COALITION PROVISIONAL AUTHORITY ORDER NUMBER 23

CREATION OF A CODE OF MILITARY DISCIPLINE FOR THE NEW IRAQI ARMY

Pursuant to my authority as the head of the Coalition Provisional Authority (CPA), relevant UN Security Council resolutions including Resolution 1483 (2003), and the laws and usages of war,

Noting that Resolution 1483 appeals to Member States *inter alia* to assist the people of Iraq to contribute to conditions of stability and security in Iraq,

Recalling in this regard that CPA Order Number 22 created the New Iraqi Army,

Acknowledging the need to ensure that the New Iraqi Army has a system of discipline to maintain order,

Noting that CPA Order Number 22 provides for both military and civilian jurisdiction over members of the New Iraqi Army

I hereby promulgate the following:

SECTION 1
DEFINITIONS

"Accused" means a Member of the New Iraqi Army subject to this Code of Military Discipline, against whom disciplinary proceedings are conducted in respect of an allegation of a Military Offense under this Code of Military Discipline,

"Charge" means a formal accusation in writing, prepared at the direction of the Disciplinary Officer and signed by a Disciplinary Officer, that a Member of the New Iraqi Army subject to this Code of Military Discipline has committed a Military Offense,

"Commander of the New Iraqi Army" means the Iraqi officer appointed by the Administrator of the CPA to command the New Iraqi Army,

"Disciplinary Proceedings" means the investigation into, hearing of and the decision reached, under this Code of Military Discipline in respect of an allegation of a Military Offense and includes any appeal of any such decision,

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"Elements of Military Offenses" means the elements of the Offenses required to be proved to the required criminal standard before a member of the New Iraqi Army can be convicted of a Military Offense.

"Junior Disciplinary Officer" means either the officer of at least Captain in rank who at the time of any part of the Disciplinary Proceedings in respect of an allegation under this Code of Military Discipline commands the company or equivalent unit, or battalion or equivalent unit of which the Accused is a member, or the officer of at least the rank of Captain who is appointed, in accordance with the provisions of this Order, by an officer in command of a Brigade to be the Junior Disciplinary Officer of the Accused for the Disciplinary Proceedings,

"Member of the New Iraqi Army" means a person serving in the New Iraqi Army from the time of attestation until the date of termination of service,

"Military Court" means a civilian court with a civilian judge who has been appointed as a Military Judge pursuant to Section 5 of this Order,

"Military Judge" means a civilian judge with jurisdiction over Military Offenses in accordance with the provisions of this Order,

"Military Offense" means an act or omission described in Section 3 of this Code of Military Discipline,

"New Iraqi Army" means the military forces of Iraq organized for the purposes set forth in this Order including all components of the national armed forces of Iraq, specifically including the ground forces recruited, trained, and organized as the first step in the process of creating a military defense force for the new Iraq. Unless the context clearly requires otherwise, all references to the "New Iraqi Army" are references to any element of the national defense forces of Iraq,

"Senior Disciplinary Officer" means either the officer of at least Lieutenant Colonel in rank who at the time of any part of the Disciplinary Proceedings in respect of an allegation under this Code of Military Discipline commands the Battalion of which the Accused is a member, or the officer of at least the rank of Lieutenant Colonel who is appointed, in accordance with the provisions of this Order, by the Commander of the New Iraqi Amy to be the Senior Disciplinary Officer of the Accused for the Disciplinary Proceedings.

SECTION 2
MILITARY JURISDICTION

1) Members of the New Iraqi Army are subject to this Code of Military Discipline at all times from the date of their attestation until the date of termination of service.

2) A Member of the New Iraqi Army who is subsequently determined to have been ineligible for service in the New Iraqi Army remains subject to the Code of Military Discipline until discharged.

3) All Members of the New Iraqi Army will remain subject to the jurisdiction of the civilian courts while serving as Members of the New Iraqi Army; provided, Members of the New Iraqi Army enjoy immunity from civilian criminal prosecution or civil liability for acts or omissions arising within the scope of their duties and authorized operations to the same degree as other governmental officials.

