*RCC Resolution no. 42 dated 24/4/1995 (RCC no. 42 was published in the Iraqi official gazette no. 3562 on 8/5/1995).

\*RCC Resolution no. 10 dated 16/1/1996 (RCC no. 42 was published in the Iraqi official gazette no. 3602 on 29/1/1996).

\*RCC Resolution no. 132 dated 20/11/1996 (RCC no. 123 was published in the Iraqi official gazette no. 3646 on 2/12/1996). It became in its current wording after the issuance of RCC Resolution no. 47 dated 15/3/1999, which added to the Resolution an Item (5), whereby women were excluded from the procedures of detention during the period investigation and trial in the cases upon which they are transferred. The provisions of Resolution no. 132 are applied to semester and final examinations that are carried out in the colleges and institutes of the Ministry of Higher Education and Scientific Research. That was stipulated in RCC Resolution no. 57 dated 2/4/2000, which is published in the Iraqi official gazette no. 3821 on 10/4/2000

\*RCC Resolution no. 137 dated 25/11/1996 (RCC no. 137 was published in the Iraqi official gazette no. 3647 on 9/12/1996). The text of Clause (1) was repealed. It was replaced by the current text under the RCC Resolution no. 10 dated 12/1/2003, which is published in the Iraqi official gazette no. 3967 on 27/1/2003.

\*RCC Resolution no. 157 dated 25/12/1996 (RCC no. 157 was published in the Iraqi official gazette no. 3647 on 1/6/1997).

\*RCC Resolution no. 24 dated 24/3/1997 (RCC no. 24 was published in the Iraqi official gazette no. 3664 on 7/4/1997).

\*RCC Resolution no. 68 dated 23/6/1997 (RCC no. 68 was published in the Iraqi official gazette no. 3667 on 30/6/1997). Also, Instructions no. 4 of 1998 were issued by the Ministry of Finance and published in the Iraqi official gazette no. 3723 on 25/5/1998 to implement the provisions of Clause (5) thereof.

\*RCC Resolution no. 18 dated 7/3/1998 (RCC no. 18 was published in the Iraqi official gazette no. 3713 on 16/3/1998).

\*RCC Resolution no. 146 dated 30/8/1998 (RCC no. 146 was published in the Iraqi official gazette no. 3738 on 16/3/1998).

\*RCC Resolution no. 192 dated 3/12/1998 (RCC no. 192 was published in the Iraqi official gazette no. 3753 on 21/12/1998).

\*RCC Resolution no. 47 dated 15/3/1999 (RCC no. 47 was published in the Iraqi official gazette no. 3767 on 29/3/1999).

\*RCC Resolution no. 61 dated 22/4/1999 (RCC no. 61 was published in the Iraqi official gazette no. 3772 on 3/5/1999).

\*RCC Resolution no. 72 dated 24/5/1999 (RCC no. 72 was published in the Iraqi official gazette no. 3775 on 29/3/1999). Instructions no. (11) of 1999 (Banning the modification of fuel tanks of benzene vehicle and paying tips). These instructions were published in the Iraqi official gazette no. 3794 on 4/10/1999.

\*RCC Resolution no. 101 dated 22/6/1999 (RCC no. 101 was published in the Iraqi official gazette no. 3781 on 5/7/1999).

\*RCC Resolution no. 110 dated 28/6/1999 (RCC no. 110 was published in the Iraqi official gazette no. 3782 on 12/7/1999).

\*RCC Resolution no. 167 dated 31/8/1999 (RCC no. 101 was published in the Iraqi official gazette no. 3791 on 13/9/1999).

\*RCC Resolution no. 30 dated 20/2/2000 (RCC no. 30 was published in the Iraqi official gazette no. 3816 on 6/3/2000). Instructions no 10 of 2000 were issued to facilitate the implementation of its provisions. These instructions were published in the Iraqi official gazette no. 3847 on 9/10/2000. Then, the State Company of Livestock Services issued a statement no. 60 of 2003, whereby it specified the zones and dates where and when fishing is forbidden at water surfaces.

\*RCC Resolution no. 50 dated 30/3/2000 (RCC no. 50 was published in the Iraqi official gazette no. 3821 on 10/4/2000).

\*RCC Resolution no. 57 dated 2/4/2000 (RCC no. 57 was published in the Iraqi official gazette no. 3821 on 10/4/2000).

\*RCC Resolution no. 121 dated 2/4/2000 (RCC no. 121 was published in the Iraqi official gazette no. 3821 on 16/8/2000).

\*RCC Resolution no. 180 dated 25/10/2000 (RCC no. 180 was published in the Iraqi official gazette no. 3821 on 13/11/2000). Then, instructions were issued to facilitate the implementation of the provisions of RCC resolution no. 136, particularly on the students studying outside Iraq. Those instructions were published in the Iraqi official gazette no. 3853 on 20/11/2000, along with the Resolution no. 90 dated 22/6/1998 on the collection of travel tax and bail amount, which was to be deposited in a special account of the Scholarship Department opened with one of governmental banks, against interests from the student who was studying at his expense outside Iraq.

\*RCC Resolution no. 206 dated 27/11/2000 (RCC no. 206 was published in the Iraqi official gazette no. 3856 on 11/12/2000).

\*RCC Resolution no. 49 dated 14/2/2001 (RCC no. 49 was published in the Iraqi official gazette no. 3867 on 26/2/2001).

\*RCC Resolution no. 106 dated 26/4/2001 (RCC no. 106 was published in the Iraqi official gazette no. 3877 on 7/5/2001).

\*RCC Resolution no. 107 dated 26/4/2001 (RCC no. 106 was published in the Iraqi official gazette no. 3877 on 7/5/2001).

\*RCC Resolution no. 154 dated 27/6/2001 (RCC no. 154 was published in the Iraqi official gazette no. 3886 on 9/7/2001).

\*RCC Resolution no. 201 dated 10/9/2001 (RCC no. 201 was published in the Iraqi official gazette no. 3896 on 17/9/2001).

\*RCC Resolution no. 203 dated 12/9/2001 (RCC no. 201 was published in the Iraqi official gazette no. 3897 on 24/9/2001).

\*RCC Resolution no. 227 dated 25/10/2001 (RCC no. 277 was published in the Iraqi official gazette no. 3903 on 5/11/2001). Later, instructions were issued to facilitate the implementation of this RCC Resolution and they were published in the Iraqi official gazette no. 3928 on 29/4/2002.

\*RCC Resolution no. 234 dated 30/10/2001 (RCC no. 234 was published in the Iraqi official gazette no. 3903 on 5/11/2001). The Special Court of the Ministry of Interior was cancelled under the State Security Court Law 1 of 2003, as that court had the jurisdiction to decide on crimes set forth in the RCC Resolution no. (234). See the text of the State Security Court Law 1 of 2003 at the end of this book.

\*RCC Resolution no. 98 dated 8/6/2002 (RCC no. 234 was published in the Iraqi official gazette no. 3903 on 5/11/2001).

\*RCC Resolution no. 216 dated 9/10/2002 (RCC no. 216 was published in the Iraqi official gazette no. 3954 on 28/10/2002).

\*RCC Resolution no. 236 dated 29/10/2002 (RCC no. 236 was published in the Iraqi official gazette no. 3956 on 11/11/2002). A statement was issued by the Minister of Justice and was published in the official gazette no. 3957 on 18/11/2002, whereby he assigned a number of courts to decide on the crimes set forth in the provisions of the resolution mentioned above.

\*RCC Resolution no. 266 dated 17/12/2002 (RCC no. 266 was published in the Iraqi official gazette no. 3954 on 30/12/2002).

\*RCC Resolution no. 272 dated 17/12/2002 (RCC no. 272 was published in the Iraqi official gazette no. 3965 on 13/1/2002).

\*RCC Resolution no. 3 dated 12/1/2003 (RCC no. 3 was published in the Iraqi official gazette no. 3976 on 27/1/2003).

\*RCC Resolution no. 8 dated 12/1/2003 (RCC no. 8 was published in the Iraqi official gazette no. 3967 on 27/1/2003).

\*RCC Resolution no. 10 dated 12/1/2003 (RCC no.10 was published in the Iraqi official gazette no. 3967 on 27/1/2003).

\*RCC Resolution no. 11 dated 12/1/2003 (RCC no. 8 was published in the Iraqi official gazette no. 3967 on 27/1/2003)

\*RCC Resolution no. 669, published in the Iraqi official gazette no. 3165 on 31/8/1987. This Resolution became as it currently is after the abolishment of Clause (3), which was replaced by the current text under RCC Resolution no. 18 dated 9/3/1997, published in the Iraqi official gazette no. 3662 on 24/3/1997.

\*Instructions no. 4 of 1987 (Timeframes of Resolving Court Cases). These instructions were published in the Iraqi official gazette no. 3181 on 21/12/1987.

\*Instructions no. 3 of 2001 (Timeframes of Resolving Cassation Appeals by Decision from the Investigative Judge). These instructions were published in the Iraqi official gazette no. 3874 on 16/4/2001

\*CPA Regulation 1 of 2003, published in the Iraqi official gazette no. 3977 on 23 March 2003.

\*CPA Order 3 of 2003, published in the Iraqi official gazette no. 3981 in March 2003.

\*CPA Order 7, signed 10 June 2003, published in the Official Gazette, issue 3978 of 17 August 2003

\*CPA Order 13 (establishing the CCCI) (revised) (amended), signed 22 April 2004, published in the Official Gazette, issue 3983 of June 2004<sup>3</sup>

\*CPA Order 14 of 2003, published in the Iraqi official gazette no. 3978 on 10 June 2003

\*CPA Order 19 of 2003, published in the Iraqi official gazette no. 3979 in 2003

\*CPA Order 31, signed 10 September 2003, published in the Official Gazette, issue 3980 of March 2004

\*CPA Order 41: Notification of Criminal Offences, signed 15 September 2003, published in the Official Gazette, issue 3980 of March 2004

\*CPA Order 55: Commission on Public Authority, signed 28 January 2004, published in the Official Gazette, issue 3981

\*CPA Order 59 of 2004, published in the Iraqi official gazette no. 3982 in June 2004.

\*CPA Order 78 of 2004, published in the Iraqi official gazette no. 3983 in June 2004.

\*CPA Order 100, signed 28 June 2004, published in the Official Gazette, issue 3985 of July 2004

\*CPA Memorandum 3, signed 18 June 2003, published in the Official Gazette, issue 3978 of 17 August 2003<sup>4</sup>

\* CPA Memorandum 5 of 2003, published in the Iraqi Official Gazette no. 3979 in 2003

\*CPA Memorandum 12: Administration of Independent Judiciary, signed 8 May 2004, published in the Official Gazette, issue 3985 of July 2004

\*Executive Order 2 of 2004: Amnesty, published in the Official Gazette, issue 3987 of September 2004

\*Executive Order 3 of 2004: Reintroducing the death penalty for a limited number of crimes, published in the Official Gazette, issue 3987 of September 2004

\*Law of the High Iraqi Criminal Tribunal No 10 of 2005. This is the revised law, which replaced the original Statute of the Iraqi Special Tribunal for Crimes Against Humanity of 10 December 2003

\*Iraqi High Tribunal Rules of Procedure 2005 which replaced the Iraqi Special Tribunal Rules of Procedure

\*Anti-Terrorism Law No 13 of 2005

\*Law No. 10 of 2006: Amendment to Public Prosecution Law No. 159 of 1979

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<sup>3</sup> note also CPA Public Notice Regarding the Creation of the CCCI and Amendments to the CPC, 18 June 2003. CPA Public Notices were not published in the Official Gazette

<sup>4</sup> note that a revised version of Memorandum 3, signed on 27 June 2004, is on the CPA archive website at <http://www.cpa-iraq.org/regulations/index.html>. The revised version was never published in the Official Gazette. We have referred herein to the original version

- \*Law No. 13 of 2007: Reintroducing the safeguards contained in the Criminal Procedure Code for the application of the death penalty
- \*Military Penal Law No. 19 of 2007
- \*Military Criminal Procedure Law No. 30 of 2007
- \*Law 6 of 2008: Amending the level of Fines in the Penal Code
- \*Internal Security Forces Penal Law No. 14 of 2008
- \*Internal Security Forces Criminal Procedure Law No. 17 of 2008
- \*Amnesty Law 19 of 2008
- \*Law No. 15 of 2009, published in the Official Gazette, issue 4133 of 17 August 2009 (False Notification of an Offence)

#### **List of Laws Suspended by the CPA pursuant to Order 7 Section 2(1)**

- \*Law no. 29 of 1985, published in the Iraqi official gazette no. 3042 on 22/4/1985.
  - \*Law no. 90 of 1985, published in the Iraqi official gazette no. 3072 on 18/11/1985.
  - \*Law no. 35 of 1986, published in the Iraqi official gazette no. 3091 on 31/3/1986.
  - \*Law no. 91 of 1987, published in the Iraqi official gazette no. 3167 on 14/9/1987.
  - \*Law no. 110 of 1988, published in the Iraqi official gazette no. 3221 on 26/9/1988.
  - \*Law no. 50 of 1989, published in the Iraqi official gazette no. 3258 on 5/6/1989.
  - \*Law no. 3 of 1990, published in the Iraqi official gazette no. 3292 on 29/1/1990.
  - \*Law no. 1 of 1991, published in the Iraqi official gazette no. 3342 on 14/1/1991.
  - \*Law no. 7 of 1992, published in the Iraqi official gazette no. 3402 on 20/4/1992.
  - \*Law no. 5 of 1993, published in the Iraqi official gazette no. 3452 on 5/4/1990.
  - \*Law no. 9 of 1993, published in the Iraqi official gazette no. 3457 on 10/5/1993.
  - \*Law no. 2 of 1995, published in the Iraqi official gazette no. 3547 on 23/1/1995.
  - \*Law no. 3 of 1996, published in the Iraqi official gazette no. 3607 on 4/3/1996.
  - \*Law no. 8 of 1999, published in the Iraqi official gazette no. 3769 on 12/4/1999.
  - \*Law no. 16 of 1999, published in the Iraqi official gazette no. 3778 on 14/6/1999.
  - \*Law no. 18 of 1999, published in the Iraqi official gazette no. 3781 on 5/7/1999.
  - \*Law no. 25 of 2001, published in the Iraqi official gazette no. 3869 on 12/3/2001.
  - \*Law no. 1 of 2002, published in the Iraqi official gazette no. 3914 on 21/1/2002.
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- \*RCC Resolution no. 429, issuing Law no. 29 of 1985, thereby amending the Penal Code no. 111 of 1969. Law no. 29 was published in the Iraqi official gazette no. 3042 on 22/4/1985.
  - \*RCC Resolution no. 1295, issuing Law no. 90 of 1985, thereby amending the Penal Code no. 111 of 1969. Law no. 29 was published in the Iraqi official gazette no. 3072 on 18/11/1985.
  - \*RCC Resolution no. 223, issuing Law no. 35 of 1986, thereby amending the Penal Code no. 111 of 1969. Law no. 35 was published in the Iraqi official gazette no. 3091 on 31/3/1985.
  - \*RCC Resolution no. 689, issuing Law no. 91 of 1987, thereby amending the Penal Code no. 111 of 1969. Law no. 91 was published in the Iraqi official gazette no. 3167 on 14/9/1987.
  - \*RCC Resolution no. 744, issuing Law no. 110 of 1988, thereby amending the Penal Code no. 111 of 1969. Law no. 110 was published in the Iraqi official gazette no. 3221 on 14/9/1988.
  - \*RCC Resolution no. 336, issuing Law no. 50 of 1989, thereby amending the Penal Code no. 111 of 1969. Law no. 50 was published in the Iraqi official gazette no. 3258 on 5/6/1989.
  - \*RCC Resolution no. 26, issuing Law no. 3 of 1990, thereby amending the Penal Code no. 111 of 1969. Law no. 3 was published in the Iraqi official gazette no. 3292 on 29/1/1990.
  - \*RCC Resolution no. 4, issuing Law no. 1 of 1991, thereby amending the Penal Code no. 111 of 1969. Law no. 1 was published in the Iraqi official gazette no. 3342 on 14/1/1991.
  - \*RCC Resolution no. 101, issuing Law no. 7 of 1992, thereby amending the Penal Code no. 111 of 1969. Law no. 1 was published in the Iraqi official gazette no. 3402 on 20/4/1992.
  - \*RCC Resolution no. 53, issuing Law no. 5 of 1993, thereby amending the Penal Code no. 111 of 1969. Law no. 5 was published in the Iraqi official gazette no. 3452 on 5/4/1993.
  - \*RCC Resolution no. 77, issuing Law no. 9 of 1993, thereby amending the Penal Code no. 111 of 1969. Law no. 9 was published in the Iraqi official gazette no. 3457 on 10/5/1993.
  - \*RCC Resolution no. 10, issuing Law no. 2 of 1995, thereby amending the Penal Code no. 111 of 1969. Law no. 2 was published in the Iraqi official gazette no. 3547 on 23/1/1995.
  - \*RCC Resolution no. 25, issuing Law no. 3 of 1996, thereby amending the Penal Code no. 111 of 1969. Law no. 3 was published in the Iraqi official gazette no. 3607 on 4/3/1996.

\*RCC Resolution no. 51, issuing Law no. 8 of 1999, thereby amending the Penal Code no. 111 of 1969. Law no. 51 was published in the Iraqi official gazette no. 3769 on 12/4/1999.

\*RCC Resolution no. 89, issuing Law no. 16 of 1999, thereby amending the Penal Code no. 111 of 1969. Law no. 89 was published in the Iraqi official gazette no. 3778 on 14/6/1999.

\*RCC Resolution no. 97, issuing Law no. 18 of 1999, thereby amending the Penal Code no. 111 of 1969. Law no. 18 was published in the Iraqi official gazette no. 3781 on 5/7/1999.

\*RCC Resolution no. 69, issuing Law no. 25 of 2001, thereby amending the Penal Code no. 111 of 1969. Law no. 25 was published in the Iraqi official gazette no. 3896 on 12/3/2001.

\*RCC Resolution no. 3, issuing Law no. 1 of 2002, thereby amending the Penal Code no. 111 of 1969. Law no. 1 was published in the Iraqi official gazette no. 3914 on 21/1/2002.

## **PART ONE: General Principles**

### **CHAPTER ONE: Penal Legislation**

#### **SECTION ONE: The Legality of crime and punishment**

Article 1 - There is only punishment of an act or omission based on a law which stipulates that it is a criminal offence at the time it is committed. No penalty or precautionary measure that is not prescribed by law may be imposed.

#### **SECTION TWO: Extent of the application of the Penal Code**

##### **SUB-SECTION ONE: Application of the law in respect of time**

Article 2 - (1) The occurrence and consequences of an offence are determined in accordance with the law in force-at the time of its commission and the time of commission is determined by reference to the time at which the criminal act occurs and not by reference to the time when the consequence of the offence is realized:

(2) However, if one or more laws are enacted after an offence has been committed and before final judgment is given, then the law that is most favorable to the convicted person is applied.

(3) If a law is enacted after final judgment is given and that law decriminalizes the act or omission for which the defendant has been convicted, the sentence shall be quashed and the penal consequences of the sentence shall become void. This does not under any circumstances prejudice any sentence previously served as long as the new law does not stipulate to the contrary. The court that originally imposed the sentence must order that the sentence be quashed at the request of the convicted person or the public prosecutor.

(4) If the new law merely reduces the severity of the punishment, the court which originally passed the sentence may, on the application of the convicted person or the public prosecutor, review the sentence imposed in the light of the provisions of the new law.

Article 3 - If a law is enacted which criminalizes an act, or increases the severity of the penalty prescribed for that act for a specified period, then the expiry of that period will not prevent the sentence from being carried out nor will it prevent an action being brought in respect of offences committed during that period.

Article 4 - The new law applies to continuous or consecutive offences committed before it is enacted or to habitual offences which continue to be committed after that law is enacted and, if the provisions of the new law dealing with reoffending or multiple offences are amended then it will apply to any offence by which the defendant becomes a reoffender or multiple offender even though they are in respect of offences carried out before the law is enacted.

Article 5 - Precautionary measures are only imposed in the circumstances and under the conditions that are stipulated by law.. Provisions relating to penalties apply to precautionary measures because they are not retroactive and because the law that is most favorable to the defendant is applied.

##### **SUB-SECTION TWO: Application of the law in respect of place**



## **1. Territorial jurisdiction**

Article 6 - The provisions of this Code are enforceable in respect of offences committed in Iraq. An offence is considered to have been committed in Iraq if a criminal act is committed there or if the consequence of that act is realized or is intended to be realized there. In all circumstances, the law applies to all parties to the offence of which all or part occurs in Iraq even though any of those parties are abroad at the time and regardless of whether he is a principal or accessory to the offence.

Article 7 - Iraq's regional jurisdiction includes the territory of the Republic of Iraq and all areas under its control including its coastal waters and airspace as well as any foreign territory occupied by the Iraqi army in so far as any offence affects the security or interests of the army.

Iraqi ships and aircraft are subject to the territorial jurisdiction of the Republic of Iraq wherever they may be.

Article 8 - This Code is not applicable to offences committed on foreign ships in Iraqi ports or coastal waters unless the offence affects the security of the region or the offender or victim is Iraqi or if assistance is requested from the Iraqi authorities. The Code is not applicable to offences committed on board foreign aircraft in Iraqi airspace unless the aircraft lands in Iraq after the offence has been committed or unless it affects the security of Iraq or the offender or victim is an Iraqi or assistance is requested from the Iraqi authorities.

## **2. Material Jurisdiction**

Article 9 - This Code is applicable to any person who commits the following offences outside Iraq:

(1) An offence that affects the internal or external security of the State or that is against the Republican regime or its legally issued bonds or stamps or the forging of official banknotes.

(2) The forging, counterfeiting or imitation of notes or coins that are in circulation legally or through common use in Iraq or abroad.

## **3. Personal jurisdiction**

Article 10 - Any Iraqi citizen who commits an act abroad and does so as principal or accessory to an offence that is considered a felony or misdemeanor under the provision of this code is punishable in accordance with its provisions if he is now in Iraq and if the offence is punishable under the laws of the land in which it is committed.

This provision is applicable whether or not the offender has obtained Iraqi citizenship after the commission of the offence or whether he had Iraqi citizenship after the offence was committed and subsequently lost that citizenship.

Article 11 - This Code is not applicable to offences that are committed in Iraq by persons who benefit from statutory protection under the terms of international agreements or international or domestic law.

Article 12 - (1) This Code is applicable to any public official or agent of the Republic of Iraq who commits abroad a felony or misdemeanor stipulated by this Code in the course of his duty or as a consequence thereof.

(2) It is also applicable to Iraqi diplomats who commit abroad a felony or misdemeanor stipulated by this Code while enjoying the protection conferred upon them in accordance with international law.

#### **4. Universal jurisdiction**

Article 13 - In circumstances other than those stipulated in Articles 9, 10 and 11, the provisions of this Code are applicable to all those who enter Iraq subsequent to committing an offence abroad whether as principals or accessories to the following offences:

Destroying or causing damage to international means of communications or trading in women, children, slaves or drugs.

Article 14 - (1) No legal proceedings may be brought against any person who commits an offence outside Iraq except by permission of the Minister of Justice. Such person cannot be tried if a final judgment to acquit or convict him has already been given by a foreign court and any sentence imposed on him as a result of that trial has been served in full or if the relevant proceedings or such sentence has been annulled or quashed in accordance with applicable law and the final sentence or annulment of his trial or quashing of his sentence falls within the jurisdiction of the law of the land in which the judgment was given.

(2) If the penalty imposed is not served in full or if a verdict of not guilty is given in respect of an offence stipulated in Articles 9 and 12 arising from the fact that the offence is not punishable under the law of that land, then legal proceedings may be brought against the accused in Iraqi courts.

Article 15 - When the sentence imposed on the convicted person has been served, the length of time he has spent in detention or prison abroad for the offence for which he was convicted, will be taken into consideration.

### **CHAPTER TWO: General Principles and definitions**

Article 16 - (1) The provisions in PART ONE of this Code are applicable in respect of offences prescribed in other penal laws and regulations unless stipulated to the contrary.

(2) By final judgment is meant in this code all judgments in respect of which all statutory aspects of an appeal have been exhausted or the time limits for an appeal against that judgment have expired.

Article 17 - The provisions of this Code do not apply to liabilities for damages or compensation.

Article 18 - The prescribed periods in this Code are calculated in accordance with the Gregorian Calendar.

Article 19 - In applying the provisions of this Code or any other penal code, the following definitions are used, unless stipulated to the contrary:

(1) A citizen - is a subject of the Republic of Iraq and, if he has no nationality, he is considered to be a citizen if he is resident in Iraq.

(2) A public official is any official, employee or worker who is entrusted with a public task in the service of the government or its official or semi-official agencies or agencies belonging to it or

placed under its control.. This includes the Prime Minister, his deputies and ministers and the members of representative, administrative and municipal councils. It also includes arbitrators, experts, creditors' agents (corporate representatives), official. receivers, sequestrators, members of boards of directors, directors and employees of foundations, companies, corporations, organizations and institutions .in which the government or any of its official or semi-official agencies has a financial interest in any capacity whatsoever. In general, he is any person who works in the public service either paid or unpaid.

When a criminal act is committed by a public official in any of the capacities set out in this Sub-Article, then the fact that he is no longer carrying out his employment, service or work does not prevent the provision of this Code being applied in respect of that public official.

(3) Publication - methods of publication are considered to be:

- (a) acts, gestures or movements if they occur on a public highway, during a public gathering or in a place that is open to the public and much frequented and exposed to the public view or if they occur so that they can be witnessed by any person in such place or if they are transmitted by some mechanical means.
- (b) A spoken or shouted remark if it is announced or repeated in any of those places mentioned or if it is announced or repeated in such a way that it can be heard by any person in such places or if it is broadcast by mechanical or other means so that. it can be heard by any person who is not connected in any way with the remark.
- (c) Newspapers and other printed matter as well as other means of propaganda and publication.
- (d) A writing, drawing, picture, sign or film or anything similar if it is displayed in one of the places mentioned or if it is distributed or sold to more than one person or offered for sale anywhere.

(4) An act is any criminal behavior prohibited by law whether or not it is positive or negative such as negligence or omission, unless stipulated to the contrary.

### **CHAPTER THREE: The Criminal Offence**

#### **SECTION ONE: The nature of criminal offences**

Article 20 – The nature of criminal offences is either ordinary or political.

Article 21 – (1) A political offence is one which is committed with a political motive or which violates the political rights either of the public or of the individual. All other offences are considered to be ordinary.

However, the following offences are not considered to be political even though they are committed with a political motive:

- (a) Offences that are committed with a selfish or base motive.
  - (b) Offences affecting the external security of the State.
  - (c) Murder and attempted murder.
  - (d) Attempts on the life of the Head of State.
  - (e) Terrorist offences.
  - (f) Dishonorable offences such as theft, embezzlement, forgery, breach of trust, fraud, bribery and rape.
- (2) If the court considers the offence to be political, it must show that in its judgment.

Article 22 - (1) Life imprisonment replaces the death sentence for political offences.

(2) On conviction for a political offence, any penalty imposed for a previous political offence is not taken into consideration nor is there a subsequent loss of civil rights or privileges nor is the convicted person prevented from managing and disposing of his assets.

## **SECTION TWO: The categories of criminal offences**

Article 23 - There are three categories of criminal offence: felony, misdemeanor and infraction. The type of offence determines the severity of the penalty prescribed by the Code. If the penalty for any offence involves both detention and a fine, then the category of that offence will determine the extent of the period of detention prescribed by the Code.

Article 24 - The category of the offence is not altered if the Court substitutes the prescribed penalty for the penalty for a lesser type of offence whether or not it is due to a mitigating excuse or an extenuating legal circumstance, unless otherwise stipulated by law.

Article 25 - A felony is an offence punishable by one of the following penalties:

- (1) Death
- (2) Life imprisonment<sup>5</sup>
- (3) 5 to 15 years imprisonment<sup>6</sup>

Article 26 - A misdemeanor is an offence punishable by one of the following penalties:

- (1) Penal servitude or simple detention for a period of between 3 months and 5 years.
- (2) A fine.

Article 27 - An infraction is an offence punishable by one of the following penalties:

- (1) Detention for a period of between 24 hours and 3 months.
- (2) A fine not exceeding 30 dinars.

## **SECTION THREE: Elements of a crime**

### **SUB-SECTION 1: The physical element**

#### **1. Basic principles**

Article 28 - The physical element of an offence is the criminal behavior involved in the commission of a criminal act stipulated by the Code or failure to carry out an act stipulated by the Code.

Article 29 - (1) A person is not responsible for an offence that did not result from his criminal behavior but he is responsible for that offence if, together with his criminal behavior, some other prior, contemporaneous or subsequent cause, even though he was unaware of it, played a part in its commission.

(2) However, if that cause alone is sufficient to effect the consequence of the offence, then the offender in this case is only responsible for the act that he has committed.

#### **2. An attempt to commit an offence**

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<sup>5</sup> note the difference between life imprisonment meaning (usually) 20 years in prison and the concept of life means life introduced by the CPA for a number of specific crimes including kidnapping

<sup>6</sup> As amended in accordance with Paragraph 1 of Law No. 207 (1970) published in Al-Waqai' Al-Iraqiya

Article 30 - This is the initiation of an act with intent to commit a felony or misdemeanor which is prevented or frustrated for reasons unrelated to the intentions of the offender.

