

THE EXECUTION OF SADDAM HUSSEIN – A LEGAL ANALYSIS¹

Eric H. Blinderman²

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2. From March 2004 until December 2006, Eric Blinderman served in Iraq, first as an Associate General Counsel of the Coalition Provisional Authority and later as an Attorney Adviser, Chief Legal Counsel, and Associate Deputy to the Regime Crimes Liaison's Office. During his tenure in Iraq, Eric worked principally with the Iraqi High Tribunal (IHT) as it prepared to try and tried members of the former regime, including Saddam Hussein, for atrocities committed against the Iraqi people. For his service in Iraq, Eric received a Special Commendation Award from the United States Department of Justice. Eric has a J.D. *cum laude* from Cornell Law School and was awarded an M.St. in international law from the University of Oxford *with distinction*. In addition, he has served as a law clerk to a United States Federal Judge and worked at the United Nations Development Program, the Preparatory Commission for the Establishment of an International Criminal Court, and the Programme in Comparative Media Law and Policy. He is International Litigation Counsel at the New York office of Proskauer Rose LLP. The views expressed in this article are based upon the author's experiences and publicly available information that do not violate any privileges or confidences that may exist between the author and the IHT or the author and the United States government. The views expressed herein are the author's own and do not necessarily reflect the views of the Department of Justice, the Regime Crimes Liaison's Office, or the United States government.

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1. INTRODUCTION

The first trial before Trial Chamber 1 of the Iraqi High Tribunal (hereinafter IHT) involved allegations that the former Iraqi regime engaged in a widespread and systematic attack against the civilian population of the city of Al-Dujail.³ The former Iraqi regime launched this attack against the city of Al-Dujail in retaliation for a failed assassination attempt against Saddam Hussein that occurred there on 8 July 1982.⁴ In response to the assassination attempt, Saddam Hussein ordered military units, intelligence operatives, and others to descend upon the town.⁵ Hundreds of people were arrested and detained for years without trial in a desert camp located near the Saudi border.⁶ Saddam Hussein also referred approximately 148 men and boys for trial before Iraq's Revolutionary Command Council Court (hereinafter RCCC) whereupon they were sentenced to death after a summary trial and executed.⁷ In addition, large portions of the town were razed – including the town's orchards and date palms – upon Saddam Hussein's orders.⁸

3. See generally Iraqi High Tribunal, Case No. 1/C/1/2005, Final Decision and Judgment, Trial Chamber 1 (22 November 2006) (hereinafter Trial Chamber Judgment).

4. See 'Saddam Hussein and the Town of Dujayl', *L.A. Times*, 18 October 2005.

5. *Ibid.*

6. See Minutes of Joint Committee Meeting of Iraqi Intelligence Services and Iraq's Department of General Intelligence (28 December 1982) (Document IST.A4021.001.053-057) (discussing the transfer of 687 men, women, and children from Al-Dujail to a prison camp located in Muthanna Governorate).

7. See Memorandum from Saddam Hussein, President, Iraq, to Revolutionary Command Council Court (27 May 1984) (IST.A4019.008.031-034) (hereinafter Referral Memorandum); see also Presidential Decree No. 778 from Saddam Hussein, President, Iraq (16 June 1984) (IST.A0480.002.002-003) (approving the execution of those condemned to death).

8. See Trial Chamber Judgment, *supra* n. 3, Part 5, p. 10 (stating that Taha Yaseen Ramadan was seen 'supervising the acts of razing the orchards in [the Dujayl] area'); see also Transcript of Record at 18, *al-Dujail Trial*, (1 March 2006) (No. 2) (on file with author in which Saddam Hussein declares

Eight defendants were haled before Trial Chamber 1 as a result of their alleged participation in this attack against the town. They were: Saddam Hussein,⁹ Barzan al-Tikriti,¹⁰ Awad al-Bandar,¹¹ Taha Yaseen Ramadan,¹² Mizher Abdullah Roweed,¹³ Abdullah Kadhim Roweed,¹⁴ Ali Diyah Ali,¹⁵ and Mohammed

that he ordered the orchards in Dujayl razed in retaliation for the failed 1982 assassination attempt against him).

9. Saddam Hussein was the President of Iraq in 1982.

10. Barzan al-Tikriti was the Director of Iraq's Department of General Intelligence ('Mukhabarrat') in 1982 and supervised the investigation into the failed assassination attempt against Saddam Hussein. See Memorandum from Barzan al-Tikriti, Director, Iraq's General Department of Intelligence, to Chairman of the Revolutionary Command Council (13 July 1982) (Document IST.A49019.008.074-077). He allegedly ordered the arrests of hundreds of citizens from Al-Dujail and personally participated in the murder and torture of those who remained in his custody. See J.F. Burns and E. Wong, 'Defiant Hussein, Lashing Out at U.S., Goes on Trial', *N.Y. Times*, 20 October 2005, at A1.

11. Awad al-Bandar was President of the RCCC. The RCCC was a special court which sat outside Iraq's regular courts of general jurisdiction and reported directly to the President of Iraq. See generally *International Commission of Jurists, Iraq and the Rule of Law* (1994) pp. 109, 113. It primarily had jurisdiction over cases involving national security and its judiciary consisted (in part) of civil servants rather than professional judges. *Ibid.*, at pp. 110-112. According to the International Commission of Jurists: 'Trials before the Revolutionary Court were conducted *in camera* and defendants did not enjoy adequate safeguards for their defence, since they were not permitted to contact their lawyers freely and without surveillance. The Judgements of the Revolutionary Court were final and could not be contested before any other official body; they were carried out immediately, except in the case of death sentences, which were carried out only after their ratification by the President of the Republic.' *Ibid.*, at p. 112. On 27 May 1984, Saddam Hussein referred 148 men and boys to the RCCC for trial as a result of their alleged participation in the failed Al-Dujail assassination attempt. See Referral Memorandum, *supra* n. 7. Approximately two weeks later, Awad al-Bandar sentenced all those referred to him to death, despite the fact that some of the individuals referred were minors and despite the fact that 46 had already died during investigation. See RCCC Decision No. 944/J/1984 (14 June 1984); see also Death Certificate of Qasem Mohammed Jasim (23 March 1989) (IST.A4000.001.007,009,034,031) (indicating that the individual was 15 years old at the time Awad al-Bandar sentenced him to death); Memorandum from Counsel of the Revolutionary Command Intelligence Service (9 February 1987) (IST.A4019.007.078) (stating that 46 people whom Awad al-Bandar had sentenced to death in 1984 had died during the investigation and interrogation process).

12. Taha Yaseen Ramadan was the head of Iraq's largest militia – the Popular Army – at the time of the failed assassination attempt. See *BBC News*, 'Profile: Taha Yassin Ramadan' at <http://news.bbc.co.uk/2/hi/not_in_website/syndication/monitoring/media_reports/2333287.stm> visited 7 January 2007. He is alleged to have ordered units of the Popular Army to assist Iraq's intelligence and security forces in arresting citizens from Al-Dujail. In addition, Saddam Hussein purportedly ordered Taha Yaseen Ramadan to destroy the date orchards and palm trees in Al-Dujail in order to punish the town. See Burns and Wong, *supra* n. 10, at A1. Taha Yaseen Ramadan supposedly ensured that Kurdish workers (whom the Popular Army protected) accomplished this goal and bulldozed the town's palm groves and date orchards.

13. Mizhir Abdullah Roweed was a resident of Al-Dujail who assisted the Mukhabarrat and the Popular Army in the campaign of mass arrest that followed the failed assassination attempt against Saddam Hussein.

14. Abdullah Kadhim Roweed was a resident of Al-Dujail who assisted the Mukhabarrat and the Popular Army in the campaign of mass arrest that followed the failed assassination attempt against Saddam Hussein.

15. Ali Diyah Ali was a resident of Al-Dujail who assisted the Mukhabarrat and the Popular Army in the campaign of mass arrest that followed the failed assassination attempt against Saddam Hussein.

Azzawi.¹⁶ Trial commenced on 19 October 2005 and concluded on 5 November 2006 with the issuance of Trial Chamber 1's verdict.¹⁷ That verdict convicted Saddam Hussein, Barzan al-Tikriti, and Awad al Bandar of crimes against humanity inflicted upon the civilian population of Al-Dujail.¹⁸ Each of these three defendants was sentenced to death.¹⁹ Trial Chamber 1 also sentenced Taha Yaseen Ramadan to life,²⁰ three other defendants (Mizher Abdullah Ruweed, Abdullah Kadhim Ruweed, and Ali Diyah Ali) to a term of 15 years imprisonment,²¹ and acquitted one defendant (Mohammed Azzawi) of all charges.²²

On 14 November 2006, the entire 1000+ page Al-Dujail case file, trial records, transcripts, and other material were transferred to the IHT Appellate Chamber for study and review.²³ Notably, Trial Chamber 1 issued its densely worded, single-spaced, 300 page opinion, explaining its rationale for the 5 November 2006 verdict on 22 November 2006 – eight days after the case file was sent to the IHT Appellate Chamber.²⁴ One day later, Trial Chamber 1 provided electronic and hard copies of the opinion to the IHT Appellate Chamber and defense attorneys for all defendants.²⁵

On 3 December 2006 (approximately ten days after receiving the opinion), attorneys for Saddam Hussein filed comprehensive appellate papers to the IHT Appellate Chamber that raised numerous substantive and legal points. The IHT Appellate Chamber assured the defense attorneys that they could supplement this initial filing with additional papers at any point prior to the issuance of an appellate judgment. On 17 December 2006 attorneys for Saddam Hussein, Barzan al-Tikriti, and Taha Yaseen Ramadan did supplement their initial briefs by filing an additional voluminous submission with the IHT Appellate Chamber. Nine days later (26 December 2006), the IHT Appellate Chamber affirmed the trial chamber's death sentences in a 17-page written opinion and remanded back to Trial Chamber 1 the judgment against Taha Yaseen Ramadan with instructions to increase the

16. Mohammed Azzawi was a resident of Al-Dujail charged with assisting the Iraqi government as it arrested citizens from Al-Dujail.

