

Justice is the Foundation of Governance

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- **Rules of Procedure and Evidence
Of the Iraqi Special Tribunal**

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Iraqi Special Tribunal Rules of Procedure and Evidence

Pursuant to the provisions of article 16, law No.10 of 2005, which was approved by article 48, transitional administrative law (TAL), it was decided to promulgate the following rules of procedure and evidence :

Part One Definitions and general provisions

Rule 1: Definitions

In these Rules, unless the context otherwise requires, the following terms shall have the meanings ascribed to them below:

- 1) **Law:** The Law No.10, 2005 of the Iraqi Special Tribunal
- 2) **Judge:** An Appellate Judge, Trial Judge or Investigative Judge.
- 3) **President:** The President of the **Iraqi Special** Tribunal.
- 4) **Appellate Judge:** Any judge of the Appeals Chamber.
- 5) **Chief justice:** The chief Judge of the **Iraqi Special** Tribunal as referred to in **the Law**.
- 6) **Chief investigative judge:** the chief investigative judge **of the Tribunal**.
- 7) **Investigative Judge:** The **appointed** judge.
- 8) **Public Prosecution:** The Prosecution **appointed in the Tribunal**.
- 9) **Chief Prosecutor:** The Chief Prosecutor as referred **to in the Law**.
- 10) **Public prosecutor:** The **appointed** prosecutor in **the Tribunal**.
- 11) **Non-Iraqi Judges:** Those Judges **appointed** pursuant to **this law**.
- 12) **Experts:** Those non-Iraqi nationals referred to in **the Law**.
- 13) **Victim:** A person against whom a crime over which the Special Tribunal has jurisdiction has allegedly or has been found to have been committed.
- 14) **Suspected:** A person concerning whom the Investigative Judge possesses reliable information which tends to show that he may have committed a crime over which the Special Tribunal has jurisdiction.
- 15) **Operation:** A number of acts or omissions, occurring as one event or a number of events, at the same or different locations, and are part of a common scheme, strategy or plan to form an offence.
- 16) **Investigation:** All activities undertaken under the Law and these Rules for the collection of information and evidence, before or after issuing an indictment.

Rule 2: Measures taken outside the Tribunal

An investigative court or Judge may exercise its function outside Iraq, when necessary by a permission of the President. In so doing, audio or video-link technology, email or other available electronic instruments may be used; the Tribunal shall take the appropriate measures to apply this rule.

Rule 3: Non-compliance with the Rules

First: Objections on the ground of non-compliance with the Law or these Rules should be raised by a party at the earliest opportunity. The court may grant relief if it finds that the alleged non-compliance is proven.

Second: The relief granted under this Rule shall be such remedy as the Special Tribunal considers appropriate to compliance with the fundamental principles of fairness.

Rule 4: Time Limits

First: Unless otherwise mentioned in the law or these rules that time shall run to take any measure, a normal rules set forth in Iraqi laws shall be adopted.

Second: Unless otherwise ordered by a criminal court, any response to a motion must be filed within 14 days of the date of service of such motion on the responding party. Any reply to the response must be filed within 7 days of the date of service of the response.

**Part Two
Cooperation and Judicial Assistance**

Rule 5: Solicitations and Orders

Where an Investigative Judge is satisfied that an appointed government official or other individual has failed to comply with a request made in accordance with Article 18, he may take legal action against him and refer the matter to the Iraqi Special Tribunal pursuant to the provisions of the Criminal procedures law.

Part Two
Organization of The Special Tribunal

Section One
The oath

Rule 6: Forms of the oath

First: The judges

All the judges shall take the oath before the president of the **Federal** Judicial Council as following:

“I swear by God to judge among the people with justice and to apply the law honestly”

Second: public prosecutors

Before starting their duties, all public prosecutors shall take the following oath before the president of the **Federal** Judicial Council:” I swear by God to perform the functions of my **position** and to apply the law honestly and loyally”

Third: Judicial investigators

Before starting their duties, judicial investigators shall take the following oath before the cassation panel:

“I swear by God to perform the functions of my **position** with justice and to apply the law honestly”

Fourth: The report of taking the oath should be kept in the records of the tribunal.

Section Two
The Judges

Rule 7:

First: Each Judge shall act independently and shall not be submitted to or response to the instructions or the directions issued by the presidency of the republic or the cabinet or from any other Governmental Department, or from any other source **in his judicial functions.**

Second: During an investigation, trial or appeal, Judges must perform their duties with impartiality.

Third: A Judge may not sit in any case in which he has a personal interest or concerning which he has or has had any personal association which might affect his impartiality.

Fourth: A Judge must withdraw from any case in which **his** impartiality or independence may reasonably be doubted.

Fifth: The President may assign another Trial Judge to sit in place of the withdrawn Trial Judge as necessary. The Chief Investigative Judge may assign another Investigative Judge to sit in place of the withdrawn Investigative Judge as necessary.

Rule8:

Any party may file a request to the **cassation panel, boosted by a legal evidence**, for the disqualification of a Judge; **the request must be answered within three days.**

Rule 9: Absence and Termination of Service of Judges

First: Judges of the Special Tribunal shall perform their duties from the time they take their oath until such time as they are disqualified from holding office at the Special Tribunal or replaced by another Judge due to an expiration of the judge's term in office.