An attempt to commit an offence is considered to include all acts that are impossible to carry out and which are attempted with intent to commit a felony or misdemeanor whether or not it is for a reason relating to the object of the offence or to the means by which it is committed as long as the offender does not believe as a result of misconception or total ignorance that it is within his power to achieve the result of the offence. Merely the intention to commit an offence or preparations to do so are not considered an attempt unless otherwise stipulated by law.

Article 31 - Attempted felonies or misdemeanors are punishable by the following penalties unless otherwise stipulated by law.

(1) Life imprisonment if the prescribed penalty for the offence is death.

(2) Imprisonment for a term not exceeding 15 years if the prescribed penalty for the offence is life imprisonment.

(3) Imprisonment for a term not exceeding half the maximum penalty prescribed for the offence if the penalty is imprisonment for a term of years. If half the maximum penalty is 5 years or less, then the penalty in that case shall be a period not exceeding half the maximum penalty prescribed for the offence.

(4) A period of detention or a fine not exceeding half the maximum penalty prescribed for the offence.

Article 32 - Provisions relating to incidental or supplemental penalties and precautionary measures prescribed for offences committed are applicable to attempted offences.

## **SUB-SECTION TWO: The Mental Element**

### **Criminal intent and mistake**

Article 33 - (1) Criminal intent is the existence in the mind of the offender of an intention to commit the criminal act with a view to realizing the consequence of the offence that has occurred or any other criminal consequence.

(2) Intent may be simple or premeditated.

(3) Premeditation is the resolute contemplation of the commission of an offence before it is committed and is far removed from an outburst of jealous rage or mental turmoil.

(4) Premeditation can be established whether or not the intent of the offender is directed towards a specific person or merely a person he has met or encountered or whether the intent is dependant on something happening or on some condition.

Article 34 - An offence is premeditated if the offender has, criminal intent. An offence is therefore considered to be premeditated if:

(1) It is prohibited by law or by an agreement binding upon a person and he fails to act in accordance with that law or agreement, intending to commit the offence that results directly from such omission.

(2) If the offender foresees the criminal consequence of his action and embarks on that course of action, accepting the risk involved.

Article 35 - An offence is not premeditated if the criminal consequence occurs as a result of a mistake on the part of the offender whether or not such mistake is due to negligence, thoughtlessness, lack of due care and attention or lack of consideration for any law, rule or regulation.

Article 36 - If the offender is unaware of the existence of an aggravating circumstance which changes the nature of the offence, then he is not responsible for it but can benefit from that excuse even though he is unaware of it.

Article 37 - (1) No person can plead ignorance of the provisions of this Code or any other penal code as long as it was not possible by reason of an act of God for him to be aware of the code under which the offence is punishable.

(2) The Court has the right to exempt an alien from the penalty for an offence that he commits within a maximum of 7 days following the date of his arrival in Iraq if his ignorance of the Code is established and if the offence is not punishable by law in his country of residence.

Article 38 The motive for the commission of an offence is not taken into consideration unless otherwise stipulated by law.

## **SECTION FOUR: Justification**

### **1. Performance of a duty**

Article 39 - There is no crime if the act occurs in performance of a duty prescribed by the Code.

Article 40 - There is no crime if the act is committed by a public official or agent in the following circumstances:

(1) If he commits the act in good faith in the performance of his legal duty or if he considers that carrying it out is within his jurisdiction.

(2) If he commits the act in performance of an order from a superior which he is obliged to obey or which he feels he is obliged to obey. It must be established in these circumstances that the belief of the offender in the legitimacy of the act is reasonable and that he committed the act only after taking suitable precautions. Moreover, there is no penalty in the second instance if the Code does not afford the official an opportunity to question the order issued to him.

### **2. Exercising a legal right**

Article 41 - There is no crime if the act is committed while exercising a legal right. The following are considered to be in exercise of a legal right:

(1) The punishment of a wife by her husband, the disciplining by parents and teachers of children under their authority within certain limits prescribed by law or by custom.

(2) A surgical operation or professional treatment when it is carried out with the consent of the patient or his legal representative or without their consent in cases of emergency.

(3) An act of violence during the course of a sporting event when the rules of that sport have been complied with:

(4) An act of violence committed against any person caught in the act of committing a felony or misdemeanor with a view to apprehending him.

### **3. The right of legal defense [self defense]**

Article 42 - There is no crime if the act is committed while exercising a right of legal defense.

This right exists if the following conditions apply:

(1) If a person defends himself and his property against the threat of a criminal act or reasonably believes that such threat exists.

(2) If he is unable to take refuge with the public authorities in order to protect himself from such threat at the appropriate time.

(3) If he has no other means with which to ward off such threat. In exercising this right, it makes no difference that the threat of danger is directed towards the life and property of the person concerned or towards the life and property of others.

Article 43 - The right of legal self-defense does not permit murder unless it is intended that one of the following situations is to be avoided:

(1) An act as a result of which it is reasonably feared that death or serious injury may occur.

(2) Rape or buggery of a man or woman against his or her will.

(3) Kidnapping.

Article 44 - The right of legal defense of property does not permit murder unless it is intended that one of the following situations is to be avoided:

(1) Arson.

(2) Theft.

(3) Entering at night a residential building or part thereof.

(4) An act as a result of which it is reasonably feared that death or injury may occur.

Article 45 - The right of legal defense does not permit the infliction of greater harm than is necessary and if the person concerned oversteps the limits of that right either deliberately or negligently or if he mistakenly thinks that he is in a situation of legal defense, then he will be responsible for the offence he commits. In this case, the court is only permitted to impose the penalty for a misdemeanor rather than that prescribed for a felony and the penalty for an infraction rather than that prescribed for a misdemeanor.

Article 46 - The right of legal defense does not permit any person to resist a member of the public authorities in the execution of his duties even though he has overstepped the bounds of that duty while acting in good faith, unless it is reasonably feared that death or serious injury will result.

## **SECTION FIVE: Parties to a crime**

### **1. The principal and accessory**

Article 47 - The following are considered to be principals to an offence:

- (1) Any person who commits an offence by himself or with others.
- (2) Any person who participates in the commission of an offence that consists of a number of acts and who willfully carries out one of those acts during the commission of that offence.
- (3) Any person who incites another in any way to commit an act contributing to an offence if that person is not in any way criminally liable for the offence.

Article 48 - The following are considered to be accessories to an offence:

- (1) Any person who incites another to commit an offence and that offence is committed on the basis of such incitement.
- (2) Any person who conspires with others to commit an offence and that offence is committed on the basis of such conspiracy.
- (3) Any person who knowingly supplies the principal to an offence with a weapon, instrument or anything else to commit an offence or deliberately assists him in any other way to carry out those acts for which he has received assistance.

Article 49 - An accessory is considered to be a principal to an offence under the provisions of Article 48, if he is present during the commission of that offence or any act contributing to that offence.

Article 50 - (1) Any person who participates in the commission of an offence as principal or accessory is punishable by the penalty prescribed for that offence unless otherwise stipulated by law. .

(2) An accessory is punishable by the penalty prescribed by law, even though the principal is not punishable due to lack of criminal intent on his part or for other circumstances in respect of him.

Article 51 - If there exists material circumstances in the offence that would by their nature increase or decrease the penalty, then they will affect all parties to the offence, principal or accessory, whether they are aware of those circumstances or not.

If there are personal aggravating circumstances which facilitated the commission of the offence, then they will not affect any person other than the person concerned, unless that other person is aware of them.

Any other circumstance will not affect the person concerned, whether or not it is aggravating or extenuating.

Article 52 - If there exists any personal defenses which absolve one of the parties to an offence, whether as principal or accessory, from the penalty or which reduce that penalty, than it affects only the person concerned.

Any material defense that absolves a party to an offence from the penalty or reduces that penalty will apply in respect of all parties to the offence.

Article 53 - A party to an offence, whether as principal or accessory, is only punishable by the penalty for the offence that has actually been committed even though he did not intend to commit the offence, as long as the offence that is committed is the probable consequence of his participation in it.



Article 54 - If the intent of a party to an offence, whether as principal or accessory, or if his knowledge of the offence differs from the intent of the other parties to that offence or the extent of their knowledge of it, then they will each be punishable according to their intent or the extent of their knowledge of the offence.

## **2. Criminal Conspiracy**

Article 55 - A criminal conspiracy is considered to be an agreement between two or more people to commit a felony or misdemeanor such as theft, fraud or forgery, whether or not it is a specified offence or arises out of acts that are aided and abetted, even though that agreement is in the initial planning stages or has been in existence only for a short time.

The agreement is considered to be a criminal one whether the final objective is to commit an offence or to achieve a legitimate aim by the commission of that offence.

Article 56 - (1) Any member of a criminal conspiracy, even though he did not attempt to commit the planned offence, is punishable by a term of imprisonment not exceeding 7 years if the planned offence is a felony or by a period of detention not exceeding 2 years or a fine not exceeding 150 dinars if the offence is a misdemeanor. This is as long as the law does not stipulate a specific penalty for conspiracy.

(2) If the aim of the conspiracy is to commit a specified offence for which the penalty is less than that stipulated in the preceding Sub-Article, then the penalty will not be greater than one quarter of the maximum limit prescribed for that offence.

Article 57 - (1) Any person who attempts to set up a criminal conspiracy or who plays a major part in it is punishable by a term of imprisonment not exceeding 10 years if that offence is a felony and by a period of detention not exceeding 3 years or a fine or both if the offence is a misdemeanor.

(2) If the aim of the conspiracy is to commit a specified offence and the penalty for that offence is less than that stipulated in the previous Sub-Article, then the penalty will not be greater than one quarter of the maximum limit prescribed for that offence.

Article 58 - Any person who gives assistance to a conspirator or facilitates the meetings of a group of conspirators or gives them shelter or helps them in any way knowing the aim of the conspiracy is punishable by the penalty prescribed in Article 56.

Article 59 - Any person is exempted from the penalties prescribed in Articles 56, 57 and 58 if he promptly notifies the public authorities of the existence of a criminal conspiracy and of the participants before any offence is committed as a result of that conspiracy and before those authorities have begun to investigate the conspirators.

If the authorities are notified after they have begun their investigations, then he is not exempted from the penalty unless the information leads to the arrest of the conspirators.

## **CHAPTER FOUR: The Criminal.**

### **SECTION ONE: Criminal liability and exemptions from it**

## **1. Loss of reason and volition .**

Article 60 - Any person who, at the time of the commission of the offence, is suffering from a loss of reason or volition due to insanity or infirmity of mind or because he is in a state of intoxication or under the influence of drugs resulting from the consumption of intoxicating or narcotic substances given to him against his will or without his knowledge or due to any other reason which leads one to believe that he has lost his reason or volition is not criminally liable. However, if he is not suffering from any infirmity of mind nor is under the influence of intoxicating, narcotic or other substances but only from a defect of reason or volition at the time of the commission of the offence, then it is considered a mitigating circumstance.

Article 61 (i<sup>7</sup>) If the offender is suffering from a loss of reason or volition induced by intoxicating or narcotic substances acquired knowingly and of his own free will, he is punishable for the offence that is committed if there is a specific intent and if that offence would have been committed without the use of intoxicating or narcotic substances. If the alcohol or drugs are acquired knowingly with a view to committing that offence, then it is considered an aggravating circumstance.

## **2. Compulsion**

Article 62 - Any person who is compelled to commit an offence by force or under threat so that he is unable to resist is not criminally liable.

## **3. Necessity**

Article 63 - Any person who commits an offence out of the necessity to protect himself or others or his property or the property of others from a significant or imminent danger and who had not himself deliberately caused that danger and has no power to prevent it by any other means is not criminally liable provided that the act contributing to the offence is proportionate to the danger from which he is protecting himself. Any person who is required by law to confront that danger is not considered to be acting out of necessity.

## **4. Age**

Article 64 Criminal proceedings can not be brought against any person who is under 7 years of age at the time of committing an offence.

Article 65 The age of a person should be officially recorded but the chief investigator or the court may ignore that official record if it is not in keeping with the juvenile's appearance. They may also submit him to a medical examination in order to establish his age by radiative, laboratory or other scientific means.

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(i) Decision No 1477 of the RCC issued on 15 September 1980 and published in Al Waqai' Al'Iraqiya. No 2799 on 29 September 1980 (see page 254) states that, if the offender, who has obtained alcoholic liquor of his own free will, commits an offence, it is not considered a mitigating circumstance that calls for leniency.

## 5. The liability of juveniles<sup>8</sup>

Article 66 A juvenile is considered to be any person who commits an offence while between the ages of 7<sup>9</sup> and 18.

If the juvenile is under the age of 15 at the time of committing the offence, he is considered to be a child but, if he is between the ages of 15 and 18, he is considered to be a young person.

Article 67 If a juvenile commits an infraction, he should be cautioned in court rather than punished in accordance with the law or he should be handed over to one of his parents, legal guardians or foster parents with a warning to the latter to insure the juvenile's good behavior or he should be fined whatever the penalty prescribed by law for an infraction may be.

Article 68 - If a child commits a misdemeanor, he should, instead of being punished in accordance with the law, be handed over to one of those people mentioned in Article 67, if he undertakes in writing to insure the child's good behavior. The period for this should not be less than 6 months and should not exceed 3 years from the date of the ruling. He may also be confined in a reform school for a period of not less than 6 months and not exceeding 3 years or he may be fined whatever the penalty prescribed by law may be.

Article 69 - If a young person commits a misdemeanor, he should, instead of being punished in accordance with the law, be ordered to undergo one of those measures set out in Article 68 or be confined in a school for young offenders for a period of not more than 3 years or fined, whatever the penalty prescribed by law for that misdemeanor may be.

Article 70 - If a juvenile commits a felony or misdemeanor during the period when he is in the care of one of the persons mentioned in Article 68, that person who has undertaken to insure the juvenile's good behavior, should stand bail for a sum not exceeding 50 dinars if the offence is a misdemeanor.

Article 71 - The provision ceases to apply when the juvenile reaches the age of 18.

Article 72 - If a child commits a felony, he shall be sentenced to confinement in a reform school for a period of not less than 2 years but not exceeding 5 years if the felony is punishable by the death sentence or life imprisonment and a period of not less than 1 year but not exceeding 4 years if the felony is punishable by imprisonment for a term of years.

Article 73 - (1) If a young person commits a felony, he shall be confined in a school for young offenders, for a period of not less than 2 years but not exceeding 15 years if that felony is punishable by the death sentence or life imprisonment.

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<sup>8</sup> Paragraph 70 of the Juvenile Law No. 64 of 1972 states that: "Provisions relating to juveniles referred to in the Penal Code and the Criminal Procedure Code which conflict with the provisions of this Code are not enforceable in such places where they apply." [now repealed and replaced with the Juvenile Welfare Law No. 76 of 1983 which has a similar but not identical text in Article 108]

<sup>9</sup> pursuant to Articles 47(1) and 108 of Juvenile Welfare Law No. 76 of 1983 the minimum age is raised to 9 years

(2) He shall be confined in a school for young offenders for a period of not less than 1 year but not exceeding half the maximum penalty prescribed for that felony if the penalty is imprisonment for a term of years. The Court may sentence a young person to confinement in a reform school for a period of not less than 1 year but not exceeding half the maximum penalty prescribed by law for that felony if the penalty for that felony is less than 10 years. However, the period of confinement in such reform school will not, under any circumstances, exceed 5 years.

Article 74 - (1) The age of a juvenile at the time of the commission of an offence should be the basis for establishing his liability.

(2) If a child commits an offence and, at the time of sentencing, has become a young person, then he will be sentenced for the offence as if he was a child. The Court may also substitute a period of confinement in a reform school for the prescribed period of confinement in a school for young offenders.

(3) If a juvenile commits an offence and he has reached the age of 18 at the time of sentencing, he will receive the penalty prescribed for that offence as if he was a juvenile but the court may substitute a period of confinement in a reform school, as with the case of a child, for a period of confinement in a school for offenders. A period of confinement in a school for young offenders may also be substituted for a term of imprisonment if the offence committed is a felony, or detention, if the offence committed is a misdemeanor, for a period equal to that which can be imposed for the commission of that offence. Other penalties prescribed by law may be substituted for a fine not exceeding 50 dinars.

(4) If a child confined in a reform school reaches the age of 18, he must be transferred from there to a school for young offenders to serve the rest of his sentence. If any person who is held in a school for young offenders reaches the age of 30, he must be transferred to a prison to serve the rest of his sentence.

Article 75 - if a juvenile is accused of the commission of more than one offence, he may be tried for all those offences at one time, for which one sentence may be passed. However, the court should take into consideration the offence that carries the severest penalty and pass sentence accordingly.

Article 76 - (1) The sentencing of a juvenile to a period of confinement in a reform school or a school for young offenders, does not prevent him from being sentenced for a second time.

(2) If the sentence includes more than one period of confinement then the total period must not exceed 5 years in a reform school or 15 years in a school for young offenders.

Article 77 - (1) If a juvenile, who has been sentenced to a period of confinement in a reform school or a school for young offenders, has completed two thirds of his sentence, the court that has passed that sentence may, on the application of the juvenile, one of his parents, legal guardians or foster parents and after examining a report from the director of the school in which he is confined or on the application of the public prosecutor, order the release of that juvenile, if it is clear that his behavior has improved. However, he must be placed in the care of one of the above mentioned persons after they have undertaken to abide by the provisions of Articles 67 if the juvenile has not yet reached the age of 18. If he has reached the age of 18, he must undertake to be on good behavior for the rest of the period of his sentence.

(2) If the juvenile commits a premeditated felony or misdemeanor during the remainder of his sentence, a court may decide to return him to a reform school or school for young offenders to complete

the rest of his sentence but the period he has spent at liberty will not, in this circumstance, be taken into consideration.

(3) If the juvenile completes the rest of his sentence without committing a premeditated felony or misdemeanor, he will be released at the end of that period.

Article 78 - The provisions relating to reoffending are not applicable to a juvenile nor is he subject to incidental or supplemental penalties or precautionary measures other than confiscation, closure of business or disbarment. If a juvenile is fined, then a period of detention is not permitted in discharge of that fine but the fine must be paid by him or, if that is not possible, it must be settled out of what he possesses.

Article 79 - No person between the ages of 18 and 20 at the time of committing an offence can be sentenced to death. In such a case, he will receive life imprisonment instead of the death sentence.

### **SECTION TWO: The liability of corporate bodies**

Article 80 - Corporate bodies other than the government and its official and semiofficial agencies are criminally liable for offences committed by their employees, directors or agents working for them or on their behalf. Such bodies may only be sentenced to a fine, confiscation or such precautionary measures as are prescribed by law for that offence. However, if the law prescribes a specific penalty for that offence other than a fine, then it may be substituted for a fine but that does not prevent the offender himself from being punished by the penalties prescribed by law for that offence.

### **SECTION THREE: Liability in offences of publication**

Article 81 - Without prejudice to the criminal liability of an author or illustrator of a book or other means of expression, the editor in chief of a newspaper is punishable in his capacity as principal to an offence committed by means of that newspaper. If there is no editor in chief, then the editor in charge of the department responsible for the publication is liable. However, either of them may be absolved from the penalty if he can establish, during the investigation that the publication, had occurred without his knowledge and if he provides all the information and documentation available to him that will assist in the identification of the person responsible.

Article 82 - If the writing or drawing or other form of expression used in the commission of an offence is produced or published outside Iraq or if it is impossible to identify the offender then the importer or printer of such material is punishable as principal to the offence. If that is not possible, then the purveyor, distributor or billposter is punishable as long as it is clear from the circumstances of the case that he was in a position to know the content of the writing, drawing or other form of expression.

Article 83 - No person is absolved from the criminal liability of publication offences even though the writing, drawing or other form of expression is a quotation from or translation of publications that are issued in Iraq or abroad or if they are merely rumors or stories propagated by others. This provision is not applicable if the publication quotes official government publications.

Article 84 - If a felony or misdemeanor is committed by any section of the media, the chief investigator or the court, before which the case is heard, may, on the application of the public prosecutor, order the seizure of all writings, drawings or other forms of expression which have been prepared for sale, distribution or display or which have already been sold, distributed or displayed, including originals posters, tapes, films or anything else. The court may, when a conviction has been obtained in the case, order the confiscation of the materials that have been seized. It may also order the verdict or a summary of the verdict to be printed in a newspaper or, at most, two newspapers at the expense of the convicted party.

The court may also, if the offence has been committed by means of a publication in a newspaper, order, on the application of the public prosecutor or the aggrieved party, that the verdict or a summary of the verdict be printed in the same part of that newspaper a period to be fixed by the court. If this is not done, then the editor in chief or whoever is responsible for publication in the absence of the editor in chief is punishable by a fine not exceeding 100 dinars. If a conviction is obtained for a felony committed by means of a newspaper, the court may close down that newspaper for a period not exceeding 3 months.

## **CHAPTER FIVE: The penalty**

### **SECTION ONE: Primary penalties**

Article 85 - The primary penalties are:

1. Death penalty
2. Life imprisonment<sup>10</sup>
3. Imprisonment for a term of years
4. Penal servitude
5. Detention
6. A fine
7. Confinement in a school for young offenders
8. Confinement in a reform school.

Article 86 - The death penalty is the hanging of the condemned person by the neck until he is dead.

Article 87 - Imprisonment is the confinement of the convicted person in a penal institution set up by law for that purpose for a period of 20 years if for life imprisonment<sup>11</sup> or for such periods as are prescribed by the sentence if for imprisonment for a term of years. Imprisonment for a term of years is more than 5 years but less than 15 years unless otherwise stipulated by law. The total period of deprivation of liberty may not exceed 25 years under any circumstances<sup>12</sup> and if the code stipulates imprisonment then it is to be considered as imprisonment for a term of years.

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<sup>10</sup> to which the CPA added 'life which means life'

<sup>11</sup> unless 'life which means life'

<sup>12</sup> CPA Order 31, sections 2,3,4 and 5 introduced a sentence of life which means life

Any person sentenced to life imprisonment or imprisonment for a term of years may be put to work in accordance with the Penal Institutions Law.<sup>13</sup>

Article 88 - Penal servitude is the confinement of the convicted person in a penal institution set up by law for that purpose for a period stipulated by the sentence. This period should not be less than 3 months and should not exceed 5 years unless otherwise stipulated by law. The court must pass a sentence of penal servitude whenever that period of detention is more than 1 year. Any person sentenced to penal servitude is to be put to work as stipulated by law in respect of penal institutions.

Article 89 – Simple detention is the confinement of the convicted person to a penal institution set up by law for that purpose for the period stipulated by the sentence. This period should not be less than 24 hours and should not exceed 1 year unless otherwise stipulated by law. The convicted person should not be put to work in any way.

Article 90 - The period during which a person is deprived of his liberty runs from the day on which the convicted person is confined in a prison to serve his prescribed sentence but the period which he spends in detention following the offence for which he is later convicted is deducted from the period of his sentence.

Article 91 - A fine is the compulsion of the convicted person to pay to the Public Treasury a sum of money prescribed by the sentence. The court should take into account, while considering the amount of the fine, the financial and social circumstances of the convicted person, what he gained or expected to gain from the offence, the circumstances of the offence and the condition of the victim. The amount of the fine should not be less than half a dinar and should not exceed 500 dinars unless otherwise stipulated by law.

Article 92 - (1) If a fine is imposed on a number of convicted persons for the commission of a single offence whether they are principals or accessories, then the fine is imposed on each of them individually unless the fine is apportioned among them.

(2) A proportionate fine is imposed in addition to a primary penalty according to the damage inflicted as a result of the offence or the benefit realized or intended to be realized by the offender. If there is a number of persons convicted for a single offence, then they are jointly liable for that fine whether they are principals or accessories unless otherwise stipulated by law.

Article 93 - (1) If a fine is imposed on a convicted person whether or not in conjunction with a period of detention, then the court may order a period of detention for nonpayment of the fine for a specific period not exceeding half the maximum limit prescribed for that offence if it is punishable by detention plus a fine.

(2) If the offence is punishable only by a fine then the period of detention that the court may order for nonpayment is one day for each half dinar of the fine. The period of detention may not, however, exceed 2 years under any circumstances.

Article 94 - Confinement in a school for young offenders is the commitment of a young person to an institution set aside for his training and correction for the period prescribed by the sentence.

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<sup>13</sup> As amended by Paragraph 3 of Law No. 207 of 1970

Confinement in a reform school is the commitment of a child to an institution set aside for his training and correction for the period prescribed by the sentence.

## **SECTION TWO: Incidental penalties**

Article 95 - Incidental penalties are those imposed on a convicted person in accordance with the law without the need for them to be specifically stated in the sentence.

### **1. The withdrawal of certain rights and privileges**

Article 96<sup>14</sup> A sentence to life imprisonment or to imprisonment for a term of years means that, in accordance with the law, the convicted person is deprived of the following rights and privileges from the day he is sentenced until such time as he is released from prison:

- (1) All offices or positions held by him
- (2) He may neither vote for nor be elected to any representative council.
- (3) He may not be a member of an administrative or municipal council nor a member or director of a company'.
- (4) He may not act as guardian, executor or trustee.
- (5) He may not own or publish a newspaper nor be its editor in chief.

Article 97 - A sentence to life imprisonment or imprisonment for a term of years imposed on the convicted person means that, from the day it is imposed to the date of completion of the penalty or its termination for any other reason, he is, in accordance with the law, deprived of his right to administer or dispose of his assets without the appointment of an executor or to make endowments except, according to the circumstances, by permission of a canonical or personalty court, which has jurisdiction in the area where he is resident. The Court may, on the application of the convicted person or the public prosecutor or anyone else who has an interest, appoint an executor to administer his assets and may require such executor to give a guarantee. The court may also stipulate a fee for him and that he be subject to the authority and supervision of the court in everything that relates to his executorship.

Any transaction, administration or disposal in respect of the convicted person's assets carried out without regard to the above is subject to the permission of the court mentioned in the preceding Sub-Article.

The assets of the convicted person are returned to him on completion of the term of the penalty or following its termination for any other reason and the executor may charge him for his administrative duties.

Article 98 - Any death sentence imposed on the condemned person means that, from the day it is imposed until the sentence is carried out, the condemned person is, in accordance with the law, deprived of the rights and privileges prescribed in the preceding 2 Articles. Any disposal or administrative transaction undertaken by him during the above period other than making a will or endowment are void. A legal or personalty court will, according to the circumstances and on the application of the public prosecutor or any person who has an interest, an executor for the condemned person.

### **2. Police supervision**

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<sup>14</sup> As amended by RCC Decision No 997 published in Al-Waqai' Al-'Iraqiya No 2667 on 7.8.78



Article 99 - (1) Any person sentenced to imprisonment for a felony relating to the internal or external security of the State, the counterfeiting or imitation of currency, the forgery of stamps, government bonds or official records or bribery, embezzlement, theft or premeditated murder in aggravating circumstances will, following the completion of his sentence, be placed in accordance with the law under the supervision of the police according to the provisions of Article 108 of this Code for a period equal to that of the original sentence but this period may not exceed 5 years.. However, the court may reduce in its sentence the period of supervision or may absolve the convicted person from such supervision or reduce the constraints of that supervision.

(2) Any person who contravenes the provisions of police supervision is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars.

### **SECTION THREE: Supplemental penalties**

#### **1. The withdrawal of certain rights and privileges**

Article 100<sup>15</sup> - (1) The court may, when sentencing a person to life imprisonment or imprisonment for a term of years or to a period of detention exceeding 1 year, order that he be deprived of one or more of the rights listed below for a period of not more than 2 years from the date of the completion of his sentence or its termination for any other reason:

- (a) The holding of certain public offices and positions but any office or position of which he is to be deprived should be specified in the sentence and any decision to that effect should be justifiable.
- (b) The wearing of national or foreign medals.
- (c) The carrying of arms.
- (d) All or some of the rights and privileges listed in Sub-Article 2 of the Decision.

(2) A penalty depriving the convicted person of similar rights and privileges may also be imposed on him and he should therefore serve the longest penalty following his release from prison.

(3) If the convicted person is released on a conditional discharge then the period of deprivation prescribed by the court will begin on the day he is released from prison. If a decision to cancel the conditional discharge is issued and the convicted person is required to serve the remainder of his sentence, then the period of deprivation begins on the day he completes the period of his sentence.

(4) The public prosecutor or the convicted person may, after a period of not less than 6 months from the date of his release from prison, submit to the High Court in the area where the convicted person is resident an application for the reduction or cancellation of the remainder of the period of deprivation prescribed by the sentence. The High Court must, after making the necessary inquiries, issue its decision, which must be both justified and final. The public prosecutor or the convicted person may, if the application is rejected either wholly or partially, submit a further application after a period of 3 months from the date when the initial application was rejected.

#### **2. Confiscation**

Article 101 - In circumstances other than those in which the law requires a confiscation order, the court may, on the conviction of a person for a felony or misdemeanor, order the confiscation of particular items that were acquired as a result of the offence and that were subsequently seized or that

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<sup>15</sup> As amended by RCC Decision No 977 published in Al-Waqai' Al-'Iraqiya No 2667 on 7.8.78

were intended to be used in the commission of the offence. This is without prejudice to the rights of others who have acted in good faith.

The court must, in all circumstances, order the confiscation of particular items that are used to create funds for the commission of an offence.