17. See J.F. Burns and K. Semple, 'The Struggle for Iraq; Hussein is Sentenced to Death by Hanging', *N.Y. Times*, 6 November 2006, at A1.

18. Ibid.

19. Ibid.

20. Ibid.

21. Ibid.

22. Ibid.

23. Al-Hay'a al-Tamyiziya, al-Mahkama al-Jina'iya al-'Iraqiya al-'Uliya [Cassation Panel, Iraqi High Criminal Court], al-Dujail Final Opinion, at 2 at <<http://www.iraq-ihc.org/ar/doc/ihtdf.pdf>>, translated in Grotian Moment: The Saddam Hussein Trial Blog, Unofficial English Translation of the Dujail Trial IHT Appellate Chamber Opinion, 26 December 2006), <http://www.law.case.edu/saddamtrial/documents/20070103_dujail_appellate_chamber_opinion.pdf> (hereinafter 'Appellate Chamber Opinion').

24. See Human Rights Watch, *The Poisoned Chalice*, at p. 1 n. 3 (June 2007).

25. See Receipt from Defense Attorney for Awad al-Bandar (15 November 2006) (on file with author) (hereinafter Receipt from Defense Attorney).

penalty against him, to death.²⁶ Shortly thereafter, the entire case file was transferred to the Prime Minister for approval of Saddam Hussein's death sentence.

On 27 December 2006, Saddam Hussein met with his brother Watban Ibrahim Hassan al-Tikriti and handed him his will and belongings.²⁷ On 30 December 2006, in a ceremony broadcast for the public, Prime Minister Nouri al-Malaki removed a pen he had carried with him since he fled Saddam Hussein more than 25 years earlier and signed the document approving Saddam Hussein's sentence.²⁸

At approximately 3:55 a.m. on 30 December 2006, several American guards at the US controlled detention facility at Camp Cropper (near Baghdad's International Airport) woke Saddam Hussein and told him to dress.²⁹ Wearing a dark overcoat to protect him from the winter desert air, Saddam Hussein stepped aboard a US Blackhawk helicopter at approximately 5:00 a.m. for a short flight to an Iraqi-controlled prison facility in the Khadhimiya District of Baghdad.³⁰ The helicopter landed at 5:15 a.m. at which point Saddam Hussein was handed over to the prison's governor and led into a holding cell.³¹ Paperwork was signed and the Iraqi government assumed physical custody of Saddam Hussein at approximately 5:30 a.m.³²

Shortly thereafter, Iraqi prison officials escorted Saddam Hussein into a dank room with a large metal scaffold³³ whereupon he presented his Koran to the Deputy Prosecutor of the Al-Dujail trial (Munqith al-Faroon) and instructed him to provide it to one of his defense attorneys. US Marshals and military officials remained outside the execution chamber. As Saddam Hussein entered the room, at least one Iraqi official began recording that morning's events on his cell phone.³⁴ A heavy noose was wrapped around Mr. Hussein's neck as several Shiite guards began chanting the name of Muqtada al-Sadr.³⁵ Munqith al-Faroon pled with the guards to stop their taunting shouting, 'please no, this man is being executed, please no, I beg you'.³⁶ Saddam Hussein stared ahead, mocking his guards before reciting the most sacred of Islamic prayers – 'There is no God but God, and Mu-

26. See generally Appellate Chamber Opinion, *supra* n. 23.

27. See K. Mayhood, 'U.S. Lawyer Helped Iraq Fight Saddam', *The Columbus Dispatch*, 11 March 2007, at 1A.

28. See F. Ajami, 'Measure for Measure', *U.S. News & World Report*, 7 January 2007.

29. See J.F. Burns, 'In Days Before Hanging, a Push for Revenge and a Push Back from the U.S.', *N.Y. Times*, 7 January 2007, at A12.

30. *Ibid.*

31. *Ibid.*

32. *Ibid.*

33. *Ibid.*

34. *Ibid.*

35. *Ibid.* Muqtada al-Sadr is a young Shiite cleric who controls one of the largest and most violent militias in Iraq – Jaish al-Mahdi. See International Crisis Group, 'Iraq's Muqtada Al-Sadr: Spoiler Stabiliser?', *Middle East Report* No. 55, 11 July 2006, at i; see also J.F. Burns and S. Tavernise, 'In Baghdad, Bush Policy Is Met with Resentment', *N.Y. Times*, 12 January 2007, at A1 (describing Jaysh al-Mahdi as the 'most powerful of the Shiite militias').

36. Associated Press, 'Death Taunts: What they Didn't Want you to See – Camera Phone Footage Captures Saddam's Insult Filled Execution', *Chicago Tribune*, 3 January 2007, at p. 9.

hammered is his prophet'.³⁷ The trap door beneath Saddam Hussein swung open at 6:10 a.m. Saddam Hussein never finished his prayer.³⁸

Thus ended a three-year journey for Saddam Hussein through the complicated legal machinery of Iraq's criminal justice system and, more specifically, his journey through the corridors of the IHT.

This article will attempt to synthesize the legal rules that governed Mr. Hussein's last moments of life. It will not explain in detail the mechanics of how the IHT operated, nor will it discuss evidentiary issues related to the trial that resulted in Saddam Hussein's death sentence. Such matters far exceed the scope of this article. Instead, this article will limit itself to setting forth the legal framework that governs the imposition of the death penalty in Iraq and discuss whether the Iraqi government assiduously followed the legal requirements needed to impose the death penalty against Saddam Hussein.

In order to accomplish this goal, this article will: (1) set forth the legal requirements necessary for the Iraqi government to have executed Saddam Hussein; and (2) opine that the Iraqi government did not comply with relevant Iraqi legal precedents when carrying out the death sentence against Saddam Hussein.

2. IRAQI LAW AND THE DEATH PENALTY

2.1 Three relevant laws

Three primary laws governed the IHT's authority to sentence to Saddam Hussein to death for crimes against humanity committed against the citizens of Al-Dujail. Without addressing evidentiary issues, the power of the IHT to impose the death sentence against Saddam Hussein turned on a complex interplay of the Statute of the Iraqi High Tribunal (hereinafter IHT Statute),³⁹ Iraq's Law on Criminal Proceedings with Amendments – Law No. 23 of 1971 (hereinafter Iraqi Criminal Procedure Code),⁴⁰ and the Iraqi Penal Code – Law No. 111 of 1969 (hereinafter Iraqi Penal Code).⁴¹ The specific steps that the Iraqi government was required to take in order to implement any death sentence are also set forth in those three laws. The next two sections of this article will address: (1) whether the IHT had legal authority to sentence Saddam Hussein to death and (2) the procedural mechanisms that

37. See Burns, *supra* n. 29.

38. Ibid. Saddam's final wishes were carried out several days later when Prosecutor Munqith presented Saddam Hussein's Koran to the defense attorney to whom it was bequeathed.

39. See Qanoon Al-Mahkamat Al-Jeena'eyyat Al-Eraqiyyat Al-Mukhtas [Statute of the Iraqi High Tribunal], 18 October 2005, at <www.law.case.edu/saddamtrial/documents/IST_statute_official_english.pdf> (Iraq).

40. See Law on Criminal Proceedings With Amendments, No. 23, (1971), at <http://www.law.case.edu/saddamtrial/documents/Iraqi_Criminal_Procedure_Code.pdf> (hereinafter Iraqi Criminal Procedure Code).

41. See Penal Code, No. 111, (1969), at <http://www.law.case.edu/saddamtrial/documents/Iraqi_Penal_Code_1969.pdf> (hereinafter Iraqi Penal Code).

the Iraqi government was required to follow in order to carry out any death sentence imposed against Saddam Hussein.

2.2 The IHT's legal authority to issue a death sentence against Saddam Hussein

Whether the IHT had legal authority to sentence Saddam Hussein to death turns on two questions. The first is whether the Coalition Provisional Authority's (hereinafter CPA) decision to suspend the death penalty during the occupation of Iraq⁴² abrogated (under the concept of *lex mitior*) the IHT's ability to impose a death sentence against Saddam Hussein. The second is whether Iraqi law provided for the death sentence for the crimes charged against Saddam Hussein in the Al-Dujail case. The next two sections of this article address these questions in turn.

2.2.1 *Lex mitior*

Lex mitior is a bedrock international criminal law principle that requires a court to apply the more lenient sentence against an accused if the punishment for a specific offense changes before final judgment is issued.⁴³ Iraq became a state party to the International Covenant on Civil and Political Rights on 25 January 1971 and was therefore bound by the *lex mitior* rule emanating from Article 15 of the ICCPR.⁴⁴ In addition, Iraq had already incorporated the concept of *lex mitior* into its domestic legal code in 1969 under Part 1, Chapter 1, Section 2, sub-section 2, paragraph 2 of the Iraqi Penal Code.⁴⁵ That section of Iraq's Penal Code states:

(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

42. See Coalition Provisional Authority Order No. 7, § 3(1), CPA/ORD/10 June 2003/07 (10 June 2003), at <http://www.cpa-iraq.org/regulations/20030610_CPAORD_7_Penal_Code.pdf>.

43. See D.A. Mundis and F. Gaynor, 'Current Developments at the Ad Hoc International Tribunals', 3 *J Int. Criminal Justice* (2005) pp. 1134, 1148; see also *Prosecutor v. Dragan Nikolić* (IT-94-2-A). Judgment on Sentencing Appeal, 4 February 2005, §§ 81 and 84 (holding that the 'principle of *lex mitior* is understood to mean that, if the law relevant to the offence of the accused has been amended, the less severe law should be applied').