Second: A Judge who decides to resign shall give notice of his resignation in writing to the President, who shall forward such resignation to the cabinet of ministers. .

Third: If a Trial Judge, for any reason, is unable to continue sitting in a case, the chief justice may, as appropriate, designate a judge to hear the case.

Rule 10: Seniority

First: Seniority of Judges appointed on different dates shall be decided according to the dates of their appointment. Judges appointed on the same date shall be decided according to age.

Second: In case of re-appointment, the total period of service as a Judge of the Special Tribunal shall be taken into account in deciding his seniority.

Third: All Judges are equal in the perform of their judicial functions, regardless of dates of appointment, age, period in service or nationality.

Section Three The Presidency

Rule 11: The Vice-Presidency

The Vice-Presidency shall be delegated to the most senior Judge among the r members of the Cassation Panel.

Rule 12: Temporary replacements of the president and Vice-president.

If neither the President nor the Vice-President can carry out the functions of the Presidency, the next most senior judge in line shall assume, **then the next, until the President or the Vice-President can carry out the function again, or until an alternative president is elected.**

Section Four Director of the Administration Department

Rule 13: Staff of the Administration Department

The Director shall assume appointing its annual staff as maybe required to perform administrative functions efficiently, such staff is a subject to the discussion and approval of the plenary body of the court.

Rule 14: Functions of the director of the administration department

- (A) The Director of the Administration Department shall offer assistance to the Courts, the Plenary Meetings of the Special Tribunal, the Judges, the Prosecutors, and the Defence Office in the performance of their functions. The Director shall be responsible before the President for the administration and services of the Special Tribunal.
- (B) The Director of the administration department, in the execution of his functions, may make oral or written statements to the Courts on any issue arising in the context of a specific case which affects or may affect the discharge of such functions, including that of implementing judicial decisions, he should take decisions necessary for notifying the parties where necessary.
- (C) The Director is responsible for the conditions of detention of the accused. The Director, mindful of the need to ensure respect for human rights and fundamental freedoms, particularly the presumption of innocence prior to

proof of conviction. He should be in consultation with the President to take necessary action or adopt and amend rules necessary to govern the detention of persons awaiting trial or appeal or otherwise detained in relation to proceedings that regulate detention of persons.

Rule 31: Victims and Witnesses Unit

First: The Director shall set up a Victims and Witnesses Unit which assumes specific functions, in accordance with the Statute and these Rules, and to implement orders of the Chief Investigation Judges and the Prosecutor General. This unit performs the following functions with respect to all witnesses and victims who appear before the Special Tribunal and others who are at risk because of testimony given by such witnesses. The following are among the functions performed by the unit for all victims and witnesses in accordance with their particular needs and circumstances:

- (i) Provide recommendation to the Special Tribunal the regarding protection and security measures for victims and witnesses;
- (ii) Provide the victims and witnesses with adequate protective measures and security arrangements, and establish long and short term plans and ensure development of plans for their protection and support;
- (iii) Ensure that the victims and witnesses receive appropriate support, consultation and other appropriate medical assistance, physical and psychological rehabilitation, especially in cases of rape and sexual assault.

Second: The Unit staff shall include experts in trauma (or injuries) including trauma related to crimes of sexual violence. Where appropriate, the Unit shall cooperate with non-governmental and international governmental organizations.

Rule 16: Minutes of the Plenary Meetings

The Director and the administrative staff shall be responsible for taking minutes of the Plenary Meetings of the Special Tribunal and instructions of the Presiding Judge.

Section Five The Chief Prosecutor

Rule 17: Selection of the Chief Prosecutor and his deputy

First: Subject to (Rule 9/fourth) of the law, the Chief Prosecutor and his deputy shall be selected for a term of one year. The Chief Prosecutor and his deputy may be re-selected.

Second: If the Chief Prosecutor ceases to be a Prosecutor, resigns, or is removed from his office before the expiration of his term, other appointed prosecution members shall select a replacement from among their number, in accordance with Article 9 (4) of the law for the remainder of the term.

Section Six The Investigative Judges

Rule 18: Selection of the Chief Investigative Judge

First: The Chief Investigative Judge and his deputy shall be selected by a majority of the votes of the Investigative Judges. In the event that an equal number of votes are cast for the leading candidates, the candidate who has seniority according to Rule 10 of these rules will become the Chief Investigative Judge.

Second: The Chief Investigative Judge shall be elected for a term of one year. The Chief Investigative Judge may be re-elected for a subsequent term.

Third: If the Chief Investigative Judge ceases to be an Investigative Judge, resigns, or is removed from his office before the expiration of his term, the Investigative Judges shall elect from among their number a successor for the remainder of the term.

Rule 19: Functions of the Chief Investigative Judge

First: The Chief Investigative Judge shall coordinate the work of the Investigative Judges and exercise all the other functions conferred on him by the Statute and these Rules.

Second: The Chief Investigative Judge may after consultation with other Investigative Judges issue guidelines, consistent with the Statute and these Rules.

Rule 20: Functions of the Deputy Chief Investigative Judge

The Deputy Chief Investigative Judge shall exercise the functions of the Chief Investigative Judge in case the latter is absent or is unable to act.