### **3. Publication of the sentence**

Article 102 - A court may, of its own accord or on an application of the public prosecutor, order the publication of the sentence imposed on a person convicted of a felony and may, on the application of the victim, order the publication of sentences imposed on persons convicted for offences of slander, libel or insult committed by means of those methods of publication mentioned in Article 19, Sub-Articles 3c and 3d. Publication will be in one or more newspapers at the convicted person's expense but, if an offence of slander, libel or insult has been committed by means of publication in a newspaper, the court will order the publication of the sentence in that newspaper and in the same place in which the offending items appeared. The publication is confined to the sentence only unless the court orders the publication of the charges in addition to the sentence. If any newspaper specified in the publication order refuses or is slow to publish the sentence without reasonable justification, then its editor in chief is punishable by a fine not exceeding 50 dinars.

## **SECTION FOUR: Precautionary measures**

### **SUB-SECTION ONE: General Provisions**

Article 103 - (1) No precautionary measure prescribed by law may be imposed on a person unless an act considered by law to be an offence has actually been committed and the condition of the offender is such that it is considered to constitute a danger to the public welfare. The condition of the offender constitutes a danger to the public welfare if it is clear from his past and present behavior and from the circumstances of the offence and the motive for committing the offence that there is a distinct possibility that he might commit a further offence.

(2) No precautionary measures may be imposed except in such circumstances and under such conditions as are prescribed by law.

Article 104 - Precautionary measures either deprive a person of his liberty or restrict his liberty or withdraw his enjoyment of certain rights or property.

### **SUB-SECTION TWO: Precautionary measures deprivation and restriction of liberty**

#### **1. Confinement in a therapy unit**

Article 105 - The convicted person shall be confined in a therapy unit of a hospital or sanatorium or any other place set aside for that purpose by the government for care and treatment in accordance with the conditions stipulated by law for a period of not less than 6 months. Those in charge of the unit must submit to the sentencing court reports on the convicted person's condition at intervals of not more than 6 months. The court may, after taking specialist medical advice, decide to release the

convicted party or, as his condition requires, hand him over to one of his parents or relatives to take care of him and ensure his compliance with the conditions laid down by the court. The court may also, on the application of the public prosecutor or any other interested party and after taking specialist medical advice, return him to the unit if circumstances require that he should be returned.

## **2. Disbarment**

Article 106 - (1) Disbarment forbids the convicted person to consume intoxicating liquor in a bar or any other place set aside for that purpose for the period prescribed by the sentence.

(2) If any person is convicted more than once for the commission of an offence while under the influence of alcohol or for the commission of some other felony or misdemeanor while under such influence, the court may, at the time of conviction, restrict the convicted person from frequenting bars or other such places for a period not exceeding 3 years.

## **3. Restriction of residence**

Article 107 - (1) Restriction of residence is the prevention of the convicted person, after he has completed his sentence, from visiting a particular place or places for a period of not less than 1 year but not exceeding the period of his original sentence. The period may not, under any circumstances, exceed 5 years. The court should take into consideration in such a case the convicted persons medical, personal and social circumstances.

(2) The court may impose a restriction of residence on anyone: convicted for a habitual felony or misdemeanor of an indecent nature and may, at any time, order, on the application of the convicted person or the public prosecutor, that he be absolved from all or part of the period prescribed for restriction or that the stipulation of the place or places to which the order applies be modified.

## **4. Police supervision**

Article 108 - Police supervision is the supervision of the convicted person's behavior once he has been discharged from prison in order to establish the extent to which he has been reformed or rehabilitated. It requires that he abide by all or some of the following restrictions prescribed by the court:

(1) Not to reside in a particular place or places but it should not affect the nature of the person's employment or his social or medical condition.

(2) Not to take up residence in any place unless it is specified by the sentencing court on the application of the public prosecutor.

(3) Not to change his residence except by permission of the court in whose jurisdiction his present residence is located and not to leave his residence after dark except by permission of the police department.

(4) Not to frequent bars and other such places as are specified by the sentence.

Article 109 - In addition to the special conditions. prescribed by the code, the court may order the convicted person to be detained for a year or more under police supervision and, after; he has completed his original sentence, for a period of not less than 1 year and not exceeding the period of the original sentence. The period may not, under any circumstances, exceed 5 years. This provision applies in the following circumstances:

(1) If the sentence is imposed for a habitual felony or theft or for handling stolen goods or fraud or blackmail or hiding escaped convicts.

(2) If the sentence is imposed for a misdemeanor and the convicted person is a habitual offender or it is reasonably believed by the court that he will commit a further felony or misdemeanor.

Article 110 - (1) The period of supervision begins on the day specified by the sentence and the date specified for the termination of that supervision may not be postponed if such supervision can not be carried out because the convicted person is serving a period of detention or is absent for some reason from the place in which he is to be under supervision.

(2) The court may, at any time and, on the application of the convicted person or the public prosecutor, absolve the convicted person from the period of supervision or from some of the restrictions if it considers such action to be appropriate.

### **SUB-SECTION THREE: Precautionary measures deprivation of rights**

#### **1. Prevention from acting as guardian, executor or trustee**

Article 111 - Prevention from acting as guardian, executor or trustee precludes the convicted party from exercising this authority over others unless it concerns life or property.

Article 112 - If a guardian, executor or trustee is convicted for the commission of a misdemeanor which violates the conditions of his position of authority or for the commission of any other offence, the circumstances of which demonstrate his unsuitability as a guardian or executor, the court may order that he be prevented from acting in any of those capacities.

#### **2. Prevention from carrying out one's employment**

Article 113 - Prevention from carrying out one's employment deprives a person of his right to pursue a profession or business or an industrial, commercial or technical activity, the pursuit of which is dependent on permission from a legally appointed authority.

Article 114 - If any person commits a felony or misdemeanor which violates the conditions of his profession, business or activity and, as a result, receives a sentence that deprives him of his freedom for a period of not less than 6 months, the court may, at the time of conviction, prevent him from carrying out his employment for a period not exceeding 1 year and, if he reoffends within the 5 years following the prevention order, the court may order that he be prevented from carrying out his employment for a period not exceeding 3 years.

#### **3. Disqualification from driving**

Article 115 - Disqualification from driving invalidates the driving license of the convicted person and precludes him from obtaining a new license for the period prescribed by the sentence.

Article 116 - Any person who is convicted of an offence committed by means of a motorized conveyance in contravention of the law, the court may, at the time of conviction, order the withdrawal of his driving license for a period of not less than 3 months.

## **SUB-SECTION FOUR: Substantive precautionary measures**

### **1. Confiscation**

Article 117 - An order for the confiscation of goods of which the manufacture, possession, acquisition, use, sale or advertisement for sale is considered an offence in itself must be issued even though they do not belong to the accused or the accused has not been convicted. If these goods have not actually been seized at the time of the trial but have been sufficiently identified, the court should order their confiscation when they are seized.

### **2. Undertaking to be on good behavior**

Article 118 - (1) An undertaking to be on good behavior means that the convicted person, when sentenced, should undertake to be on good behavior for a period of not less than 1 year and not exceeding the period of the prescribed penalty. However, the period should not, under any circumstances, exceed 5 years from the date of the completion of the sentence or its termination for any other reason. The convicted person must pay to the court a sum of money or something of equivalent value considered by the court to be compatible with his financial position. However, this amount should not be less than 20 dinars and should not exceed 200 dinars. Another person may pay the prescribed amount.

(2) The court should stipulate in its sentence a time limit for payment of the sum or something of equivalent value not exceeding 1 month from the date of the completion of the sentence or its termination for any other reason. If it is not paid within this period, the court may decide to place the convicted person under police supervision for a period of not less than 1 year and not exceeding the prescribed period for his undertaking to be on good behavior. The court may also order any other precautionary measure that is compatible with his position and may absolve him from that at any time if he pays the sum or the equivalent of that sum. The court may, on the application of the convicted person, decide to reduce the sum or the period of his undertaking to be on good behavior, if there is reasonable cause for doing so.

Article 119 - The court may, when sentencing any person for the commission of a felony or misdemeanor that endangers life or, property or violates the public morality, require the convicted person at the time of his conviction to undertake to be on good behavior.

Article 120 - If the convicted person does not commit a felony or misdemeanor during the period of his undertaking, the court will order the refund of the sum specified in respect of his undertaking or the goods of equivalent value to whomever provided them. If he is finally convicted of a premeditated felony or misdemeanor committed during such period, the sum of money is paid to the Public Treasury. If goods have been submitted instead of money, the equivalent amount of money is taken in settlement.

### **3. Closure of business premises**

Article 121 - Notwithstanding the special conditions stipulated by law concerning the closure of business premises, the court may, when sentencing a person for a felony or misdemeanor, order the closure of business premises used in the commission of the offence for a period of not less than 1 month and not exceeding 1 year.

Closure means the prevention from pursuing a business or commercial or industrial activity in those premises whether or not such activity is carried on by the convicted person or a member of his family or any other person to whom the convicted person has rented or given the premises following the commission of the offence. Such prevention will not affect the owner of the premises or any other person who has a material interest in the premises as long as he is not involved in the commission of the offence.

#### **4. Suspension and winding up of a body corporate**

Article 122 - The suspension of a body corporate follows the prevention of that body corporate from pursuing the affairs that it is entitled to administer even though it is on behalf of or under the control of another. The winding up of a body corporate follows the liquidation of its assets or the termination of the employment of its directors and representatives.

Article 123 - The court may order the suspension of a body corporate for a period of not less than 3 months and not exceeding 3 years if a felony or misdemeanor is committed by one of its representatives or by an agent working on its behalf or at its expense and he is penalized as a result by a deprivation of freedom for a period of 6 months or more.

If the felony or misdemeanor is committed on more than one occasion, the court may order the body corporate to be wound up.

#### **SUB-SECTION FIVE: General Provisions**

Article 124 - Notwithstanding the conditions stipulated in Articles 105, 111 and 117, any violation of the provisions of a precautionary measure is punishable by a period of detention not exceeding 1 year or by a fine not exceeding 100 dinars.

Article 125 - The discharge of any person from a penalty does not mean a discharge from a precautionary measure unless otherwise stipulated by law or the court rules to the contrary.

Article 126 - If the period, during which the penalty is discharged, ends without an order being made to cancel that discharge, the precautionary measure will lapse whether that measure was operative in conjunction with the penalty or not and the sentence imposed is considered not to have been passed.

Article 127 - Notwithstanding the measures concerning confiscation and the winding up of a corporate body, the court may, on the application of the person concerned, cancel any measure prescribed in the preceding Articles that is imposed on him or modify the extent to which it is applicable.

If the person refuses to make such a request, he may not do so again, for at least a year and the court may, on the application of the public prosecutor, withdraw at any time its order to cancel the measure if it considers such action to be appropriate.

#### **SECTION FIVE: Legal excuse and legally extenuating circumstances**

Article 128 - (1) Legal excuse either discharges a person from a penalty or reduces that penalty. Excuse only exists under conditions that are specified by law. Notwithstanding these conditions, the commission of an offence with honourable motives or in response to the unjustified and serious provocation of a victim of an offence is considered a mitigating excuse.

(2) The court must identify in its decision the excuse that discharges a person from a penalty.

Article 129 - An excuse that discharges a person from a penalty precludes the imposition on such person of a sentence to a primary, incidental or supplemental penalty.

Article 130 - If there exists a mitigating excuse for a felony for which the penalty is death, the penalty shall be reduced to life imprisonment or imprisonment for a term of years or detention for a period of not less than 1 year. If the penalty is life imprisonment or imprisonment for a term of years; the penalty shall be reduced to a period of detention of not less than 6 months unless otherwise stipulated by law.

Article 131 - If there exists a mitigating excuse for a misdemeanor, the reduction of the penalty shall be as follows:

(1) If the penalty has a minimum limit, the court will not be bound by that in its assessment of the penalty.

(2) If the penalty is detention plus a fine, the court will rule for only one of those penalties.

(3) If the penalty is detention without a minimum limit, the court will rule for a fine instead.

Article 132 - If the court considers that the circumstances of a felony or of the offender call for leniency, it may substitute a lesser penalty for the penalty prescribed for the offence, as follows:

(1) Life imprisonment or imprisonment for a term of years not less than 15 years may be substituted for the death penalty,

(2) Imprisonment for a term of years may be substituted for life imprisonment.

(3) A period of detention of not less than 6 months may be substituted for imprisonment for a term of years.<sup>16</sup>

Article 133 - If the court considers that the circumstances of a misdemeanor call for leniency, it may apply the provisions of Article 131.

Article 134 - If the court reduces a penalty in accordance with Articles 130, 131, 132 and 133, it must identify in its decision the excuse and circumstances which call for a reduction in the sentence.

## **SECTION SIX: Aggravating circumstances**

### **General aggravating circumstances**

Article 135 - Without prejudice to the special conditions prescribed by law for an increase in the penalty, the following are considered to be aggravating circumstances:

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<sup>16</sup> As amended in accordance with Law No 77 of 1984 issued on 23/8/84 and published in the Official Gazette issue 3009 of 3/9/84

- (1) The commission of an offence with a base motive.
- (2) The commission of an offence while taking advantage of a defect in the victim's reason or his inability to resist or in circumstances in which others are unable to come to his aid.
- (3) The use of brutal methods in the commission of an offence or the harsh treatment of the victim.
- (4) The use by the offender in the commission of an offence of his position of employment or the abuse of any authority or influence deriving from such position.
- (5) The abuse of public or trusted officer for private gain or the offering, granting or acceptance of some advantage in violation of the person's trusted or public official duties and the official abuse of the rights of others, or attempting to induce such abuse or violation.<sup>17</sup>
- (6) The commission of an offense in connection with, in furtherance of, or to impede detection of any of the offenses described in sections 2 (4) (a) through (d) of the organic law establishing the Commission of Integrity.<sup>18</sup>
- (7) Violation of financial disclosure regulations promulgated by the Commission of Integrity.<sup>19</sup>

Article 136 - If there exists any aggravating circumstances in the commission of an offence, the court may rule as follows:

- (1) If the penalty prescribed for the offence is life imprisonment, the death penalty may be imposed.<sup>20</sup>
- (2) If the penalty is imprisonment for a term of years or detention, the sentence may be greater than the maximum limit for the penalty prescribed for the offence provided that the increase in the penalty does not exceed half the maximum limit. The term of imprisonment, however, may not, under any circumstances, exceed 25 years and the period of detention may not exceed 10 years.
- (3) If the prescribed penalty for the offence is a fine, the sentence may be a period of detention which may amount to half the period that can be imposed in accordance with the rate of conversion prescribed in Sub-Article 2 of Article 93. The period, however, may not, under any circumstances, exceed 4 years.
- (4) If the offense involves a provision described in Sections 2(4) (a) through (d) of the organic law establishing the Commission of Integrity, then the offending person shall be immediately and permanently disqualified from government employment or from contracting to provide goods or services to the government and, unless a more harsh sentence is prescribed by another provision of law, the sentence may be imprisonment of up to 10 years, and a fine of up to \$10 million or its equivalent in Iraqi Dinars, and the forfeiture and restitution of any and all amounts, objects, and tangible assets of unjust enrichment resulting from the offense or related activities.<sup>21</sup>

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<sup>17</sup> sub-paragraphs (5), (6) and (7) were added by the Annex to CPA Order 55, section 6

<sup>18</sup> sub-paragraphs (5), (6) and (7) were added by the Annex to CPA Order 55, section 6

<sup>19</sup> sub-paragraphs (5), (6) and (7) were added by the Annex to CPA Order 55, section 6

<sup>20</sup> note that the CPA suspended the operation of the death penalty replacing it with life imprisonment. Decree 3 of 2004 re-introduced it but only for specific crimes

<sup>21</sup> sub-paragraph (4) was added by the Annex to CPA Order 55, section 6



Article 137 - If there exists any aggravating circumstances in conjunction with mitigating excuses or circumstances which call for leniency, the court shall take into consideration firstly the aggravating circumstances, then the mitigating excuses and finally those circumstances which call for leniency. If the aggravating circumstances, the mitigating excuses and the circumstances that call for leniency offset one another, the court may consider them all to be irrelevant and prescribe the original penalty for the offence. If, however, these conflicting circumstances and excuses overlap the court may, in the interests of justice, give precedence to those circumstances that carry the greatest weight.

Article 138 - If an offence is committed with intent to realize an illegal gain and the law prescribes a penalty other than a fine, then the sentence may, in addition to the prescribed penalty, include a fine not exceeding the value of the gain realized or intended to be realized by the offender unless otherwise stipulated by law.

Article 139 - The following persons are considered to be reoffenders:

(1) Any person against whom a final judgment of felony is made and who, before the expiry of any legally prescribed period at the end of which any conviction becomes spent, commits a felony or misdemeanor.

(2) Any person against whom a final judgment of misdemeanor is made and who, before the expiry of any legally prescribed period at the end of which any conviction is spent, commits a felony or misdemeanor similar to the first misdemeanor.

The offences stipulated in any of the following Sub-Articles are considered to be similar to the first misdemeanor for the purposes of applying the provisions of this Sub-Article:

- (a) embezzlement, theft, fraud, breach of trust, illegal appropriation of property or bonds, extortion, concealment or illegal possession of goods acquired as a result of such offences.
- (b) slander, libel, insult or disclosure of secret information.
- (c) offences against the public decency or morality.
- (d) manslaughter and malicious wounding.
- (e) premeditated offences included in this Code.

(3) The judgment of a foreign court is not relevant in the application of the provisions of this Article unless it is issued for offences of counterfeiting or forgery of Iraqi or foreign currency.

Article 140 - The court may, in the event of a further' offence as stipulated in the preceding Article, impose a sentence greater than the maximum penalty prescribed by law provided that the increase in the penalty does not exceed half the maximum penalty. However, a term of imprisonment should not, under any circumstances, exceed 25 years and a period of detention should not exceed 10 years but:

(1) If the penalty prescribed for the offence is imprisonment for a 'term of years without qualification, the court may impose a sentence of life imprisonment.

(2) If the penalty prescribed for the offence is a fine, the court may impose a period of detention.

#### **SECTION SEVEN: The multiplicity of offences and its effect on punishment**

Article 141 - If one act constitutes a number of offences, the offence carrying the greatest penalty must be taken into consideration and the prescribed penalty must be imposed. If the penalties are similar then one of them should be imposed.

Article 142 - If a number of offences are committed as a result of a number of acts and they are inextricably linked and have a common purpose, the penalty prescribed for each one of those offences must be imposed and an order to serve the greatest penalty only must be issued. This does not prevent the convicted person from serving any incidental or supplemental penalties or precautionary measures prescribed by law or imposed in respect of the other offences.

If the convicted person is sentenced for the offence carrying the least severe penalty, he may later be tried for the offence carrying the greatest penalty. In this case, the court will order him to serve the penalty prescribed for the second sentence with an order to subtract the portion of the previous sentence actually served.

Article 143 - (1) If a person commits a number of unrelated offences without a common purpose, he will, instead of being sentenced for one of those offences, be sentenced to the prescribed penalty for each of them and they will be served consecutively but the total period of imprisonment or detention imposed on him or the total combined period of imprisonment and detention should not exceed 25 years.

(2) If a person is sentenced for an offence committed after he has been sentenced for some other offence, the two sentences will be served consecutively<sup>22</sup>.

(3) The period of imprisonment must be as much as the period of detention imposed for an offence committed before the imposition of the sentence to imprisonment.

(4) All fines should be paid and all incidental or supplemental penalties and precautionary measures should be discharged, however many there are but the total period of police supervision should not exceed 5 years.

## **SECTION EIGHT: Suspension of sentence**

Article 144 - The court may, when passing a sentence of detention for a felony or misdemeanor for a period not exceeding 1 year, order in the sentence itself a suspension of that sentence if the convicted person has not previously committed a premeditated offence and if it sees from his character, his past, his age and the circumstances of his offence any reason to believe that he will not commit a further offence. The court may confine the suspension of sentence to the primary penalty or make it apply to incidental or ' supplemental penalties or precautionary measures. If the sentence is to both detention and a fine, the court may confine the suspension of sentence to the period of detention only. The court must indicate in its judgment its reasons for suspending the sentence.

Article 145 - The court may, when ruling for a suspension of sentence, require the convicted person to undertake to be on good behavior during the period of the suspended sentence in accordance with the provisions of Article 118 or require that he make restitution in whole or in part or that he fulfils both of these provisions..

Article 146 - The period of a suspended sentence may be 3 years following the date of sentencing.

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<sup>22</sup> The phrase "whatever the sum total of the two periods shall be" has been deleted in accordance with Paragraph 5 of Law No 207 1970)

Article 147 - (1) A decision to reinstate a suspended sentence may be issued in any of the following circumstances:

- (a) If the convicted person does not fulfill the conditions imposed on him in accordance with Article 145.
- (b) If the convicted person commits during the period of suspension defined in the preceding Article a premeditated felony or misdemeanor for which he is sentenced to a penalty that deprives him of his freedom for more than 3 months, whether or not he is convicted during this period or after it has expired.
- (c) If it appears during the period of suspension that a final judgment was made against the convicted person in respect of the circumstance mentioned in the preceding Sub-Article for a premeditated felony or misdemeanor and the court was unaware of it at the time it ruled for a suspension of sentence.

(2) The ruling for reinstatement is given on the application of the public prosecutor to the court that imposes the penalty for the offence as a result of which the suspended sentence is reinstated or the reason for the reinstatement is established. This is without prejudice to any right of appeal or to the stage of the proceedings.

Article 148 - The primary penalty and the incidental and supplemental penalties that have been suspended will be served as a result of the reinstatement of the sentence. An order may be made for the payment of a surety that will discharge in whole or in part the convicted person's undertaking to be on good behavior.

Article 149 - If the period of suspension comes to an end without a ruling for the reinstatement of the suspended sentence in accordance with Article 147, then the sentence is considered to have been served and the surety referred to in Article 145 is annulled.

## **CHAPTER SIX: The limitation of offences and penalties**

### **SECTION ONE: General provisions**

Article 150 - An offence lapses for the following reasons:(1) the death of the accused (2) a general amnesty (3) the dropping of charges by the victim in such circumstances as are prescribed by law.

Article 151 - A sentence imposing a penalty or precautionary measure lapses with a general amnesty or rehabilitation or with the dropping of charges by the victim in such circumstances as are prescribed by law or, in the event of a suspension of sentence and without anything that would call for the reinstatement of the suspended sentence occurring during the period of suspension, by the termination of that period of suspension.

Primary, incidental and supplemental penalties as well as precautionary measures lapse with the quashing of the sentence for any of the reasons referred to in the preceding Sub-Article or by the death of the convicted person or by special amnesty but. This must be in deference to the provisions of the following Articles.

### **SECTION TWO: Specific provisions**

## **1. Death of the accused**

Article 152 - If the accused dies before the judgment becomes final, the offence lapses and all consequences of that judgment are removed. The victim of the offence, however, has the right to bring an action in the appropriate civil court.

If he dies after the judgment becomes final, the prescribed penalty and precautionary measures lapse with the exception of financial penalties such as a fine or restitution or precautionary measure in respect of property such as confiscation or closure of business which will be settled out of the accused's estate in priority to his inheritors.

## **2. General and special amnesty**

### **A. General amnesty**

Article 153 - (1) A general amnesty is issued in accordance with the law and results in the termination of legal proceedings and the quashing of any conviction obtained by means of those proceedings as well as the lapse of all primary, incidental or supplemental penalties and precautionary measures. A general amnesty, has no effect on any penalty previously served unless otherwise stipulated by the law of amnesty.

(2) If a law issues a general amnesty for only part of a prescribed penalty, then it is considered to be a special amnesty and the provisions for that apply.

(3) A general amnesty does not affect the personal rights of others.

### **B. Special amnesty**

Article 154 - (1) A special amnesty is issued by Republican decree and the prescribed penalty lapses in whole or in part as a result or is substituted for a lesser penalty prescribed by law.

(2) A special amnesty does not result in the lapse of incidental or supplemental or any other penalty or precautionary measure nor does it affect any sentence previously served unless otherwise stipulated by the law of amnesty.

(3) Dropping of charges, rehabilitation and suspension of an operative sentence

Article 155 - The Code of Penal Procedure sets out the provisions for the dropping of charges, rehabilitation and the suspension of sentence.

## **PART TWO: Offences against the public welfare**

### **CHAPTER ONE: Offences affecting the external security of the state**

Article 156 - Any person who willfully commits an act with intent to violate the independence of the country or its unity or the security of its territory and that act, by its nature, leads to such violation is punishable by life imprisonment ~~{death}~~.<sup>23</sup>

Article 157 - (1) Any Iraq citizen who associates himself in any way with an enemy or the armed forces of any country at war with Iraq is punishable by life imprisonment ~~{death}~~.<sup>24</sup> Any Iraqi citizen who takes up arms against Iraq from outside the country is punishable by the same penalty.

Any Iraqi citizen who associates himself with a group opposed to the Republic of Iraq but which is not described as being at war with Iraq is punishable ~~by death or~~ by life imprisonment.<sup>25</sup>

(2) Any person who dissociates himself from an enemy or the armed forces of any country at war with Iraq or the armed forces of a group opposed to the Republic of Iraq before any hostile act is committed against Iraq is punishable by life imprisonment or by imprisonment for a term of years.

Article 158 - Any person who, in a foreign country or in association with it or with a person who is working on its behalf, attempts to commit hostile acts against Iraq that may lead to the outbreak of war or the severing of diplomatic relations or who provides it with the means to that end is punishable by ~~death or~~ life imprisonment.<sup>26</sup>

Article 159 - Any person who, in a hostile foreign country or in association with it or with a person who is working on its behalf, attempts to assist it in its hostile operations against Iraq or impede the military operations of the Republic of Iraq and any person who provides that country with the means to that end or assists it in any way to succeed in its hostile operations is punishable by life imprisonment ~~{death}~~.<sup>27</sup>

Article 160 - Any person who assists an enemy to enter the country or stir up sedition among the people or lower the morale of the armed forces or induce members of the armed forces to join the enemy or surrender to it or who undermines their loyalty to the country or their confidence in their ability to defend it and any person who delivers a member of the armed forces into the hands of the enemy is punishable by life imprisonment ~~{death}~~.<sup>28</sup>

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<sup>23</sup> The death penalty was suspended by operation of CPA Order 7 Section 3(1) and substituted with life imprisonment. It was re-introduced by Decree 3 of 2004 for a limited number of crimes not including this one.

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Article 161 - (1) Any person who incites members of the armed forces to defect to a foreign country in time of war or assists their defection is punishable by life imprisonment.

(2) Any person who willfully involves himself in any way with the mobilization of troops and personnel or the collection of funds, supplies or equipment for any country at war with Iraq or for a hostile group even though that group is not described as being at war.

Article 162 - Any person who assists an enemy to enter the country or who surrenders to it any part of Iraqi territory or port or stronghold or military position or ship or aircraft or weapon or ammunition or equipment or supplies or foodstuffs or war materiel or means of communication or factory or establishment or anything else set aside for the defense of the country or that is used for such purpose or anything that provides the country with troops, personnel, funds or manpower or that supplies the country with intelligence or that gives it a sense of purpose is punishable by life imprisonment ~~[death]~~.<sup>29</sup>

Article 163 - The following persons are punishable by life imprisonment or imprisonment for a term of years:

(1) Any person who willfully sabotages, destroys or renders faulty or inoperative a military position, base or establishment or factory or ship or aircraft or means of communication or mode of transport or oil pipeline or installation or weapon or equipment or supplies or drugs and material for war use or anything else that is for use by the armed forces or for the defense of Iraq or which is used for that purpose..

(2) Any person who conceals the items mentioned in the previous Sub-Article or appropriates them or allows them to fall into the hands of an enemy or who knowingly introduces a fault during their manufacture or repair or knowingly commits an act which, by its nature, renders them unusable, even temporarily, for the purpose for which they were designed and from which damage results.

(3) Any person who endangers military plans or plans for the defense of the country.

The penalty will be death if the offence occurs during time of war.

Article 164 - The following persons are punishable by life imprisonment ~~[death]~~.<sup>30</sup>:

(1) Any person who, with a foreign power or a person who works on its behalf or by negotiation with either of them, attempts to damage Iraq's military, political or economic administration.

(2) Any person who willfully destroys, conceals, steals or forges banknotes or documents knowing them to be instrumental in upholding the rights of Iraq in the face of a foreign country or knowing them to relate to the external security of the state or to some other national interest.

Article 165 - Any person who, without authorization from the government, mobilizes a military force against a foreign country or takes up arms against it or joins forces in any way with the armed forces of another country in a time of war with that country or commits any other hostile act against it is punishable by imprisonment.

The penalty is life imprisonment or imprisonment for a term of years if the offence is committed against an Arab State.

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<sup>29</sup> The death penalty was suspended by operation of CPA Order 7 Section 3(1) and substituted with life imprisonment. It was re-introduced by Decree 3 of 2004 for a limited number of crimes not including this one.

<sup>30</sup> The death penalty was suspended by operation of CPA Order 7 Section 3(1) and substituted with life imprisonment. It was re-introduced by Decree 3 of 2004 for a limited number of crimes not including this one.

Article 166 - Any person entrusted with negotiating with a foreign government, international organization or foreign company regarding affairs of state who willfully negotiates contrary to the interests of the state is punishable by life imprisonment or imprisonment.

Article 167 - (1) Any person who seeks for himself or for another or receives or takes money or any other gain or a promise thereof even though it is through a foreign country or a person who works on its behalf with intent to commit an act, which he knows will, by its nature, damage the national interest is punishable by imprisonment plus a fine of not less than 1,000 dinars but not exceeding the amount he sought or was given or promised.