44. Art. 15 of the International Covenant on Civil and Political Rights, defines the concept of *lex mitior* as follows:

'No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.'

International Covenant on Civil and Political Rights, Art. 15, G.A. Res. 2200A, at 52, UN GAOR, 21st Sess., Supp. No. 16, UN Doc. A/6316 (19 December 1966) (emphasis added). For the status of ratification of the ICCPR, see Office of the United Nations High Commissioner for Human Rights, at <<http://www.ohchr.org/english/countries/ratification/4.htm>>.

45. See Iraqi Penal Code, *supra* n. 41, at Part 1, Chap. 1, Sec. 2, sub-sec. 2, para. 2.

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 realised:

(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 favourable to the convicted person is applied.⁴⁶

Saddam Hussein's defense lawyers and the prosecution hotly contested the applicability of *lex mitior* to the Al-Dujail trial as a result of the CPA's decision to suspend capital punishment in section 3(1) of CPA Order No. 7.⁴⁷ CPA Order No. 7, enacted by the CPA in its temporary capacity as the occupying power of Iraq, states that '[c]apital punishment is suspended. In each case where the death penalty is the only available penalty prescribed for an offense, the court may substitute the lesser penalty of life imprisonment, or such other lesser penalty as provided for in the Penal Code.'⁴⁸ When the Iraqi Interim Government was created, it passed Law No. 3 of 2004 – which lifted the death penalty suspension passed by the CPA for specific enumerated crimes later charged against Saddam Hussein,⁴⁹ including willful murder as defined under paragraph 406 of the Iraqi Penal Code No. (111) of 1969.⁵⁰

Saddam Hussein argued that the promulgation of CPA Order No. 7 was a more favorable law enacted after the offenses charged in Al-Dujail had been committed and before final judgment was issued.⁵¹ Saddam Hussein therefore claimed that the IHT lacked authority to sentence him to death and was required to utilize CPA Order No. 7 in determining which sentences to apply against him.⁵²

Trial Chamber 1 disagreed with this contention. Trial Chamber 1 noted that Article 43 of the 1907 Hague Regulations prohibited the CPA (as an occupying power) from altering existing Iraqi law (including the state's ability to impose the death penalty), unless necessity compelled it to do otherwise.⁵³ Trial Chamber 1 observed, however, that CPA Order No. 7 did not alter existing Iraqi law. Instead, according to Trial Chamber 1, the CPA simply 'suspended' operation of a specific penalty found in Iraqi law since 1919.⁵⁴

Because the CPA suspended implementation of the death penalty during the occupation without canceling the law entirely, Trial Chamber 1 held that: (1) the CPA's promulgation of CPA Order No. 7 had not altered existing Iraqi law in vio-

46. *Ibid.* (emphasis added).

47. See Coalition Provisional Authority Order Number 7, § 3(1), *supra* n. 42.

48. *Ibid.*

49. See *infra* Section 2.2.2.

50. See Iraqi Interim Government, Law No. 3 of 2004 (on file with author) dated 8 August 2004.

51. See Trial Chamber Judgment, *supra* n. 3, Part 1, at p. 2.

52. *Ibid.*, at p. 3.

53. *Ibid.*

54. *Ibid.*, (holding that because the Coalition Provisional Authority 'suspended the [death] penalty and did not cancel it [that] this penalty [has] exist[ed] in the Iraqi penal code since the year 1919').

lation of Article 43 of the Hague Regulations and (2) that Iraqi courts (even during the occupation) were capable of sentencing defendants to death.⁵⁵ In reaching these conclusions, Trial Chamber 1 relied upon the precise language of CPA Order No 7, that states that, during the death penalty's suspension, a 'court *may* [but is not obligated to] substitute the lesser penalty of life imprisonment, or other such lesser penalty as provided for in the Penal Code'.⁵⁶ Thus, during the occupation, courts had the option of either sentencing a defendant to death (although they were prohibited from carrying out the death penalty for proscribed offenses until such time as the suspension was repealed) or substituting the death sentence for the lesser penalty of life imprisonment.

Because Trial Chamber 1 held that the death penalty had remained in effect (albeit suspended during the occupation) from 1919 until the issuance of judgment in the Al-Dujail case on 5 November 2006, Saddam Hussein was not entitled to benefit from the principle of *lex mitior* and the IHT had authority to apply the full range of penalties against him found in Iraqi law.⁵⁷

Whether the IHT had the power to carry out any death sentence is a different question, one answered in Law No. 3 of 2004, that the Iraqi Interim Government enacted on 8 August 2004. Iraqi Interim Government Law No. 3 of 2004 repealed the suspension on the implementation of the death sentence for a series of specified crimes.⁵⁸ As such, the Iraqi Government was empowered to carry out a death sentence against Saddam Hussein only if the IHT issued a conviction and sentence of death for a crime that fell within the six classes of crimes for which Iraq Interim Government Law No. 3 of 2004 reinstated the death penalty.

Trial Chamber 1's ruling on this point was in accordance with applicable Iraqi and international law. Having made this ruling, the IHT next had to determine whether any of the crimes charged against Saddam Hussein qualified for implementation of the death sentence under Law No. 3 of 2004. The next section of this article addresses that issue.

55. See *ibid.*

56. See Coalition Provisional Authority Order Number 7, § 3(1), *supra* n. 42 (emphasis added).

57. See Trial Chamber Judgment, *supra* n. 3, Part 1, at p. 3 (ruling unanimously that the IHT could apply the 'appropriate penalty due to the seriousness of the felony ... including the [death] penalty').

58. See Coalition Provisional Authority Order Number 7, § 3(1), *supra* n. 42; see also Iraqi Interim Government Law No. 3 of 2004, *supra* n. 50 at paras. 1-3 (reinstating the death penalty for the following crimes:

(1) offenses against the internal security of Iraq as defined in paragraphs 190, 191 192(3), 194, 195, 196, and 197(1)(2) of the Iraqi Penal Code of 1969; (2) offenses against public welfare as defined in paragraphs 349 and 351(1) of the Iraqi Penal Code of 1969; (3) offenses against public transport as defined in paragraphs 354 and 355 of the Iraqi Penal Code of 1969; (4) willful murder as defined in paragraph 406 of the Iraqi Penal Code of 1969; (5) drug trafficking in violation of paragraph 14(a, c, and d) of Iraqi Drug Law No. 68 of 1965 provided that the trafficking was designed to finance the overthrow of the Iraqi Government in violation of paragraph 190 of the Iraqi Penal Code of 1969; and (6) kidnapping as defined in paragraphs 421-423 of the Iraqi Penal Code of 1969).

2.2.2 Crimes carrying the death penalty under Iraqi law

Saddam Hussein was charged with crimes against humanity under Article 12 of the IHT Statute.⁵⁹ More specifically, Trial Chamber 1 charged Saddam Hussein with committing a series of enumerated acts – ‘willful murder’, ‘deportation or forcible transfer of population’, ‘imprisonment’, ‘torture’, ‘enforced disappearance’, and ‘other inhumane acts ... intentionally causing great suffering or serious bodily injury to the body or to the mental or physical health [of a victim]’ – as part of a widespread or systematic attack against the civilian population of Al-Dujail.⁶⁰ Critically, Iraqi law had not criminalized the commission of a crime against humanity against a civilian population prior to the adoption of the IHT Statute. As a result, it was arguable that the trial of Saddam Hussein violated the *nullum crimen sine lege* principle on the ground that the IHT was trying and punishing him for acts which were not criminal at the time they were perpetrated.⁶¹

The Court avoided a comprehensive *nullum crimen sine lege* debate by relying on the fact that, the Iraqi Penal Code No. (111) of 1969, and its predecessor, the Baghdad Penal Code of 1919, had long criminalized almost each and every of the enumerated acts charged against Saddam Hussein under Article 12 of the IHT Sta-

59. See Formal Charging Document, Case No. 1/1, First Trial Chamber (15 May 2006), at <http://www.law.case.edu/saddamtrial/documents/20060515_indictment_trans_saddam_hussein.pdf>.

60. See *ibid*.

61. Under the *nullum crimen sine lege* principle, a court cannot hold a defendant criminally responsible for conduct if the conduct in question is not criminal at the time it takes place. See e.g., International Covenant on Civil and Political Rights, *supra* n. 44, at Art. 15 (stating that ‘[n]o one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed’). Iraq incorporated the *nullum crimen sine lege* principle into its Penal Code in 1969. See Iraqi Penal Code, *supra* n. 41, at para. 1 (stating that ‘[t]here is only punishment of an act or omission based on a law which stipulates that it is a criminal offense at the time it is committed’).

tute⁶² – i.e., willful murder,⁶³ deportation,⁶⁴ torture,⁶⁵ false imprisonment,⁶⁶ enforced disappearance,⁶⁷ and destruction of property.⁶⁸ Trial Chamber 1 reasoned that the acts criminalized in the Iraqi Penal Code were not substantively different than the acts criminalized under Article 12 of the IHT Statute such that Saddam Hussein's trial for the crimes charged violated the *nullum crimen sine lege* principle.⁶⁹ In support of this conclusion, Trial Chamber 1 observed that the only distinction between liability for a crime against humanity and the commission of a simple crime under Iraq's Penal Code of 1969 is that the perpetration of an enumerated act in the context of a crime against humanity has a heightened requirement of intent.⁷⁰ Thus, Trial Chamber 1 concluded that: (1) the defendants were aware of the criminality of their conduct at the time they committed the charged offenses and (2) the court could try and sentence the defendants for the crimes committed against the civilian population of Al-Dujail.⁷¹

Because Iraqi law had already criminalized the majority of enumerated acts set forth in Article 12 of the IHT Statute but not the more serious offense of a crime

62. Trial Chamber 1 noted that because the enumerated acts set forth in Article 12 were long criminalized in Iraq, there were no *ex-post facto* problems in prosecuting Saddam Hussein for the crimes charged in Al-Dujail. See Trial Chamber Judgment, *supra* n. 3, at p. 6 (listing each of the enumerated acts in Article 12, comparing those enumerated acts to their Iraqi Penal Code counterparts, and concluding that no *nullum crimen sine lege* issues warranted dropping the charges against Saddam Hussein because the enumerated acts set forth in Article 12 of the IHT Statute were also 'criminal acts identified within the amended penal code number (111) of 1969' and thus outlawed when the defendants perpetrated their widespread and systematic attack against Al-Dujail).