Part Four Non Iraqi Advisors/ Experts

Rule 21: Functions of Non-Iraqi Advisors/Experts

First: Non-Iraqi Advisors/Experts, appointed in accordance with the Statute, will be assigned to the Prosecution, Investigative Judges, the Trial Chambers and the Appeals. Each is a separate functional area. Anyone who is assigned as a Non-Iraqi Advisor/Expert to one functional area of the Special Tribunal may not concurrently act as an advisor to another functional area of the Special Tribunal. A Non-Iraqi Advisor/Expert may be reassigned from one functional area into another with the consent of the President. In the event of reassignment, Non-Iraqi Advisor/Expert may not take any part in providing advice in relation to a case in which that he previously participated in prior to reassignment.

Second: With the consent of the president, The Director shall provide the Non-Iraqi Advisors/Experts with all such access and facilities as required for them to fulfil their functions.

Third: Non-Iraqi Advisors/Experts appointed to the Defence Office under Rule 30 of these rules shall offer assistance for the administration of the Defence Office, including providing advice on any proposed amendments to these Rules or to any Rules related to code of Professional Conduct . They may not take any action that would involve them in any form of attorney-client relationship with a suspect or accused in any proceedings before the Tribunal.

Fourth: Any Non-Iraqi Advisor/Expert who is assigned to the Investigative Judges, a Trial Chamber or the Appeals Chamber will provide non-partisan, confidential, non-binding expert advice and recommendations. Any Non-Iraqi Advisor/Expert assigned to the Prosecution Department or Defence Office will provide confidential, non-binding expert advice and recommendations.

Part Five
Investigations and Rights of The Accused

Section One
Initiation of Investigation

Rule 22: Initiation of an Investigation

First: Criminal proceedings under article 18 of this Statute are initiated by oral or written complaint filed to the Chief Investigative Judge.

Second: Such complaints may be filed to investigative judge of the Special Tribunal by Iraqi Ministries, government offices, investigative officers, or, international organizations, or any other appropriate agency or organization at the Iraqi Special Tribunal.

Section Two
Investigation

Rule (23): Conduct Investigation

First: In the conduct of an investigation, an Investigative Judge may:

- A- Review witness statements, summon and question suspects, interview victims and witnesses and record their statements, collect evidence and conduct on-site investigations;
- B- Take all measures deemed necessary for the investigation, including special measures to ensure the safety of potential witness and sources;
- C- Seek, with the concurrence of the Chief Investigative Judge, the assistance of any governmental agency or relevant international body including the International Criminal Police Organization (INTERPOLE);
- D- Submit an application for deferral in accordance with the provocations of the law.

Second: An Investigation Judge shall collect the evidence of innocence. The prosecution may view all the evidences gathered by the Investigative Judge during his investigation.

Third: An Investigative Judge shall question the witness and the victims separate from public, with due consideration given to the provisions of the Criminal Procedures Code No. 23 for the year 1971 (amended). But this rule does not prohibit a suspect's Defense counsel from individuals interviewing

witnesses and victims with **undisclosed identities**. A suspect or Defense counsel may provide evidence to an Investigation Judge. A suspect or Defense counsel may request an Investigative Judge to conduct any relevant and material witness interviews.

Rule 24: Provisional Measures

First: An Investigation Judge may order any relevant governmental authority to implement **the order** if he **deems accordingly** appropriate.

- A. To arrest **and place the** suspect him in provisional detention in accordance with the IST Statute and these Rules and such other provisions of Iraqi law as may be relevant;
- B. To seize all physical evidence.
- C. To take appropriate measures to prevent the escape of a suspect, an accused or without injury or intimidation of a victim or witness, or the destruction or the loss of evidence.

An Investigative Judge **must** refer in this written order to the grounds **on while** he relied as well as to state the primary accusation along **of** a briefing with the foundation she relied on **if he didn't** want to **question** the suspect only. The Investigative Judge **must specify** the initial period for the temporary **detention** of the suspect.

If the accused was notified with this order, he **must** be informed **of** his rights as determined in this article and **must** be provided as soon as possible with a copy of the Investigative Judge's order.

Second: In deciding whether to issue such an order, the Investigative Judge **must** consider the following:

- A. The **existence of** a reliable body of evidence that **can be relied on and which** shows that the suspect may have committed a crime within the jurisdiction of the Iraqi Special Tribunal.
- B. The **conviction** that the provisional detention is a necessary measure to prevent the escape of the suspect without injury to or intimidation of a victim or witness or the destruction or the loss of evidence.
- C. The **conviction** that the provisional detention is necessary for the success of the investigation.

Third: The suspect **must** be released if:

A subsequent order issued by the Investigative Judge or the Iraqi Special Tribunal **dictates as such**.

Rule 25: Provisional Detention Orders

First:

1. **Initially** no accused may be **subject to** a provisional detention period exceeding (90) days **starting** from the day **following** the suspect **placement** in any detention unit of the Iraqi Special Tribunal. The period of detention may be extended, by **subsequent** order by the Competent Judge, for an additional (30) day period extendable for the same periods but may not exceed (180) days in total.
2. The extension for the period that to exceed (180) days shall be **ordered** by the Competent Judge after **receiving** the consent of the President.
3. The decisions mentioned in **paragraphs** (first and second) above are appeal able.