SECTION 3
MILITARY OFFENSES

1) Any Member of the New Iraqi Army subject to this Code of Military Discipline who commits any of the following shall commit a Military Offense and shall be liable on conviction to any punishment laid down in Sections 10 and 13 of this Order.

(a) mistreatment of Members of the New Iraqi Army of inferior rank;
(b) causing or engaging in a disturbance or behaving in a disorderly manner;
(c) behaving in an insubordinate manner;
(d) striking a Member of the New Iraqi Army or a member of another armed force of superior rank or civilian instructor placed in authority over the accused;
(e) while on sentry duty either
    (i) engaging in misconduct, or
    (ii) failing to do the Member's duty;
(f) disobeying a lawful order;
(g) drunkenness if, owing to the influence of alcohol or any drug, whether alone or in combination with any other circumstances, the Member is:
    (i) unfit to be entrusted with his duty,
    (ii) unfit to be entrusted with any duty which the Member was reasonably aware that he could be called upon to perform,

(iii) behaving in a disorderly manner, or;
(iv) behaving in any manner likely to bring discredit on the New Iraqi Army;

(h) absence without leave;
(i) avoiding the performance of a duty or negligently performing a duty;
(j) making a false statement concerning any official matter relating to the New Iraqi Army;
(k) fighting with another Member of the New Iraqi Army;
(l) willfully or by neglect damaging or causing damage to or the loss of any property of the New Iraqi Army;
(m) conduct to the prejudice of good order or military discipline;
(n) behaving in a manner likely to bring discredit on the New Iraqi Army.

2) The Elements of the Military Offenses are contained in Annex A to this Order.

3) Any Member of the New Iraqi Army subject to this Code of Military Discipline who commits a civilian criminal offense shall be guilty, by reason of so doing, of a Military Offense against this Section and liable to trial, and on conviction, to any punishment under the provisions of this Order.

4) Any Member of the New Iraqi Army subject to this Code of Military Discipline or any other person who by the law of war is subject to trial by a Military Court for any crime or offense against the law of war who commits a violation of the law of war as adopted by Iraq or recognized as customary international law shall be guilty, by reason of so doing, of a Military Offense against this Section and liable to trial, and on conviction, to any punishment under the provisions of this Order. In the event the law of war convention or treaty was adopted without specifying the penalty for violations or otherwise fails to specify the criminal penalty, the maximum penalty shall be the maximum penalty specified for the most closely analogous offense under the civilian criminal code.

SECTION 4
DISCIPLINARY OFFICERS

1) Junior Disciplinary Officers have jurisdiction over all Military Offenses created under this Order, with the exception of the Military Offenses created under Sections 3(3) or 3(4), in respect of Members of the New Iraqi Army below the rank of Lieutenant.

2) An officer in the New Iraqi Army, not below the rank of Captain may be appointed in writing as a Junior Disciplinary Officer by an officer in command of a Brigade to be the Junior Disciplinary Officer of the accused in respect of the allegation of the commission of any Military Offense.

3) Senior Disciplinary Officers have jurisdiction over all Military Offenses created under this Order, with the exception of the Military Offenses created under Sections 3(3) or 3(4), in respect of members of the New Iraqi Army in the rank of Lieutenant and above, so long as the Senior Disciplinary Officer is at least one rank above the Accused. Senior Disciplinary Officers have jurisdiction over all appeals of decisions of Junior Disciplinary Officers.

4) An officer in the New Iraqi Army, not below the rank of Lieutenant Colonel may be appointed in writing as a Senior Disciplinary Officer by the Commander of the New Iraqi Army to be the Senior Disciplinary Officer of the accused in respect of the allegation of the commission of any Military Offense.

SECTION 5
MILITARY COURTS AND MILITARY JUDGES

1) Military Courts have jurisdiction over those Military Offenses created under Sections 3(3) and 3(4) of this Order.

2) Military Judges have jurisdiction over those Military Offenses created under Sections 3(3) and 3 (4) of this Order.