63. See Iraqi Penal Code, *supra* n. 41, at paras. 405-406.

64. The crime of deportation or forcible transfer of population was the only crime charged against Saddam Hussein in the Al-Dujail trial which did not seem to have an exact counterpart under Iraqi law. Trial Chamber 1 cited paragraph 325 of Iraq's Penal Code as equivalent to the crime of deportation or forcible transfer of population. See Trial Chamber Judgment, *supra* n. 3, Part 1, at p. 6. But the acts outlawed under paragraph 325 of Iraq's Penal Code are the use of 'slave labor' and the compelling of a person 'to engage in activities or circumstances other than those ... which the law sanctions'. Iraqi Penal Code, *supra* n. 41, at para. 325. Because the crimes codified under paragraph 325 of the Iraqi Penal Code and the crime of deportation and forcible transfer of population codified under Article 12(1)(D) seem to be facially different, it is debatable that (at least with regard to the crime of deportation and forcible transfer of population) a more thorough analysis of *nullum crimen sine lege* was required. That said, neither defense counsel nor the prosecution raised this issue during the course of the Al-Dujail trial or appeal.

65. See *ibid.*, at paras. 332-333.

66. See *ibid.*, at paras. 322-324.

67. See *ibid.*, at paras. 421-426 (kidnapping).

68. See *ibid.*, at para. 479 (destruction of unharvested plants, fields, and trees).

69. See Trial Chamber Judgment, *supra* n. 3, Part 1, at p. 6.

70. For example, in the common law system, killing *simpliciter* is a crime of specific intent, in that a defendant may rebut a charge with evidence that he or she lacked the intent to murder, for example because of intoxication. See W.A. Schabas, 'Was Genocide Committed in Bosnia and Herzegovina? First Judgments of the International Criminal Tribunal for the Former Yugoslavia', 25 *Fordham ILJ* (2001) pp. 23, 49. In contrast, for 'killing' to constitute a crime against humanity, the defendant must kill with the intent (not just to kill) but to kill for the purpose of perpetrating a widespread or systematic attack against a civilian population. See *Poisoned Chalice*, *supra* n. 24, at p. 18 n. 53.

71. See Trial Chamber Judgment, *supra* n. 3, at p. 6.

against humanity, the IHT Statute demanded that Trial Chamber 1 turn to existing Iraqi law in order to sentence any defendant found guilty of violating the IHT Statute.⁷² Thus, in the event that Trial Chamber 1 determined that Saddam Hussein had perpetrated any of the charged enumerated acts in the context of a widespread or systematic attack against the civilian population of Al-Dujail, the penalties it could impose were those ‘prescribed by the Iraqi Penal Code No. (111) of 1969’.⁷³ Had Trial Chamber 1 concluded that a specific enumerated act did not have a counterpart under Iraqi law, Trial Chamber 1 had discretion to sentence a defendant by ‘taking into account such factors as the gravity of the crime, the individual circumstances of the convicted person, guided by judicial precedents and other relevant sentences issued by the international criminal courts’.⁷⁴

With regard to Saddam Hussein and the charges for which he was accused in the Al-Dujail case, only one carried with it a possible death sentence – willful murder.⁷⁵ For Trial Chamber 1 to conclude that Saddam Hussein was guilty of the crime against humanity of willful murder, it needed to find that (1) he willfully killed one or more people; (2) the conduct was committed as part of a widespread or systematic attack directed against a civilian population; and (3) that Saddam Hussein knew that the conduct was part of, or intended the conduct to be part of a widespread or systematic attack against a civilian population.⁷⁶ Once making the requisite findings regarding the elements of willful murder, Trial Chamber 1 was required to examine the sentencing provisions related to murder in Iraq’s Penal Code (as those provisions were the most relevant counterpart to the crime against humanity of willful murder) in order to determine an appropriate penalty for Saddam Hussein.⁷⁷

The situation for Trial Chamber 1 became complicated in view of the fact that paragraph 405 and paragraph 406 of Iraq’s Penal Code set forth two distinct penalties for murder. Paragraph 405 states that ‘[a]ny person who willfully kills another is punishable by life imprisonment or imprisonment for a term of years’.⁷⁸ Paragraph 406 states that ‘[a]ny person who willfully kills another is punishable by death ... if such killing is premeditated’.⁷⁹ Because of Iraqi law’s sentencing distinction between the crime of murder (which warrants a life sentence or term of imprisonment) and premeditated murder (which warrants a death sentence), it was not immediately obvious to Trial Chamber 1 whether the crime against humanity of willful murder was more closely related to simple murder such that paragraph 405 and a sentence of life imprisonment or a term of years should apply or whether

72. See IHT Statute, *supra* n. 39, at Art. 24(1).

73. See *ibid.*

74. See *ibid.*, at Art. 24(5).

75. See Iraqi Penal Code, *supra* n. 41, at para. 406.

76. See *Prosecutor v. Blagojević and Jokić*, ICTY Case No. IT-02-60, Judgment (Trial Chamber), 17 January 2005, at para. 556.

77. See IHT Statute, *supra* n. 39, at Art. 24(1).

78. Iraqi Penal Code, *supra* n. 41, at para. 405-406.

79. *Ibid.*, at para. 406.

the crime against humanity of murder was more closely related to premeditated murder such that paragraph 406 and a sentence of death should apply.⁸⁰

In examining this issue, Trial Chamber 1 was permitted under Article 24(5) of the IHT Statute to examine relevant international criminal precedents.⁸¹ And precedents from various international criminal tribunals hold that only ‘premeditated murder [may constitute] a crime against humanity’.⁸² According to the International Criminal Tribunal for the Former Yugoslavia (ICTY), the crime against humanity of willful murder requires that a defendant have a ‘premeditated intention to murder civilians as part of a widespread or systematic attack’.⁸³ As the ICTY has further explained, a result ‘is premeditated when the actor formulated his intent to kill after a cool moment of reflection’.⁸⁴

Given these precedents and Trial Chamber 1’s finding that Saddam Hussein systematically planned and ordered the deaths of multiple citizens from Al-Dujail, there was ample authority for the IHT to conclude that the crime against humanity of willful murder (at least under the facts relating to Saddam Hussein presented in the Al-Dujail trial) was most closely related to paragraph 406 of Iraq’s Penal Code.⁸⁵ This distinction was of critical importance too because Iraqi Interim Government Law No. 3 of 2004 had repealed the suspension of the death penalty that the CPA had put in place for violations of paragraph 406 of Iraq’s Penal Code.⁸⁶ Upon making this legal finding, Trial Chamber 1 was within its legal rights to sentence Saddam Hussein to death so long as it followed the procedural requirements set forth in Iraqi law – which are discussed in the next sections of this article.

2.3 Procedural requirements to impose a death sentence under Iraqi law

In view of the above discussion, there can be little doubt as to whether Trial Chamber 1 had legal authority to sentence Saddam Hussein to death for any crimes that were analogous to or constituted premeditated murder under Iraq’s Penal Code. Having made these conclusions and issued a sentence of death, the IHT and Iraqi government were required to look primarily to the IHT Statute and Iraqi Criminal Procedure Code in order to carry out that sentence lawfully.⁸⁷ These steps were intricate but included an automatic right of appeal, possible clemency before Iraq’s

80. See Trial Chamber Judgment, *supra* n. 3, Part 3, p. 3.

81. See IHT Statute, *supra* n. 37, at Art. 24(5).

82. *Prosecutor v. Semanza*, ICTR Case No. ICTR-97-20, Judgment (Trial Chamber), 15 May 2003, at para. 334-339; see also *Prosecutor v. Bagilishema*, ICTR Case No. ICTR-95-1A-T, Judgment (Trial Chamber), 7 June 2001, at para. 84.

83. See *Semanza*, *ibid.*

84. See *Prosecutor v. Kayishema and Ruvindana*, ICTR Case No. ICTR-95-1-T, Judgment (Trial Chamber), 21 May 1999, at paras. 137-140.

85. See Trial Chamber Judgment, *supra* n. 3, Part 2, pp. 44-52; Part 3, pp. 3-12, 13-28.

86. See Coalition Provisional Authority Order No. 7, *supra* n. 42, at § 3(1); see also *supra* n. 58.

87. See generally IHT Statute, *supra* n. 39, at Art. 27(2); see also Iraqi Criminal Procedure Code, *supra* n. 38, at paras. 285 et seq.

three-person Presidency Council,⁸⁸ transfer of the case to Iraq's Ministry of Justice for issuance of a necessary decree, and other administrative matters set forth under Iraqi law.⁸⁹ The next sections of this article will address how the Iraqi government should have applied these procedural steps in the abstract while section IV will apply these abstract procedural steps to the concrete events that occurred during the Al-Dujail trial.