Second: The provisions of the two **paragraphs** (35) and (36) of these rules shall be applied to the execution of the provisional detention of the suspect.

Third: The suspect shall be brought without delay, before the Investigative Judge who made the initial detention order, or **before** another Investigative Judge **assigned** by the Chief Investigative Judge. The Investigative Judge **must be convicted** that the right of the accused to counsel is respected. The accused has the right to be represented at his own expense by any Defense Counsel who is qualified under Rule (29) of these Rules. If the accused **demand** from the Principle Defense to provide him with a Defense Counsel, the Investigative Judge **must** inquire into the accused's ability to pay for legal services and instruct the Defense Office to provide a Defense Counsel to the accused. The Defense Office shall charge the accused for any legal services provided; unless, a Trial Chamber Judge finds that the accused is indigent.

Four: With due consideration to Rules 59, an accused may be detained until the conclusion of his trial if necessary to ensure the accused's appearance at trial, or to protect any victim or witness, or to prevent the destruction or the loss of any evidence.

Rule 26: Preservation of Information and Evidence

First: The Investigative Judge, prosecutor or investigator shall send a copy of the information and physical evidence to the evidence and information collection

unit that belongs to the tribunal. This unit must preserve the information and evidence received.

Second: The Investigative Judge must draw up an inventory of all materials seized, including documents, books, papers, and other objects, and must provide a copy thereof to the individual from whom the materials were seized. Materials that are of no evidentiary value must be inventoried and safeguarded until such time they can be returned.

Third: In a case the **criminal court** requests documents from **the** aforementioned unit, the unit **must** provide a secured place for **their** storage and transportation.

Rule 27: Rights of **the Suspect during Questioning by an Investigative Judge**

First: A suspect who is questioned by an Investigative Judge shall have the following rights of which he **must** be informed by the Investigative Judge prior to questioning in a language he speaks and understands:

- A. The right to legal assistance of his own choosing, including the right to have legal assistance provided by the Defence Office if he does not have sufficient means to pay for it;
- B. The right to free **interpreting** assistance of if he cannot understand or speak the language used **in** questioning;
- C. The right to remain silent. In this regard, the suspect or accused **must** be cautioned that any statement he makes may be **used against him in court**.

Second: An accused may voluntarily waive his right **to** legal assistance during questioning if the Investigative Judge determines that the waiver is voluntarily and **knowingly** made.

Third: If an accused has exercised his right to legal assistance, questioning by an Investigative Judge **may not be performed** without the presence of counsel if **the accused did not -----his right, willingly and knowingly for the presence of his counsel**. In a case of the waiver, **if** the accused **later** expressed his will to have legal assistance, accordingly the questioning **must stop accordingly and must not resume except with the presence of counsel**.

Rule 28: Recording **the questioning of accused by an Investigative Judge**

If the Investigative Judge questioned the accused, he may record that questioning by audio, video or via a court reporter.

**Section 3
Defence Counsel**

Rule 29: Appointment **of defence Counsel**

First: A Counsel engaged by an accused **must** file his power of attorney with the **concerned** Judge at the earliest opportunity. **The judge must verify qualification of the counsel** in accordance with the Iraqi law of lawyers.

Second: **In accordance with** Articles 18(**Third**) and 20(**Fourth**) of the Statute, of the Iraqi Special Tribunal an accused may **consign** one or more non-Iraqi counsel.

Third In the performance of **his** duties, a counsel **must adhere by** the relevant provisions **whether they are** of the **Tribunal** Statute, these Rules **or** any other rules or regulations adopted by the Special Tribunal. In addition, **he must adhere by** any codes of practice and ethics governing **his** profession.

Rule 30: Defence Office

First: The Director of the **Administration Department**. shall establish a Defence Office for the purpose of ensuring the rights of the accused. **The Defence Office shall be headed by a Director from among the lawyers for a period of three years that is extendable.** After conducting an appropriate investigation **and** getting the approval of the president, the Director may remove the Principal **defense lawyer** for good cause.

Second: The Defence Office, in accordance with the Statute of the **Tribunal** and these Rules, **shall** provide advice **and** assistance to:

- A. **The** accused placed in provisional detention in accordance with Rule (22) **of these Rules.**
- B. The accused being questioned by an Investigative Judge in accordance with Rule (27) including non-custodial questioning.
- C. Accused persons before the Special Tribunal.

Third: **The following are the function performed by the defence office.**

- A. Legal assistance to any accused who does not have sufficient means to pay or it, or as ordered by the Special Tribunal;
- B. Assign or appoint a counsel locked within a reasonable proximity for the detention unit and the head---- of the Special Tribunal, to report the detention unit when summoned to provide legal assistance to a suspect or accused.
- C. Adequate facilities to enable the counsel to use in the preparation of the Defence.

Fourth: The head of the defence office must, in providing for an effective Defence, select a highly qualified criminal Defence counsel.

Fifth: Defence Counsel must present his requests and his defence adequately.