(2) The penalty will be life imprisonment plus a fine of not less than 1,000 dinars but not exceeding the amount he sought or was given or promised if the offender is a public official or if the offence is committed during time of war.

The same penalty is applicable to the following persons:

- (a) Any person who gives, promises or offers money or some other gain with intent to commit an act that is harmful to the national interest even though his gift, promise or offer is not accepted.
- (b) Any person who acts as an intermediary in the commission of any of the offences mentioned in this Article. In all of the above circumstances, if the request, acceptance, offer or mediation occurs in written form then there is only an offence when it is delivered.

Article 168 - Any person who renders a service to enemy forces for gain, profit or a promise thereof for himself or for a person specified by him whether directly or indirectly and whether or not that gain or profit is material is punishable by life imprisonment or imprisonment for a term of years. .

Article 169 - Any person who willfully assists an enemy in any way other than those mentioned in the preceding Articles is punishable by imprisonment.

Article 170 - Any person who incites the commission of an offence referred to in Articles 156 to 169 even though such incitement produces no effect is punishable by a term of imprisonment not exceeding 10 years.

Article 171 - Any person who causes through negligence, thoughtlessness, inattention or lack of care for any law or regulation an offence referred to in Articles 156 to 169 is punishable by a period of detention not exceeding 5 years plus a fine not exceeding 500 dinars or by one of those penalties.

If this occurs in time of war, he may receive a penalty not exceeding twice the maximum limit for the penalty prescribed in this Article.

Article 172 - The following persons are punishable by a term of imprisonment not exceeding 10 years plus a fine of not less than 500 dinars but not exceeding 10,000 dinars or by one of those penalties:

(1) Any person who exports directly or through another country goods, produce or any other resource to a hostile country or imports such goods, produce or resources from that country in time of war.

(2) Any person who, in time of war, expedites on his own behalf or through another a commercial transaction other than those specified in the preceding Sub-Article with a resident of a hostile country or any citizen, representative, agent or organization of that country.

In all cases, confiscation of the goods involved in the offence will be ordered and, if such goods are not seized, the offender will be ordered to pay an additional fine equivalent to the value of those goods.

Article 173 - Any person who participates in the donation, lending or contribution of funds for the benefit of a hostile country or assists the financial position of that country is punishable by imprisonment or by detention plus a fine not exceeding 10,000 dinars. The same penalty applies if the participation in such donation, lending or contribution of funds is for the benefit of an institution or organization belonging to a hostile country or if the assistance is in respect of the affairs of such institution or organization. In all cases, confiscation of the goods involved in the offence will be ordered and, if such goods are not seized, the offender will be ordered to pay an additional fine equivalent to the value of those goods.

Article 174 - (1) Any person who, in time of war or during military maneuvers in the field, willfully fails to fulfill all or some of the obligations imposed on him by the conclusion of a contract or agreement with the government to transfer or supply goods to it or to fulfill or carry out any obligation or public works for the government or any of its general establishments for the requirements of the armed forces or the civilian population is punishable by a term of imprisonment not exceeding 10 years.

(2) Any person who, in time of war, knowingly commits an act of fraud while fulfilling any contract mentioned in the preceding Sub-Article is punishable by imprisonment.

(3) If such omission or act of fraud is committed with intent to disrupt the defense of the State or the operations of the armed forces then the penalty is life imprisonment ~~[death]~~.<sup>31</sup>

(4) The preceding provisions are, according to the circumstances, applicable to subcontractors, agents and intermediaries if the omission or act of fraud committed during the fulfillment of the contract can be attributed to them.

Article 175 - (1) Any person who participates in an illegal pact with intent to commit such offences as are stipulated in Articles 156 to 174 or who exploits such a pact in order to achieve that end is punishable by life imprisonment or imprisonment for a term of years.

(2) Any person who attempts to set up such a pact or who plays a major part in it is punishable by ~~death or~~ life imprisonment.<sup>32</sup>

(3) If, by such a pact, it is intended to commit a specified offence or to make use of it as a means to that end and the penalty for that offence is less than that prescribed in the preceding two Sub-Articles, then a greater penalty than that prescribed for the offence will not be imposed.

(4) Any person who invites another to participate in such a pact and that invitation is not accepted is punishable by detention.

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<sup>31</sup> The death penalty was suspended by operation of CPA Order 7 Section 3(1) and substituted with life imprisonment. It was re-introduced by Decree 3 of 2004 for a limited number of crimes not including this one.

<sup>32</sup> The death penalty was suspended by operation of CPA Order 7 Section 3(1) and substituted with life imprisonment. It was re-introduced by Decree 3 of 2004 for a limited number of crimes not including this one.



Article 176 - If the omission occurs while fulfilling all or part of such obligations as are referred to in Article 174 as a result of negligence or inattention, the penalty shall be detention plus a fine not exceeding 3,000 dinars or by one of those penalties.

Article 177 - The following persons are punishable by life imprisonment:

(1) Any person who obtains by any means anything that is considered to be secret in respect of the defense of the State with intent to disrupt the defense of the State to the advantage of a foreign country or disclose such secret to that foreign country or to a person working on its behalf.

(2) Any person who hands over or discloses such secrets to a foreign country or to a person working on its behalf.

(3) Any person who, for the benefit of a foreign country, destroys a document or anything considered to be secret in respect of the defense of the State or renders the defense of the State untenable.

The penalty will be life imprisonment ~~[death]~~<sup>33</sup> if the offender is a public official or if the offence is committed in time of war or if the foreign country is hostile.

Article 178 - The following persons are punishable by a term of imprisonment not exceeding to years:

(1) Any person who obtains by illegal means any secrets in respect of the defense of the State without intending to hand them over or disclose them to a foreign country or to a person working on its behalf.

(2) Any person who broadcasts or discloses in any way secrets in respect of the defense of the State.

(3) Any person who sets up or uses any means of communication in order to obtain secrets in respect of the defense of the State or to hand them over or broadcast them.

The penalty will be a term of imprisonment not exceeding 15 years if the offence is committed in time of war or if the offender is a public official.

Article 179 - (1) Any person who willfully broadcasts in time of war false or biased information, statements or rumors or disseminates subversive propaganda which, by their nature, will disrupt any military preparations for the defense of the State or any military operations of the armed forces or spread panic among the population or lower its morale is punishable by a term of imprisonment not exceeding 10 years.

(2) The penalty will be imprisonment for a term of years if the offence is committed as a result of any communication with a foreign country. If that country is hostile, then the penalty will be life imprisonment.

Article 180 - Any citizen who willfully broadcasts abroad false or biased information, statements or rumors concerning the internal situation in Iraq which undermine financial confidence in the State or prejudice its international standing and reputation or who acts in any way that is detrimental to the national interest is punishable by detention plus a fine not exceeding 500 dinars or by one of those penalties.

The penalty will be a term of imprisonment not exceeding 7 years if the offence is committed in time of war.

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<sup>33</sup> The death penalty was suspended by operation of CPA Order 7 Section 3(1) and substituted with life imprisonment. It was re-introduced by Decree 3 of 2004 for a limited number of crimes not including this one.

Article 181 - (1) The following persons are punishable by a term of imprisonment not exceeding 7 years or by detention plus a fine.

- (a) Any person who flies through Iraqi airspace in violation of a prohibition from doing so issued by the competent authorities.
- (b) Any person who photographs, sketches or draws a map of any area or place in violation of a prohibition from doing so issued by the competent authorities.
- (c) Establishment or military encampment or place where members of the armed forces are encamped or stationed or who boards a warship or commercial vessel or aircraft or military vehicle or who enters any restricted location or factory engaged in work of importance to the national defense.
- (d) Any person who is found in a location or area restricted by order of the military authorities.

(2) If the offence occurs in time of war or is committed with the use of any kind of deceit, fraud, disguise or dissimulation in respect of identity, nationality, profession or occupation, the penalty will be a term of imprisonment not exceeding 15 years and, in the event of both these circumstances existing, the penalty will be life imprisonment or imprisonment for a term of years.

Article 182 - (1) Any person who publishes or broadcasts in any way or form or by any means intelligence, information, correspondence, documents, maps, sketches, pictures or anything relating to government departments or agencies or general establishments, the publication or broadcast of which is prohibited by the competent authority, is punishable by detention plus a fine not exceeding 500 dinars or by one of those penalties.

(2) Any person who hands over to a foreign country or to a person working on its behalf in any way or form or by any means any of the things referred to in the previous Sub-Article is punishable by a term of imprisonment not exceeding 10 years.

Article 183 - (1) The following persons are punishable as accessories to the offences stipulated in this Chapter :

- (a) Any person who is aware of the offender's intentions and affords him assistance, sustenance, shelter or a place to hold meetings or any other form of help and any person who delivers messages on his behalf or assists him in planning the offence or conceals, transmits or communicates that plan while being aware of the offender's intentions even though that person does not intend to participate in the commission of the offence.
- (b) Any person who willfully destroys, steals, conceals or alters a document or anything else that will facilitate the discovery of the offence or evidence thereof or the punishment of the offenders.

(2) The spouse of the offender as well as his ancestor, descendant, brother or sister are exempt from any punishment in the event of their giving the offender assistance, sustenance or shelter. The court may apply a reduced penalty to these persons in circumstances other than those described in Sub-Articles (a) and (b).

Article 184 - The following persons are punishable by life imprisonment or imprisonment for a term of years:

- (1) Any person who knowingly offers shelter to enemy spies or military personnel or gives them food, clothing or other form of assistance.
- (2) Any person who knowingly facilitates the escape of a POW or enemy detainee.

Article 185 - Any person who, by giving financial, material or moral support, incites the commission of those offences stipulated in the preceding Articles of this chapter without intending to be a party to them is punishable by a term of imprisonment not exceeding 7 years or by detention plus ,a fine not exceeding 500 dinars.

Article 186 - Any person who is aware of the commission of an offence stipulated in, this Chapter and does not notify the public authorities is punishable by detention plus a fine not exceeding 500 dinars or by one of those penalties. This Article does not apply to the spouse of the offender nor to his ancestor, descendant, brother or sister.

Article 187 - An offender who notifies the authorities of everything he knows about the offence before it is committed and prior to any investigation into that offence will be exempt from the penalties prescribed for the offences stipulated in this chapter. The Court may exempt such a person from the penalty, if such information is forthcoming after the commission of the offence but before any investigation takes place.

The court may reduce the penalty or grant an exemption if the offender, during the investigation or legal proceedings, assists the authorities in apprehending any of the other parties to the offence.

Article 188 - The following are considered to be defense secrets:

(1) Any military, political, economic or industrial information which, by its nature, is known only by those persons who are entrusted with such information and the interests of national defense require that it remain secret to all others.

(2) Any correspondence, record, document, sketch, map, plan, picture or anything else, the disclosure of which will lead to the dissemination of the information referred to in the preceding Sub-Article and the interests of national defense require such things to remain secret to those who are not entrusted with the knowledge or use of such information.

(3) Any intelligence or information relating to the armed forces, their order of battle, movements, equipment, supply or anything else that involves military matters and plans for war unless written permission from a competent authority has been given for the publication or broadcast of such information.

(4) Any intelligence or information relating to the measures and procedures used in the discovery and apprehension of the parties to the offences stipulated in this Chapter and any intelligence or information arising during the course of the investigation and legal proceedings if the authority in charge of such investigation or legal proceedings has prohibited its broadcast.

Article 189 - The following definitions are used in the provisions of this Chapter:

(1) An 'enemy' is a state which is at war with Iraq and includes a citizen of that state. A political group that is not recognized by Iraq is considered to be a state if it behaves in a hostile manner. The definition of an enemy also includes armed rebels.

(2) 'A state of war' is a state of actual fighting whether or not there has been a prior declaration of war or an announcement of a ceasefire.

(3) 'The State' is the territories of the Republic of Iraq and any territory that submits to its sovereignty including its territorial waters and airspace, its ships and aircraft as well as any foreign territory occupied by the Iraqi army.

(4) The provisions of this Chapter may, by a decision of the Council of Ministers or by Republican decree published in an official newspaper, include in whole or in part such acts as are set

out in that decision or decree when they are committed against an Arab state that is an ally of the Republic of Iraq. In this case, the stipulations of the decree are applicable to any act committed after the publication of such decree in an official newspaper.

## **CHAPTER TWO: Offences against the internal security of the State**

Article 190 - Any person who attempts to overthrow by force or with the use of violence the constitutionally appointed Republican regime or change the constitution of the State or the formation of the government is punishable by life imprisonment or imprisonment for a term of years. If the offence is committed by a group using bombs, dynamite or other explosives or firearms, the penalty will be death or life imprisonment. The penalty will be death if the offence results in any fatalities.

Article 191 - Any person who, with criminal intent, takes command of part of the armed forces or a military post or port or town without authorization from the government is punishable by death or life imprisonment. The same penalty applies to any person who remains in a position of military command in contravention of the orders given to him by the government and to any commander who maintains his units under arms or mobilized after the government has ordered their demobilization or disbandment.

Article 192 (1) Any person who attempts to incite armed rebellion against the constitutionally appointed authorities or who is a member of a conspiracy or group aspiring to that end is punishable by imprisonment.

(2) If such rebellion actually occurs, then the penalty is life imprisonment.

(3) If such rebellion results in an armed confrontation with the armed forces of the State or in fatalities or if the offender is the commander in charge of an armed force, the penalty will be death.

Article 193 - Any person who is entitled to command units of the armed forces and who asks or instructs those units to obstruct the execution of the government's orders is punishable by life imprisonment or imprisonment for a term of years if he has criminal intent. If such an act does result in the obstruction of the government's orders, he is punishable by death or life imprisonment and any commander who obeys that person's orders is punishable by life imprisonment or imprisonment for a term of years.

Article 194 - Any person who organizes, directs or assumes command of an armed group that attacks any sector of the population or has, as its objective, the prevention of the rule of law, the invasion of territory or the appropriation by force of property belonging to the State or a group of people or who resists with the use of arms members of the public authorities is punishable by death. However, any person who joins such a group without participating in its formation or assuming control of it is punishable by life imprisonment or imprisonment for a term of years.

Article 195 - Any person who has as his objective incitement to civil war or sectarian fighting by arming the population or by encouraging one section of the population to arm itself against another or by urging them to fight is punishable by life imprisonment. The penalty will be death if the objective is realized.

Article 196 - Any person who attempts to occupy with the use of force or menaces any public property or building or building belonging to a government agency or departments or public utility or general establishment or to take control in any way of such property or prevent it from being used for the purpose for which it was intended.

If the offence is committed by an armed group, the penalty will be life imprisonment or imprisonment for a term of years for its members or death or life imprisonment for the person who formed the group or assumed the leadership or command of that group.

Article 197 - (1) Any person who willfully destroys, demolishes, spoils or seriously damages a public building or property or property belonging to a government agency or department or public utility or general establishment or property belonging to associations considered by law to be for the public welfare or oil installation or any other state industrial installation or hydroelectric power station or means of communication or bridge or dam or public waterway or place set aside for public use or recreation or any public property of significant importance to the national economy with intent to overthrow the constitutionally appointed regime is punishable by death or life imprisonment.

(2) The penalty is death if the offender uses explosives in the commission of the offence or if that offence leads to the death of any person found in such place.

(3) The penalty is life imprisonment or imprisonment for a term of years if the offence is committed in time of civil unrest or riot or with intent to spread panic among the population or create anarchy but without the offender intending to overthrow the constitutionally appointed regime.

(4) The penalty is imprisonment for a term of years for any person who willfully contributes to the destruction of anything mentioned in Sub-Article 1 or to the obstruction of the normal course of its operation.

(5) The offender will in all cases be ordered to pay for such damage or destruction.

Article 198 - (1) The following persons are punishable by a term of imprisonment not exceeding 10 years:

(a) Any person who incites the commission of an offence stipulated in Articles 190 to 197 and nothing results from such incitement.

(b) Any person who invites the commission of such offences by providing material or financial assistance without intending to participate in their commission.

(2) If such incitement or encouragement is directed at a member of the armed forces, the penalty is life imprisonment.

Article 199 - Any person who incites a member of the armed forces to disobey an order or to deviate from the execution of his duties even though no offence is committed is punishable by a term of imprisonment not exceeding 7 years plus a fine not exceeding 500 dinars. The same penalty applies to any person who assists a member of the armed forces to desert or knowingly shelters a deserter or provides him with shelter.

A deserter's wife, ancestor, descendant, brother or sister are exempt from the penalty prescribed for the offence of sheltering or providing shelter for a deserter.

~~Article 200 - (1) The following persons are punishable by death:~~

~~(a) Any person who is a member of the Arab Socialist Ba'ath Party and who willfully conceals any previous party or political membership or affiliation.~~

(b) —<sup>34</sup> ~~Any person who is or has been a member of the Arab Socialist Ba'ath Party and who is found to have links during his commitment to the Party with any other political or party organization or to be working for such organization or on its behalf.~~

(c) —<sup>35</sup> ~~Any person who is or has been a member of the Arab Socialist Ba'ath Party and who is found to be, following the termination of his relationship with the Party, a member of any other political or party organization or to be working for such organization or on its behalf.~~

(d) —<sup>36</sup> ~~Any person who recruits to a political or party organization another person who is affiliated to the Arab Socialist Ba'ath Party or recruits such person in any way to that organization following the termination of his affiliation with the Party while being aware of that affiliation.~~

— (2) ~~Any person who promotes or acclaims any movement that seeks to change the fundamental principles of the constitution or the basic laws of society or in order to raise one section of society over another or to oppress a particular section of society or to overthrow the basic social and economic laws of the State or the fundamental laws of society and the use of force, terror or any other illegal method is perceived in such action is punishable by a term of imprisonment not exceeding 7 years or by detention.~~

— ~~The same penalty applies to any person who incites the overthrow of the appointed regime in Iraq or hatred of or scorn for such regime or acclaims or promotes anything that stirs up factional or sectarian chauvinism or encourages conflict between factions and classes or stirs up feelings of hatred and contempt among the population.~~<sup>37</sup>

Article 201<sup>38</sup> - Any person who promotes or acclaims Zionist principles including freemasonry or who associates himself with, Zionist organizations or assists them by giving material or moral support or works in any way towards the realization of Zionist objectives is punishable by life imprisonment ~~{death}~~<sup>39</sup>.

Article 202 - Any person who publicly insults the Arab community or the Iraqi people or any section of the population or the national flag or the State emblem is punishable by a term of imprisonment not exceeding 10 years or by detention.

Article 203 - Any person who, by giving financial, material or moral support, incites the commission of an offence stipulated in the preceding Articles of this Chapter without intending to

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<sup>34</sup> Sub-Paragraphs (a) and (b) have been added to Paragraph 200 in accordance with Law No 107 (1974) published in Al-Waqai' Al'Iraqiya No 2290 on 22/8/74. Sub-Paragraph 1 was considered to be part of Paragraph and Sub-Paragraph 2 to be the original paragraph

<sup>35</sup> Sub-Paragraph (c) has been added to the end of Paragraph 200 in accordance with Law No 145 (1974) published in Al-Waqai' Al'Iraqiya No 2561 on 6/12/76

<sup>36</sup> Sub-Paragraph (d) has been added to the end of Paragraph 200 in accordance with Law No 111 (1978) published in Al-Waqai' Al'Iraqiya No 2659 on 19/6/78

<sup>37</sup> Suspended by CPA Order 7 section 2(1)

<sup>38</sup> As amended by Paragraph 1 of Law No 130 (1975) published in Al-Waqai' Al'Iraqiya No 2486 on 25/8/75

<sup>39</sup> The death penalty was suspended by operation of CPA Order 7 Section 3(1) and substituted with life imprisonment. It was re-introduced by Decree 3 of 2004 for a limited number of crimes not including this one.

participate in such offence is punishable by a term of imprisonment not exceeding 7 years or by detention plus a fine not exceeding 500 dinars.

Article 204 - (1) The following persons are punishable by a term of imprisonment not exceeding 15 years plus a fine not exceeding 1,000 dinars:

- (a) Any person who sets up, establishes, organizes or administers an association, club or organization in Iraq with intent to commit any act referred to in Articles 200 to 202.
  - (b) Any person who sets up, establishes, organizes or administers a branch of such association, club or organization in Iraq even though its head office is outside the country.
  - (c) Any foreigner resident in Iraq and any Iraqi citizen even though he is resident abroad who sets up, establishes or administers outside the country a branch of such association, club or organization.
- (2) The following persons are punishable by a term of imprisonment not exceeding 10 years:
- (a) Any person who joins any such association, club, organization or branch or participates in any way in it while being aware of its objectives.
  - (b) Any person who himself or through another communicates with such association, club or organization or branch for illegal purposes or who encourages or assists another to do so.

Article 205 - (1) Any person who sets up a secret association in circumstances other than those prescribed in the preceding Articles or who assumes control of such association or any principle office belonging to such association is punishable by detention.

(2) Any member of a secret association is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties.

(3) A secret association is considered to be any association that conducts its affairs secretly in whole or in part and whose objectives are contrary to the law or which conceals those objectives by giving the competent authorities false or incomplete statements about its objectives or about its organization or modus operandi or the names of its members or officials or the minutes of its meetings.

Article 206 - (1) Any person who sets up, establishes, organizes or administers in Iraq an association, club or organization of any kind having international status or branch. thereof which is not referred to in the preceding Articles without authorization from the competent authorities or with such authorization obtained by false statements is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 150 dinars or by one of those penalties.

(2) Any person who joins any such unauthorized association, club or organization or joins it while being aware that authorization was obtained by false statements is punishable by a period of detention not exceeding 6 months plus a fine not exceeding 75 dinars or by one of those penalties.

(3) Any citizen resident in Iraq who joins in any capacity and without authorization from the competent authority such organization with a head office abroad. [sic]

Article 207 - (1) The court must, in the circumstances described in Article 204, order the dissolution of the association, club, organization or branch mentioned in that Article.

(2) The court must rule in all cases for the confiscation of funds, property, documents, records, printed matter or anything else that is used or intended for use in the commission of the offence.

(3) The court may order the closure of any place where an offence stipulated in this chapter is committed.

(4) The court may, in all circumstances described in the preceding Sub-Articles, order the confiscation of funds or property found in places set aside for meetings of the members of such clubs, organizations or branches as well as any property belonging to the convicted person if there is evidence

to suggest that such property was, in fact, a source of finance from which the association, club, organization or branch was funded.

Article 208 - The following persons are punishable by a term of imprisonment not exceeding 7 years plus a fine not exceeding 500 dinars or by one of those penalties:

(1) Any person who maliciously obtains or steals any register, printed matter or record that promotes, acclaims or incites anything stipulated in Articles 200 to 202 if it is intended that it should be distributed, published or communicated to others. .

(2) Any person who obtains any means of printing, recording or publication with a view to printing, recording or broadcasting appeals, anthems or propaganda on behalf of a faction, association, club or organization whose objectives are set out in the preceding Articles.

Article 209 - Any person who obtains in any way directly or through another funds or benefits of any kind from a person or organization in Iraq or abroad with intent to promote the offences stipulated in Articles 200 to 202 is punishable by a term of imprisonment not exceeding 7 years or by detention plus a fine not exceeding 500 dings.

Article 210 - Any person who willfully broadcasts false or biased information, statements or rumors or disseminates propaganda which, by its nature, endangers the public security, spreads panic among the population and disturbs the public peace is punishable by detention plus a fine not exceeding 300 dinars or by one of those penalties.

The same penalty applies to any person who maliciously obtains or steals any register, printed matter or record that contains anything mentioned in the preceding Sub-Article with intent to distribute, publish or communicate it to others or who obtains any means of printing, recording or publication in order to' print, record or publish such material.

Article 211 - Any person who publishes by any means false information or fake or forged documents or documents falsely attributed to others which, by their nature, endanger the public security or disturb the public peace is punishable by detention plus a fine. not exceeding 300 dinars or by one of those penalties.

Article 212 - Any person who incites by any means of publication the commission of the offences of manslaughter, theft, destruction or arson or any other felony, which, by their nature, endanger the public security even though such incitement has no effect is punishable by detention.

Article 213 - Any person who incites by any means of publication noncompliance with the law or promotes an act considered to be a felony or misdemeanor is punishable by detention plus a fine not exceeding 300 dinars or by one of those penalties.

Article 214 - Any person who incites a riot by shouting or singing is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties.

Article 215 - Any person who produces, imports, exports or obtains a picture, written material or sign with intent to trade, distribute, display or exhibit such material, which, by its nature, endangers the public security or brings the country into disrepute unless he was acting in good faith is punishable by detention plus a fine not exceeding 300 dinars or by one of those penalties.



Article 216 - (1) Any person who participates in a criminal conspiracy, the objective of which is to commit an offence stipulated in Articles 190. to 193 and 195 to 197 or to use that offence as a means to achieve the intended objective is punishable by life imprisonment. or imprisonment for a term of years.

(2) Any person who attempts to set up that conspiracy or who plays a major part in setting it up is punishable by life-imprisonment.

(3) If the objective of such conspiracy is to commit a specified offence or to use that offence as a means to achieve the intended objective and the penalty for that offence is less than that prescribed in the preceding two Sub-Articles, the penalty will not be greater than that prescribed for the offence.

(4) Any person who invites another to participate in the conspiracy and his invitation is declined is punishable by detention.

Article 217 - Any person who participates in a criminal conspiracy or in a gang, association, club, organization or branch described in this Chapter and who is neither an employee nor in a position of leadership and who dissociates himself from it on first being instructed to do so by the official authorities is exempt from any penalty. He may, in such a case, be punished for other offences he has already committed himself.

Article 218 - Any person who notifies the public authorities prior to committing an offence and before the initiation of an investigation into such offence is exempt from the penalties prescribed in the preceding Articles of this Chapter. The court may exempt him from the penalty if such notification is made after the commission of the offence but before the initiation of the investigation.

The court may also exempt that person from the penalty if he assists the authorities during the investigation to apprehend the other parties to the offence.

Article 219 - Any person who is aware of the commission of an offence stipulated in this Chapter and does not notify the public authorities of that fact is punishable by detention plus a fine or by one of those penalties. This Article does not apply to that person's spouse, ancestor, descendant, brother or sister.

Article 220 - If five or more people are assembled in a public place, thereby endangering the public security and the public authorities order them to disperse, any person who is given that order and refuses to comply with it is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties.

Article 221 - Any person who calls for a gathering in a public place or who organizes such a gathering or participates in it while being aware of any ban on such gatherings by the public authorities is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties.

The same penalty applies to any person who publicly incites a gathering even though such incitement has no effect.

Article 222 - (1) If the intent of the gathering is to commit a felony or misdemeanor or to prevent the implementation of laws, regulations or decisions or to influence the affairs of the public authorities or to deprive another of his freedom of action with the use of force or menaces, then any person who calls for such a gathering or organizes it or who participates in it while being aware of its objective or any person who remains at it after having become aware of the objective is punishable by a

period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or by one of those penalties.

(2) If any of the participants in a gathering uses force or menaces or overtly carries a weapon or implement, the use of which may result in fatalities, the person who called for that gathering or organized it and any person who participated in it while being aware of its intended objective are punishable by detention plus a fine not exceeding 300 dinars or by one of those penalties.

(3) If any of the participants in the gathering commits an offence while pursuing the intended objective, every person who is present at the gathering at the time the offence is committed is punishable by the penalty prescribed by law if they were aware of the objective of the gathering. Any person who calls for the gathering or organizes it is punishable by the penalty prescribed by law for that offence even though he is not present at the gathering at the time the offence is committed.

(4) The provisions of this Article do not prejudice any greater penalty prescribed by law.

### **CHAPTER THREE: Offences against the public authorities**

#### **SECTION ONE: Offences affecting the constitution**

Article 223 - (1) Any person who murders the President is punishable by life imprisonment ~~[death]~~.<sup>40</sup>

(2) Any person who assaults the President or attempts to do so but not to the extent of murdering him is punishable by imprisonment.

(3) The same penalties apply, according to the circumstances, if the offence is committed against a foreign Head of state while he is in Iraq or on an official visit.

Article 224 - Any person who resorts to the use of violence, menaces or any other illegal method in order to force the President or his representative to perform a duty assigned to him by law or to refrain from doing so is punishable by life imprisonment or imprisonment for a term of years.

The penalty will be imprisonment for a term of years if the act is committed against the Prime Minister or his deputy or a minister or member of the National Assembly.

~~Article 225 - Any person who publicly insults the President or his representative is punishable by a term of imprisonment not exceeding 7 years or by detention.~~<sup>41</sup>

Article 226 Any person who publicly insults the National Assembly or the government or the courts or the armed forces or any other constitutional body or the public authorities or official or 1 semiofficial agencies or departments is punishable by a term of imprisonment not exceeding 7 years or detention or a fine.

Article 227 - Any person who publicly insults a foreign state or any international organization having an office in Iraq or that country's Head of State or its representative in Iraq or its flag or national

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<sup>40</sup> The death penalty was suspended by operation of CPA Order 7 Section 3(1) and substituted with life imprisonment. It was re-introduced by Decree 3 of 2004 for a limited number of crimes not including this one. However premeditated murder contrary to Article 406 is punishable by death

<sup>41</sup> Suspended by CPA Order 7 section 2(1)

emblem when it is displayed in accordance with Iraqi law, is punishable by a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars.

Legal proceedings may only be brought in respect of this offence by written permission from the Minister of Justice.