2.3.1 *Automatic right of appeal and correction of appeal*

2.3.1.1 Automatic right of appeal

Article 25 of the IHT Statute and Rule 68 of the IHT Rules of Evidence and Procedure govern all appellate matters before the IHT.⁹⁰ Pursuant to Article 25 of the IHT Statute, a convicted person or the public prosecutor can appeal errors of law, procedure, or facts to the Appellate Chamber.⁹¹ Article 25 grants the Appellate Chamber the opportunity to affirm, reverse, or alter any decision that a Trial Chamber or Investigative Chamber made during the course of a proceeding.⁹² Moreover, Article 25 and Rule 68 state that all appellate matters before the IHT should be consistent with and governed by the appellate provisions of Iraq's Criminal Procedure Code.⁹³

Because Trial Chamber 1 issued a sentence of death to Saddam Hussein, specific provisions in Iraq's Criminal Procedure Code applied. In particular, paragraph 254 of Iraq's Criminal Procedure Code required Trial Chamber 1 to send the entire investigative dossier to the IHT Appellate Chamber within ten days of the issuance

88. Under Art. 138(1) and (2) of Iraq's Constitution, the office of Presidency for the first electoral term following the Constitution's implementation is composed of a President and two Vice Presidents who collectively form the 'Presidency Council' See Iraqi Constitution Art. 138(1)-(2). The Presidency Council 'practice[s] the powers of the President Republic stipulated in [Iraq's] Constitution'. *Ibid.*, at Art. 138(6). The Presidency Council can only make decisions if all three members agree except that any member of the Presidency Council may delegate his decision making authority to one of the other two members. See *ibid.*, Art. 138(4) (stating that the 'Presidency Council shall issue its decisions unanimously and any member may delegate to one of the two other members to take his place'). The members of Iraq's Presidency Council at the time Saddam Hussein was executed were Jalal Talabani (a Kurd), Adil Abdul Mahdi (a Shiite), and Tariq al-Hashemi (a Sunni Arab) who, as explained further below, were required under Iraqi law unanimously to ratify Saddam Hussein's death sentence. See Associated Press, 'Iraqi Vice President Criticizes the Execution of two Saddam Aides', *USA Today* 15 January 2007 (stating that 'Tariq Al-Hashemi, President Jalal Talabani and Vice President Adil Abdul-Mahdi make up Iraq's presidential council, and all three must sign death warrants before executions can be carried out'); see also *infra* n. 110 and accompanying text.

89. See *ibid.*

90. See generally IHT Statute, *supra* n. 39, at Art. 25; see also IHT Rules of Evidence and Procedure 68, at <http://www.law.case.edu/saddamtrial/documents/IST_rules_procedure_evidence.pdf>.

91. See IHT Statute, *supra* n. 39, at Art. 25(1).

92. See *ibid.*, at Art. 25(2).

93. See *ibid.*, at Art. 25(4); see also IHT Rules of Evidence and Procedure, *supra* n. 90, at Rule 68 (B) (stating that '[t]he appeal before the cassation panel [shall] be in accordance with Iraqi Criminal Procedure Law No. 23 of 1971').

of a death or life sentence.⁹⁴ The submission of this dossier to the Appellate Chamber was required regardless of whether Saddam Hussein wished to appeal his death sentence.⁹⁵ Stated differently, paragraph 254(A) of Iraq's Criminal Procedure Code granted Saddam Hussein an automatic right of appeal of his death sentence to the IHT Appellate Chamber.⁹⁶

Upon receipt of the investigative dossier from the Trial Chamber, the Appellate Chamber was obligated to log its entry and to distribute it immediately to the Public Prosecutor for commentary.⁹⁷ The Public Prosecutor was required to provide commentary (in the form of written submissions) to the Appellate Chamber within 20 days of receipt of the file.⁹⁸ Once this 30 day clock began ticking,⁹⁹ Saddam Hussein had (pursuant to paragraph 252(A) of Iraq's Criminal Procedure Code) the legal right to present any commentary about his sentence to the IHT Appellate Chamber so long as the IHT Appellate Chamber received his submissions prior to the expiration of the 30 day period.¹⁰⁰

The IHT Appellate Chamber had discretion (but was not obligated) to summon the defendants, complainants, civil complainants, Public Prosecutor or any other witnesses to the IHT in order to hear their statements in the event that such a hearing was required to 'obtain the truth'.¹⁰¹ This meant that the IHT Appellate Chamber could have held additional hearings on the evidence in the Al-Dujail case, summoned the attorneys to open court to present legal arguments, or simply decided the case on the paperwork in the investigative dossier and the trial record. Upon concluding its review of the case documentation, the IHT Appellate Chamber then was required to issue a ruling that either affirmed Trial Chamber 1's ruling in whole or in part, reversed the judgment in whole or in part, remanded the matter back to the Trial Chamber for retrial or resentencing with a view towards increasing or decreasing sentence, or remanded the matter back to the Investigative Chamber for continued investigation.¹⁰²

94. See Iraqi Criminal Procedure Code, *supra* n. 40, at para. 254(A).

95. See *ibid.*, (declaring that a trial court that 'has issued a sentence of death or life imprisonment must send a file on the case to the Court of Cassation within 10 days of the judgment ... even if an appeal has not been lodged').

96. See *ibid.*

97. See *ibid.*, at para. 255.

98. See *ibid.*

99. This 30 day period is composed of the ten day window in which the Trial Chamber must send the case file to the Appellate Chamber, see *ibid.*, at para. 254(A), and the 20 days thereafter in which the Public Prosecutor must return the file to the Appellate Chamber with written commentary, see *ibid.*, at para. 255.

100. See *ibid.*, at para. 252(A).

101. See *ibid.*, at para. 258(B).

102. See *ibid.*, at para. 259(A)(1-9).

2.3.1.2 Motion for correction of appellate decision

It would appear that persons convicted by the IHT are *not* entitled to submit a motion for correction of the Appellate Chamber's decision pursuant to paragraph 266(a) of the Iraqi Criminal Procedure Code.¹⁰³ This is so because of the following reason. While the Statute of the IHT calls for appellate matters to be decided in accordance with the procedures used in Iraq's regular appellate court (called the Court of Cassation), certain procedures before the Court of Cassation (particularly those that apply to the death penalty) do not marry well with the IHT's structure.¹⁰⁴

Specifically, the Court of Cassation is composed of not less than 30 judges who sit together on a 'General Body'.¹⁰⁵ The judges of the General Body are dispersed among a series of five separate bodies (an 'Enlarged Body', a 'Civil Body', a 'Personal Status Body', and 'Administrative Matters Body', and a 'Criminal Body') that hear cases involving discrete subject matters.¹⁰⁶ Thus, the Court of Cassation's 'Criminal Body' (composed of the President and Vice-President of the Cassation Court and at least two other judges)¹⁰⁷ is responsible for hearing appeals on regular criminal matters arising from Iraq's courts. The General Body (composed of the entire compliment of at least 30 Cassation Judges) has limited subject matter jurisdiction and can only decide: (1) matters that one of the limited bodies refer to it;¹⁰⁸ (2) disputes between the Cassation Court's other bodies¹⁰⁹ and (3) 'suits in which a judgment [of] death has been issued'.¹¹⁰

As such, defendants sentenced to death in Iraq's regular courts have the full compliment of judges on the Cassation Court hear their appeals in the first instance. This is important because paragraph 267 of the Iraqi Criminal Procedure Code states that a defendant may not submit a motion for correction of decision if the full compliment of judges of the Court of Cassation's General Body (as opposed to a limited body) has issued a decision.¹¹¹ Accordingly, defendants sentenced to death in Iraq's regular courts would appear *not* to have the ability to file a motion for correction of decision under paragraph 266 of Iraq's Criminal Procedure Code.

103. See Iraqi Criminal Procedure Code, *supra* n. 40, at para. 266(A) (stating that 'the Public Prosecutor, the convicted person and all others connected with a criminal case may request the correction of a legal error in the decision issued by the Court of Cassation, provided the request is submitted within 30 days, counted from the date a convicted ... person is notified of the Court of Cassation decision').

104. See *supra* n. 93 and accompanying text.

105. See Judicial Organization Law, No. 160 (1979), Art. 13(1)(A) (hereinafter Iraqi Judicial Organization Law).

106. See *ibid.*, at Art. 13(1)(C)-13(1)(F).

107. See *ibid.*, at Art. 13(2).

108. See *ibid.*, at Art. 13(1)(A)(1).

109. See *ibid.*, at Art. 13(1)(A)(3).

110. See *ibid.*, at Art. 13(1)(A)(2).

111. Iraqi Criminal Procedure Code, *supra* n. 40, at para. 267(3) (stating that 'a request for correction is not accepted for ... a decision of judgment issued by the Court of Cassation General Board').

This rule of law and the policies behind it apply equally to the IHT which does not have a ‘General Body’ and limited bodies. Instead, appeals before the IHT are heard before the entire complement of nine appellate judges in the first instance. Accordingly, the IHT Appellate Chamber is the functional equivalent of the Court of Cassation’s General Body such that paragraph 267 of the Iraqi Criminal Procedure Code applies. Therefore, unlike defendants filing their appeals before a limited body of the Court Cassation and who may file a motion for correction of decision, defendants before the IHT do not have a statutory vehicle to file such a motion.

2.3.2 *Requests for clemency and/or pardon*

Article 73(1) of Iraq’s Permanent Constitution grants Iraq’s Presidency Council (composed of a Kurdish President and a Sunni and Shiite Vice-President) the right to issue orders of amnesty, upon a recommendation from the Prime Minister.¹¹² The right of the Presidency Council to issue orders of amnesty is not, however, absolute. Article 73(1) excludes ‘those convicted of international crimes, terrorism, financial or administrative corruption, or crimes against personal rights’ from any right to receive an amnesty order from the Presidency Council.¹¹³ Article 73(1) of Iraq’s Constitution gives full effect to Article 27(2) of the IHT Statute, which states that ‘No authority, including the President of the Republic, may grant a pardon or mitigate the punishment issued by the [IHT]’.¹¹⁴

Because Trial Chamber 1 convicted Saddam Hussein for crimes against humanity (an international crime), Article 73 of Iraq’s Constitution applied and any avenue of clemency, pardon, or amnesty was foreclosed once the IHT appellate process ended. That said, it is arguable whether the Presidency Council (although lacking powers of pardon or amnesty) was required under Article 73(8) of the Constitution to ratify a death sentence for Saddam Hussein¹¹⁵ in the event that proper administrative steps relevant to carrying out of an execution were conducted – a point more fully discussed in the section that follows.¹¹⁶

2.3.3 *Transfer of case to Ministry of Justice and other administrative steps*

The administrative steps necessary to carry out a death sentence in Iraq are detailed in the IHT Statute and the Iraqi Criminal Procedure Code as modified by Iraqi Interim Government Law No. 3 of 2004.