Sixth:

- A. In accordance with Rule 21/ (Third) of these Rules and with the nominating by the head of the defence office, the Director may contract with Non-Iraqi Advisors and Experts to provide assistance and expertise to the Defence Office.
- B. Non-Iraqi Advisors/Experts shall be selected based upon their criminal law experience in their respective countries, and should have extensive knowledge or experience in international war crimes trials and such Advisors/Experts must be of high moral character and integrity.

Rule 31: Misconduct of Counsel

First: A Judge or a Criminal Court may impose legal proceedings against counsel if, in its opinion, the Council's conduct becomes offensive or abusive or demeans the dignity and decorum of the Special Tribunal or obstructs the proceedings.

Second: A Judge or a Criminal Court may, with the approval of the President of the Court, communicate any misconduct of the Counsel to the professional body regulating the conduct of counsel in his State of admission.

Part Six
Investigation Judge Proceedings

Section One
Multiplicity of Crimes.

Rule 32: Multiplicity of Crimes.

- (A) The provisions of Article 132 of the Iraqi Criminal Procedure Law no. (23) Of 1971 should be applied in case of accused is alleged to have committed multiple crimes.
- (B) Only one crime can be indicted in case of accused is alleged to have committed multiple crimes if those crimes are punishable pursuant to one article in one law.

Rule 33: Non-Disclosure of Indictment

- (A) In exceptional circumstances and in the interests of justice, a Designated Judge may order the non-disclosure to the public of any documents or information until further order.
- (B) A Criminal Court or Designated Judge may order that there be no disclosure of an indictment, or part thereof, or of all or any part of any particular document or information, if satisfied that the making of such an order is required to give effect to a provision of these Rules, to protect confidential information obtained by the Investigative Judge or the Chief Investigative Judge, or is otherwise in the interests of justice.

Section Two
Orders and Warrants

Rule 34: General Provisions

First: At the request of either party or the request of the complainant, an Investigative Judge may issue such orders, summons, subpoenas, and warrants as may be necessary in the interests of justice for the purposes of an investigation.

Second: At the request of either party or initially at the request of the complainant, a Designated Judge or a Criminal court may issue such orders, summons, subpoenas and warrants as may be necessary for the purposes of bringing the accused or the conduct of the trial.

Rule 35: Executions of Arrest Warrants

First: Pursuant to Rule 24, a warrant of arrest shall be signed by an Investigative Judge and shall bear the seal of the Special Tribunal. It shall be accompanied by a copy of the alleged criminal act, the legal article or the indictment, and a statement of the rights of the suspect or the accused. The Director shall transmit to the relevant authorities of Iraq three sets of certified copies of these documents.

Second: With due consideration given to the provisions of Rule 24, the Director of the Administrative Department shall request the following from the said Iraqi authorities:

- A- To execute the arrest of the accused or the suspect and his transfer to the Court.
- B- To serve a set of the aforementioned documents upon the suspect or the accused and cause the documents to be read to the accused in a language understood by him and to caution him as to his rights in that language; and.
- C- To return a copy of the documents together with proof of service to the Iraqi Special Tribunal.

Rule 36: Failure to Execute a Warrant of Arrest

First: When the competent authorities, to whom a warrant of arrest or orders under Rule 24 or others have been transferred, are unable to execute the warrant of arrest, they shall submit a report to the Director of the Administrative Department, stating the reasons for non-execution.

Second: If within a reasonable time after the delivery of the warrant of arrest or other orders to the relevant Iraqi authorities, no report is made on action taken, this shall be deemed a failure to execute the warrant of arrest and the orders. Upon his own initiative or at the request of an Investigative Judge, the Presiding Judge of a Criminal Court may refer the failure to the President of the Tribunal for appropriate action.

Rule 37: Procedure upon Guilty Plea

First: If an accused pleads guilty or requests to change his plea to guilty, the Criminal Court shall satisfy itself that:

- A- The plea is made freely and voluntarily;

B- The plea is unequivocal; and there is a sufficient factual basis to establish the accused's culpability for the crime.

Second: Thereafter the Criminal Court may find him guilty in case the provisions mentioned in First of this Article are available and when the Criminal Court is satisfied to incriminate the accused regarding the action to which he actually pled guilty, the Criminal Court may enter a finding of guilt and set a date for the sentencing hearing.

Third:

A- If the Criminal Court is not satisfied as to any of the factors in subparagraph (First) above, or if, under applicable law, the offence is punishable by death, then the Criminal court shall enter a plea of not guilty and the case shall proceed to trial.

B- If the Criminal Court accepted the accused not guilty plea to an offence punishable by death and such answer is pursuant to Rule (38) and that the Prosecutor General is recommending a less severe sentence than the death penalty, and then the Criminal Court shall end the trial and issue the decision.