3) In circumstances in which allegations against an Accused involve Military Offenses under both Section 3(1) and Section 3(3) or 3(4), then the Military Court and Military Judge to which such matters are referred will have jurisdiction over Military Offenses under Section 3(1) in addition to those under Section 3(3) or 3(4).

4) Military Judges will be selected from sitting civil judges. The Senior Advisor, Ministry of Justice, in coordination with the Interim Minister of the Justice will appoint such civil judges, as he may deem appropriate, to be Military Judges on a standing basis who will sit as Military Judges when a Military Offense is referred to them in accordance with the provisions of this Order.

5) A civil court in which a Military Judge is conducting Disciplinary Proceedings in respect of a Military Offense will be deemed to be a Military Court for the duration of those Disciplinary Proceedings.

SECTION 6
APPELLATE COURTS

In circumstances in which a Member of the New Iraqi Army has been convicted by a Military Court then the appellate court to which any appeal is made will have jurisdiction over any Military Offense referred. Appeals will be made to the appellate court with jurisdiction to hear appeals from the trial court.

SECTION 7
ARREST

1) Any Member of the New Iraqi Army subject to this Code of Military Discipline found committing a Military Offense, or reasonably suspected of committing a Military Offense, may be arrested in accordance with the provisions of this Section.

2) A Member of the New Iraqi Army subject to this Code of Military Discipline may be arrested by (a) a Member of the New Iraqi Army of superior rank, (b) by a civilian instructor placed in authority over the accused, (c) by a civilian police officer acting within the officer's authority, or a Member of the New Iraqi Army serving in a provost position.

3) As soon as possible, but in any event no later than 24 hours following arrest, the arrested Member of the New Iraqi Army must be informed of the reasons for his arrest.

4) Within 24 hours of arrest, unless the exigencies of operational circumstances prevent it, a Disciplinary Officer must be informed of the arrest and must consider the necessity of retaining the Member of the New Iraqi Army in arrest. The Disciplinary Officer shall order the release of the arrested Member of the New Iraqi Army unless he reasonably believes that if released:

(a) the arrested Member of the New Iraqi Army will absent himself or flee disciplinary proceedings;
(b) there is a risk that evidence will be lost, tainted or destroyed; or
(c) the arrested Member of the New Iraqi Army will commit further Military Offenses if released.

5) If, in accordance with Section 7(5) of the present Order, the Disciplinary Officer shall have determined that the member of the New Iraqi Army under arrest shall be further retained, the period of such further retention shall not, unless the exigencies of operational circumstances prevent it, exceed 48 hours.

6) Except for the exigencies of operational circumstances or the referral of the matter to a Military Court, before the expiration of the period of 72 hours of arrest, the Disciplinary Officer must have either released the Member of the New Iraqi Army under arrest from arrest under this Section or dealt with the allegation of the Military Offense upon which the arrest is based through Disciplinary Officer action or referral to a Military Court.

7) In circumstances in which a suitable facility within a military location in which the Accused can be retained under arrest is unavailable, use may be made, with the agreement of the civilian police, of such civilian police or prison facilities as may be available.

8) Upon referral to a Military Court, that Military Court will determine whether an Accused shall remain in arrest on the basis of the civil procedures applicable in that court.

SECTION 8
INVESTIGATION OF ALLEGATIONS

1) An allegation that a Member of the New Iraqi Army has committed a Military Offense created under Section 3(1), Section 3(3), or Section 3(4) shall be reported to a Disciplinary Officer, who shall cause each such allegation to be investigated.

2) In circumstances involving an allegation of a Military Offense under Section 3(3) or Section 3(4), the Disciplinary Officer will act in accordance with Section 13 of this Order.

3) In circumstances in which allegations against an Accused involve Military Offenses under both Section 3(1) and Section 3(3) or Section 3(4), the Disciplinary Officer shall, if the Disciplinary Officer considers it is in the interests of justice for the matters to be tried together, refer all allegations to a Military Judge in accordance with Section 13 of this Order.