Article 27(2) of the IHT Statute requires that all sentences that the IHT issues be implemented ‘within 30 days of the date when the judgment becomes final and

112. See Iraqi Constitution, *supra* n. 88, at Art. 73(1).

113. See *ibid.*

114. IHT Statute, *supra* n. 39, at Art. 27(2).

115. See Iraqi Constitution, *supra* n. 88, at Art. 73(8).

116. See *infra* n. 123, and accompanying text.

non-appealable'.¹¹⁷ Under Iraqi law, a judgment becomes final and non-appealable so long as a defendant is foreclosed from filing appellate papers and motions for correction of decision. Thus, because Saddam Hussein was not permitted to file any motions for correction of decision under paragraph 266 of Iraq's Criminal Procedure Code, his sentence became final and not subject to further appeal on 26 December 2006 – when the IHT Appellate Chamber issued its decision.

Once the judgment became final and not subject to further appeal, the IHT was to send the investigative dossier and accompanying sentence to the Ministry of Justice.¹¹⁸ According to the Iraqi Criminal Procedure Code, as modified by paragraph 6 of the Iraqi Interim Government Law No. 3 of 2004, the Minister of Justice was then tasked with transferring the matter to the Prime Minister of Iraq.¹¹⁹ The Prime Minister was responsible for reviewing the matter, approving the death sentence, and transferring the file to the Presidency Council.¹²⁰ Article 73(8) of Iraq's Constitution¹²¹ and Iraqi Interim Government Law No. 3 of 2004¹²² stipulates that the three-member Presidency Council ratify unanimously¹²³ the Prime Minister's recommendation and, pursuant to paragraph 286 of the Iraqi Criminal Procedure Code, issue a signed order stating such.¹²⁴ The Presidency Council was then compelled to transfer the death order back to the Minister of Justice who was to issue another order specifying that all legal requirements needed for execution had taken place and specifying the date and time of punishment.¹²⁵ Only after the Minister of Justice issued this final order could an execution occur.

During this administrative process, Saddam Hussein was to remain in prison.¹²⁶ As the date of execution approached, Iraqi law declared that he be transferred to the location where the punishment was to occur.¹²⁷ The method of execution (hanging) is set in paragraph 288 of Iraq's Criminal Procedure Code.¹²⁸ There

117. IHT Statute, *supra* n. 39, at Art. 27(2).

118. See Iraqi Criminal Procedure Code, *supra* n. 40, at para. 286 (stating that if an appellate court 'confirms the death sentence as issued, it will send the case file to the Minister of Justice, who is responsible for passing it on to the President of the Republic to seek the necessary decree for carrying out the sentence').

119. See Iraqi Interim Government Law No. 3 of 2004, *supra* n. 50, at para. 6 (stating that paragraphs 285(B) and 286 of the Iraqi Criminal Procedure Code are modified such that the Iraqi Government may only implement a death sentence 'after approval of [the] Prime Minister and [the ratification] of [the] Presiden[cy] Council').

120. See *ibid.*

121. See Iraqi Constitution, *supra* n. 88, at Art. 73(8) (stating that the Presidency Council 'shall ... [r]atify death sentences issued by the competent courts').

122. See Iraqi Interim Government Law No. 3 of 2004, *supra* n. 50, at para. 6.

123. See *ibid.*, see also *supra* n. 88.

124. See Iraqi Criminal Procedure Code, *supra* n. 40, at para. 286 (stating that the 'President of the Republic issues the decree for carrying out the sentence').

125. See *ibid.*, (stating that if the President of the Republic 'issues the decree for implementation [of the death sentence], the Minister of Justice issues an order to that effect, including the decree of the Republic, in accordance with legal provisions').

126. See *ibid.*, at para. 285.

127. See *ibid.*, at para. 288.

128. See *ibid.*

were no provisions in Iraq's Criminal Procedure Code for execution to occur by any other means, such as by firing squad. At the execution day, Iraqi law stipulates that Saddam Hussein be brought to the gallows.¹²⁹ Iraqi law further demands that at least one judge from the IHT, one IHT Prosecutor, a representative from the Ministry of Interior, the director of the prison holding the condemned, the prison doctor, and the condemned's legal representative serve as witnesses.¹³⁰ The legal representative of Saddam could have requested to be excused from attending the execution.¹³¹

The execution itself was supposed to proceed with the director of the prison reading the contents of the death warrant to the accused.¹³² Iraqi law permitted Saddam Hussein to make a final statement that the judge who was present was required to record.¹³³ Once the execution was completed, the prison director and prison doctor were to certify that the condemned was dead (noting the time of death).¹³⁴

The Iraqi Criminal Procedure Code did provide Saddam Hussein with certain rights in the days leading up to execution, at the execution, and after the execution itself. In particular, paragraph 290 of the Iraqi Criminal Procedure Code prohibited the Iraqi government from carrying out the death penalty on any 'official holidays and special festivals connected with the religion of the condemned person'.¹³⁵ Further, paragraph 291 of the Iraqi Criminal Procedure Code permitted Saddam Hussein the opportunity to visit with relatives on the day before sentence was to be carried out.¹³⁶ Paragraph 292 of the Iraqi Criminal Procedure Code also permitted Saddam Hussein to make necessary religious arrangements with a cleric of his religion.¹³⁷ After the execution occurred, the Iraqi Criminal Procedure Code required the Iraqi government to turn the corpse over to the relatives of the condemned for burial so long as the condemned's family requested receipt of the corpse.¹³⁸

With the return of the corpse to the condemned's family, the mechanics of the death sentence end.

The next section of this article will analyze whether the Iraqi government complied with the administrative requirements set forth in its law implementing the death sentence against Saddam Hussein.

129. See *ibid.*

130. See *ibid.*

131. See *ibid.*

132. See *ibid.*, at para. 289(A).

133. See *ibid.*, at para. 289(B).

134. See *ibid.*, at para. 289(C).

135. *Ibid.*, at para. 290.

136. *Ibid.*, at para. 291. Saddam Hussein's daughter sought to visit Saddam Hussein in the days leading up to his execution. Mr. Hussein refused her request and instead met with his brother Watban Ibrahim Hassan al-Tikriti. See Mayhood, *supra* n. 27, and accompanying text.

137. See Iraqi Criminal Procedure Code, *supra* n. 40, at para. 292.

138. See *ibid.*, at para. 293.

3. THE IRAQI GOVERNMENT DID NOT COMPLY WITH RELEVANT DOMESTIC LAW WHEN CARRYING OUT THE DEATH SENTENCE AGAINST SADDAM HUSSEIN

3.1 **The IHT unfairly calculated the time frame for the defense to file their appellate papers**

The first legal challenge to Saddam Hussein's execution pertains to the date the appellate process began. Specifically, the verdict was issued on 5 November¹³⁹ while the judicial opinion supporting the verdict was not issued until 22 November.¹⁴⁰ According to Paragraph 254 of the Iraqi Criminal Procedure Code, Trial Chamber 1 became obligated to transfer the entire Al-Dujail case file to the Appellate Chamber within ten days of the issuance of 'the judgment' (and thus start the appellate process 30 day time period).¹⁴¹ Although a colorable reading of the Iraqi Criminal Procedure Code could indicate that 'the judgment' was issued with the verdict on 5 November 2006, such that Trial Chamber 1 had to transfer the case file to the IHT Appellate Chamber before 15 November 2006, a better reading of the Iraqi Criminal Procedure Code indicates that 'the judgment' was issued when Trial Chamber 1 released the judicial opinion supporting the verdict – 22 November 2006. The reason for this is simple.

Saddam Hussein's defense lawyers and Al-Dujail prosecutors needed sufficient time to review the case file, ruling, and opinion so that they could prepare adequate appellate submissions. By reading the Iraqi Criminal Procedure Code such that the appellate process commenced on 5 November the IHT imposed a deadline of 5 December for the defense counsel and prosecutors to file their written submissions to the IHT Appellate Chamber. Given that the written opinion was released on 22 November 2006¹⁴² and supplied to the defense attorneys and prosecution on 23 November 2006,¹⁴³ the attorneys working on the matter had at most 13 days (until 5 December) to review the judgment and to incorporate its findings into their appellate submissions.

Had Trial Chamber 1 concluded that, as a matter of law, 'the judgment' was issued in conjunction with the opinion (i.e., 22 November 2006), the defense attorneys and prosecutors would have received a full 30 days (as opposed to 13 days) to review the opinion's content – comprised of approximately 300 pages of detailed factual and legal findings¹⁴⁴ – and to incorporate it more fully into their appellate submissions. Granted, the truncated time frame to review the appellate papers applied to both the prosecution and the defense. As a result, both sides were equally prejudiced in their ability to rely upon the opinion when drafting their appellate

139. See Burns and Semple, *supra* n. 17, and accompanying text.

140. See Human Rights Watch, *supra* n. 24 and accompanying text.

141. See Iraqi Criminal Procedure Code, *supra* n. 40, at para. 254.

142. See Human Rights Watch, *supra* n. 24 and accompanying text.

143. See Receipt from Defense Attorneys, *supra* n. 25 and accompanying text.

144. See Trial Chamber Judgment, *supra* n. 3.

submissions. That said, however, because the Al-Dujail case was of such historic importance to the Iraqi people and because it involved capital sentences, the IHT did itself a severe disservice in issuing the verdict on 5 November 2006 (without written reasons), releasing the opinion that supported the verdict on 22 November 2006, and demanding that all parties submit their appellate papers to the Tribunal on 5 December 2006 – a mere 13 days after the opinion was issued. It was a legal error that did not need to occur and could have been easily remedied.