Article 228 - Any person who publishes the proceedings of the secret sessions of the National Assembly or publishes the proceedings of any public sessions of the National Assembly maliciously or inaccurately is punishable by detention or by a fine not exceeding 200 dinars.

## SECTION TWO

### Offences against officials and other public agents

Article 229 - Any person who insults or threatens an official or other public employee or council or official body in the execution of their duties or as a consequence of those duties is punishable by a period of detention not exceeding 2 years or by a fine not exceeding 200 dinars.

The penalty will be a period of detention not exceeding 3 years plus a fine or by one of those penalties if such insult or threat is directed at a judge or legal or administrative court or council carrying out a legal function in the execution of their duties or as a consequence of those duties.

Article 230 - Any person who assaults an official or other public employee or who makes an attack upon a council or official body during the execution of their duties or as a consequence of those duties is punishable by a period of detention not exceeding 3 years or by a fine not exceeding 300 dinars.

The penalty will be detention or a fine if injury or harm occurs as a result of that assault or while resisting such assault.

The penalty will be detention plus a fine or by one of those penalties if injury or harm is caused to a judge in the execution of his duty or as a consequence of that duty. This Article does not prejudice any greater penalty prescribed by law for injuring or harming.

Article 231 - Any person who willfully prevents an official or public employee from carrying out his duties is punishable by a period of detention not exceeding 3 years plus a fine or by one of those penalties.

Article 232 - The following are considered to be aggravating circumstances in the commission of any offence stipulated in Articles 229 to 231:

- (1) If the offence is premeditated
- (2) If the offence is committed by five or more persons
- (3) If the offence is committed by a person who is openly carrying a weapon.

## CHAPTER FOUR

### Offences prejudicial to the court of Justice

#### SECTION ONE

##### Offences affecting the due process of law

Article 233 - Any official or public employee who intercedes with a judge, magistrate or court either on behalf of the accused or against him is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties.

Article 234 - Any judge or magistrate who issues a judgment that is found to be unjust and the result of prior intercession with him is punishable by detention plus a fine or by one of those penalties.

Article 235 - Any person who publishes any matter, which, by its nature, will influence a judge or magistrate entrusted with the judgment of cases brought before a legal authority or legal or other official in charge of investigations or specialist, arbitrator or witness, who is required to give evidence at a trial or investigation or any person who publishes any matter, which, by its nature, will prevent another from passing information to the appropriate authority is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties.

If the publication is intended to produce such influence or if the matter published is false, the penalty will be a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or by one of those penalties.

Article 236 - Any person who publishes the following information is punishable by a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or by one of those penalties:

(1) Information about a trial which is required by law to be kept secret or the publication of which is prohibited by the court or information concerning any sub judice investigation into a felony or misdemeanor or any document relating to that investigation if the investigating authorities have prohibited such publication.

(2) Information concerning the investigations or proceedings of cases of genealogy, marriage, inheritance or adultery.

(3) The deliberations of courts.

(4) Inaccurate and malicious accounts of the proceedings of public sessions of the courts.

(5) The names or photographs of the victims of rape or sexual assault or the names or photographs of juvenile defendants.

(6) The proceedings of civil or criminal cases which the courts rule should be heard in camera or the proceedings of investigations or hearings relating to offences of slander, abuse or the disclosure of classified information. There is no penalty merely for the publication of the judgment if it is done with the authorization of the competent court.

Article 237 - Any person who is under a legal restraining order and who lays his hands on property or another person without legal justification is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties. The penalty may be doubled if force is used in the commission of the offence.

Article 238 - Any person who is obliged by law to appear either in person or by proxy at a time or in a place specified in a notice, order or statement issued by a court, legal authority or by a public official or agent authorized to issue such notices, orders or statements and who willfully refrains from doing so at the prescribed time or place or leaves the prescribed place before he is permitted to do so is punishable by a period of detention not exceeding 6 months plus a fine not exceeding 100 dinars or by one of those penalties.

Article 239 - Any person who willfully removes, tears or destroys an announcement or notice posted by order of a court, legal authority or public official or agent is punishable by a period of detention not exceeding 6 months plus a fine not exceeding 100 dinars or by one of those penalties.

Article 240 - Any person who contravenes an order issued by a public official or agent, municipal council or official or semiofficial body in accordance with their legal authority or who disobeys an order issued by those entities in accordance with their legal authorities is punishable by a period of detention not exceeding 6 months or by a fine not exceeding 100 dinars. This is without prejudice to any greater penalty stipulated by law.

Article 241 - Any person who disobeys an order from an investigating or other legal authority or police officer to leave a place where an investigation, examination or any other legal procedure relating to an investigation or the collection of evidence is in progress is punishable by a period of detention not exceeding month plus a fine not exceeding 20 dinars or by one of those penalties.

Article 242 - Any person who refrains without justification from fulfilling his obligation to assist a court, judge or investigator in execution of his legal duties or public official or agent in execution of his duties after being requested to do so is punishable by a period of detention not exceeding 6 months plus a fine not exceeding 100 dinars or by one of those penalties.

## **SECTION TWO**

### **Giving false information, withholding information and deception**

#### **1. Giving false information and withholding information**

Article 243 - Any person who falsely notifies a legal or administrative authority of an offence that he knows not to have occurred, who maliciously notifies any of those authorities that someone committed an offence while being aware that these information are false, who concocts material evidence to prove that someone committed an offence contrary to the truth or who is instrumental in bringing legal proceedings against another person while being aware of that person's innocence and anyone who notifies the competent authorities of certain matters regarding an offence while being aware that they are false shall be punishable by the maximum penalty imposed on the crime which the informant has accused that person of committing if the informant's false notification was proven but the penalty must not exceed 10 years.<sup>42</sup>

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<sup>42</sup> This text was substituted for the previous text by Law No 13 of 2009, published in the Official Gazette, issue 4133 of 17 August 2009. The previous text read "Any person who falsely notifies a legal or administrative authority of an offence that he knows not to have occurred or maliciously notifies any of those authorities of the commission of an offence while knowing that information to be false or concocts material evidence to suggest that an offence has been committed by another or who is instrumental in bringing legal proceedings against another while being aware of that person's innocence or notifies the competent authorities of certain matters concerning an offence that has occurred knowing them to be false is punishable by detention plus a fine or by one of those penalties if the offence is a felony or by a period of detention not exceeding 3 years plus a fine not exceeding 300 dinars or by one of those penalties if the offence is a misdemeanor or infraction."

Article 244 - Any person who notifies in anyway a legal or administrative authority or public agent of a disaster, accident or danger knowing that such an event has not occurred is punishable by a period of detention not exceeding 1 year plus a fine riot t exceeding 100 dinars or by one of those penalties.

Article 245 - Any person who is obliged by law to notify a public agent in his official capacity of a certain matter but informs him of matters that he knows to be false or who notifies a public agent in his official capacity of a certain matter that he knows to be false with intent to compel such agent to carry out an act that is contrary to his official duties if such agent is aware of the truth of the matter is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties.

Article 246 - There is no offence if a person notifies in all sincerity or without malice a legal or administrative authority of a matter deserving of punishment.

Article 247 - Any person who is obliged by law to notify a public agent of a matter or matters known to him and who willfully refrains from doing so in the prescribed manner or at the time stipulated by law is punishable by detention or a fine. The same penalty applies to any public agent in charge of the investigation or prevention of an offence who neglects to report an offence that is brought to his attention. This is unless an action is brought as a result of a complaint or the offender is the spouse, ancestor, descendant, brother or sister of that public agent or his spouse's ancestor, descendant, brother or sister or any relative by marriage of such persons.

## 2. Deception

Article 248 - Any person who, with intent to deceive, alters the condition of a person, place or thing or who conceals the evidence of an offence or makes false statements in respect of that offence knowing then to be untrue is punishable by detention plus a fine or by one of those penalties.

Article 249 - Any person who is asked to identify himself by a court, investigating authority or police officer and who gives a name or identity other than his own is punishable by a period of detention not exceeding 3 years plus a fine not exceeding 300 dinars or by one of those penalties but, if he gives the name of another person, then the penalty will be detention plus a fine or one of those penalties.

Article 250 - Any person who, with intent to deceive, steals, conceals, destroys or alters a document, piece of evidence or object used in the commission of an offence that is submitted before a court investigating authority is punishable by detention plus a fine or by one of those penalties.

The penalty will be a term of imprisonment not exceeding 7 years if the offender is a public official or agent to whom such articles are entrusted or assigned by virtue of his official capacity.

## SECTION THREE False testimony

Article 251 - False testimony is the intent of a witness, who has taken the legal oath before a civil, administrative or disciplinary court or special court or investigating authority, to make false

statements, deny the truth or conceal in whole or in part what he knows of the events that he has witnessed.

Article 252 - Any person who falsely testifies for or against an accused is punishable by detention plus a fine or by one of those penalties.

If the accused is subsequently convicted as a result of that testimony, such person is punishable by the penalty for the offence for which the accused was convicted.

Any person who falsely testifies during civil, administrative, disciplinary or canonical proceedings or before an official authority entrusted with the investigation of civil offences is punishable by detention plus a fine or by one of those penalties.

Article 253 - Any person who seeks, takes or receives a gift or promise thereof to give false testimony is punishable by the greater of the penalties prescribed for bribery or false testimony as is the person who offered such gift or promise thereof or who acted as intermediary in that respect.

Article 254 - The following persons are punishable by the penalty prescribed for false testimony:

(1) Any person who forces or induces by any means a witness not to testify or to give false testimony even though his objective is not achieved.

(2) Any person who refrains from testifying as a result of receiving a gift or promise thereof or some other inducement.

Article 255 - The following persons are punishable by the penalty prescribed for false testimony:

(1) Any person who is entrusted by a court or authority mentioned in Article 251 with carrying out tasks requiring specialist or translating skills and who willfully makes alterations of any kind from the original.

(2) Any person who falsifies a translation or document that could be used in evidence.

(3) Any person who gives or signs a false statement in anticipation of legal proceedings and that statement is required by law to be given or signed or relates to some matter that admits the use of that statement as evidence.

(4) Any person who, during legal proceedings or during an investigation, uses in evidence a false statement, account, translation, paper, document or anything else he knows to be false.

(5) Any person who, during legal proceedings or during an investigation or in anticipation of such proceedings, creates any situation or records any false information in a register or other record which can be used in evidence and which, by its nature, leads the court to form an incorrect opinion and which affects the outcome of the proceedings.

Article 256 - The following circumstances are considered to be mitigating excuses:

(1) A retraction by the witness of his false statement and, during legal proceedings, an undertaking by him to tell the truth before any judgment is made in the case or, during an investigation before a report on the matter is submitted by the investigating authority. If the investigation is in respect of an offence then such undertaking should be given before a decision is made not to proceed with the trial.

(2) If the statement of the truth exposes a witness or his spouse, ancestor, descendant, brother or sister to a significant danger that affects his freedom or dignity.

Article 257 - The provisions concerning false testimony do not apply to any person who is not obliged to appear as a witness or who is obliged by law to refrain from giving testimony.

#### SECTION FOUR.

##### Perjury

Article 258 - Any litigant who is obliged to take an oath during civil proceedings and who then perjures himself is punishable by detention.

Any person who then tells the truth having once perjured himself and before a judgment is issued in the case is exempt from any penalty.

Article 259 - The following persons are punishable by a period of detention not exceeding 6 months plus a fine not exceeding 100 dinars or by one of those penalties:

(1) Any person who refrains without legal justification from taking a legal oath to tell the truth after being required to do so by a judge, investigator or public official or legal capacity.

(2) Any person who refrains without legal justification from answering questions put to him by any person mentioned in the preceding Sub-Article.

(3) Any person who refrains from providing any document or from making available anything he has been ordered to make available by any person mentioned in Sub-Article 1 even though he is obliged to do so by law.

#### SECTION FIVE

##### Assumption of official positions and impersonation

Article 260 - Any person who assumes a public position or interferes with the affairs of an official position or public service, whether civil or military, or who unlawfully conducts its affairs or administers its requirements unofficially or without authorization from a competent authority is punishable by a period of detention not exceeding 3 years plus a fine not exceeding 300 dinars or by one of those penalties.

The same penalty applies to any public official or agent who is officially discharged, dismissed or removed from his position and he continues to carry out the duties of such position or service.

Article 261 - Any person who wears in public an official uniform or uniform that is associated in law with a particular group of people or uniform associated with a higher rank than his own to which he is not entitled or any person who wears a medal, decoration, badge or insignia of office or who assumes an academic or university title or officially recognized religious title or military rank or representative capacity is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties.

This provision applies if such uniform, decoration or other thing mentioned in this Article belongs to a foreign country.

Article 262 - The court may, in respect of offences stipulated in this section, order that the judgment or summary of the judgment be published in one or more newspapers.



## SECTION SIX

### Breaking of seals, theft, destruction of documents and other such offences

Article 263 - (1) Any person who breaks, removes or destroys a seal placed on a building, document or other such thing by order of a legal or administrative authority or competent official authority or any person who defeats in any way the object of affixing such seal is punishable by a period of detention not exceeding 3 years plus a fine not exceeding 300 dinars or by one of those penalties.

(2) The penalty will be a period of detention if the offence is committed with the use of violence against others.

Article 264 - (1) Any person who steals, appropriates, removes or destroys a document, object, paper, record or register pertaining to the state or public authorities or records of legal proceedings that have been deposited in places set aside for their safekeeping or placed in the custody of a person entrusted even, temporarily with their safekeeping is punishable by imprisonment not exceeding 7 years or by detention.

(2) The penalty will be a term of imprisonment if the offence is committed with the use of violence against others.

Article 265 - If any person who commits an offence stipulated in Sub-Article 1 of the preceding two Articles is a custodian, guardian or keeper of such objects mentioned therein, he is punishable by a term of imprisonment not exceeding, 10 years.

Article 266 – A custodian, guardian or keeper of such objects is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties if he causes, through negligence, the commission of an offence stipulated in Articles 263 and 264.

## SECTION SEVEN

### Escape and sheltering of prisoners and detainees

#### 1. Escape of prisoners and detainees

Article 267 - Any person who escapes following his seizure, arrest, detention or imprisonment in accordance with the law is punishable by a period of detention not exceeding 2 years plus a Fine not exceeding 200 dinars.

The penalty will be a period of detention if the offence is committed by two or more persons or with the use of menaces or violence against people or property. The penalty will be a term of imprisonment not exceeding 7 years if the commission of the offence involves the use of arms or the threat of such use.

Article 268 - Any person who enables a condemned prisoner to escape or helps or assists him to do so is punishable by a term of imprisonment not exceeding 10 years.

The penalty will be a term of imprisonment not exceeding 7 years if the escaped prisoner has been sentenced to life imprisonment or imprisonment for a term of years.

The penalty will be detention or a fine in all other circumstances but it will not exceed the original penalty, imposed on the escaped prisoner:

The penalty will be a term of imprisonment not exceeding 15 years or if the offence is committed by more than two persons or with the use of violence or menaces or the use of arms or the threat of such use.

Article 269 - Any person who enables another who has been seized, arrested or detained in accordance with the law to escape or helps or assists him to do so and such other person is accused of an offence for which the penalty is death is punishable by a period of detention not exceeding 7 years.

In all other circumstances, the penalty will be a period of detention not exceeding 3 years plus a fine not exceeding 300 dinars or by one of those penalties but the penalty will not exceed the penalty prescribed by law for the offence of which the escapee is accused. The penalty will be a term of imprisonment not exceeding 10 years or detention plus a fine if the offence is committed by two or more persons or with the use of violence or menaces or with the use of arms or the threat of such use.

Article 270 - Any person who provides another who has been seized, arrested, detained or imprisoned with a weapon, implement or tool by which such other person is helped to escape or who assists him to do so in any way is punishable by a term of imprisonment not exceeding 7 years or by detention.

The penalty will be imprisonment if the offence is committed by a person assigned to guard, escort or transfer a detainee.

Article 271 - Any public official or agent who is entrusted with the arrest of a person or with guarding a person under arrest, detainee or prisoner or with escorting or transferring such person and who subsequently enables him to escape or is negligent in respect of that person or is lax while carrying out the necessary procedures of the arrest with intent to assist him to escape is punishable by a term of imprisonment not exceeding 10 years if the escapee has already been sentenced to life imprisonment or imprisonment for a term of years or if he is accused of an offence for which the penalty is death.

In all other circumstances, the penalty will be detention.

Article 272 - Any person who is entrusted with guarding another person under arrest, detainee or prisoner or with escorting, or transferring such person and who causes through negligence the escape of that person is punishable by detention or a fine.

## **2. Sheltering of prisoners and detainees**

Article 273 - (1) Any person who, himself or through another, knowingly conceals or shelters another person who runs away following his arrest or the issue of a warrant for his arrest or who is accused or has been convicted of a felony or misdemeanor is punishable by the following penalties:

- (a) A term of imprisonment not exceeding 7 years if the person concealed or given shelter has been sentenced to death or life imprisonment or imprisonment for a term of years or is accused of an offence for which the penalty is death.
- (b) Detention plus a fine or by one of those penalties in all other circumstances.

(2) The penalty may not under any circumstance exceed the maximum limit of the penalty prescribed for that offence.

(3) The provision of this Article does not apply to the spouse, ancestor, descendant, brother or sister of the runaway.

**CHAPTER FIVE**  
**Offences against the public confidence**

**SECTION ONE**  
**Counterfeiting and forgery of seals and stamps**

Article 274 - Counterfeiting is the creation of something false so that it resembles the genuine article.

Article 275 - Any person who himself or through another counterfeits or forges the state seal or the seal or signature of the President or the seal or insignia of the government or of any official or semiofficial agency or government official or his signature<sup>(i<sup>43</sup>)</sup> or any legally prescribed gold or silver hallmark is punishable by imprisonment.

The penalty will be a term of imprisonment not exceeding 10 years if the offence involves the seal or insignia of a foreign state or the seal or insignia of a bank, institution, company, association, organization or establishment in which the state has a financial interest or the seal or insignia of a joint-stock company, cooperative society or corporation set up in accordance with legally prescribed regulations or association or institution considered by law to be for the public good.

The same penalty applies, according to the circumstances, to any person who makes use of such seals or insignia or who brings them into the country knowing them to be counterfeit or forged.

Article 276 - Any person who unlawfully makes use of the state seal or the seal of the President or the seal or insignia of the government or of any official or semiofficial agency or government official or any legally prescribed gold or silver hallmark is punishable by a term of imprisonment not exceeding 10 years

The penalty will be a term of imprisonment not exceeding 7 years or detention if the offence involves the seal or insignia of a foreign state or the seal or insignia of a bank, institution, company, association, organization or establishment in which the state has a financial interest or the seal or insignia of a joint-stock company, cooperative society or corporation set up in accordance with legally prescribed regulations or association or institution considered by law to be for the public good.

Article 277 - (1) Any person who counterfeits or forges the financial stamps of Iraq or of a foreign country or the insignia, postage stamps or cable or wireless communications of Iraq or of a foreign country that is a member of the International Postal Union or franked correspondence with intent to make unlawful use of such things or who disseminates such things while being aware of their nature is punishable by a term of imprisonment not exceeding 10 years.

The penalty will be detention if the offence involves the stamps of officially recognized nongovernmental organizations.

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(i) The phrase 'or his signature' has been inserted after 'government official' in accordance with Paragraph 6 of Law No 207 (1970).

(2) Any person who makes use of a counterfeit or forged stamp ,of the kind mentioned in the preceding Sub-Article or uses a genuine stamp that has previously been used or who introduces such stamps into the country with intent to use them unlawfully or disseminate them while being aware that they have been forged or previously used is punishable by detention.

Article 278 - Any person who produces in any way or obtains prints or specimens which, to all intents and purposes, resemble the insignia, postage stamps or cable or wireless communications of Iraq or a member country of the International Postal Union or franked correspondence to such an extent that they are accepted as readily as the genuine article with intent to sell, distribute or offer such prints or specimens for sale is punishable by detention or by a fine not exceeding 200 dinars.

The coupons of the International Postal Union are considered to be in the same category as stamps and insignia.

Article 279 - Any person who simulates or falsifies road or other signs that fulfill and implement the laws, regulations and instructions relating to transport or traffic is punishable by a period of detention not exceeding 1 year or by a fine not exceeding 100 dinars.

The same penalty applies to any person who makes use of such signs knowing them to be simulated or falsified and who makes use of any genuine sign which he is not entitled to use.

## SECTION TWO

### Counterfeiting of currency, banknotes and financial bonds

Article 280 - Any person who himself or through another counterfeits or forges gold or silver currency in circulation in Iraq or some other country by law or by common usage or who. introduces forged or counterfeit currency or disseminates such currency in Iraq or some other country or trades with it or obtains it with intent to disseminate it or trade with it while being aware of its nature is punishable by imprisonment.

The reduction of the weight of a coin or its regalvanization in order to make it resemble a coin of greater value is considered tantamount to the counterfeiting of coins.

The penalty will be a term of imprisonment not exceeding 10 years if such counterfeiting is of coins that are not of gold or silver.

Article 281 - Any person who himself or through another counterfeits or forges a legally recognized Iraqi or foreign financial bond(i<sup>44</sup>) or banknote with intent to circulate or issue it inside Iraq or some other country or trade with it while being aware of its nature is punishable by imprisonment.

Article 282 - If an offence stipulated in the preceding Articles results in a devaluation of the national currency or government bonds or undermines confidence in the domestic or foreign markets or is committed by a group of more than three persons, the penalty will be life imprisonment.

Article 283 - Any person who knowingly circulates or introduces worthless coins or banknotes is punishable by detention plus a fine or by one of those penalties.

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(i) The phrase 'financial bond or' has been inserted in accordance with Paragraph 7 of Law No 207 (1970).

Article 284 - Any person who takes a counterfeit coin or forged banknote in good faith and then trades with it after having discovered its true nature is punishable by detention.

Article 285 - (1) Any person who produces, sells, distributes, disseminates, offers, transfers or obtains coins or notes with intent to sell or distribute them for cultural, scientific, industrial or commercial reasons and without due authorization from the competent financial authorities and in contravention of such restrictions as are in force and those coins or notes resemble to all intents and purposes the legally issued currency in circulation in Iraq and such resemblance causes confusion among the population is punishable by a period of detention not exceeding 6 months or by a fine not exceeding 100 dinars. (i<sup>45</sup>)The same penalty applies to any person who commits such an act in respect of gold coins legally in circulation or in common use in Iraq or in a foreign country or obtains the means for counterfeiting such coins.

(2) The same penalty applies to any person who, for reasons set out in the preceding Sub-Article and without due authorization from the competent financial authorities, prints, publishes or makes use of a likeness of the face or part thereof of legally issued currency in circulation in Iraq if such likeness causes confusion among the population.

(3) Legally issued foreign banknotes are considered to be paper currency in the application of the provision of the preceding two Articles.

### SECTION THREE

#### Falsification of written documents

#### SUB-SECTION ONE

#### Definition of falsification and its types

Article 286 - Falsification is the alteration as to substance or meaning as stipulated by the Code with intent to deceive of a deed, certificate or other document thereby causing harm to the public welfare or to others.

Article 287 - (1) Falsification as to substance falls into the following categories:

- (a) the use of a falsified signature, thumb print or seal or the falsification of a genuine signature, thumb print or seal.
- (b) the procurement of the signature, thumb print or seal of any person who is unaware of the true content of the document by surprising or deceiving such person.
- (c) the completion of a blank document that has been signed, thumb printed or sealed without the consent of the person who signed, thumb printed or sealed such document. This includes the misuse of such signature, thumb print or seal.
- (d) the addition to, deletion, amendment or other alteration of the text of a written document or of a number, picture, sign or other thing contained therein.
- (e) the fabrication or forgery of a written document.

(2) Falsification as to meaning falls into the following categories:

- (a) the alteration of the basic premise, the documentation of which is the object of producing the written document.
- (b) knowingly making a simulated incident appear as a genuine one.
- (c) making an unauthorized incident, appear authorized.

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(i) From here to the end of Paragraph 285 has been inserted in (---unclear---).

- (d) the assumption or substitution or false description of a person's identity and, in general terms, the distortion of the truth in a written document or the omission from it at the time of writing of a statement considered to be for inclusion in it.

## SUB-SECTION TWO

### Falsification of official documents

Article 288 - An official document is one in which a public official or agent records that which occurs under his auspices or which is received from competent persons in accordance with legal provision and within the bounds of his authority and jurisdiction or which impinges upon its documentation in any way or by affording it official status.

Article 289 - In circumstances other than those in which the law stipulates a special sentence, any person who falsifies an official document is punishable by a term of imprisonment not exceeding 15 years.

Article 290 - Any person who compels a public official or agent while that official is making a report in the line of duty either by assuming the name of another or an identity that is not his own or by reporting fictitious information or by any other means to record or register fictitious information in respect of a matter which by its nature should be recorded is punishable by a term of imprisonment not exceeding 15 years.

## SUB-SECTION THREE

### Special instances of falsification of official documents

Article 291 - Fabrication is the creation of a document that has not previously existed and its attribution to another record without the need for there to be intent to falsify the do itself or the handwriting of person.

Article 292 - Any person who manages by assuming a false name or identity to obtain any official permit, identity card, poll card, driving or transport license or permit to move within the country is punishable by detention plus a fine not exceeding 300 dinars or by one of those penalties.

The same penalty applies to any person who forges or falsifies such document.

Article 293 - Any public official or agent who issues a document referred to in the preceding Article while being aware that the person to whom it is issued has assumed a false name or identity is punishable by detention.

Article 294 - Any person who, before an authority presiding over an investigation into the circumstances of a death or bequest, makes false statements concerning the facts under investigation and a document is issued on the basis of such statements is punishable by detention plus a fine or by one of those penalties. The same penalty applies to any person who makes false statements or registers with or submits to any such person a document containing false information with intent to register the fact that either of the parties in the marriage contract has reached the legally required age in order to authenticate such marriage `contract or to conclude a marriage contract to which there exists a legal impediment and a marriage certificate is issued on the basis of such statements or documents.

The same penalty applies to any public official or agent who issues a certificate pertaining to the death of a person or a bequest or attests a marriage contract while being aware of the false nature of those statements or documents on which that certificate or marriage contract is based:

#### SUB-SECTION FOUR Falsification ordinary documents

Article 295 - (1) Any person who falsifies an ordinary document which establishes a debt or disposes of property or discharges a person from a debt or settles a debt or any ordinary document which can be used to establish rights of ownership is punishable by a term of imprisonment not exceeding 7 years or by detention.

(2) The penalty will be detention if it is the falsification of any other ordinary document.

Article 296 - Any person who is entrusted by law to seize ledgers or documents subject to supervision by the public authorities and makes a false entry in them or neglects to make a legitimate entry thereby deceiving such authorities and causing them to commit an error is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties.

Article 297 - (1) Any doctor or midwife who issues a certificate in respect of a pregnancy, childbirth, illness, disability, death or anything concerned with his or her profession knowing it to be false in any way is punishable by a period of detention not exceeding 2 years or by a fine not exceeding 200 dinars. If the certificate is due for submission to a legal authority or in order to justify an exemption from any public service the penalty will be detention or a fine not exceeding 300 dinars.

(2) If the doctor or midwife has sought, received or taken a gift or promise thereof to issue that certificate or if he or she has already issued it as a result of receiving advice or due to any intervention by another, he or she and whoever offered, gave, promised or put forward such advice or who intervened is punishable by detention plus a fine or by one of those penalties.

(3) The same penalty applies, according to the circumstances, to any person who himself or through another falsifies or fabricates a certificate of the type mentioned in Sub-Article 1.

#### SUB-SECTION FIVE The use of falsified documents

Article 298 - Any person who makes use of a falsified document knowing it to be so is, according to the circumstances punishable by the penalty prescribed for the offence of falsification.

#### SUB-SECTION SIX Unlawful use of documents issued for use by another

Article 299 - Any person who unlawfully makes use of or benefits from a genuine document issued for the use or benefit of another is punishable by a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or by one of those penalties.

#### SUB-SECTION 7

## Destruction of documents

Article 300 - (1) Any person who maliciously destroys, distorts, spoils or nullifies a document which establishes a debt, disposes of property, discharges a person from a debt or settles a debt or any document that could be used to establish rights of ownership is punishable by a term of imprisonment not exceeding 7 years or by detention.

(2) The penalty will be detention if such act is committed in respect of a document not mentioned in the preceding Sub-Article.

Article 301 - Any employee in a relevant business who, with intent to deceive, destroys, distorts, spoils, nullifies or makes a false entry or neglects to make a significant entry in the ledgers, documentation or records of such business is punishable by detention plus a fine or by one of those penalties.

## SECTION FOUR Collective Provisions

Article 302 - (1) Any person who manufactures or obtains a tool, instrument or anything that can be used to imitate or counterfeit seals, bonds or stamps or falsifies any document with \_ intent to make use of it for the purpose mentioned above is punishable by a term of imprisonment not exceeding 7 years.

(2) The same penalty applies to any person who manufactures or obtains a mint, tool, instrument or anything that can be used to imitate, forge or counterfeit coins, bank notes or financial bonds.

Article 303 - Any person who commits an offence of forgery or counterfeiting of seals, bonds or stamps or mints coins or counterfeits bank notes, financial bonds or official documents is exempt from the prescribed penalty if he notifies the public authorities before the offence is committed and before the authorities begin to investigate or make inquiries into the offender and identify the other parties to the offence.

If such notification is given after the authorities have begun their investigation, he is not exempt from the penalty unless that notification assists in the apprehension of such parties to the offence.