Rule 38: Agreements upon Guilty Plea

The pardon should be offered to the accused in ambiguous crimes in accordance with article 129 of Iraqi Criminal Procedure Law no.23 of 1971

Rule 39: Detention and bail

The detention and the bail should be in accordance with criminal proceedings law no.23 of 1971 provided that the accused shall be detained in the prison facilities of the Special Tribunal

**Section Three
Production of Evidence**

Rule 40: Disclosure of the Crime Materials by the Public Prosecutor

First: Pursuant to the provisions of Rule 33 and 51, the Prosecutor shall:

- A- Disclose to the defence lawyer, at least 45 days prior to the commencement of trial, copies of the statements of all witnesses and all evidence. For purposes of this Sub-Rule, a “statement” of witnesses should be written statement signed, adopted, and approved by the accused, or a substantially verbatim recital of an oral statement made by the witnesses that was recorded contemporaneously with the making of the oral statement. The Criminal Court may order that additional copies of the statements of witnesses be made available to the Defence within a prescribed time.
- B- At the request of the Defence, and pursuant to Rule (42), the Defence is permitted to inspect any books, documents, photographs and acquire these things, which are material to the preparation of the Defence, and also inspect any books, categories of, or specific documents, photographs and tangible objects in the accused custody or control which are intended for use by the Criminal Court as evidence at the trial.

Second: During the investigation and when informing the Prosecutor about the documents and information, the disclosure of which may prejudice further or ongoing investigations, or for any other reason may be contrary to the public interest or affect the general security interests of any State, the Prosecutor may apply to a Designated Judge sitting *ex parte* in private to be relieved from the obligation to disclose pursuant to Sub-Rule (A) of this Article. When making such an action the Public Prosecutor shall provide the information or materials that are sought to be kept confidential.

Rule 41: Reciprocal Disclosure of Evidence

First: Regarding reciprocal disclosure of evidence, the following should be done:

- A- At least 45 days prior to the commencement of trial, the Prosecutor shall notify the Defence of the names of the witnesses that he intends to call to establish the guilt of the accused.
- B- The Prosecutor shall be notified by the Defence of the names of the witnesses that the defence intends to call in rebuttal of any guilt of which the Prosecutor has received notice in accordance with Sub-Rule (Third) (A) of this Article, or any guilt in the Case Statement duration served under item (3) of (C) of this paragraph
- C- At least 15 days prior to the commencement of the trial, the Defence shall notify the following to the Prosecutor before the trial commencement:
 - 1. A defence of alibi, in which case the notification shall specify the place at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any

other evidence upon which the accused intends to rely to establish the alibi;

2. Any special defence, including that of diminished or lack of mental responsibility, in which case the notification shall specify the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the special defence;
3. In cases of sexual assault, to prove or demonstrate the case of the victim consent to the alleged acts committed by the accused;
4. Any books, documents, photographs, or tangible evidence, to be introduced at trial shall be provided to the Prosecutor to inspect or to copy.

D- At least 15 days prior to the commencement of the trial, the Defence shall notify the Prosecutor of the names of the defence witnesses that he intends to call.

Second: Failure of the Defence to provide such information under this Rule shall not preclude the accused from relying on the above defences, at the discretion of the Special Tribunal.

Third: To assist the Prosecutor with his disclosure obligations pursuant to these rules, the Defence shall, at least 15 days prior to trial, provide the Prosecutor with a Defence Case Statement which should:

- A. Set out in general terms the nature of the defence of the accused.
- B. Indicate every matter on which he asked the prosecutor to take measure.
- C. State, in the case of each such matter, the reason why the prosecution took measure.

Fourth: If either party discovers additional evidence or information or materials which should have been produced earlier pursuant to these Rules, that party shall promptly notify the other party and the Trial Chamber of the existence of the additional evidence or information or materials.

Rule 42: Disclosure of Exculpatory Evidence

First: In extraordinary circumstances, according to a request of either party, and in the interest of justice, the trial Chamber or the chief of investigation judges

may delegate one of the members or investigation judges of the tribunal to hear the testimony of the witness and organize a minuet for it.

Second: the Prosecutor shall disclose to the defence lawyer the existence of evidence known to the Prosecutor which in any way tend to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of a prosecution witness or the authenticity of prosecution evidence. The Prosecutor shall disclose the grounds of the penalties continuously.

Rule 43: Matters not Subject to Disclosure

First: With due consideration given to the provisions of Rules 40 and 41, the reports, memoranda, or other internal documents submitted by a party, its assistants or representatives in connection with the investigation or preparation of the case, are not subject to disclosure or notification under the aforementioned provisions.

Second: If the tribunal is in possession of information which was provided to it, on a confidential basis and which has been used solely for the purpose of generating new evidence, that initial information and its origin – notwithstanding Rule 42 – shall not be disclosed by the tribunal without the consent of the person or entity providing the initial information .

Third: If, after obtaining the written consent of the person or entity providing information under this Sub-Rule (Second), the Prosecutor elects to present as evidence any testimony, document or other material so provided, the accused shall receive prior disclosure consistent with Rule 42. The Trial Chamber may not order either party to produce additional evidence received from a person or entity providing the initial information, nor may the Trial Chamber for the purpose of obtaining such additional evidence itself summon that person or a representative of that entity as a witness or order their attendance.

Fourth: The right of the accused to challenge the evidence presented in the case shall remain unaffected subject only to the limitations contained in Sub-Rules (Third) and (Fourth) above.

Section Four Depositions

Rule 44: Depositions

With due consideration given to provisions of rule (28) and at the request of either party, a Trial Chamber may, and in the interest of justice, order that a

deposition be taken outside the court. The Trial Chamber shall delegate one of its judges or an investigative judge to preside over the writing of the deposition, and organize a record for it.