3.2 **The appellate process was rapid, cursory, and created the appearance of executive interference**

In conjunction with the IHT's decision to start the appellate process on 5 November as opposed to 22 November 2006, the Appellate Chamber failed to exercise the discretion granted to it under Iraqi law to hold additional hearings, call witnesses, or permit defense attorneys and the prosecution to present oral argument on their legal submissions to the court.¹⁴⁵ These failures would not have greatly impacted the appellate process – as Iraqi appellate courts do not traditionally call witnesses or conduct oral argument when rendering a decision – so long as the nine judges on the Appellate Chamber individually made a credible and determined effort to review independently the bulky and voluminous investigative and trial record before them.

Indeed, the case file itself consisted of approximately 1000 pages of documents, witness statements,¹⁴⁶ and other items and the trial record consisted of multiple volumes of densely packed handwritten notes taken by court scribes, verbatim trial transcripts consisting of thousands of pages of material, video recordings of each and every trial session, and bulk trial motions (on matters such as the IHT's legitimacy, *lex mitior*, sovereign immunity, a request to recuse the Chief Trial Judge, and various other issues) that the prosecution and defense submitted to Trial Chamber 1 throughout the course of the trial.¹⁴⁷ In addition to all this primary material, the nine judges on the Appellate Chamber had to review the approximately 300 page decision from the Trial Chamber that synthesized all this material and ultimately adjudicated the guilt or innocence of each defendant.¹⁴⁸

Notwithstanding, the Appellate Chamber issued its decision on 26 December 2006¹⁴⁹ – approximately 42 days after receiving the case file, 34 days after receiving the opinion, and most disturbing, 23 days after receiving Saddam Hussein's

145. See Iraqi Criminal Procedure Code, *supra* n. 40, at para. 258(B).

146. See Human Rights Watch, 'Judging Dujail: The First Trial Before the Iraqi High Tribunal', 20 November 2006, at p. 20 n. 81.

147. See E.H. Blinderman, 'Judging Human Rights Watch', 39 *Case Western Reserve JIL* (2007) pp. 99, 127 (describing how court scribes maintained long-hand notes of all that transpired in court each day and how the videotapes of each day's sessions were converted into verbatim trial transcripts that were provided to the IHT judiciary).

148. See generally Trial Chamber Judgment, *supra* n. 3.

149. See generally IHT Appellate Chamber Opinion, *supra* n. 23.

appellate submissions and nine days after receiving supplemental appellate submissions from Saddam Hussein, Barzan al-Tikriti, and Taha Yaseen Ramadan. In comparison, Trial Chamber 1 (composed of five judges) adjourned on 27 July 2006 and did not issue a full written opinion on the Dujayl case until 22 November 2006 – approximately four months after the trial closed.¹⁵⁰ The rapidity of the IHT Appellate Chamber's decision calls into question whether the full complement of nine appellate judges, or for that matter, any of the appellate judges carefully studied the legal and factual issues that the parties raised. It also calls into question whether the judges themselves felt that they had to issue a rapid decision confirming Saddam Hussein's execution in order to comply with political directives from the executive branch of the Iraqi government – a point discussed further below.¹⁵¹

The specter of impropriety surrounding the rapid release of the appellate decision is compounded further by the lack of comprehensive legal reasoning that was contained in the decision. The opinion itself (translated into English) was only 21 pages long – the first six pages of which simply listed the appellants' names and summarized the issues before the court.¹⁵² With regard to Saddam Hussein, the Appellate Chamber rightly rejected, albeit in a cursory fashion, his legal challenges based on legitimacy, sovereign immunity, *ex-post facto* punishment, and *lex mitior* but never once tackled the detailed evidentiary issues that Saddam Hussein's defense counsel raised in their legal submissions to the court.¹⁵³

Likewise, the Appellate Chamber devoted only one paragraph of legal reasoning to the conviction of Barzan al-Tikriti (also convicted of death)¹⁵⁴ and only two paragraphs of writing to the conviction and sentence of Taha Yaseen Ramadan, which the Appellate Chamber increased from life to death.¹⁵⁵ Particularly troubling about the Appellate Chamber's analysis of Taha Yaseen Ramadan is that, although the Appellate Chamber relied upon certain legal evidence (including legal decrees from the former regime that detailed the powers of the Popular Army) to conclude that a death sentence was warranted, it did not explain in detail how his specific actions could constitute the crime against humanity of willful murder such that a more strict penalty than that which Trial Chamber 1 imposed was warranted.¹⁵⁶

The lack of comprehensive reasoning in the Appellate Chamber as well as its rapid turnaround are circumstantial evidence of an even more troubling matter – executive interference with the judicial process. During the course of the Appellate Chamber's deliberations, the Prime Minister of Iraq made frequent statements in-

150. See Human Rights Watch, *supra* n. 24 and accompanying text.

151. See *infra* n. 157 and accompanying text.

152. See IHT Appellate Chamber Opinion, *supra* n. 23, at pp. 1-6.

153. See *ibid.*, at pp. 8-12.

154. See *ibid.*, at p. 14.

155. See *ibid.*, at pp. 16-17.

156. See *ibid.* Taha Yaseen Ramadan himself expressed puzzlement at the harshness of his sentence during trial by commenting that he could understand if he were sentenced to death for his role in the suppression of the Shiite rebellion in southern Iraq following the 1991 war but that, because he had a limited role in the Al-Dujail matter, he did not understand how the IHT could sentence him to death.

dicating that he expected to see Saddam Hussein hang for his crimes before the New Year's holiday.¹⁵⁷ Further, the IHT President and another Appellate Judge (Munir Haddad) announced the release of the Appellate Chamber decision from the offices of the Prime Minister as opposed to making the announcement from the court itself. While the IHT's decision to announce its verdict at the Prime Minister's office and statements from the Prime Minister of Iraq calling for Saddam Hussein's execution by a set date do not prove that the Prime Minister's Office was influencing the Appellate Chamber, these events (when combined with the rapid and cursory nature of the appellate process) created the appearance of executive interference in the judicial process such that the IHT's independence and integrity was undermined.

3.3 The administrative steps taken to execute Saddam Hussein did not comply with Iraqi law

3.3.1 *Saddam Hussein was executed despite the fact that the Presidency Council did not ratify the death sentence*

In addition to the above, the Iraqi government failed to follow proper procedures in carrying out the execution of Saddam Hussein. Instead of following the procedures provided under the law,¹⁵⁸ the President of the IHT bypassed the Minister of Justice and submitted the investigative dossier and sentence directly to the Prime Minister so that the Prime Minister could approve Saddam Hussein's execution. The Prime Minister then approached President Jalal Talabani in order to receive the required ratification for the execution to take place.

On 29 December 2006, President Jalal Talabani issued a legal opinion concluding that, because Article 27(2) of the IHT Statute stripped the Presidency Council of any ability to grant a pardon or to mitigate a punishment arising out a judgment from the IHT, the Presidency Council had no authority to receive any legal decrees submitted to it from the Prime Minister or to ratify any death sentences arising out of a judgment from the IHT.¹⁵⁹ This legal conclusion was made without reference to the black-letter requirements set forth in Article 73(8) of Iraq's Constitution, paragraph 6 of Iraqi Interim Government Law No. 3 of 2004, and paragraph 286

157. See e.g., Nadia Abou el-Magd, 'Saddam Case: Egyptian President Uneasy at Verdict', *The Advertiser*, 11 November 2006, at F1 (stating that Iraqi Prime Minister Nouri al-Maliki 'expected' Saddam Hussein's death sentence to be carried out in 2006); see also L. Roug, 'Shiite Preachers Call for Saddam's Speedy Hanging', *Los Angeles Times*, 11 November 2006 (quoting Iraqi Prime Minister Nouri al-Maliki as claiming that Saddam Hussein's execution could take place before the end of 2006).

158. See *supra* nn. 118, 120 and 125 and accompanying text.

159. See N. Parker, 'Saddam Hanged: Iraq Prime Minister Signs Death Warrant Former Dictator Hands Will to Half-Brothers', *The Times*, 30 December 2006 (noting that President Jalal Talabani agreed that Saddam Hussein's 'hanging could go ahead without reference to the country's three-man presidency council ... because Saddam's case had been dealt with by a special tribunal and not the regular Iraqi courts').

of the Iraqi Criminal Procedure Code stating that only the Presidency Council may ratify death sentences in Iraq.¹⁶⁰

Of course, it is possible to argue that President Talabani's issuance of this legal opinion constituted an implicit ratification of any actions which the Prime Minister took to effectuate the death sentence of Saddam Hussein. This perspective would certainly have merit, had all three members of the Presidency Council signed unanimously the legal opinion as required under Article 138(4) of Iraq's Constitution for the opinion to have effect.¹⁶¹ Unfortunately, this did not occur. Instead, the opinion itself states that President Talabani, after conducting 'deliberations in the Presidency Council', concluded that 'there is no need for approval of the decision of [the] execution of Saddam Hussein Majid and the other defendants with him'.¹⁶² Nowhere does Vice-President Tariq Al-Hashemi's or Vice-President Adil Abdul Mahdi's signature appear on the document, thereby making it impossible to verify whether the opinion represents an unanimous and legally binding decision of the Presidency Council in accordance with paragraph 138(4) of Iraq's Constitution.¹⁶³

The Prime Minister (upon receiving President Jalal Talabani's legal memorandum) then ordered Saddam Hussein executed¹⁶⁴ notwithstanding the serious legal questions over whether President Talabani's memorandum was legally sufficient to fulfill the Presidency Council's Constitutional and statutory obligations to ratify unanimously Saddam Hussein's death sentence. The situation was made even more complex when the matter was transferred back to the Ministry of Justice for issuance of a final order certifying that all legal requirements needed for execution had taken place.