4) During the course of an investigation into an allegation of a Military Offense under section 3(1), if it becomes necessary to speak to the Accused, the Accused shall be offered the opportunity to have an officer of the member's choice, if reasonably available, and of at least the rank of the investigator present during the conversation to assist the Accused. It shall be explained that the Accused is not obliged to say anything unless the Accused wishes to do so. The answers of the Accused will be written down sequentially, together with the questions asked and the Accused shall have an opportunity to sign the record as accurate.

SECTION 9
DECISION BY DISCIPLINARY OFFICERS ON CHARGING

1) In the case of an allegation against an Accused with respect to of a Military Offense under Section 3(1), the Disciplinary Officer will decide whether the evidence discovered during the investigation would support a Charge being preferred against the Accused.

2) If the Disciplinary Officer determines that a Charge should be preferred, the Charge shall be reduced to writing, signed by the Disciplinary Officer and a copy given to the Accused.

3) At the same time or as soon as reasonably practicable thereafter the Accused shall be provided a copy of all documentary evidence and access to all real evidence with respect to the charged Military Offense.

SECTION 10
DISCIPLINARY HEARING

1) The Accused shall have at least 24 hours to prepare for the Disciplinary Hearing. The 24-hour period shall begin when the written Charge or copy of the evidence is provided to the Accused, whichever is later.

2) The Accused shall have the assistance of an Officer of his choice, subject to reasonable availability, in preparing for and during the Disciplinary Hearing.

3) Disciplinary Hearings will not be open to the Public.

4) Disciplinary Hearings will be conducted in accordance with the procedures set forth in Administrative Instructions issued by the Administrator of the CPA or by a civilian member of the CPA reporting directly to the Administrator and to whom authority to issue such Administrative Instructions is delegated.

5) Disciplinary Hearings shall be conducted in a manner that provides for the basic rights of an Accused, including but not limited to the following rights:

(a) the Accused shall have the Charge explained by the Disciplinary Officer;
(b) the Accused shall have the right to question witnesses called to give evidence against the Accused;

(c) the Accused shall have the right to present evidence in support of his case, and if convicted, to present evidence or speak in mitigation of his punishment
(d) the Accused shall have the right to remain silent and have no adverse consideration taken by the exercise of this right

6) A Disciplinary Officer, having considered all the evidence presented to him, will only find an Accused guilty of the Military Offense charged if the Disciplinary Officer is satisfied that Accused committed the Offense in respect of each of the elements of the Military Offense listed in the Annex to this Order.

SECTION 11
PUNISHMENTS BY DISCIPLINARY OFFICERS

1) In adjudicating cases involving enlisted or non-commissioned personnel, a Disciplinary Officer may award the following punishments in respect of each Military Offense of which the member has been found guilty:

(a) Detention for a period not longer than 7 days;
(b) Fine not exceeding 14 days' pay;
(c) A reprimand;
(d) Extra duties to a maximum of 7 days;
(e) In respect of a Private First Class, Corporal, or Sergeant, reduction by one rank;
(f) Stoppages of pay in respect of damage or loss caused by the act or acts which formed the basis of the Offense charged, not exceeding 14 days' pay.

2) A Junior Disciplinary Officer may combine those punishments listed in Sections 11(1)(b) and 11(1)(f), except that no more than 28 days pay may be taken from the convicted member of the New Iraqi Army in respect of all the Offenses dealt with by the Junior Disciplinary Officer at one hearing.

3) Detention may only be awarded to a Private, Private First Class, or Corporal. It may not be combined with any other punishment except stoppages of pay.

4) Reduction in rank may not be combined with any other punishment.

5) A reprimand and extra duties may be combined with any other punishment not otherwise excepted under this Section.

6) In adjudicating cases involving officers, a Senior Disciplinary Officer may only award the following punishments in respect of each Military Offense of which the member has been found guilty:

(a) Fine not exceeding 14 days' pay;
(b) A reprimand;
(c) Extra duties to a maximum of 7 days;
(d) Stoppages of pay in respect of damage or loss caused by the act or acts which formed the basis of the Offense charged, not exceeding 14 days' pay.