In addition, any person who commits an offence of imitation, counterfeiting or forgery stipulated in this chapter is exempt from the penalty if he destroys the materials for. use in the offence before they are used and before the initiation of an investigation into the offenders.

## **SECTION FIVE: Offences affecting the national economy and confidence in the State's finances**

Article 304 - Any person who publicly and knowingly broadcasts fictitious evidence or false allegations thereby causing a reduction in the value of national banknotes or undermining confidence in the currency of the State or its bonds or any other security connected to the national economy or public confidence in state finances is punishable by a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or by one of those penalties.



The penalty will be detention plus a fine or one of those penalties if such a situation arises or if the offence is committed by a public official or agent connected with the circulation of such currency or bonds.

If both such aggravating circumstances occur simultaneously the penalty for a public official or agent will be a term of imprisonment not exceeding 7 years.

Article 305 - Any person who publicly incites others to withdraw capital deposited with banks or public funds or to sell state bonds or other government securities or to refrain from purchasing such securities is punishable by a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or by one of those penalties.

The penalty will be detention plus a fine or one of those penalties if the offence is committed by a public official or agent connected with the circulation of such currency or bonds.

Article 306 - Any person who does not accept the legally issued national currency, whether coins or notes, at its nominal value is punishable by a period of detention not exceeding 1 year or by a fine not exceeding 200 dinars.

The penalty will be a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or one of those penalties if the offence is committed by a public official or agent connected with the circulation of such currency.

## **CHAPTER SIX: Offences in breach of the duties of office**

Article 307 - (1) Any public official or agent who seeks or accepts for himself or for another a gift, benefit, honor or promise thereof to carry out any duty of his employment or to refrain from doing so or to contravene such duty is punishable by a term of imprisonment not exceeding 10 years or by detention plus a fine which should not be less than the amount he sought, was given, or was promised but should not, under any circumstances, exceed 500 dinars.

(2) The penalty will be a term of imprisonment not exceeding 7 years or detention if such request, acceptance or receipt occurs with intent to receive remuneration after such duty is or is not carried out or following the contravention of such duty.

Article 308 - Any public official or agent who seeks or receives for himself or for another a gift, benefit, privilege or promise thereof to carry out or refrain from carrying out an act that does not fall within the duties of his office but he claims or considers that such act was carried out in error is punishable by a term of imprisonment not exceeding 7 years or by detention plus a fine of not less than the amount he sought, was given or was promised. The fine should not, under any circumstances, exceed 500 dinars.

Article 309 - The provisions of the preceding two Articles apply even though that public official or agent intended not to carry out such act or refrain from doing so or contravene the duties of his office.

Article 310 - Any person who gives, offers or promises a public official or agent anything stipulated in Article 308 is considered to be offering a bribe.

Any person who mediates for a person who offers or accepts a bribe in order to offer, seek, accept, receive or promise such bribe, is considered to be an intermediary.

The person who offers a bribe as well as the intermediary is punishable by the penalty prescribed by law for a person who accepts such bribes.

Article 311 - A person who offers a bribe as well as the intermediary is exempt from the penalty if he undertakes to notify the legal or administrative authorities or confesses to the offence before an action is brought. It is considered a mitigating excuse if such notification or confession occurs after an action is brought but before the end of the proceedings.

Article 312 - The following persons are punishable by detention:

(1) Any person who seeks or receives a gift, benefit or privilege believing it to be a bribe for a public official or agent with intent to keep it for himself.

(2) Any person who receives or accepts such gift, benefit or privilege while being aware of its purpose even though the public official or agent to be bribed has not already specified or become aware of it, as long as he is not an intermediary in the act of bribery.

Article 313 - Any person who offers a bribe to a public official or agent and he does not accept it is punishable by detention or by a fine.

Article 314 - In addition to the penalties stipulated in the Articles of this Section, an order for the confiscation of the gift received by or offered to the public official or agent will be issued.

## **SECTION TWO: Embezzlement**

Article 315 - Any public official or agent who embezzles or conceals funds, goods, documents establishing legal rights or other things that come into his possession is punishable by imprisonment.

The penalty will be life imprisonment or imprisonment for a term of years if the public official or agent is a tax collector or his deputy or deposit trustee or money changer or if he embezzles anything surrendered to him in his capacity as such.

Article 316 - Any public official or agent who exploits his position in order to obtain funds, goods or documents establishing legal rights or other things to which he is not entitled and which belong to the State or to an establishment or organization in which the state has a financial interest is punishable by imprisonment.

The penalty will be a term of imprisonment not exceeding 10 years if such funds, goods, documents or other thing belong to some entity other than those mentioned in the preceding Sub-Article.

Article 317 - If the value of any thing involved in an offence stipulated in Articles 315 and 316 is less than 5 dinars, the Court may sentence the offender to detention instead of the penalty prescribed in those Articles.

Article 318 - Any public official or agent who is entrusted with the supervision of a department belonging to an authority in which he is working or a transaction or case and who then maliciously harms or causes harm to that department in order to obtain some benefit for himself or for another is punishable by imprisonment.

Article 319 – Any public official or agent who benefits directly or through the mediation of another from a transaction, contract or agreement, the preparation, assignment, implementation or supervision of which is in the hands of such public official or agent is punishable by a term of imprisonment not exceeding 10 years or by detention. The same penalty applies if he receives for himself or for another a commission in respect of such activity.

Article 320 - Any public official or agent who employs others to carry out the activities relating to his position and who retains for himself in whole or in part the wages or other recompense due to his employees or who employs slave labor and takes their wages for himself or who enters in a government register the names of fictitious or genuine persons who have not been engaged in those activities and retains their wages for himself or who pays such employees their wages at the government's expense is punishable by a term of imprisonment not exceeding 10 years or by detention.

Article 321 - In addition to the penalties stipulated in the Articles of this Section, the offender shall be ordered to make restitution for the funds he has embezzled or appropriated for himself or for the value of the benefit or gain which he has obtained.

### **SECTION THREE: Officials who overstep the bounds of their duty**

Article 322 - Any public official or agent who arrests, imprisons or detains a person in circumstances other than those stipulated by law is punishable by a term of imprisonment not exceeding 7 years or by detention.

The penalty will be a term of imprisonment not exceeding years or detention if the offence is committed by a person wearing an official uniform to which he is not entitled or who uses a false identity or makes use of a counterfeit order claiming it to have been issued by an authority that is entitled to issue such orders.

Article 323 - Any public official or agent who, while being aware of the violation of his duty to the law, punishes a convicted person or orders him to be punished by a penalty greater than that imposed on him by law or by a penalty to which he has not been sentenced is punishable by detention.

Article 324 - Any public official or agent who is entrusted with the administration or supervision of a center, prison or other institution set aside for the discharging of a penalty or precautionary measure and who admits a person without an order to do so from a competent authority or refrains from implementing an order issued for the release of such person or for his continued detention following the period prescribed for his custody, detention or imprisonment is punishable by detention.

Article 325 - Any public official or agent who engages slave labor in activities unconnected with the legally or constitutionally recognized public interest or activities other than those that are prompted by necessity or who obliges a person to engage in activities or circumstances other than those in which the law sanctions such activity is punishable by detention. This is in addition to an order that he pay any wages due to those people he has unlawfully employed.

Article 326 - Any public official or agent who, in the course of his official duty, enters the house of a person or any part thereof without the consent of that person or causes another to enter the

house in circumstances other than those in which the law sanctions such entry or without due care to the procedures laid down for making such entry is punishable by detention plus a fine or by one of those penalties.

The same penalty applies to any public official or agent who carries out a search of a person, house or location without the consent of the owner or causes another to carry out the search in circumstances other than those in which the law sanctions such search or without due care to the procedures laid down for such search.

Article 327 - Any public official or agent who knowingly reveals information that has come to his knowledge in the course of his duty to a person to whom he is required to withhold such information is punishable by a period of detention not exceeding 3 years plus a fine not exceeding 300 dinars or by one of those penalties. The penalty will be imprisonment if, as a result of that revelation, the interests of the state are harmed. The same penalty applies to any person associated with the government or his deputy or any person working on his behalf who is involved in the conclusion of a contract or transaction and who reveals information that he has received in the course of concluding such contract or transaction and which he is obliged to withhold.

Article 328 - Any official or employee in a postal or telecommunications agency as well as any public official or agent who opens, destroys or conceals a letter or telex entrusted or consigned to such agency or who assists another to do so or reveals secrets contained therein is punishable by a term of imprisonment not exceeding 7 years or by detention. The same penalty applies to any of those persons who reveal the contents of a telephone conversation or assist another to do so.

Article 329 - (1) Any public official or agent who exploits the authority of his office and who prevents or hinders the execution of an order issued by the government or legal provision or regulation or judgment or order issued by a court or competent public authority or who delays the collection of revenues, taxes or such thing that is regulated by law is punishable by detention plus fine or by one of those penalties.

(2) The same penalty applies to any public official or agent who refrains from executing a decision or order of a court or competent public authority within 8 days of his official notification to do so and the execution of such decision or order falls within his jurisdiction.

Article 330 - Any public official or agent who unlawfully refrains from executing the duties of his office or willfully fails to fulfill his duties in response to a request or instruction or to mediation by another or for any unlawful reason is punishable by detention.

Article 331 - Any public official or agent who willfully commits an act in breach of the duties of his office or refrains from executing the affairs of that office with intent to harm the welfare of an individual or to benefit one person at the expense of another or at the expense of the state is punishable by detention plus a fine or by one of those penalties.

Article 332 - Any public official or agent who cruelly treats a person in the course of his duties thereby causing him to suffer a loss of esteem or dignity or physical pain is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties but without prejudice to any greater penalty stipulated by law.

Article 333 - Any public official or agent who tortures or orders the torture of an accused, witness or informant in order to compel him to confess to the commission of an offence or to make a statement or provide information about such offence or to withhold information or to give a particular opinion in respect of it is punishable by imprisonment or by penal servitude. Torture shall include the use of force or menaces.

Article 334 - Any public official or agent who uses the authority of his office to purchase forcibly any moveable or immovable property from its owner or unlawfully take possession of such property or a benefit or title belonging to another or who compels the owner to make any disposals of such property to him or to another or to enable him to benefit from such property in any way is punishable by detention plus a fine or by one of those penalties. He shall be ordered to make restitution for the property that he has appropriated or its value if it has no substance in addition to the compensation if necessary of any person who has suffered harm as a result of the offence.

Article 335 - Any public official or agent who unlawfully uses his position to take possession of property, goods or title documents or other such things in his possession as a consequence of his position or assists another to do so and without intent to take legal possession is punishable by a term of imprisonment not exceeding 10 years or by detention.

Article 336 - (1) Any public official or agent who, by deception or any other illegal means, violates the freedom or integrity of auctions or invitations to tender by the government or by an establishment or company in which the government has a financial interest or those of an official or semiofficial agency is punishable by detention plus a fine or by one of those penalties.

(2) The same penalty applies to any person other than a public official or agent who commits an act stipulated in the preceding Sub-Article.

(3) Such a person shall be ordered to make restitution for the loss arising from an act stipulated in this Article.

Article 337 - Any official prohibited by reason of his position from engaging in commerce who trades without profit or gain with his own private property or the property of his ancestor, descendant, brother, sister, spouse or any person in his custody or care is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 200 dinars or by one of those penalties.

Article 338 - Any official or employee in an official or semiofficial agency who uses the authority of his position to acquire for himself or for another from a person without his consent anything of little or no value is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 200 dinars or by one of those penalties in addition to an order that he return those items that he has acquired or pay their value in full if they are no longer in their original state.

Article 339 - Any public official or agent who is involved in the collection of a tax, revenue, fine or other such thing or who is responsible for the payment of fees, wages or such things and who knowingly seeks or acquires or orders the collection of that to which he has no right or which exceeds that which is due is punishable by a term of imprisonment not exceeding 7 years or by detention. Sums unlawfully collected shall be ordered to be refunded.

Article 340 - Any public official or agent who willfully inflicts damage on the property or interests of the authority for which he works or to which he is associated by virtue of his position or on

another's property that has been entrusted to him is punishable by a term of imprisonment not exceeding 7 years or by detention.

Article 341 - Any public official or agent who causes by a serious error on his part the infliction of grave damage on the property or interests of an authority for which he works or with which he is associated by virtue of his position or on another's property or interests that have been entrusted to him is punishable by detention if it is as a consequence of gross negligence in the performance of his duty or the abuse of his authority or a serious breach of the duties of his office.

## **CHAPTER SEVEN: Offences that endanger the public**

### **SECTION ONE: Fire and explosives**

Article 342 - (1) Any person who willfully sets on fire moveable or immovable property even though he is the owner of such property is punishable by a term of imprisonment not exceeding 5 years if he thereby endangers the life or property of others.

(2) The penalty will be life imprisonment or imprisonment for a term of years if the following places are set on fire:

- (a) An ordnance or weapons factory or depot or part thereof or military equipment store.
- (b) An oil rig or well.
- (c) A fuel dump or store of inflammable substances or explosives.
- (d) An electricity, water or nuclear power station.
- (e) A railway station or engine or vehicle or railway carriage that is occupied by others or airport or aircraft or shipyard or ship.
- (f) A residential building or place inhabited by a group of people.
- (g) A building used by an official or semi-official agency or general establishment or institution working in the public interest.

(3) The penalty will be life imprisonment if the offence aims to facilitate the commission of a felony or misdemeanor or destroy the evidence of such offence or if the offender renders ineffective any fire fighting equipment or means of fighting fires or if the fire leads to permanent disability or is started with the use of explosives.

(4) The penalty will be ~~death or~~ life imprisonment<sup>46</sup> if the fire results in the death of others.

Article 343 - (1) Any person who accidentally causes to be set on fire moveable or immovable property is punishable by detention plus a fine or by one of those penalties if he thereby endangers the life and property of others.

(2) The penalty will be a term of imprisonment not exceeding 7 years or detention if the fire leads to the destruction of a public utility or causes extensive damage to property.

(3) The penalty will be a term of imprisonment not exceeding 10 years if the offence results in the death of others.

Article 344 - Any person who manufactures, imports, obtains or acquires explosives without authorization or for a purpose other than that stipulated in such authorization is punishable by a term of imprisonment not exceeding 7 years or by detention plus a fine. Explosives are considered to include all

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<sup>46</sup> The death penalty was suspended by operation of CPA Order 7 Section 3(1) and substituted with life imprisonment. It was re-introduced by Decree 3 of 2004 for a limited number of crimes not including this one.

substances used in their manufacture which. are defined by a decision of the competent Minister published in an official newspaper as well as the tools and equipment used in their manufacture or detonation.

Article 345 - Any person who uses or attempts to use explosives thereby endangering the life of others is punishable by a term of imprisonment not exceeding 5 years. If the use of such explosives causes serious injury or death to others, the penalty will be life imprisonment or imprisonment for a term of years.

Article 346 - Any person who willfully uses or attempts to use explosives thereby endangering the property of others is punishable by a term of imprisonment not exceeding 10 years. The penalty will be imprisonment if the explosion causes serious damage to such property.

Article 347 - Any person who uses explosives in order to achieve an illegal purpose or in circumstances other than those mentioned above is punishable by a term of imprisonment not exceeding 10 years.

Article 348 - Any person who conveys or attempts to convey explosives or inflammable substances by any mode of land, sea or air transport or by letter or parcel in contravention of accepted rules and regulations is punishable by detention plus a fine or by one of those penalties.

## **SECTION TWO: Offences of flooding and those involving a public utility**

Article 349 - Any person who willfully causes or attempts to cause flooding which endangers the life or property of others is punishable by a term of imprisonment not exceeding 15 years. The penalty will be death or life imprisonment if such flooding results in the death of others or life imprisonment or imprisonment for a term of years if such flooding results in serious damage to property.

Article 350 - (1) Any person who accidentally causes flooding is punishable by detention plus a fine or by one of those penalties if it endangers the life or property of others.

(2) The penalty will be a term of imprisonment not exceeding 7 years or detention if such flooding results in the destruction of a public utility or causes extensive damage to property.

(3) The penalty will be a term of imprisonment not exceeding 10 years if the offence leads to the death of others.

Article 351 - (1) Any person who willfully endangers the life or safety of others by contaminating with substances, bacteria or other such material which cause death or serious harm to the public health, a well, water store, public storage depot or other such thing set aside for use by the public is punishable by life imprisonment or imprisonment for a term of years. The penalty will be death if such contamination results in the death of others.

(2) Any person who accidentally causes the commission of an offence stipulated in Sub-Article 1 is punishable by detention plus a fine or by one of those penalties. The penalty will be a term of imprisonment not exceeding 10 years if the offence results in the death of others.

Article 352 - Any person who contaminates the water of a public well or storage tank or reservoir or other such thing that is provided for use by the public by rendering it less suitable for the purpose for which it is used or accidentally causes such contamination is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties.

Article 353 - (1) Any person who breaks, destroys or causes other such damage to the appliances, pipes or equipment of a water, electricity or oil installation or any other public utility is punishable by a term of imprisonment not exceeding 7 years or by detention if such damage could lead to the closure of that installation.

The penalty will be a term of imprisonment not exceeding 10 years or detention if it actually causes the closure of such installation.

(2) Any person who wrecks, demolishes, destroys or damages a permanent health center or mobile medical unit or instrument or materials contained therein or impairs such things or renders them unsuitable for use is punishable by a term of imprisonment not exceeding 7 years or by detention.

(3) Any person who accidentally causes the commission of an offence stipulated in Sub-Article 1 is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties.

### **SECTION THREE: Offences affecting the safety of transport and public conveyances**

Article 354 - Any person who willfully endangers in any way safety of navigation in the air or at sea or the safety of a train, ship, aircraft or other mode of public transport is punishable by imprisonment.

The penalty will be life imprisonment if such act results in a train disaster or accident involving any of the modes of transport mentioned above. The penalty will be death or life imprisonment if it results in the death of others.

Article 355 - (1) Any person who willfully causes damage to or sabotages a public highway or airport or bridge, or dam or railway or navigable channel or river is punishable by detention plus a fine or by one of those penalties.

(2) The penalty will be life imprisonment or imprisonment for a term of years if the offender uses explosives in the commission of the offence.

(3) The penalty will be death or life imprisonment if the offence results in a disaster or the death of others.

Article 356 - Any person who accidentally causes an accident involving public transport on land, at sea or in the air which impairs its operation or endangers the passengers is punishable by detention plus a fine or by one of those penalties. The penalty will be a term of imprisonment not exceeding 7 years if the offence results in a disaster or the death of others.

Article 357 - Any person who willfully throws stones or projectiles at a train, ship, aircraft or other mode of public transport in such a way that it could be expected to result in injury to others is punishable by a period of detention not exceeding 3 years plus a fine not exceeding 300 dinars or by one of those penalties.



The penalty will be detention if such act results in injury or harm to any passenger on the train, ship, aircraft or other mode of transport. The penalty will, be imprisonment if the offence results in the death of others.

Article 358 - Any person who willfully impedes the progress of any mode of public transport on land, at sea or in the air is punishable by a term of imprisonment not exceeding 7 years or by detention or by a fine.

Article 359 - Any person who willfully endangers in any way the safety of any mode of public transport is punishable by detention or by a fine.

The penalty will be imprisonment if the offence results in the death of others.

#### **SECTION FOUR: Collective Provisions**

Article 360 - Any person who destroys, conceals or substitutes in any way an appliance, implement or other equipment needed for fighting fires, saving lives at sea or administering medical treatment or for preventing disasters or other such incidents or who prevents the use of such equipment is punishable by a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or by one of those penalties.

#### **SECTION FIVE: Offences affecting cable and wireless communications**

Article 361 Any person who willfully causes damage to any means of cable or wireless communication set up for the public benefit or who disconnects or destroys any cable or equipment or willfully impedes the repair of such equipment is punishable by a term of imprisonment not exceeding 7 years or by detention.

The penalty will be imprisonment if the offence is committed with the use of explosives or in time of war, civil strife or riot.

Article 362 - Any person who accidentally causes damage to or destruction of any means of cable or wireless communication set up for the public benefit or disconnects such means of communication is punishable by a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or by one of those penalties.

Article 363 - Any person who willfully causes alarm by the abuse of cable or wireless communications equipment is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties.

#### **SECTION SIX: Offences affecting the course of employment**

Article 364 (1) Any public official or agent who leaves his employment even if he resigns or who willfully refrains from carrying out the duties of his office or employment and, by so doing, endangers the lives, health and security of others or provokes civil strife or unrest or causes damage to a public utility is punishable by a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or by one of those penalties.

(2) The commission of such act by 3 or more persons who have conspired to commit such act with a common purpose is considered to be an aggravating circumstance.

Article 365 - Any person who infringes or attempts to infringe with the use of force, violence, intimidation or menaces or by any other illegal means the right of a public official or agent to carry out his employment is punishable by detention plus a fine or by one of those penalties.

Article 366 - In circumstances other than those described in the preceding Article, any person who uses force, violence, intimidation, menaces or other illegal method against the right of another to carry out his employment or the right to employ or refrain from employing a person is punishable by a period of detention not exceeding 1 year or by a fine not exceeding 100 dinars.

The provision of this Article also applies if any illegal method is used in respect of the spouse, ancestor or descendant of the victim of the offence.

Article 367 - Any person who willfully removes an instrument or sign necessary for the prevention of accidents at work or breaks or destroys it or renders it unsuitable for use or damages it in any way is punishable by detention.

The penalty will be a term of imprisonment not exceeding 10 years if the offence results in the closure of a public utility. The penalty will be imprisonment if the offence results in a disaster or the death of others.

## **SECTION SEVEN: Offences detrimental to the public health**

Article 368 - Any person who willfully commits an act which spreads a dangerous, disease that endangers the lives of others is punishable by a period of detention not exceeding 3 years. If the offence results in the death of others or permanent disability the offender will, according to the circumstances, be punishable by the penalty prescribed for the offence of assault leading to death or that of permanent disabling.

Article 369 - Any person who accidentally causes the spread of a dangerous disease that endangers the lives of others is punishable by a period of detention not exceeding 1 year or by a fine not exceeding 100 dinars.

If the offence results in the death of others or permanent disability the offender will, according to the circumstances, be punishable by the penalty prescribed for manslaughter or accidental wounding.

## **CHAPTER EIGHT Social offences**

### **SECTION ONE Failure to give assistance**

Article 370 - (1) Anyone who, without justification, refrains from or hesitates in giving assistance when requested to do so by a competent public official or agent at a time of fire, flood or other disaster is punishable by a period of detention not exceeding 6 months plus a fine not exceeding 50 dinars or by one of those penalties.

(2) The same penalty applies to any person who, without justification, refrains from or hesitates in giving assistance to a victim of a disaster or offence.

Article 371 - Any person who is entrusted by law or by arrangement with the care of a person unable to look after himself by reason of his young or old age, state of health, mood or mental condition and he refrains, without justification, from fulfilling his duties is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties.

## **SECTION TWO: Offences that violate religious sensibilities**

Article 372 - The following persons are punishable by a period of detention not exceeding 3 years or by a fine not exceeding 300 dinars:

(1) Any person who attacks the creed of a religious minority or pours scorn on its religious practices.

(2) Any person who willfully disrupts a religious ceremony, festival or meeting of a religious minority or who willfully prevents or obstructs the performance of such ritual.

(3) . Any person who wrecks, destroys, defaces or desecrates a building set aside for the ceremonies of a religious minority or symbol or anything that is sacred to it.

(4) Any person who prints or publishes a book sacred to a religious minority and deliberately misspells the texts so that the meaning of the text is altered or who makes light of its tenets or teachings.

(5) Any person who publicly insults a symbol or a person who constitutes an object of sanctification, worship or reverence to a religious minority.

(6) Any person who publicly imitates a religious ceremony or celebration with intent to deceive.

## **SECTION THREE: Desecration of graves and the dead and disruption of funeral processions and ceremonies**

Article 373<sup>47</sup> - Any person who desecrates or defiles a grave or cemetery or gravestone or who willfully breaks, destroys or defaces such a thing is punishable by a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or by one of those penalties.

Article 374 Any person who willfully desecrates a corpse or part thereof of any human remains or who removes the shroud from such corpse is punishable by a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or by one of those penalties. The penalty will be a period of detention not exceeding 3 years if such act was committed in order to take vengeance on or revile such corpse.

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<sup>47</sup> As amended by Paragraph 8 of Law No 207 (1970)

Article 375 - Any person who willfully disrupts a funeral procession or ceremony or impedes it with the use of violence or menaces is punishable by a period of detention not exceeding 1 year or by a fine not exceeding 100 dinars.

#### **SECTION FOUR: Offences involving the family**

Article 376 - Any person who obtains a marriage certificate knowing it to be invalid for any reason in secular or canonical law and any person who issues such certificate knowing the marriage to be invalid is punishable by a term of imprisonment not exceeding 7 years or by detention. The penalty will be a term of imprisonment not exceeding 10 years if the spouse, in respect of whom the reason for the invalidity has arisen, conceals that fact from his partner or consummates the marriage on the basis of the invalid certificate.

Article 377 - (1) An adulteress and the man with whom she commits adultery are punishable by detention. The offender is assumed to be aware of the marriage unless he can prove that he was not capable of being aware of it.

(2) The same penalty applies if the husband commits adultery in the conjugal home.

Article 378 - (1) No action for adultery may be brought against either spouse nor may any measures be taken in respect of that action except on the basis of an accusation by the other partner. Such accusation will not be accepted in the following circumstances:

- (a) If it is made after 3 months from the day when the complainant first became aware of the offence.
- (b) If the complainant is content to resume married life despite having become aware of the offence.
- (c) If it is established that the offence was committed with the consent of the complainant.

(2) By spouse in this Article is meant any person who meets that description at the time of the commission of the offence or who causes to do so following the offence. The right of the husband to bring an action for adultery committed by his wife continues for 4 months after he has divorced her.

Article 379 - (1) An action for adultery becomes void and the civil right of action lapses with the death of the complainant or if he drops the charges against the offending party or with the agreement of the complainant to resume normal relations with the offending party before a final judgment of the case is made. The dropping of the charges by the husband against the offending spouse is considered also to apply to the charges against the man with whom she has committed adultery.

(2) A spouse may therefore prevent the implementation of the sentence imposed on the other spouse.

If the complainant dies, any of the children of the accused spouse or guardian of such child may prevent the implementation of the sentence.

Article 380 - Any husband who incites his wife to commit adultery and she does so on the basis of such incitement is punishable by detention.

#### **SECTION FIVE: Offences involving adoption, the care of minors, endangering the young or old and the desertion of the family**

Article 381 - Any person who removes a new born child from whomever has legal authority over such child or conceals it or substitutes it for another or falsely attributes it to another mother is punishable by detention.

Article 382 - (1) Any person who is responsible for a child and who is requested to hand over the child by a person who has a right to do so in accordance with a decision or judgment issued by a legal authority in connection with the upbringing or care of that child and who does not hand over the child to him is punishable by a period of detention not exceeding 1 year or by a fine not exceeding 100 dinars. The provision still applies if the person responsible for the child is a parent or grandparent.

(2) The same penalty applies to any parent or grandparent who takes by himself or with the help of another his own young child or grandchild from any person with whom the responsibility of the upbringing or care of the child has been placed even though he does so without cunning or malice.

Article 383 - (1) Any person who by himself or through another endangers a child under 15 years of age or person who is unable to defend himself by reason of his state of health or mental or psychological condition is punishable by a period of detention not exceeding 3 years or by a fine not exceeding 300 dinars.

(2) The penalty will be detention if the offence involves the desertion of a child or old person in an isolated place or if it is committed by a parent of the victim or by a person who is responsible for the upbringing or care of such child or old person. If the offence results in the victim's disability or death without the offender intending such result, the offender is, according to the circumstances, punishable by the penalty prescribed for the offence of assault leading to disability or death. The same penalty applies if the child or old person is endangered by being willfully deprived of the food or care that his condition requires notwithstanding the offender's obligation by law, agreement or custom to provide such food or care.

Article 384 - Any person who is issued with a legal order to provide support for his wife, parent, child or other person or to pay nursing, suckling or accommodation charges and refrains from carrying out such order within a month of its issue, while being able to do so, is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties.

An action may only be brought on the basis of a complaint by the person concerned and that action ceases with the withdrawal of the complaint by such person or with the discharge by the defendant of his indebtedness to the complainant. If the withdrawal of the complaint or discharge of the debt occurs after any judgment is made in the case, the penalty will not be carried out.

Article 385 - Any person who has carnal knowledge of a girl to whom he is not married with her consent when she has not yet reached the age of 18 is punishable by a term of imprisonment not exceeding 10 years or by detention.

It is considered an aggravating circumstance if the victim is forced or if she loses her virginity or contracts venereal disease as a result of the offence or if the offender is responsible for the victim's upbringing or supervision or has some measure of authority over her. Any action or measure in respect of such action may only be brought on the basis of a complaint by the victim or her ancestor, descendant, brother or sister.

## **SECTION SIX: Offences involving drunkenness**

Article 386 - (1) Any person who is found in a public highway or place or area that is open to the public in a state of intoxication and who is clearly suffering from a loss of reason or is causing trouble or disturbing others is punishable by a fine not exceeding 10 dinars.