Iraq's then Minister of Justice, a Sunni Arab named Hashim al-Shibli, who was on vacation at this time, declared that the Ministry would not involve itself with the execution of Saddam Hussein (in part) because of the controversy surrounding whether the Presidency Council was required to ratify Saddam Hussein's death sentence.¹⁶⁵ In response, the Prime Minister of Iraq removed the Minister from his position temporarily and replaced him with the Minister of Education. The Minister of Education then delegated to the Deputy Minister of Justice the authority to issue the final order certifying that all necessary measures to carry out the death

160. See Iraqi Constitution, *supra* n. 88, at Art. 73(8); see Iraqi Interim Government Law No. 3 of 2004, *supra* n. 50, at para. 6; see Iraqi Criminal Procedure Code, *supra* n. 40, at para. 286; see also *supra* nn. 120-123 and accompanying text.

161. See Iraqi Constitution, *supra* n. 88, at Art. 138(4).

162. See Legal Memorandum from President Jalal Talabani to Prime Minister Nouri al-Maliki (29 December 2006) (on file with author).

163. See Iraqi Constitution, *supra* n. 88, at Art. 138(4).

164. See F. Ajami, 'Measure for Measure – the Execution of Former Dictator Saddam Hussein', *U.S. News & World Report*, 15 January 2007, at p. 57 (stating that Iraqi Prime Minister Nouri al Maliki had carried the 'pen with which he signed Saddam Hussein's death warrant ... for well over a quarter century' and noting that he signed the death warrant in front of the cameras so as to send a message to his Shiite kinsmen).

165. See J. Muir, 'Iraq's Justice Minister Resigns', *BBC News*, 31 March 2007, at <http://news.bbc.co.uk/2/hi/world/middle_east/6514897.stm>.

sentence, had occurred. Thus, it was the Deputy Minister of Justice (acting upon the orders of the Minister of Education) who issued the final order that led to Saddam Hussein's execution even though paragraph 286 of Iraq's Criminal Procedure Code required that the Minister of Justice issue this order.¹⁶⁶

3.3.2 *The execution violated paragraph 290 of Iraq's Criminal Procedure Code*

Equally disconcerting, the final order demanded that Saddam Hussein be executed in violation of paragraph 290 of the Iraqi Criminal Procedure Code that bars executions on 'any official holiday and special festivals connected with the religion of the condemned person'.¹⁶⁷ By way of background, 30 December 2006 was a Saturday (itself an official holiday of Iraq because it was part of the weekend) and marked the start of one of the most important special festivals in Islam (Id al-Adha) for Sunnis.¹⁶⁸ Because of certain discrepancies between the Shiite and Sunni Muslim calendars, the Id al-Adha holiday did not commence for Shiites until 31 December 2006.¹⁶⁹ As Saddam Hussein was a follower of Sunni Islam, the Id al-Adha holiday began for him on 30 December 2006.¹⁷⁰ Thus, paragraph 290 should have applied and the Iraqi government should have stayed his execution until the Id al-Adha holiday concluded. When confronted about this point of law, Judge Munir Haddad (a Shiite IHT Appellate Judge who witnessed the execution), without acknowledging that paragraph 290 barred executions on Saturday, stated that the Iraqi government had consulted with Shiite religious authorities (as opposed to authorities of the condemned's religion – Sunni Islam) and concluded that the execution could move forward on 30 December because the Id al-Adha holiday in Iraq did not begin until 31 December.¹⁷¹

166. Shortly after Saddam Hussein's execution, Hashim al-Shibli resigned from his post citing as one of the reasons for his departure differences between himself and the Iraqi government over the execution of Saddam Hussein. See *ibid*.

167. See *supra* n. 135 and accompanying text.

168. See J. Swain and H. Jaber Amman, 'Bungled Hanging Turns Saddam into Victim', *The Sunday Times*, 7 January 2007 at p. 22 (stating that 'to kill Saddam on Saturday [30 December 2006] was particularly offensive to Iraq's Sunnis [as] it was the first day of their Eid holiday – it starts for Shiites the following day – and to execute Saddam on Saturday reinforced the Sunni view that the execution was an act of vengeance by Maliki's Shiite dominated government').

169. See *ibid*.

170. See *ibid*.

171. See e.g., *Canada Wire*, 'Butcher of Baghdad is Gone Former Dictator Saddam Hussein Hanged at Dawn for Crimes Against Humanity', 30 December 2006 (quoting Judge Munir Haddad as stating that 'all the measures have been done ... there is no reason for delay' even though the Eid al-Adha holiday was set to begin for Sunnis on the day of Saddam Hussein's scheduled execution). In addition, the holiday commemorates Abraham's receipt of a ram from God that Abraham sacrificed instead of his son. Thus, for Sunni Muslims throughout the world, Saddam Hussein's execution on 30 December 2006 carried with it tremendous symbolic significance.

3.3.3 *The execution violated other provisions of the Iraqi Criminal Procedure Code*

In the rush to push Saddam Hussein to the gallows, the Iraqi government also ignored multiple other provisions of the Iraqi Criminal Procedure Code. In particular, paragraph 288 of the Iraqi Criminal Procedure Code required that an IHT Judge, IHT Prosecutor, a representative from the Ministry of Interior, the director of the prison holding the condemned, the prison doctor, and the condemned's legal representative serve as witnesses.¹⁷² To that end, IHT Appellate Judge Munir Haddad, Munqith al-Faroon (the Al-Dujail Deputy Prosecutor), the Inspector General for the Ministry of Interior, the prison director, and a prison doctor all witnessed the execution. In addition, Mowaffak al-Rubaie (Iraq's National Security Adviser), Iraq's Minister of Education and several other individuals served as witnesses to the execution even though there were no provisions in Iraq's Criminal Procedure Code that permitted them to attend.

What makes the attendance of these additional witnesses disturbing is that the Prime Minister's Office never informed a representative from Saddam Hussein's legal team of the date of execution or offered to provide logistical support to facilitate attendance so that someone representing Saddam Hussein could witness the execution as permitted under paragraph 288 of the Iraqi Criminal Code.¹⁷³ Compounding these mistakes further, was the fact that at least one witness filmed what transpired in the execution chamber on his cell phone in violation of various provisions of the Iraqi Criminal Procedure Code and Iraqi Penal Code and circulated this footage to various press outlets.¹⁷⁴ Furthermore, as the room erupted into chants of revenge and Shiite revelry, Saddam Hussein was not permitted to make a final statement and was executed in the middle of his final prayer in violation of paragraph 289 of the Iraqi Criminal Procedure Code.¹⁷⁵

The Iraqi Government did permit Saddam Hussein to meet with his brother in the days prior to the execution but this visit occurred three days before his execution on 27 December 2006¹⁷⁶ as opposed to the day before execution as required under paragraph 291 of the Iraqi Criminal Procedure Code.¹⁷⁷ About the only guarantees provided to Saddam Hussein in Iraq's Criminal Procedure Code that were followed involved the participation of a Sunni cleric at the execution and the release of the condemned's corpse to Saddam Hussein's family for burial.¹⁷⁸ But

172. See *supra* n. 130 and accompanying text.

173. See *ibid.*

174. See Burns, *supra* n. 29 (stating that an 'illicit cellphone video [of Saddam Hussein's execution] has caused an uproar among Iraqi Sunnis and across the world, showing Mr. Hussein erect on the gallows in his black overcoat and gray beard, staring ahead, and answering back, as taunts flowed from Shiites gathered in front of the platform').

175. See *ibid.*; see also *supra* n. 132 and accompanying text.

176. See *supra* n. 27 and accompanying text.

177. See *supra* n. 136 and accompanying text.

178. See Associated Press, 'Saddam Hussein Buried in his Home Village of Auja', *Charleston Daily Mail*, 1 January 2007, at 5A.

even release of Saddam Hussein's corpse to his family for burial did not occur without pressure from the United States government¹⁷⁹ and only after crowds of people (carrying Munqith al-Faroon on their shoulders) danced in celebration around Saddam Hussein's body (which had been removed to the Prime Minister's office where a celebration of the execution of Saddam Hussein was underway) and peeled back his burial shroud so that others could take photographs and videotape the grisly scene.¹⁸⁰

4. CONCLUSION

The above described analysis demonstrates that the Iraqi government rode roughshod over many constitutional and legal proscriptions in its haste to execute Saddam Hussein. The legal, social, and political implications of the series of events that marked Saddam Hussein's appeal and execution placed an indelible stain on what was already a markedly difficult trial. Whether these events ultimately overshadow the IHT's efforts to provide voice to the thousands of victims of Saddam Hussein's regime (and particularly those from Al-Dujail) is difficult to know now.

What is known, is that for certain individuals who participated in the Al-Dujail trial and who wished for it to mark a break with the barbarism that characterized the Iraqi regime under Saddam Hussein, these events were tragic. They were not tragic because a brutal dictator of millions was summarily put to death. They were tragic because they demonstrated once again that fair and neutral justice, and more importantly, the rule of law in the new Iraq may be just as elusive as they were in the old Iraq.

179. See *ibid.*, (stating that 'even as late as Saturday night, it was unclear where Saddam would be buried, as Iraqi politicians grappled with concerns over security and allowing Saddam's resting place to become a shrine for his loyalists. Only after US pressure did the government agree to release Saddam's corpse to his tribesmen').

180. See Z. Kasim, 'New Saddam Hussein Execution Video', *Iraq Slogger*, 8 June 2007, at <http://www.iraqslogger.com/index.php/post/3135/New_Saddam_Hussein_Execution_Video>; see also <<http://www.youtube.com/watch?v=btO-Gd1goaw>>.