7) A Senior Disciplinary Officer may combine those punishments listed in Sections 11(6)(a) and 11(6)(d), except that no more than 28 days pay may be taken from the convicted Member of the New Iraqi Army in respect of all the Offenses dealt with by the Senior Disciplinary Officer at one hearing.

8) A reprimand and extra duties may be combined with any other punishment not otherwise excepted under this Section.

SECTION 12
APPEAL FROM DISCIPLINARY OFFICER

1) An Accused who has been convicted by a Junior Disciplinary Officer of a Military Offense under Section 3(1) of this Code of Military Discipline shall be entitled to appeal to the Senior Disciplinary Officer. An Accused must submit the appeal and any supporting evidence in writing to the officer in command of the convicted member within 14 days of the Disciplinary Hearing.

2) An Accused who is an officer of the New Iraqi Army who is convicted by a Senior Disciplinary Officer of a Military Offense under Section 3 (1) of this Code of Military Discipline shall be entitled to appeal to the Commander of the New Iraqi Army or the senior Commander of the New Iraqi Army. An Accused must submit the appeal and any supporting evidence in writing to the officer in command of the convicted member within 14 days of the Disciplinary Hearing.

SECTION 13
REFERRAL FOR TRIAL BY MILITARY JUDGE

1) In the case of an allegation of a Military Offense under Section 3(3) or Section 3(4) the Disciplinary Officer will refer the allegation, together with all available evidence relating to the allegation, to a Military Judge for consideration.

2) Where an investigation into an allegation of a Military Offense under Section 3(1) discovers evidence of additional Military Offenses under Section 3(3) or Section 3(4), the Disciplinary Officer shall terminate the investigation and refer the allegation, together with all available evidence, to a Military Judge for consideration.

3) In accordance with Section 8(3) of this Order, where there are allegations against an Accused involving Military Offenses under both Section 3(1) and Section 3(3) or Section 3(4) the Disciplinary Officer shall, if the Disciplinary Officer considers it in the interests of justice for the matters to be tried together, refer all allegations, together with all available evidence, to a Military Judge.

4) The Military Judge will investigate and otherwise deal with the allegation of the Military Offense referred in accordance with this Section in the manner applicable for civil Offenses laid down in the Iraqi Law of Criminal Procedure 1971 as amended by Iraqi law and by CPA Orders.

SECTION 14
PUNISHMENTS BY MILITARY JUDGE

The Military Judge will apply the sentences appropriate to the civil Offense charged under the provisions of Section 3(3) or Section 3(4), except that in determining the appropriate level of sentence within the sentencing range for the Offense, the Military Judge may consider the impact that the Military Offense had on good order and discipline within the New Iraqi Army.

SECTION 15
APPEAL FROM MILITARY JUDGE

1) An Accused who has been convicted by a Military Judge of a Military Offense shall be entitled to appeal in accordance with civil procedures.

2) The court hearing the appeal will consider the matter appealed in accordance with the applicable law and procedure for civil Offenses laid down in the Iraqi Law of Criminal Procedure 1971 with amendments and as amended by CPA Orders and the Third Edition of the Iraqi Penal Code 1969, with amendments and as amended by CPA Orders.

SECTION 16
SUSPENSION OF IRAQI LAWS

The Iraqi Military Law Code Number 13 of 1940, the Iraqi Military Procedures Code Number 44 of 1941, the Code of Legal Notification of Military Personnel

Number 106 of 1960, Punishment of Military Deserters Law Number 28 of 1972, and the Penal Code of the Popular Army Number 32 of 1984 have been suspended under CPA Order Number 21 entitled Creation of a New Iraqi Army.

SECTION 17
ADMINISTRATIVE INSTRUCTIONS

The Administrator of the CPA or a civilian member of the CPA reporting directly to the Administrator and to whom such authority is delegated may issue Administrative Instructions not inconsistent with this Order, prescribing all matters that are necessary or convenient for giving effect to or carrying out the purposes of this Order.

SECTION 18
ENTRY INTO FORCE

This Order shall enter into force on the date of signature.



L. Paul Bremer, Administrator
Coalition Provisional Authority