(2) If such person reoffends within 1 year of the date of his sentence, the penalty will be a period of detention not exceeding 1 month or a fine not exceeding 20 dinars. The court may, if it is established that the offender is an alcoholic, order him to be put in a clinic set up for such persons or government hospital instead of the penalty prescribed in this Sub-Article. The court may also release him on application by the public prosecutor or the convicted person before the end of that period if a medical report issued by the clinic or hospital shows that he has recovered.

Article 387 - Any person who incites a young person who has not yet reached the age of 18 to consume intoxicating liquor or gives him an intoxicating drink for a purpose other than medical treatment is punishable by a period of detention not exceeding 10 days or by a fine not exceeding 20 dinars.

If the victim is deceived as to the nature of the drink and unwittingly consumes it, the offender is punishable by a period of detention not exceeding 1 month or by a fine not exceeding 30 dinars.

Article 388<sup>48</sup> - (1) Any proprietor of a bar or other public place or any employee working in such place who offers alcohol to a juvenile who has not reached the age of 18 is punishable by a period of detention not exceeding 6 months or by a fine not exceeding 50 dinars.

(2) Any owner of a tavern, bar or night club or any employee working in such place who permits a person under 21 years of age to enter such place for any reason whatsoever is punishable by a period of detention not exceeding 6 months plus a fine not exceeding 50 dinars or by one of those penalties.

(3) If the offender reoffends by committing any of the above acts within one year following the date on which he was sentenced, the court may, in addition to imposing the prescribed penalty for the offence, order that the place be closed for a period not exceeding 6 months.

## **SECTION SEVEN: Gambling**

Article 389 - (1) Any person who opens or runs an establishment for gambling and opens it to the public is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties. The same penalty applies to any person who organizes such gambling in a public place or place that is open to the public or location or house set aside for such purpose.

(2) The same penalty applies to a cashier of such establishment.

(3) Any person found gambling in a place mentioned in Sub-Article 1 is punishable by a period of detention not exceeding 1 month or by a fine not exceeding 50 dinars.

(4) The money and equipment used for gambling will be seized and ordered to be confiscated.

(5) The court may also order such place to be closed for a period not exceeding 1 year.

## **SECTION EIGHT: Begging**

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<sup>48</sup> As amended by Law No 80 (1980)

Article 390 - (1) Any person over the age of 18 who has a legitimate source of income on which he can live or who is able to achieve such source of income by working and who is found begging in a public highway or public place or enters without permission a building or part thereof for the purpose of begging is punishable by a period of detention not exceeding 1 month. The penalty will be a period of detention not exceeding 3 months if the beggar feigns an injury or disability or uses any other deceitful means to solicit public charity or displays an injury or disability or pesters others for alms.

(2) If the offender is under the age of 18, the provisions relating to the liability of juveniles for the commission of an infraction are applicable.

Article 391 - The court may, instead of sentencing a beggar to the penalty prescribed in the preceding Article, order him to be placed in a work house for a period not exceeding 1 year if he is able to work or, if he is unable to work and has no money on which to live, in an infirmary or home for the disabled or recognized charitable institution whenever he is able to enter the institution that is suitable for him.

Article 392 - Any person who compels another under the age of 18 to become a beggar is punishable by a period of detention not exceeding 3 months plus a fine not exceeding 50 dinars or by one of those penalties. The penalty will be a period of detention not exceeding 6 months plus a fine not exceeding 100 dinars or one of those penalties if the offender is the guardian, protector, or custodian of the victim.

## **CHAPTER NINE: Moral indecency – public etiquette**

### **SECTION ONE: Rape, buggery, indecent assault<sup>49</sup>**

Article 393 - (1) Any person who has sexual intercourse with a female without her consent or commits buggery with any person without their consent is punishable by a term of imprisonment not exceeding 15 years.

(2) The following are considered to be aggravating circumstances for this offense:

(a) If the victim at the time of the act was under 18 years old

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<sup>49</sup> NOTE: RCC Decision No 488, published in Al-Waqai' Al-Iraqiya No 2650 on 24/4/78, which stated:

(1) The following persons are punishable by death [The death penalty was suspended by operation of CPA Order 7 Section 3(1) and substituted with life imprisonment. It was re-introduced by Decree 3 of 2004 for a limited number of crimes not including this one]:

(a) Any person who has sexual intercourse with a female relative to the third generation who is over 15 years of age without her consent and the offense leads to her death or to pregnancy or loss of virginity.

(b) Any person who has sexual intercourse with a female relative to the third generation who is under 15 years of age without her consent.

(c) Any person who has sexual intercourse with a female relative to the third generation under the age of 15 with her consent and the offense leads to her death, to pregnancy or loss of virginity.

(2) Any male and female who have sexual intercourse or commit an act of buggery with each other with her consent and they are over 18 years of age and related to the third generation are punishable by life imprisonment.

(3) This decree becomes effective from the date of its publication in the official newspaper.]

(b) If the offender was a relative of the victim to the third generation, or if the offender is the guardian, protector, or custodian of the victim or has authority over the victim or the victim is the offender's servant.

(c) If the offender was a public official, religious leader, or doctor and used the power of his position or the trust in him.

(d) If the offense is committed by two or more people in order to prevail over the resistance of the victim or if they commit the offense multiple times.

(e) If the victim contracts venereal disease as a result of the offense.

(f) If the victim loses her virginity or loses her virginity as a result of the offense.

(3) If the offense leads to the death of the victim, the penalty will be life imprisonment.

(4) If the victim was a virgin, the court must order that she receive appropriate compensation.

Article 394 (1) Any person who, outside of marriage, has sexual intercourse with a woman with her consent, or commits buggery with a person with their consent, is punishable by a period of imprisonment not exceeding 7 years if the victim is between the ages of 15 and 18. If the victim was under the age of 15, the offender is punishable by a period of imprisonment not exceeding 10 years.

(2) It will be considered an aggravating circumstance if the act occurred under circumstances described in Paragraph 393.

(3) If the victim was a virgin, the court must order that she receive appropriate compensation.

Article 395 - Any person who seduces a woman over the age of 18 with a promise of marriage, has sexual intercourse with her and subsequently refuses to marry her is punishable by detention.

Article 396 - (1) Any person who sexually assaults a man or woman or attempts to do so without his or her consent and with the use of force, menaces, deception or other means is punishable by a term of imprisonment not exceeding 7 years or by detention.

(2) The penalty will be a term of imprisonment not exceeding 10 years if the person against whom the offence is committed is under 18 years of age or the offender is a person described in Sub-Article 2 of Article 393.

Article 397 - Any person who sexually assaults a boy or girl under the age of 18 without the use of force, menaces or deception is punishable by detention. The penalty will be a term of imprisonment not exceeding 7 years or detention if the offender is a person described in Sub-Article 2 of Article 393.

Article 398 - If the offender mentioned in this Section then lawfully marries the victim, any action becomes void and any investigation or other procedure is discontinued and, if a sentence has already been passed in respect of such action, then the sentence will be quashed. Legal proceedings will resume or the sentence will be reinstated, according to the circumstances if such marriage ends in divorce brought about by the husband without legal justification or in a divorce ordered by the court for wrongs committed by the husband or for his bad behavior within 3 years following the cessation of the proceedings. The public prosecutor, the accused, the victim or any person who has an interest in the proceedings may, according to the circumstances, make application for the proceedings, investigation, procedures or execution of the sentence to be stopped or for their resumption or for the reinstatement of the sentence.

## **SECTION TWO: Incitement to Prostitution and Fornication**



Article 399 - Any person who incites a boy or girl under the age of 18 to indulge in fornication or resort to prostitution as a profession or assists him or her to do so is punishable by detention. The penalty will be a term of imprisonment not exceeding 10 years or by detention if the offender is a person described in Sub-Article 2 of Article 393 and intends to profit by his action or receives money for such action.

### **SECTION THREE: Immodest and shameful acts**

Article 400 - Any person who commits an immodest act with a man or woman and without his or her consent is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties.

Article 401 - Any person who commits an immodest act in public is punishable by a period of detention not exceeding 6 months plus a fine not exceeding 50 dinars or by one of those penalties.

Article 402 - (1) The following persons are punishable by a period of detention not exceeding 3 months plus a fine not exceeding 30 dinars or by one of those penalties:

- (a) Any person who makes indecent advances to another man or woman.
- (b) Any person who assails a woman in a public place in an immodest manner with words, actions or signs.

(2) The penalty will be a period of detention not exceeding 6 months plus a fine not exceeding 100 dinars if the offender, having been previously convicted for such offence, reoffends within a year of the date of such conviction.

Article 403 - Any person who produces, imports, publishes, possesses, obtains or translates a book, printed or other written material, drawing, picture, film, symbol or other thing that violates the public integrity or decency with intent to exploit or distribute such material is punishable by a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or by one of those penalties. The same penalty applies to any person who advertises such material or displays it in public or sells, hires or offers it for sale or hire even though it is not in public or to any person who distributes or submits it for distribution by any means.

If the offence is committed with intent to deprave, it is considered to be an aggravating circumstances.

Article 404 - Any person who himself or through some mechanical means sings or broadcasts in a public place obscene or indecent songs or statements is punishable by a period of detention not exceeding 1 year or by a fine not exceeding 100 dinars.

## **PART THREE: Offences against the person**

### **CHAPTER ONE: Offences affecting the life and physical safety of others**

#### **SECTION ONE: Murder**

Article 405 - Any person who wilfully kills another is punishable by life imprisonment or imprisonment for a term of years.

Article 406 - (1) Any person who wilfully kills another is punishable by death in the following circumstances:

- (a) If such killing is premeditated.
  - (b) If such killing occurs as a result of the use of toxic substances or explosives.
  - (c) If the motive for such killing is base or such killing is in exchange for money or if the offender uses brutal methods in the commission of the offence.
  - (d) If the victim is a parent of the offender.
  - (e) If the victim is a public official or agent while in the course of executing his duty or employment or if he is killed as a consequence of such duty or employment.
  - (f) If the offender intends to kill two or more people and does so as a result of a single act.
  - (g) If the murder is related to one or more other murders or attempted murders.
  - (h) If the killing is committed as a prelude to the commission of a felony or misdemeanor punishable by a period of detention of not less than 1 year or in order to facilitate the commission of such offence or while carrying out such offence or in order to enable the offender or accessory to make his escape or avoid punishment.
  - (i) If the offender has been sentenced to life imprisonment for murder and he commits murder or attempts to do so during the term of his sentence.
- (2) The penalty will be death or life imprisonment in the following circumstances:
- (a) If the offender intends to kill one person but his action results in the death of two or more persons.
  - (b) If the offender mutilates the body of the victim.
  - (c) If the offender sentenced to life imprisonment in circumstances other than those described in Sub-Articles (a)(i) of this Article and he commits murder during the term of his sentence.

Article 407 - Any mother who, having become pregnant through fornication, kills her newly born child. out of shame is punishable by a term of imprisonment not exceeding 10 years or by a period of detention of not less than 1 year.

Article 408 - (1) Any person who incites a person to commit suicide or assists him in any way to do so is punishable by a term of imprisonment not exceeding 7 years if that person commits suicide on the basis of such incitement or assistance. The penalty will be detention if the person does not commit suicide but attempts to do so.

(2) If the suicide is under 18 years of age or is suffering from a state of diminished reason or will, it is considered an aggravating circumstance. The offender is, according to the circumstances, punishable by the penalty for murder or attempted murder if the suicide is suffering from loss of reason or will.

(3) There is no penalty for an attempted suicide.

Article 409 - Any person who surprises his wife in the act of adultery or finds his girlfriend in bed with her lover and kills them immediately or one of them or assaults one of them so that he or she dies or is left permanently disabled is punishable by a period of detention not exceeding 3 years. It is not permissible to exercise the right of legal defense against any person who uses this excuse nor do the rules of aggravating circumstance apply against him.

## **SECTION TWO: Assault leading to death and manslaughter**

Article 410 - Any person who willfully assaults another by striking or wounding him with the use of force or harmful substances or by committing another unlawful act and who does not intend to kill that person but the assault leads to the death of such person is punishable by a term of imprisonment not exceeding 15 years. The penalty will be a term of imprisonment not exceeding 20 years if the offence is premeditated or if the victim is a parent of the offender or if he is a public official or agent and the offence is committed against him while in the course of executing his duty or employment or as a consequence of it.

Article 411 - (1) Any person who accidentally kills another or causes him to be killed without premeditation so that it is the result of negligence, thoughtlessness, lack of due care and attention or lack of regard for any law, regulation or decree is punishable by detention plus a fine or by one of those penalties.

(2) The penalty will be a period of detention of not less than 1 year plus a fine of not less than 300 dinars and not more than 500 dinars or by one of those penalties if the offence is committed as a result of a flagrant breach on the part of the offender of the basic obligations of his employment, profession or business or if he is under the influence of alcohol or drugs at the time of committing the error which results in the accident or if he refrains from assisting the victim at the time of the accident or from seeking assistance for the victim while being in a position to do so.

(3) The penalty will be a period of detention of not less than 3 years if the offence results in the death of three or more persons. If there also exists any other circumstances described in the preceding Sub-Article, the penalty will be a term of imprisonment not exceeding 7 years.

## **SECTION THREE: Intentional wounding, beating and damage**

Article 412 - (1) Any person who willfully assaults a person by wounding or beating him or with the use of force or harmful substances or by committing another unlawful act with intent to cause permanent disability is punishable by a term of imprisonment not exceeding 15 years.

There is permanent disability if the act results in the severance or amputation of a limb or part thereof or the loss or diminution of the benefit of such limb or madness or mental disability or permanent loss in whole or part of any of the senses or bodily disfigurement that is not expected to disappear or imminent danger to life.

(2) The penalty will be a term of imprisonment not exceeding 7 years or detention if the offence results in permanent disability which the offender did not intend.

Article 413 - (1) Any person who willfully assaults another by wounding or beating him or by committing any other unlawful act and causes him to be harmed or become ill is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties.

(2) The penalty will be a period of detention not exceeding 3 years plus a fine not exceeding 300 dinars or by one of those penalties in the following circumstances:

- (a) If the assault results in a broken bone.
- (b) If the assault results in the victim being harmed or contracting an illness that prevents him from carrying out his normal employment for more than 20 days.

(3) The penalty will be detention if the harm occurs as a result of the use of a firearm or implement designed to cause harm or any inflammable, corrosive or toxic substance.

Article 414 - If any of the following circumstances exist in respect of an assault stipulated in Articles 412 and 413, it is considered an aggravating circumstance:

- (1) If the act is premeditated.
- (2) If the act is committed by a group of three or more persons who have agreed to carry out the assault.
- (3) If the victim is a parent of the offender.
- (4) If the assault is committed against a public official or agent in the execution of his duty or employment or as a consequence of it.
- (5) If the assault is committed preparatory to the commission of ,a felony or misdemeanor punishable by a period of detention of not less than 1 year or in order to assist the commission of such offence or to commit such offence or to enable the offender or accessory to escape or avoid punishment.

Article 415 - Any person who commits a minor assault or causes a minor injury which leaves no trace on the victim's body is punishable by a period of detention not exceeding 3 months plus a fine not exceeding 30 dinars or by one of those penalties.

Article 416 - (1) Any person who accidentally causes another harm or to become ill and such act is the result of negligence, thoughtlessness or lack of due care and attention or disregard for any law, regulation or decree is punishable by a period of detention not exceeding 6 months plus a fine not exceeding 50 dinars or by one of those penalties.

(2) The penalty will be a period of detention not exceeding 2 years if the offence results in permanent disability or if the offender causes a flagrant breach of the obligations of his office, profession or employment or if he is under the influence of alcohol or drugs when he commits the act that results in the accident or he refrains at the time of the accident from assisting the victim or from seeking such assistance for him while being in a position to do so or if such act leads to the assault of three or more persons.

## SECTION FOUR

### Abortion

Article 417 - (1) Any woman who willfully procures her own miscarriage or enables another to do so with her consent is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties.

(2) The same penalty applies to any person who willfully procures such woman's miscarriage with her consent. If the abortion or the means used to procure such abortion, even though the pregnancy is not terminated, results in the death of the victim, the penalty will be a term of imprisonment not exceeding 7 years.

(3) If the offender is a doctor, pharmacist, chemist, midwife or assistant of such person, it is considered an aggravating circumstance.

(4) If a woman, having become pregnant through fornication, procures her own miscarriage out of shame it is considered to be a legally mitigating circumstance.

The same is true in respect of any woman whose pregnancy is terminated by a relative to the second generation.

Article 418 - (1) Any person who willfully procures the miscarriage of a woman without her consent is punishable by a term of imprisonment not exceeding 10 years.

(2) The penalty will be a term of imprisonment not exceeding 15 years if the abortion or means to procure such abortion, even though the pregnancy is not terminated, results in the death of the victim.

(3) If the offender is a doctor, pharmacist, chemist, midwife or assistant of such person it is considered an aggravating circumstance. The court must order that he be prevented from continuing his profession or work for a period not exceeding 3 years.

Article 419 - Without prejudice to any greater penalty prescribed by law, any person who assaults a pregnant woman, while being aware of her condition, by beating or injuring her or with the use of violence or by administering to her toxic substances or by committing any other unlawful act without intending to procure the miscarriage of such woman and thereby causes her to miscarry is punishable by detention.

### **SECTION FIVE: Concealment of a body**

Article 420 Any person who conceals or buries a dead body without notifying the competent authorities before it is discovered or an inquest carried out is punishable by a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or by one of those penalties.

## **CHAPTER TWO: Offences affecting the freedom of an individual and the deprivation of such freedom**

### **SECTION ONE: Unlawful seizure, kidnapping and detention<sup>50</sup>**

Article 421 - Any person who seizes, detains or deprives a person of his liberty in any way without an order from a competent authority in circumstances other than those described in the laws and regulations to that effect is punishable by detention.

The penalty will be a ~~death sentence~~ ~~term of imprisonment not exceeding 10 years~~<sup>51</sup> in the following circumstances:

(1) If the offence is committed by a person who is wearing the uniform of a government employee without being entitled to do so or a distinctive official insignia belonging to such employee or assumes a false public identity or issues a false order for the arrest, imprisonment or detention of a person while claiming it to be issued by a competent authority.

(2) If the offence is accompanied by the threat of death or physical or mental torment.

(3) If the offence is committed by two or more persons or by a person openly carrying a weapon.

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<sup>50</sup> The wording of Decree 3 of 2004 suggests that the new penalties for kidnapping as described in Articles 421, 422 and 423 is the death penalty – not that the maximum penalty is the death penalty. Pursuant to CPA Order 31, section 2(1) the mitigation provisions of Article 130 and the maximum sentence limitations of Article 87 do not apply to these cases

<sup>51</sup> increased to life imprisonment which means life by CPA Order 31, section 2(1); subsequently increased to the death penalty by Decree 3 of 2004

(4) If the period of seizure, detention or deprivation of freedom exceeds 15 days.

(5) If the motive for the offence is financial gain or the sexual assault of the victim or the taking of vengeance on the victim or on another.

(6) If the offence is committed against a public official or agent in the execution of his duty or employment or as a consequence of it.

Article 422 - Any person who himself or through another kidnaps a person under the age of 18 without the use of force or deception is punishable by a death sentence ~~term of imprisonment not exceeding 15 years~~<sup>52</sup> if the victim is female or by a death sentence ~~term of imprisonment not exceeding 10 years~~<sup>53</sup> if the victim is male.

If the kidnapping is carried out with the use of force or deception or there exists any aggravating circumstance described in Article 421, the penalty will be the death sentence ~~life imprisonment~~ if the victim is female or the death sentence ~~imprisonment not exceeding 15 years~~<sup>54</sup> if the victim is male.

Article 423 - Any person who himself or through another kidnaps a woman over the age of 18 with the use of force or deception is punishable by a death sentence ~~term of imprisonment not exceeding 15 years~~<sup>55</sup>. If the kidnapping is accompanied by any sexual intercourse with the victim or an attempt to have intercourse with her, the penalty will be death ~~or life imprisonment~~.<sup>56</sup>

Article 424 - If the use of force described in Article 422 and 423 or the torment described in Article 421 results in the death of the victim, the penalty will be death or life imprisonment.

Article 425 - Any person who provides a location for unlawful detention or imprisonment while being aware of that fact is punishable by a term of imprisonment not exceeding 7 years or by detention.

~~Article 426 — (1) If the kidnapper does not cause harm to the victim and leaves him within 48 hours of the offence in a secure place which assists him in returning to his family, the penalty will be a period of detention not exceeding 1 year.~~

~~— (2) The offender is exempt from the penalty for an offence stipulated in the preceding Articles of this Chapter if he voluntarily turns himself over to the authorities, informs them of the place where~~

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<sup>52</sup> increased to life imprisonment which means life by CPA Order 31, section 2(1); subsequently increased to the death penalty by Decree 3 of 2004

<sup>53</sup> increased to life imprisonment which means life by CPA Order 31, section 2(1); subsequently increased to the death penalty by Decree 3 of 2004

<sup>54</sup> increased to life imprisonment which means life by CPA Order 31, section 2(1); subsequently increased to the death penalty by Decree 3 of 2004

<sup>55</sup> increased to life imprisonment which means life by CPA Order 31, section 2(1); subsequently increased to the death penalty by Decree 3 of 2004

<sup>56</sup> Amended in accordance with RCC Resolution No 330 issued on 19/4/81 and published in Al-Waqai' Al-Iraqiya No 2824 on 6/4/81; subsequently increased to the death penalty by Decree 3 of 2004

~~the victim is held before they find him, leads them to such place and identifies any other offenders and if that results in the rescue of the victim and the arrest of such offenders.<sup>57</sup>~~

~~Article 427 If the offender mentioned in this Section then lawfully marries the victim, any action becomes void and any investigation or other procedure is discontinued and, if a sentence has already been passed in respect of such action, the sentence will be quashed.~~

~~Legal proceedings will resume or the sentence will be reinstated according to the circumstances if the marriage ends in a divorce brought about by the husband without legal justification or in a divorce ordered by the court for wrongs committed by the husband or for his bad behavior within 3 years following the cessation of the proceedings.~~

~~The public prosecutor, the accused, the victim or any person who has an interest in the proceedings may, according to the circumstances, make application for the proceedings, investigation, procedures or execution of the sentence to be stopped or for their resumption or for the reinstatement of the sentence.<sup>58</sup>~~

## **SECTION TWO: Violation of the sanctity of the home or property of others**

Article 428 - (1) The following persons are punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties:

- (a) Any person who enters a place of residence or place set aside for that purpose or part thereof without the consent of the owner and in circumstances other than those in which the law sanctions such entry.
- (b) Any person who is found in such place while hiding from another who has a right to eject him from it.
- (c) Any person who legitimately enters such place and remains there against the wishes of another who has a right to eject him from it.

(2) Any person who enters such place or hides or remains in it with intent to prevent another by force from taking possession of it or to commit an offence in it is punishable by a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars by one of those penalties. The penalty will be detention if the offence is committed between dusk and dawn or if entry is gained by breaking or climbing in or by a person openly carrying a weapon, carrying a concealed weapon or by 3 or more persons or by a person who has assumed a public position or who claims to be a public official or who has assumed a false identity.

Article 429 – (1) If an offence stipulated in Article; 428 is committed in a place set aside for the safekeeping of money or in any other property not mentioned in such Article, the penalty will be a period of detention not exceeding 1 year or a fine not exceeding 100 dinars.

(2) The penalty will be a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or one of those penalties if an offence stipulated in Sub-Article 1 is committed by 2 or more persons, one of whom is openly carrying a weapon or carrying a concealed weapon or is committed by 5 or more persons.

## **SECTION THREE: Threats**

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<sup>57</sup> suspended by CPA Order 31, section 2(1)

<sup>58</sup> suspended by CPA Order 31, section 2(1)

Article 430 - (1) Any person who threatens another with the commission of a felony against his person or property or against the person or property of others or with the imputation to him of certain dishonorable matters or with the revelation of such matters and such threat is accompanied by a demand or charge to carry out or refrain from carrying out an act or is intended to be so accompanied is punishable by a term of imprisonment not exceeding 7 years or by detention.

(2) The same penalty applies if the threat is communicated anonymously or is attributable to an existing or alleged secret group.

Article 431 - Any person who threatens another with the commission of a felony against his person or property or against the person and property of others or with the imputation to him of certain dishonorable or disrespectful matters or with the revelation of such matters in circumstances other than those mentioned in Article 430 is punishable by detention.

Article 432 - Any person who threatens another by word or action or in a written or spoken reference or through another person or in circumstances other than those mentioned in Articles 430 and 431 is punishable by a period of detention not exceeding 1 year or by a fine not exceeding 100 dinars.

#### **SECTION FOUR: Defamation, insult and the disclosure of confidential information**

##### **1. Defamation and insult**

Article 433 - (1) Defamation is the imputation to another in public of a particular matter which if true, would expose such person to punishment or cause him to be scorned by society.

Any person who defames another is punishable by detention plus a fine or by one of those penalties. If such defamation is published in a newspaper or publication or other press medium it is considered an aggravating circumstance.

(2) Such person is not permitted to establish the proof of his imputation unless that imputation is directed at a public official or agent or public deputy or he is carrying out an act in the public interest or if such imputation is connected with the office or employment of the aggrieved person but if he establishes the proof of all imputations made, then there is no offence.

Article 434 - Insult is the imputation to another of something dishonorable or disrespectful or the hurting of his feelings even though it does not include an imputation to him of a particular matter.

Any person who insults another is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties.

If such insult is published in a newspaper or publication or medium it is considered an aggravating circumstance.

Article 435 - If the defamation or insult is directed at the victim in private or during a telephone conversation or if it is sent to the victim in writing or communicated to him by other means, the penalty will be a period of detention not exceeding 6 months plus a fine not exceeding 50 dinars or by one of those penalties.



Article 436 - (1) It is not an offence if a complainant or his representative defames or insults the other party orally or in writing while defending his rights before a court, investigating authority or other body as long as it is within the necessary limits of his defense.

(2) There is no penalty for any person who has defamed or insulted another while in a state of anger following an unjust assault on him by such other person.

## **2. Disclosure of confidential information**

Article 437 - Any person who by reason of his office, profession, trade or the field of nature of his work is privy to confidential information and who discloses such information in circumstances other than those prescribed by law or uses it to his advantage or to another's advantage is punishable by a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or by one of those penalties. However, there is no penalty if he has been authorized to make such disclosure or if, by such disclosure, he intends to report a felony or misdemeanor or prevent the commission of such offence.

Article 438 - The following persons are punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties:

(1) Any person who publishes in any way a picture, remark or information in respect of the private or family life of another, even though such information is true and such publication causes him offence.

(2) Any person other than those mentioned in Article 328 who is privy to information contained in a letter, telex or telephone conversation and he discloses such information to a person other than for whom it is intended and such disclosure causes harm to another.

## **CHAPTER THREE: Offences against property**

### **SECTION ONE: Theft**

Article 439 - Theft is the willful appropriation of moveable property belonging to another.

Moveable property is considered to be, for the purposes of applying the provisions for theft, plants and everything that is attached to the ground or fixed in it at the time it is pulled from it or fruit when it is picked or electric or water power resource or other energy or power resource.

The appropriation of moveable property acquired by a legal or administrative authority or by another competent authority or property placed in any way under the authority of the law, even though that appropriation is committed by the owner of such property is tantamount to theft.

The same applies to the appropriation of moveable property that confers a benefit or material guarantee or that is bequeathed or involves the right of another, even though that appropriation is committed by the owner of such property.

Article 440<sup>59</sup> - The penalty will be death if theft is committed in the following circumstances:

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<sup>59</sup> RCC Decision No 1631 issued on 30/10/80 and published in Al-Waqai' Al-Iraqiya No 2802 on 10/11/80 (see page 255) increased the penalty for any person who commits an offence stipulated in Paragraph 440 and Sub-Paragraphs 4 and 5 of Paragraph 443

- (1) If the offence is committed between dusk and dawn.
- (2) If the offence is committed by two or more persons.
- (3) If any of the offenders is openly carrying a weapon or carrying a concealed weapon.
- (4) If the offence is committed in a place of residence or place set aside for that purpose or part thereof and if entry is gained by climbing a wall, forcing a door or other such method or by the use of a counterfeit key or by assuming an official identity or claiming to be on public service or by conspiring with a resident of such place or by deception.

Article 441<sup>60</sup> - The penalty will be death for an offence of theft committed against a person on a public highway away from a town or city or on a train or other conveyance on land or at sea at such times when it is remote from any populated area and in the following circumstances:

- (1) If the offence is committed by two or more persons and one of them is openly carrying a weapon or carrying a concealed weapon.
- (2) If the offence is committed with the use of force by two or more persons.
- (3) If the offence is committed by a person who is openly carrying a weapon or is carrying a concealed weapon between dusk and dawn with the use of force or by threatening with the use of a weapon or if he tortures the victim or uses extreme force.

Article 442 - The penalty will be death for an offence of theft committed in any of the following circumstances:

- (1) If the offence is committed by two or more persons one of whom is openly carrying a weapon or is carrying a concealed weapon.
- (2) If the offence is committed between dusk and dawn by two or more persons with the use of force or by threatening another with the use of a weapon. Force or threats are considered to have been used even though the offender employs such tactics only after he has committed the theft with intent to retain the stolen goods or escape with them.
- (3) If the offence is committed with the use of force which results in a permanent disability or broken bone or harm or illness that prevents the victim from carrying out his normal business for more than 20 days or which results in the death of another.