Part Seven
Proceedings of the Trial Chambers

Section One
General Provisions

Rule 45: Proceedings before Trial Chambers

Trail proceedings should comply with the provisions set forth in the Iraqi Criminal Procedure Law No.23 of 1971 and these rules.

Rule 46: Interveners

A Chamber may, if it considers it helpful for the proper determination of the case, invite any organization or person to make submissions on any issue specified by the Chamber.

Rule 47: Medical Examination of the Accused

A Trial Chamber may, or at the request of a party, order a medical, including psychiatric or psychological examination of the accused.

Rule 48: Measures for the Protection of Victims and Witnesses

First: A Chamber may, on its own initiative, or at the request of either party, the victim or witness concerned, or the Victims and Witnesses Unit, order appropriate measures to safeguard the privacy and security of a victim or a witness, provided that those measures are consistent with the rights of the accused. A Chamber may order measures to protect a victim or witness before any indictment is confirmed or at any other time.

Second: A Chamber may hold proceedings in private to determine whether to order:

- (A) Measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a witness, or of persons related to or associated with a victim or witness by such means as:

- (1) Expunging names and identifying information from the Iraqi Special Tribunal's public records;
 - (2) Non-disclosure to the public any records identifying the victim or witness;
 - (3) Not allowing the testimony to be photographed or voice-altering devices or closed circuit television, video link or other similar technologies; and
- (B) Hold closed sessions in accordance with Rule 71;

Third: A Chamber shall control the manner of questioning a witness to avoid any harassment or intimidation.

Fourth: When making a decision under Sub-Rule (First), a Chamber may wherever appropriate state whether the transcript of those proceedings relating to the witness shall be made available for use in other proceedings before the Special Tribunal.

Fifth: Once protective measures have been ordered in any proceedings before the Special Tribunal, such protective measures shall continue to have effect unless it needs to be changed in any subsequent proceedings before the Special Tribunal or rescinded, varied or augmented in accordance with the procedure set out in Sub-Rule (Seventh).

Sixth: In the case of subsequent protective measures, their variation or augmentation from those taken earlier, the following must be applied:

- (A) The same protection continues in every trial chamber however constituted.
- (B) In case of an earlier protection discontinues, the trial chamber may stay the subsequent protection.

Seventh: Before determining an application under Sub-Rule (Sixth), the Chamber retaining of the subsequent protective measures shall obtain all relevant information from the earlier protection, and may consult with any Judge who ordered the protective measures.

Eighth: References in this Rule to a "Chamber" shall include "the Judge of that Chamber or a designated judge".

Rule 49: Solemn Declaration by Interpreters and Translators

Before performing any duties, an interpreter or a translator or an expert shall solemnly declare to do so faithfully, independently, impartially and with full respect for the duty of confidentiality.

Rule 50: Open Sessions

All proceedings before a Trial Chamber shall be open to public. Photography, video, or audio broadcasting or recording of proceedings for public showing shall be prohibited, except when authorized by the Trial Chamber and for recordings made by the Iraqi Special Tribunal pursuant to Rule 57. All deliberations of the Chamber shall be private (closed).

Rule 51: Closed Sessions

First: A Trial Chamber may order the press and the public to be excluded from all or part of a proceeding when:

- A. Information prejudicial to national security of Iraq is disclosed; or
- B. It is necessary for the security of the Special Tribunal; or
- C. It is necessary to protect the privacy of persons, as in cases of sexual offences or cases involving children or women.
- D. Publicity would prejudice the interests of justice.

Second: Unless otherwise ordered by the Chamber, no person may disclose information related to a closed session.

Third: If in the opinion of another sovereign State, disclosure of information would compromise its national security the reasonable steps including closed sessions, shall be taken by the Chamber to ensure that legitimate national security interests of that State are not compromised. If the State remains concerned about its national security interests after the decision of the Chamber, then it may appeal the decision and any such appeal must be submitted within 7 days of the date of the decision and must be considered urgent. This appeal will not stop the proceeding of the trial.

Rule 52: Control of Proceedings

First: The Trial Chamber may exclude any person from the proceedings in order to protect the right of the accused to a fair and public trial, or to maintain the dignity and decorum of the proceedings.

Second: The Trial Chamber may not order an accused to be removed from the court from during proceedings unless he acted in disruptively. In the event of renewal, the proceedings continue until he can be present and the court should make him aware of the proceedings he missed.

Rule 53: Records of Proceedings and Preservation of Evidence

First: The Administrative and Service Director shall preserve a full and accurate record of all proceedings, including audio recordings, transcripts and, when deemed necessary by the Trial Chamber, video recordings.

Second: The Trial Chamber may order the disclosure of all or part of the record of closed proceedings when the reasons for ordering the non-disclosure no longer exist.

Section Two Proceedings

Rule 54: Joint and Separate Trials

The provisions of the Iraqi Criminal Procedure Law No.23 of 1971 should be applied regarding the joint and separate trials.

Rule 55: Instruments of Restraint

The accused shall be brought to the Court without instruments of restraint and all the necessary measures shall be taken to keep order in the Court room.

