

**IRAQI HIGH CRIMINAL COURT  
(formerly The Iraqi Special Tribunal)**

**Baghdad, Iraq**

**Iraq Interim Government,**

**vs.**

**Saddam Hussein Al-Majid, et al**

**Defendants.**

**EMERGENCY REQUEST TO THE COURT TO ACT TO  
SECURE PROTECTION OF DEFENSE COUNSEL, THEIR  
FAMILIES, LEGAL ASSISTANTS, INVESTIGATORS  
AND DEFENSE WITNESSES AND TO SUSPEND  
TRIAL PROCEEDINGS UNTIL SECURITY IS PROVIDED**

This Request is submitted pursuant to the oral notice given the Court at the November 28, 2005 hearing.

1. A Trial That Exposes Participants in the Judicial Process to Assaults, Kidnapping, Summary Execution Without Assuring Protection for All Such Participants, in the Presence of Constant Threats, Assaults and Killings, Makes A Fair Trial Impossible, Surrenders the Independence of the Judiciary to Aggression and Denies Defendants The Effective Assistance of Counsel

The first duty of the Court is to protect its ability to perform its duties. This is not possible in the face of continuing threats, assaults and assassinations.

The Court cannot proceed with the trial until measures adequate to assure the safety of all Court participants are in place. If the judicial process is continued in the face of serious threats and violent acts against persons essential to the adjudication of its cases, fair trials are not possible. Fear, injury and death will obstruct justice, as they already have.

The potential victims of such threats and violent acts are not only the judges, prosecutors, the defendants, defense attorneys, supporting personnel, investigators, witnesses and families of all persons participating in the judicial process. The ultimate victim is the judicial system itself and the rule of law. Fear alone can prevent a fair trial. Judges, lawyers, investigators and other essential participants in trials cannot perform effectively in constant fear of death. The deaths of principal participants will destroy the judicial system.

The Court cannot recklessly endanger the lives of participants essential to its performance, or fail to assure fair trials, the very reason for its existence, by proceeding to trial in the present volatile and deadly circumstances until it knows adequate security measures are in place to protect all participants in the performance of the judicial process.

Until the Court achieves the required protection it is not independent of external pressures, influence, or control, as required by all law, because its performance is subject to constant fear, crippling threats and assaults, if not termination. A fair trial is not possible in the face of pervasive threats and random killings where there is not adequate protection for essential participants in trials.

If the Court proceeds before adequate measures are in place for such protection, it bears responsibility for deaths and injuries that occur and disruptions of judicial proceedings, because it forced action exposing those who are executed, or injured to violence in the face of a clear and present danger.

If protection provided fails to prevent assaults and executions of persons essential to trials, then there can be no trials until peace is restored.

2. The Right to Life of All Persons Is Equal, but the Lives of Persons in the Defense Camp

are Inherently More Vulnerable to Violence Than Any Other Persons In The Judicial Process.

All persons involved in the judicial process except those in the defense camp are part of the government of the State. As such, they are identified with government, associate with law enforcement personnel regularly, share a common employer and commitment and have the power of government to protect them. When there are threats against government personnel and prosecution witnesses, protection is provided as essential to performance of the government itself.

Government employees work and usually live in a more protected environment. They are not viewed with suspicion and law enforcement, including the military, sees them as loyal to the State and at a personal level, as “one of us”, or “on our side”. The concern of government employees for their own safety is shared by law enforcement and the military and requests for special protection are provided without question wherever possible and reasonable.

Thus, there is a high level of protection in place for the Judges, Prosecutors, and supporting personnel in this case provided as a duty without request, and upon request for additional protection, from the beginning of their service. This is not only proper, it is essential. We hope it will provide adequate.

While not aware of the specific protection afforded Judges and Prosecutors and believing the extent of the protection of all persons should be secret, in the roughly 48 hours international defense counsel were in Baghdad, November 27-29, we observed judges and prosecutors apparently residing in one of the most protected buildings in the International Zone (Green Zone), and also riding in armor protected vehicles, with escort vehicles accompanied by U.S. soldiers with automatic rifles and driven to the steps of the Court in lanes reserved for U.S. military, and

other special persons, such as VIP's.

In contrast, defense counsel have as yet received virtually no protection from the U.S. or the State and have none in place for 24 hours/ 7 days each week for themselves, their families, staff, investigators, or witnesses more than 45 dangerous days after first summary execution of a senior defense lawyer, the October 19, 2005, one of 13 who attended the October 18, 2005 hearing of the Court. The summary execution of a second lawyer and wounding of a third, both of whom attended the October 18 hearing, while riding in mid day city traffic in early November shows the continuing danger to surviving defense lawyers.