Article 443<sup>61</sup> - The penalty will be death if an offence of theft is committed in any of the following circumstances:

- (1) If the offence is committed with the use of force.
- (2) If the offence is committed between dusk and dawn by a person openly carrying a weapon or carrying a concealed weapon..
- (3) If the offence is committed between dusk and dawn by three or more persons.
- (4) If the offence is committed between dusk and dawn in a place of residence or a place set aside for that purpose or part thereof.
- (5) If the offence is committed between dusk and dawn in a bank, shop, store or depot to which the offender gains entry by climbing a wall, forcing a door, making an opening or by using some other such method or with the use of a counterfeit key or by assuming the identity of a public official or claiming to be on public service or by conspiring with a resident of such place or by deception.

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<sup>60</sup> RCC Decision No 1133 issued on 2/9/82 increased the penalty for any person who commits an offence stipulated in Paragraphs 441, 442 and Sub-Paragraphs 1, 2 and 3 of Paragraph 443

<sup>61</sup> Published in Al-Waqai' Al-Iraqiya No 2902 on 20/9/82 (see page 260)

Article 444 - The penalty will be a term of imprisonment not exceeding 7 years or detention for an offence of theft committed in the following circumstances:

(1) If the offence is committed in a place of residence or place set aside for that purpose or part thereof or in a place of worship or railway station or port or airport.

(2) If the offence is committed in a place surrounded by a wall or fence to which the offender gains entry by climbing such wall, forcing a door or making an opening or with the use of a counterfeit key or by assuming the identity of a public official or by claiming to be on public service or by conspiring with a resident of such place or by deception.

(3) If the offence is committed by one person openly carrying a weapon or carrying a concealed weapon.

(4) If the offence is committed by three or more persons.

(5) If the offence is committed with the use of force or menaces.

(6) If the offence is committed by a hired servant to the detriment of his master or employer or by a worker or laborer in a factory or shop belonging to his employer or in a place where he normally works.

(7) If the offender makes use of a time of civil commotion, riot, fire, shipwreck or other disaster to commit an offence of theft.

(8) If the offence is committed by a public official or agent in the execution of his duty or by a person who has assumed the identity of a public official or who claims to be acting in the public service.

(9) If the offence is committed by breaking a seal that has been affixed by order of a court or other official authority.

(10) If the offence is committed in time of war against the wounded including enemy wounded or if the offender exploits the illness of the victim or his inability to defend himself or his medical, emotional or mental state.

(11) If the offence is committed against property belonging to the state or a public organization or company in which the state has a financial interest.

If the offence involves two or more of the above circumstances the penalty will be a term of imprisonment not exceeding 10 years.

Article 445 - The penalty will be a term of imprisonment not exceeding 15 years for an offence of theft committed at a time of public crisis, commotion or riot or disaster caused by a member of the armed forces or by a guard, who is entrusted with keeping the peace at night, in the execution of his duties.

Article 446 - The penalty will be detention for an offence of theft committed in circumstances other than those stipulated in the preceding Articles.

The penalty prescribed in this Article may be substituted for a fine not exceeding 20 dinars if the value of the goods stolen does not exceed 2 dinars.

Article 447 - The following persons are punishable by a period of detention not exceeding 2 years:

(1) Any person who counterfeits or modifies a key or manufactures some instrument with intent to use it in the commission of theft. If such person manufactures such things professionally, the penalty will be a period of detention not exceeding 3 years.

(2) Any person found between dusk and dawn in possession of a counterfeit key or other instrument for use in the forcing of locks, doors or windows and he attempts to conceal himself or appears to have intent commit theft.

Article 448 - Any person who incites a juvenile under the age of 18 to commit theft even though such juvenile does not commit the offence is punishable by a period of detention not exceeding 3 years.

The penalty will be detention if such incitement is directed at more than one juvenile whether or not it occurs at one time or at different times or if the offender is a parent of the juvenile or responsible for such juvenile's upbringing or supervision or has some authority over him.

Article 449 - Any person who consumes food or drink in a place set aside for that purpose or stays at a hotel or other establishment or hires a vehicle set aside for that purpose knowing that he is unable to pay the price or fare or who runs away without paying such price or fare is punishable by a period of detention not exceeding 3 months or by a fine not exceeding 30 dinars.

Article 450 - Any person who keeps for himself without the right to do so something he has found or lost property or property that has come into his possession accidentally or by chance or who maliciously makes use of it to his or to another's advantage while being aware of the identity of the owner of such property or if he does not take the necessary steps to find out the owner's identity is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties.

## **SECTION TWO: Unlawful appropriation of documents and property**

Article 451 - Without prejudice to any greater penalty prescribed by law, any person who unlawfully acquires with the use of force or menaces a document, record, signature, seal or thumbprint or compels a person by such means to nullify, destroy or amend such things or to sign a blank form is punishable by a term of imprisonment not exceeding 15 years.

Article 452 - (1) Any person who compels a person with the use of menaces to hand over money or anything other than that mentioned in the preceding Article is punishable by a term of imprisonment not exceeding 7 years or by detention.

(2) The penalty will be a term of imprisonment not exceeding 10 years if the offence is committed with the use of force.

## **SECTION THREE: Breach of trust**

Article 453 - Any person who is entrusted with the moveable property of another or is assigned such property in any way or is given such property for any purpose and who maliciously uses it to his advantage or to the advantage of another or maliciously disposes of it contrary to the purpose for which it was assigned or granted to him in accordance with a legal stipulation or the instructions, expressed or implied, from the person who granted or assigned such property to him is punishable by detention or by a fine.

The penalty will be detention if the offender is a professional land, sea or air freight carrier or his agent and such property has been entrusted to him in this capacity. or if he is a lawyer, auctioneer or money changer to whom the property is entrusted by reason of his profession or if the offence is committed by a secretary, employee or servant in respect of property entrusted his employer. The penalty will be a term of imprisonment not exceeding 7 years or detention if the offence is committed by a person appointed by order of a court in respect of property entrusted to him by such court or if he is a guardian or custodian of a minor or incompetent or if he is responsible for the administration of the property of a charitable institution.

Article 454 - Any owner of moveable property impounded by a legal or administrative authority or property that has been placed in the hands of a legal authority is punishable by detention or a fine if he maliciously makes use of that property to his own advantage or to the advantage of another or if he maliciously disposes of that property or conceals it or refrains from handing it over to a person entitled to ask him for it and this defeats the object of the measure adopted by such authority in respect of that property.

The same penalty applies to the owner of pledged property if the pledgee entrusts him with such property and he maliciously makes use of it to his own advantage or to the advantage of another or maliciously disposes of it contrary to the purpose for which it was assigned or given to him in accordance with a legal stipulation or expressed or implied instruction from the person who gave or assigned such property to him.

Article 455 - Any person who buys moveable property of which the vendor retains ownership until such time as the price is paid in full and disposes of such property, which then leaves his possession without prior permission from the vendor, is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties.

An action may be brought on the basis of a complaint by the vendor and that action will be void if the vendor withdraws his complaint before a final judgment is given. If the withdrawal of his complaint occurs after the final judgment is given then the judgment will be quashed.

#### **SECTION FOUR: Deception**

Article 456 - (1) Any person who obtains or transfers for himself or another ownership of any moveable property that is in the possession of another in any of the following circumstances is punishable by detention in any of the following circumstances:

- (a) If the offence is committed by deception.
- (b) If the offence is committed by assuming a false name or identity or by misrepresenting a particular fact, thereby deceiving the victim or compelling him to surrender such ownership.

(2) The same penalty applies to any person who, in the ways stated above, compels another to surrender or transfer to him ownership of a promissory note or to dispose of property or a document granting a remission from debt or any other document that can be used to establish a right of ownership or other material right or who, in the ways stated above, compels another to sign, annul, destroy or amend such document.

Article 457 - Any person who disposes of any moveable or immovable property knowing that he is not the owner of such property or that he has no right of disposal over it or disposes of it knowing that he has already disposed of it or concludes a contract on the basis of it, thereby causing harm to others, is punishable by detention.

Article 458 - (1) Any person who takes advantage of the needs of a juvenile or exploits his inexperience or an obsession of such juvenile and obtains, to the detriment of such juvenile's interests or the interests of others, any property, promissory note, receipt or the annulment or amendment of such document is punishable by detention.

In addition to juveniles, this Article applies to the insane, disabled, those placed in care or any person whose care order is to continue after he has reached the age of 18.

(2) The penalty will be a term of imprisonment not exceeding 7 years or detention if the offender is a guardian, protector or custodian of the victim or is entrusted in any capacity with the care of the victim's interests whether by requirement of law, legal judgment or by private arrangement.

Article 459 - (1) Any person who maliciously gives another a cheque knowing that he does not have sufficient disposable funds to cover such cheque or, having given that person the cheque, he withdraws all or part of such funds so that the balance does not cover the value of the cheque or orders the drawee to withhold payment or deliberately writes or signs the cheque in such a way as to prevent its being honored is punishable by detention plus a fine not exceeding 300 dinars or by one of those penalties.

(2) The same penalty applies to any person who endorses or delivers a payable-to-bearer cheque to another knowing that he does not have sufficient funds to cover the full amount.

#### **SECTION FIVE: Concealment of goods acquired as a result of an offence**

Article 460 - Without prejudice to any greater penalty prescribed by law, any person who knowingly obtains, conceals or makes use of any goods acquired as a result of a felony or disposes of such goods in any way is punishable by a term of imprisonment not exceeding 7 years.

The penalty will be detention if the offence, as a result of which such goods are acquired, is a misdemeanor but it will not exceed the maximum limit prescribed for that misdemeanor as long as the person who obtained, concealed or made use or disposed of such goods was not a party to the commission of the offence.

Article 461 - Any person who obtains any goods acquired as a result of a felony or misdemeanor in circumstances which lead him to believe the source of such goods to be unlawful is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties.

Article 462 - Any person who commits an offence stipulated in Articles 460 and 461 is exempt from punishment if he notifies the public authorities of those who committed such offence before the authorities begin to investigate the offenders.

If such notification occurs after the authorities have begun their investigation, the offender is not exempt from punishment but the notification is considered to be a mitigating circumstance.

#### **SECTION SIX: Collective provisions**

Article 463 - No action or proceedings may be brought against any person who commits an offence stipulated in the preceding Sections of this Chapter to the detriment of his spouse, ancestor or descendant except on the basis of a complaint by the victim. Criminal proceedings will lapse if the victim withdraws his complaint before the issue of a final judgment in the case.

The judgment is quashed if the withdrawal of the complaint is made after the judgment is given. The provisions of this Article do not apply in a situation where the goods are acquired legally or officially or from a competent authority or placed under the legal authority or pledged to another or held for the benefit of others.

## **SECTION SEVEN: Offences against the freedom of public auctions or notices to tender**

Article 464 - Any person who, by deception or any other illegal means, violates the freedom or integrity of an auction or notice to tender which is not connected with the government or any institution or company in which the government has a financial interest and which is not administered by an official or semiofficial agency is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties.

## **SECTION EIGHT: Commercial offences**

### **SUB-SECTION ONE: Usury**

Article 465<sup>62</sup> Any person who, in any way, lends money to another at a declared or hidden rate of interest that exceeds the maximum agreed limit prescribed by law is punishable by detention plus a fine not exceeding 1,000 dinars or by one of those penalties. The penalty will be a term of imprisonment not exceeding 10 years if the offender commits a similar offence within 3 years of the issue of the final judgment of the first offence.

### **SUB-SECTION TWO**

#### **Fraudulent commercial transactions**

Article 466 - Any person who causes an increase or decrease in the price of a commodity or negotiable financial bill or the disappearance of a commodity set aside for destruction by willfully publishing divergent facts or false information or by making false claims or by committing any other act involving deception or fraud is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties.

Article 467 - Any person who deceives a contracting party as to the existence or nature of any goods or their intrinsic qualities or component parts or the type or source of such goods in circumstances in which they are considered to form the fundamental basis for the contract or if the deception is as to the number, quantity, measure, weight or capacity of such goods or as to the identity

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<sup>62</sup> As amended by Paragraph 1 of Law No 63 (1976) published in Al-Waqai' Al-'Iraqiya No 2533 on 14/6/76

of such goods if the goods delivered are not those contracted for is punishable by a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or by one of those penalties.

### **SUB-SECTION THREE: Bankruptcy**

Article 468 - Any businessman who is declared bankrupt by a final judgment in the following circumstances is considered a fraudulent bankrupt:

(1) If he conceals some or all of his books of account or destroys, amends or substitutes such books of account.

(2) If he appropriates or conceals part of his assets to the detriment of his creditors.

(3) If he declares a spurious debt or maintains that he is in debt for an amount for which he is not, in fact, liable whether it appears in his books of account, budgeted accounts or other accounting records or he declares such debt orally.

(4) If he refrains from making available a document or giving an explanation to a competent authority when he is requested to do so, while knowing the consequences of his omission. The fraudulent bankrupt is punishable by a term of imprisonment not exceeding 7 years or by a period of detention of not less than 2 years.

Article 469 - Any businessman who is declared bankrupt by a final judgment and who has caused his creditors to suffer by his own gross negligence is considered to be a negligent bankrupt and is punishable by a period of detention not exceeding 2 years.

A bankrupt is grossly negligent in the following circumstances:

(1) If his personal or private expenses are excessive in relation to his income.

(2) If he spends excessive amounts of money on gambling, lotteries or whimsical speculation.

(3) If he purchases goods in order to sell them at a lower price or borrows funds or issues securities or makes use of any other means to acquire funds, which results in heavy loss to himself, in order to delay his being declared bankrupt.

(4) If he, after payments have been suspended, then settles an account with one of his creditors to the disadvantage of the remaining creditors or with intent to reach a compromise with him.

(5) If he fraudulently reaches a compromise with his creditors.

Article 470 - Any businessman who is declared bankrupt by a final judgment is punishable by a period of detention not exceeding 1 year or by a fine not exceeding 100 dinars in any of the following circumstances:

(1) If he fails to keep trading accounts required to be kept by trading laws or if such accounts are incomplete or disorganized so that there is no accurate record of either debtors or creditors.

(2) If he fails to file notice of suspension of payments within the period prescribed by law.

(3) If he fails to provide true statements of account required to be given by law following the suspension of payments.

(4) If he fails to make application to the receiver in person when required to do so without a reasonable excuse or if he fails to provide statements required by such receiver or if such statements appear to be false.

(5) If he makes, for the benefit of another and without consideration, a substantial commitment not conducive to his financial status at the time of making such commitment.



Article 471 - If a trading company is declared bankrupt by a final judgment, the managing director or any member of the board of directors who is convicted for the commission of an act stipulated in Article 467 is punishable by the penalty prescribed for that offence. The same penalty applies to any person who, by deception or fraud, commits an act which results in the bankruptcy of the company or is instrumental in suspending the company's payments whether by publishing false information concerning the issued or paid up share capital or false budgets or by distributing spurious dividends or taking for himself more than that to which he is entitled in accordance with the articles of the company.

By directors, it is also meant full or silent partners in a limited partnership if they are habitually involved in the affairs of the company.

Article 472 - If a trading company is declared negligently bankrupt by a final judgment for the commission of any act stipulated in Articles 468 and 469, the members of the board of directors, the directors and the full or silent partners in a limited partnership if they are habitually involved in the affairs of the company are, according to the circumstances, punishable by the penalties prescribed in those two Articles.

Article 473 - If a person in care, juvenile or other person whose affairs are administered by an agent is declared bankrupt by a final judgment, then the custodian, guardian or agent who is proved guilty of committing a fraudulent or negligent act stipulated in the preceding Articles is criminally liable for acts of negligence or fraud and is, according to the circumstances, punishable by the penalty prescribed for such acts.

Article 474 Without prejudice to any greater penalty prescribed by law, the following persons are punishable by a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or by one of those penalties:

(1) Any person who steals or conceals in whole or in part the assets of a bankrupt whether or not he is the spouse, ancestor or descendant of such bankrupt.

(2) Any person other than a creditor who fraudulently takes part in the negotiation of a settlement by deception or who fraudulently submits or registers his inability to pay a fictitious debt in his own name or in the name of another.

(3) Any creditor who fraudulently increases the value of a debt due to him or imposes certain special conditions on the bankrupt to his own advantage or to the advantage of another in return for his vote in the negotiation of the settlement or bankruptcy or a promise thereof.

(4) Any creditor who makes a special arrangement to his own advantage or to the detriment of the remaining creditors.

Article 475 - The court may order the conviction for any offence stipulated in the preceding Articles of this section to be published.

## **SECTION NINE: Violation of the rights of corporate ownership**

Article 476 - Without prejudice to any greater penalty prescribed by law, any person who violates another's right of corporate ownership which is protected by law or by international agreement to which Iraq is a party is punishable by a fine. Any goods arising from the violation of such right will be ordered to be confiscated.

## **SECTION TEN: Damage to and destruction of property and trespass**

### **SUB-SECTION ONE: Damage to and destruction of property.**

Article 477 - Without prejudice to any greater penalty prescribed by law:

(1) Any person who breaks, destroys or damages any moveable property which does not belong to him or renders it unsuitable for use or harms or impairs it in any way is punishable by a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or by one of those penalties.

(2) The penalty will be detention if the offence results in the closure of a public utility or frustration of an activity carried out by an agency for the public good or if it endangers the lives, health or security of others. The same penalty applies to any person who willfully destroys, damages or defaces a building set aside for use by the public or monument erected in a public place.

(3) The penalty will be imprisonment if the offence results in the death of others.

Article 478 - Without prejudice to any greater penalty prescribed by law:

(1) Any member of a group consisting of at least five persons that breaks, damages or destroys moveable or immovable property belonging to another or renders it unsuitable for use or harms or impairs it in any way is punishable by detention.

(2) The penalty will be a term of imprisonment not exceeding 7 years or detention if the offence is committed with the use of violence against others.

(3) If the offenders make use of a time of civil commotion, riot or disaster in order to commit such offence, the penalty will be a term of imprisonment not exceeding 10 years.

Article 479 - (1) The following persons are punishable by detention plus a fine or by one of those penalties:

(a) Any person who destroys the unharvested crops or plants belonging to another.

(b) Any person who destroys a sown field belonging to another or scatters harmful substances or seeds on it.

(c) Any person who uproots, cuts down or destroys a tree belonging to another or this fruit or bark thereof so that it dies.

(2) The penalty will be a term of imprisonment not exceeding 7 years or detention if the offence is committed between dusk and dawn by at least three persons or by two persons, one of whom uses violence against another or is openly carrying a weapon or is carrying a concealed weapon.

Article 480 - Any person who cuts down, uproots or destroys a tree or any greenery planted in a place of worship or in a street or public square or recreational area or public garden or other place set aside for the public benefit without permission. from a competent authority is punishable by a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or by one of those penalties.

### **SUB-SECTION TWO: Trespass**

Article 481 - Any person who fills in a ditch or destroys a wall or fence made out of living or dead trees or other material or moves or removes any other marker delimiting areas, defining

boundaries or separating properties is punishable by a period of detention not exceeding 2 years plus a fine not exceeding 200 dinars or by one of those penalties.

The penalty will be detention if the offence is committed with the use of violence against others or with intent to appropriate land belonging to another or if such markers have been erected by an official or semiofficial agency.

## **SECTION ELEVEN: Killing and harming of animals**

Article 482 - The following persons are punishable by detention plus a fine or by one of those penalties:

(1) Any person who deliberately or unnecessarily kills a beast of burden belonging to another or seriously injures it or seriously harms it in any other way.

(2) Any person who poisons fish in a river, canal, pond, swamp or reservoir or uses any means of mass destruction such as explosives, chemical substances, electricity or other such thing in order to catch or destroy them.

Article 483 - Any person who deliberately or unnecessarily kills silkworms, swarms of bees or any tame or domesticated animal belonging to another other than those mentioned in Article 482 or causes them serious harm is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties.

Article 484 - Any person who deliberately causes any minor harm to an animal belonging to another is punishable by a period of detention not exceeding 1 month or by a fine not exceeding 20 dinars.

Article 485 - Any person who accidentally causes the death or injury of cattle or beasts of burden belonging to another is punishable by a period of detention not exceeding 10 days or by a fine not exceeding 10 dinars.

Article 486 - (1) Any person who severely beats a tame or domesticated animal or torments it or cruelly punishes it or maltreats it in any other way or uses any unnecessarily cruel method to kill it is punishable by a period of detention not exceeding 3 months or by a fine not exceeding 30 dinars.

(2) The same penalty applies to any person who works a beast of burden beyond its endurance, if it is not suited for work or works it until it becomes ill or until it is injured or lame.

## **PART FOUR: Infractions**

### **CHAPTER ONE: Offences relating to public highways and places set aside for the public benefit**

Article 487 - The following persons are punishable by a period of detention not exceeding 15 days or by a fine not exceeding: 10 dinars.

(1) Any person who unnecessarily or without the permission of a competent authority obstructs a public highway whether by digging holes in it or by placing or leaving materials or other things that

render its use by pedestrians unsafe or that impede traffic on it in any way and any person who takes unlawful possession of a public highway or any land set aside for the public benefit.

(2) Any person who causes an obstruction on a public highway by leaving or stopping a vehicle on it whether such vehicle is drawn by an animal or not and it occurs on more occasions than is necessary for the loading or unloading of such vehicle or for passengers to get on or off such vehicle.

(3) Any person who obstructs a canal or other waterway crossing set aside for use by the public and does not replace it or set up any other means by which the public can cross. In all circumstances, the court will order the convicted person to refund any expenses incurred in the removal of such obstruction and pay compensation for any damage arising from such obstruction.

Article 488 - The following persons are punishable by a fine not exceeding 5 dinars:

(1) Any person who offers goods for sale on a public highway or in a place set aside for the public benefit in which such activity is prohibited by order of a competent authority or at times other than those specified by that authority for such activity.

(2) Any person who advertises his goods on a public highway by shouting in such a way as to cause a nuisance.

(3) Any person who washes his car, vehicle or animal thereby causing an obstruction on a public highway or constituting a nuisance to pedestrians.

Article 489 - Any person who removes one or more traffic signs erected on a public highway or building or signs indicating distances or roads or giving directions to a city or other public place or who defaces such signs or alters their direction is punishable by a period of detention not exceeding 1 month or by a fine not exceeding 20 dinars.

Article 490 - The following persons are punishable by a period of detention not exceeding 1 month or by a fine not exceeding 20 dinars:

(1) Any person who fails to give warning during the day of any excavation or other work which he is authorized to carry on or of the material which he is authorized to place on a highway or in a public place or who fails to illuminate it at night.

(2) Any person who removes such warning signs or lights.

(3) Any person who extinguishes, removes or destroys a lamp used to light a highway or public place.

Article 491 - The following persons are punishable by a period of detention not exceeding 1 month or by a fine not exceeding 20 dinars:

(1) Any person who places materials on a public highway thereby causing harm to pedestrians or obstructing the flow of traffic or who suspends anything above a public or private road without taking the necessary precautions and which, if they were to fall, would cause harm or distress to others.

(2) Any person who throws without due care and attention any solid, liquid or gaseous material at another, even though it does not cause any injury.

Article 492 - Any person who posts a bill in a place other than those authorized for such activity or who removes, destroys or defaces any bill posted in such place is punishable by a fine not exceeding 10 dinars.

Article 493 - The following persons are punishable by a period of detention not exceeding 10 days or by a fine not exceeding 10 dinars:

(1) Any person who rides or leads an animal or drives any freight vehicle on a public highway or in a public place without due care for the safety and welfare of others.

(2) Any person who parks a vehicle or drives it on a highway :or in a public place between dusk and dawn without displaying a light at both ends of such vehicle.

## **CHAPTER TWO: Offences against the public peace**

Article 494 - Without prejudice to any greater penalty prescribed by law or to any other obligation prescribed by specific regulation, any person who is given notice by a competent authority to restore or demolish a building in danger of collapse and he omits to do so or is negligent in doing so is punishable by fine not exceeding 30 dinars.

Article 495 - The following persons are punishable by a period of detention not exceeding 1 month or by a fine not exceeding 20 dinars:

(1) Any person who sets off a firework or similar thing without permission in areas in which setting off such thing may result in damage, danger or harm.<sup>63</sup>

(2) Any person who discharges a firearm or explosive charge a city, town or village or detonates any other explosive material.

(3) Any person who intentionally or through negligence fuses a commotion, disturbance or nuisance in any way to the annoyance of others.

(4) Any person who allows a person of unsound mind or predatory animal or animal that is harmful in any way to escape ;to a public highway.

(5) Any person who does not take care of an animal in his possession or for which he is responsible in order to prevent any anger or harm that could be caused by such animal.

(6) Any person who gallops a horse or beast of burden in a residential area or allows it to run free in such area.

## **CHAPTER THREE: Offences against public health**

Article 496 - The following persons are punishable by a period of detention not exceeding 3 months or by a fine not exceeding 30 dinars:

(1) Any person who buries a human body from a town, village residence in any place other than a cemetery or place authorized by an administrative authority for such burial.

(2)<sup>64</sup> Any person who throws the body of an animal or any substance that is unclean or harmful to health into a river, canal, conduit or other watercourse, is punishable by a period of detention of not less than 1 month but not exceeding 6 months plus fine of not less than 100 dinars but not, exceeding 500 dinars.

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<sup>63</sup> RCC decree No 570 issued on 27/4/82 and published in Al-Waqai' Al-'Iraqiya No 2884 on 17/5/82 stipulates that any person who discharges a firearm during public or private functions in a city, town or village, without authorization from a competent authority is punishable by a period of detention of not less than 1 year but not exceeding 2 years

<sup>64</sup> As amended by RCC Decision No 77 issued on 14/1/82 published in Al-Waqai' Al-'Iraqiya No (unclear)

Article 497 - The following persona are punishable by a period of detention not exceeding 15 days or by a fine not exceeding 10 dinars:

- (1) Any person who urinates or defecates in a street or highway or in a public place or city, town or village park or in places other than those set aside for such purpose.
- (2) Any person who throws or leaves in a street or highway or in a public place or park, refuse, rubbish, waste, dirty water or any thing that is harmful to the health of others.
- (3) Any person who deliberately or negligently causes an escape of gas, fumes, smoke, dirty water or other substance thereby causing harm, irritation or contamination to others.
- (4) Any person who is negligent when cleaning or repairing a chimney, oven or factory in which fire is used.

Article 498 - Any professional medical practitioner who finds during his examination of a dead body or while he is caring for a person who is seriously injured any indication that death or injury has resulted from the commission of an offence or if there is evidence that leads him to be suspicious of the cause of death or injury and he does not notify the competent authorities is punishable by a period of detention not exceeding 3 months or by a fine not exceeding 30 dinars.

Article 499 - The following persons are punishable by a fine not exceeding 5 dinars:

- (1) Any person who covers the roof or walls of his residence in a town with a substance containing excrement or the dung of cattle or other such thing that is harmful to the public health.
- (2) Any butcher or other such person who moves the meat or carcasses of cattle through a town or carries it in full view of passers-by.

#### **CHAPTER FOUR: Offences against property**

Article 500 - The following persons are punishable by a period of detention not exceeding 10 days or by a fine not exceeding 5 dinars:

- (1) Any person who goes onto land that is prepared for cultivation or is sown with seed or contains unharvested crops without the right to do so or moves around on such land by himself or with his cattle, beasts of burden or other animals or leaves them to move around on such land.
- (2) Any person who grazes his cattle or other animals without a right to do so or leaves them to graze on land that contains a crop or in a garden.
- (3) Any person who throws a stone or other solid object or refuse at a vehicle, house, building or enclosure belonging to another or into a garden or yard.
- (4) Any person who throws into a river, canal, ditch or other water course any object or other thing that obstructs navigation or impedes the flow of water.

#### **CHAPTER FIVE: Offences against the public decency**

Article 501 - Any person who washes themselves in a city, town or village in an indecent manner or appears in a public place in an indecent state of undress is punishable by a period of detention not exceeding 10 days or by a fine not exceeding 5 dinars.

Article 502 - Any person who loiters in a public place or observes such a place with indecent intent or for an indecent purpose is punishable by a period of detention not exceeding 10 days or by a fine not exceeding 5 dinars.

### **CHAPTER SIX: Organizational offences**

Article 503 - Any proprietor of a hotel, inn, hostel or furnished room set aside for the accommodation of a number of persons who fails to record the names of guests or residents of such place in accordance with issued instructions or is negligent in doing so is punishable by a period of detention not exceeding 1 month or by a fine not exceeding 20 dinars.

### **CONCLUDING PROVISIONS**

Article 504 - The Baghdad Penal Code and the appendices and amendments thereof are cancelled as are all stipulations in any penal law that conflicts explicitly or implicitly with the provisions of this Code.

Article 505 - This Code shall become operative 3 months after the date of its publication in the official gazette.

Article 506 - This Code must be implemented by the Minister of Justice.

Registered in Baghdad on the fifth day of Jumada I 1389 or the nineteenth day of July 1969.

Ahmad Hasan Al-Bakr  
President  
Prime Minister

## Decisions of the Revolutionary Command Council

### Decision No 1477

Pursuant to the provisions of Sub-Article (A) of Article 42 of the temporary constitution, the Revolutionary Command Council issued the following Decision during its session of 15 September 1980:

- (1) If any person commits an offence, having consumed alcohol by his own volition or choice, it is not considered an extenuating circumstance that calls for leniency.
- (2) Any stipulation which conflicts with the provisions of this Decision is void.
- (3) This Decision shall come into force on the date of its publication in the official newspaper.

Saddam Husain  
Chairman of the RCC

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