COALITION PROVISIONAL AUTHORITY ORDER NUMBER 25

CONFISCATION OF PROPERTY USED IN OR RESULTING FROM CERTAIN CRIMES

Pursuant to my authority as Administrator of the Coalition Provisional Authority (CPA), under the laws and usages of war, and consistent with relevant U.N. Security Council resolutions, including Resolution 1483 (2003),

Recognizing that crimes involving the theft of natural resources or state property and crimes involving the damage of utility infrastructure including water and power facilities harm all Iraqi people,

Noting that one of the means of deterring such crimes is to deprive criminals of the proceeds of crime and of the property used or intended for use in the commission of crimes,

Understanding the need for a fair process to ensure that the rights of innocent persons are not infringed by unwarranted confiscation of property,

I hereby promulgate the following:

Section 1
Definitions

1) "Confiscation Hearing" means the hearing in an Investigative Court conducted by an Investigative Judge for the purpose of determining whether seized property is Criminal Property as defined in this Order and subject to confiscation.

2) "Criminal Property" means

   a) Property used or intended for use in the commission of a criminal offense involving Natural Resources or Utility Infrastructure including any means of transport or conveyances, such as aircraft, vehicles, or vessels that are used, or are intended for use, to transport, or in any manner facilitate the commission of such criminal offenses;

   b) Property acquired through or as a result of the commission, or attempted commission of a criminal offense involving Natural Resources or Utility Infrastructure; and

   c) All monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for unlawfully

acquired Natural Resources or parts of Utility Infrastructure, or to otherwise facilitate the commission of an offense within the scope of this order.

3) "Natural Resources" means resources occurring in nature that can be used for the creation of raw materials or products as identified in Article 13 of the Interim Constitution of 1970 including products resulting from such resources such as refined petroleum, benzene, diesel fuel, or other petroleum products after refinement.

4) "Utility Infrastructure" means

   a) any and all parts of public service facilities including power generation and supply equipment including wires and towers,

   b) water treatment and delivery apparatus including irrigation systems and pipes, and

   c) information technology components including telephone and computer cabling.

Section 2
Confiscation of Criminal Property

1) Criminal Property shall be subject to confiscation; confiscated property shall vest as provided in Section 6 below.

2) Criminal Property may be seized by Coalition Forces or Iraqi Police in the manner set forth below in Section 3.

3) Confiscation Hearing procedures described in this Order are in addition to other confiscation laws that require the conviction of the accused prior to the confiscation of the property.

4) A criminal conviction is not required under these procedures prior to the confiscation of Criminal Property.

5) The Confiscation Hearing procedures set forth in this Order are independent of criminal investigations or prosecutions and may be pursued irrespective of the disposition of criminal charges.

Section 3
Procedures for the Seizure and Confiscation of Criminal Property

1) When suspected Criminal Property is identified in connection with an investigation of or the apprehension of a person for the commission or attempted commission of a criminal offense involving Natural Resources or Utility Infrastructure, such suspected Criminal Property is subject to immediate seizure by Coalition Forces or Iraqi Police.

2) The authority seizing the suspected Criminal Property shall inform the person in possession or control of the property at the time of seizure that the property is being seized as suspected Criminal Property and will be subject to confiscation proceedings.

3) Within seven days of seizure pursuant to this Order, the authority that seized the suspected Criminal Property shall report the seizure of such property to a court of competent jurisdiction and to the Ministry of Finance. The following courts are courts of competent jurisdiction to conduct Confiscation Hearings:

   a) Except as provided in Section 3.3(b) below, the Investigative Court with jurisdiction over the geographic area in which the property was seized shall have jurisdiction to conduct Confiscation Hearings. For seizures within the territorial waters or airspace of Iraq, the Investigative Court nearest the port of entry or with jurisdiction over the geographic area of the storage location of the seized property shall have jurisdiction to conduct Confiscation Hearings.

   b) The Investigative Court of the Central Criminal Court of Iraq shall have jurisdiction to conduct Confiscation Hearings involving seizures of suspected Criminal Property. Such cases shall be referred to the Central Criminal Court in accordance with the referral procedures set forth in CPA Order 13 (Revised), The Central Criminal Court of Iraq, CPA/ORD/11 Jul 2003/13.

4) The report to the Investigative Court and the Ministry of Finance by the authority that seized the suspected Criminal Property shall describe the seized property with serial or identification numbers, if any, and state the time, date and place of seizure, the identity of the person possessing or in control of the property at the time of seizure, and any other available identifying information about the owner of the seized property.

5) Following the report of the seizure of suspected Criminal Property, the Investigating Judge shall make reasonable attempts to identify the owner and others with a documented interest in the suspected Criminal Property including the review of reasonably available property registration records.

6) Once identified, the owner of the seized property and others with a documented interest shall be notified within a reasonable time in writing of the Confiscation Hearing, which shall occur no earlier than seven days following notification.

7) In the event the Investigating Judge is unable to identify or notify the owner or others with a documented interest in the suspected Criminal Property, the Investigative Court shall publish a short description of the Criminal Property, the date and place of seizure, and the date and time of the Confiscation Hearing described in Section 4 below. This publication will be made in two general circulation newspapers in the vicinity of the location of the seizure for five consecutive issues if published in daily publications or two consecutive issues if published less than daily. Confiscation Hearings may not occur before the expiration of three days from the last date of publication.

Section 4
Confiscation Hearings

1) The circumstances surrounding the seizure of suspected Criminal Property shall be reviewed by the Investigating Judge in accordance with the procedures of Investigative Hearings set forth in Law (23) of 1971, the Law on Criminal Proceedings as modified by CPA Implementing Memorandum 3 (CPA/MEM/18 Jun 2003/03).