Persons accused of crimes and especially political crimes are seen as enemies of the State. Lawyers for persons accused of political crimes are seen as aiding enemies of the State by police and the military. Police and the military will not provide them protection unless ordered to do so and the importance of the protection is carefully explained to them.

3. The U.S. and Iraqi Interior Ministry Have Made No Serious Offer of Protection for the Defense Camp.

Negotiations for the protection of defense attorneys and their families have been undertaken almost entirely through a single U.S. Army captain, but no serious offer for such protection has been made.

A first offer included a non specific opportunity for defense counsel and their families to live in the International Zone. This offer ignores the fact that the International Zone includes the Interior Ministry which the defense believes controls some of the most dangerous deaths squads presently attacking persons associated with President Saddam Hussein, and Sunni's generally, and other government agencies and private organizations controlling the major Iraqi groups attacking

the Sunni population and supporters of the prior administration. The population within the International Zone supports the new regime established by the U.S. military. It also includes command personnel and elements of U.S. forces which are attacking Sunni's and others opposed to the U.S. occupation of Iraq and in and around Baghdad and elsewhere across the country, including Falluja, Ramadi, western Anbar Province, Tikrit and other places named in the daily news. There is not an area in Iraq with greater a concentration of hostility and potential for violence against persons associated with the administration of President Saddam Hussein and the legal defense of its leadership than the International Zone. Defense counsel and their families cannot be safe in the International Zone.

A second tentative offer of protection is funding for three guards, ages 18 to 30, authorized to carry hand guns for each defense counsel and his family. If the guards were assigned solely for protection of the counsel 24 hours/7 days each week, each guard would have to work 8 hours a day, 7 days a week, to provide counsel the protection of only one guard at all times. The hand gun would be useless against attackers with automatic rifles, or machine guns. Even if the counsel had a secure house for himself and his family, 3 guards with pistols would be useless against an attack like either of those that took the lives of defense counsel in October and November 2005.

4. Undersigned counsel will submit, under seal, a proposal for the protection of defense counsel, their families, legal assistants, investigators and witnesses, that will enable defense counsel to proceed with the trial with reasonable confidence that it would be sufficient to protect the defense camp and the judicial process from acts against their lives as soon as the Court directs the parties responsible for protection to receive and consider it. Major elements of the proposal

have not been mentioned in this submission to protect their confidentiality. The proposal would permit the trial to proceed without defense counsel being forced to abandon their responsibility for the safety of their families, staff and witnesses, or the client they will never desert, and for whom they must secure a fair trial in a legal court.

5. While defense counsel will never desert on their clients, they are fully aware that their summary execution is the ultimate abandonment. Already 3 of the 8 defendants have been left without counsel by the execution of two lawyers, wounding of a third and failure of others to appear for unknown reasons. Defense counsel cannot be summarily dismissed for failure to appear for a court date without an inquiry by the Court as to the reasons for the failure and a finding supported by the facts that the failure constituted abandonment. A clear, direct threat to defense counsel which makes an attempt to appear in Court too dangerous cannot be held to be abandonment.

The summary replacement of counsel for two defendants and provision of only one week for a third defendant to locate counsel of choice for his defense by the Court at the November 28, 2005 hearing was arbitrary and violated due process of law and the right of every accused to counsel of choice. The Court did not even explain to defendants their continuing right to counsel of choice.

The Court, before replacing defense counsel must first determine whether absent counsel are willing and able to represent their clients if given reasonable protection. If they are willing and able they should remain as counsel if their client still chooses them. This may depend on the reason they failed to appear. If the counsel who failed to appear is properly discharged, then each defendant is entitled to a reasonable time, considering their status of confinement and difficulty of

communication, to obtain new counsel of choice. New counsel of choice, if obtained, is then entitled to a reasonable time, or the minimum statutory time of 45 days, to prepare the defense.

Under existing circumstances, if the Court assigns counsel not chosen by a defendant that defendant is entitled to independent counsel to examine assigned counsel to determine whether assigned counsel is capable of faithfully and vigorously representing the defendant with total loyalty to his rights and interests.

6. By setting a schedule for briefs and oral argument on the issue of the legality of the Court, as is being requested simultaneously herewith, this case can proceed to determine the legality of the Court while security for the defense camp is established without any loss of time.

WHEREFORE, it is respectfully requested that the Court seek protection for defense counsel, their families, legal assistants, investigators and defense witnesses from the government of the United States and Iraq and suspend further proceedings until a protection plan for defense counsel and their families and other defense related person is in place and order that negotiations begin immediately and be pursued without delay until completed.

Dated: December 5, 2005

Respectfully submitted,

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