2) Persons asserting lawful interests in suspected Criminal Property shall be provided an opportunity to be heard at the Confiscation Hearing.

3) The Investigating Judge shall review available evidence and information presented by persons with lawful interests in suspected Criminal Property at the Confiscation Hearing. The Investigating Judge shall determine whether the suspected Criminal Property is Criminal Property as defined in this Order.

4) In the event the Investigating Judge is satisfied that the property is Criminal Property and the owner knew or reasonably should have known that the property was used or was intended to be used in a criminal offense involving Natural Resources or Utility Infrastructure, the Investigating Judge shall order that the property be confiscated. Following the Confiscation Hearing, the Investigating Judge shall promptly inform the Ministry of Finance of the description and location of the confiscated property. The owner of property ordered to be confiscated may appeal such order in accordance with Section 5 below.

5) In the event the Investigating Judge is not satisfied that the property is to be confiscated, the property shall be made available for release to the individual

identified as the owner of the property, provided it is not necessary to retain the property for use in future criminal or other confiscation proceedings related to the suspected offense. The governmental authority may appeal such order in accordance with Section 5 below.

5) Courts conducting Confiscation Hearings shall report all such hearings to the Ministry of Justice and Ministry of Finance. Reports will include: the name of the suspected owner of the property, description of property, Investigative Court and Judge conducting the Confiscation Hearing, date of the Confiscation Hearing, and outcome. Reports will be made by the 15th day of the month and will report all Confiscation Hearings conducted in the prior month. Investigative Courts will also report to the Ministry of Justice any property not forwarded to the Ministry of Finance for disposition or returned to the owner within sixty days following the Confiscation Hearing.

Section 5
Appeal from Confiscation Hearings

1) Within thirty days of the decision regarding the confiscation of the Criminal Property, the decision of the Confiscation Hearing Investigative Judge may be appealed to the Felony Trial Court with jurisdiction over cases arising from the Investigative Court conducting the Confiscation Hearing or to the Felony Trial Court of The Central Criminal Court of Iraq.

2) The Felony Trial Court with jurisdiction to which the confiscation decision has been appealed shall review the evidence presented at the Confiscation Hearing and determine whether the decision of the Investigative Judge was warranted by the evidence. The owner or governmental authorities may present briefs accompanied by sworn affidavits to the Felony Trial Court for consideration. The appeal to the Felony Trial Court is not a new trial, but is limited to a review of the record of the Investigating Court and matters submitted by the persons with an interest in the confiscated property or governmental authorities.

3) In the event that the Felony Trial Court is satisfied that the property is Criminal Property subject to confiscation, the Felony Trial Court shall order that the property be confiscated and disposed of in accordance with Section 6 below. There shall be no further appeal from the determination of the Felony Trial Court.

4) In the event the Felony Trial Court is not satisfied that the property is Criminal Property, the Felony Trial Court shall order that the seized property be made available for release to the owner of the property, provided it is not necessary to retain the property for use in future criminal or other confiscation proceedings. The Felony Trial Court shall inform the Ministry of Finance that the property is to

be released to the owner. In the event the property has been disposed of in accordance with Section 6 below prior to the decision of the Felony Trial Court granting the appeal, the Felony Trial Court shall inform the Ministry of Finance of the description of the property, owner, and appeal result. In the event the property cannot be returned, the Ministry of Finance shall pay (i) the amount of the assessed market value of the property at the time of seizure or (ii) the actual amount paid if sold at public auction, whichever is greater, to the owner within thirty days of the decision by the Felony Trial Court.

Section 6
Disposition of Criminal Property

1) Investigating Judges may not order the release of suspected Criminal Property prior to conducting a Confiscation Hearing.

2) Property determined to be Criminal Property by the Investigating Judge shall be disposed of by the Ministry of Finance. All monies, negotiable instruments, or securities will be accounted for by the Ministry of Finance and paid into the Central Bank of Iraq. For other property, the Ministry of Finance shall undertake an assessment of the fair market value at the time of seizure of the property confiscated under the Order.

3) Following a determination of the fair market value at the time of seizure of the Criminal Property, the Ministry of Finance, in its discretion, may retain such property for official governmental use and may deliver the property to ministries that have requirements for the use of such property or sell it in a public auction according to the Law of Selling and Leasing State Properties No. (32) of 1986. Proceeds of such sales shall be paid into the Central Bank of Iraq.

4) Appeals from the decision of the Investigative Court, shall not delay the disposition of such property.

5) In the event the Investigative Judge determines seized property is not Criminal Property subject to confiscation, the property shall be maintained for 60 days following the hearing so that it may be claimed by the owner. In the event the owner fails to claim such property within the 60-day period, the property shall be disposed of in accordance with this Section.

6) The Ministry of Finance shall deliver a Criminal Property report by the 15th day of each month to the CPA, Director of Management and Budget. The report will contain information regarding all Criminal Property disposed of during the prior month. The Criminal Property report will include the name of the suspected owner, Investigative Court conducting the Confiscation Hearing, date of the

Confiscation Hearing, description of property, fair market value at the time of seizure, and amount paid if sold or the government agency in possession of the property if retained for government use.

Section 7
Preservation of Other Confiscation Laws

This Order is in addition to other confiscation provisions of Iraqi law, and shall not preclude the enforcement of such provisions.

Section 8
Administrative Instructions

The interim Minister of Justice, in coordination with CPA ministry advisors, may issue such Administrative Instructions as are necessary to carry out this Order. The interim Minister of Finance, in coordination with the CPA Director of Management and Budget, may issue such Administrative Instructions as are necessary to carry out the financial and property management aspects of this Order.

Section 9
Entry into Force

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

L. Paul Bremer, Administrator
Coalition Provisional Authority