Rule 56: Commencement of Trial

Except where expressly required by the law or these Rules, the trial will generally be conducted in accordance with the procedures in Article 167 of the Iraqi Criminal Procedure Law No.23 of 1971.

Rule 57: Presentation of Evidence

First: With due consideration given to the provisions of Article (168) of the Iraqi Criminal Procedure Law, questioning and cross examination of the witness shall be allowed for each case by the opponents to refute his statements. The party calling for testimony shall conduct questioning or examining the witnesses. After cross-examination, the party calling a witness shall conduct re-examination. A judge may at any stage put any question to the witness. The accused may not directly question any witness except through the Trial Chamber.

Second: Evidence may be given directly in court via communications media (including video or satellite channels as the Trial Chamber may order.

Rule 58: Judgement

First: The judgement shall be pronounced in public on its scheduled session.

Second: If the Trial Chamber issues a convicted judgment and punishment against the accused , the Trial Chamber may order the forfeiture of any property, proceeds or other assets acquired unlawfully or by criminal conduct in accordance with Articles 101 and 117 of the penal Code, No. 111 of 1969.

Third: The judgement shall be rendered by a majority of the five Trial Judges assigned to the Trial Chamber that heard the case. It shall be accompanied by a reasoned opinion in writing. Separate or dissenting opinions may be appended with the file of the case.

Section Three Rules of Evidence

Rule 59: General Provisions

First: A Chamber shall apply the rules of evidence set forth in these Rules as well as the rules set forth in the Iraqi Criminal Procedure Law No. 23 of 1971, and shall not be bound by rules of evidence used in any other forum.

Second: In cases there is no applicable legal stipulation for evidence, a Criminal Court shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit and general principles of the law.

Third: A Chamber may admit any relevant evidence which it deems to have probative value.

Fourth: A Chamber may exclude evidence if its probative value is substantially outweighed by the potential for unfair prejudice, considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Fifth: The following factors should be considered when determining the admissibility of evidence under this rule:

- A. The authenticity of evidence obtained out of court;
- B. The selection of any statement and any circumstances that might verify or impugn the statement;
- C. The respect of other scopes to the extent its content benefit the corroboration of the evidence and its trustworthiness.
- D. Whether the means by which the evidence obtained casts substantial doubt on its reliability.

Rule 60: Testimony of Witnesses

First: Witnesses may give evidence directly, or as described in Rule 60. A Chamber may consistent with Rule 59(Fourth), permit the testimony of witnesses by telephone, audiovisual means, or other means; however, the Chamber shall consider the ability to test the veracity of that testimony in evaluating the weight to be given to the witness's testimony.

Second: A witness aged 15 years, before giving evidence, makes the solemn oath that he will say the truth and nothing but the truth, where as the witness below this age can be heard just for awareness without an oath.

Rule 61: False Testimony

If a Chamber has strong grounds for believing that a witness may have knowingly and wilfully given false testimony, the Chamber may request the investigations Chambers to take the legal procedures against him.

Rule 62: Testimony of Expert Witnesses

First: Testimony may be received from a witness qualified as an expert by knowledge, skill, experience, training, or education, who has scientific,

technical, or other specialized knowledge that will assist the Trial Chamber to understand the evidence.

Second: If any party wishes to provide a written statement of an expert witness in lieu of oral testimony, the full statement of the witness shall be disclosed to the opposing party as early as practicable.

Rule 63: Rules of Evidence in Cases of Sexual Assault

First: In cases of sexual assault and if there is reasonable cause, no corroboration of the victim's testimony shall be required.

Second: Consent shall not be allowed as a defence if the victim

- A. Has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression, or reasonably believed to be the victim, submittance, threat or fear.

Third: The evidence submitted by the accused should prove the victim's consent without shortcomings.

Section Four Sentencing Procedure

Rule 64: Status of the Acquitted Person

First: If, at the time the judgement of acquittal or release is pronounced, the Prosecutor advises the Trial Chamber in the same session of his intention to file notice of appeal within the legal duration and to produce appeal statement later, the Trial Chamber may issue an order for the continued detention of the accused, pending the determination of the appeal.

Second: In case of acquittal or release, when the prosecutor has no intention to appeal pursuant to sub-Rule (First) above, and there is no other case against the accused, the Tribunal shall order the release of the accused.

Rule 65: Penalties

First: In determining a sentence, the Trial Chamber shall take into consideration the factors mentioned in Article 24 of the law, as well as such factors as:

- A. Any aggravating circumstances;

B. Any mitigating circumstances including the substantial cooperation with the Chief Prosecutor or an Investigative Judge by the convicted person before or after conviction; and

C. Apply provisions of Article 30 (3) of the law.

Second: The Trial Chamber shall indicate whether multiple sentences of imprisonment shall be served consecutively or concurrently.

Third: Credit shall be given to the convicted person for the period, if any, during which the convicted person was detained pending his surrender to the Iraqi Special Tribunal or pending trial or appeal. Such credit shall not be given for the period, if any, during which the accused was detained pursuant to the detention authority of another sovereign unless that sovereign was acting solely at the bequest of the Iraqi council of ministers or the successor government, taking into consideration the date of resuming the sovereign in June 1,2004.

Rule 66: The judgment Implementation

First: the judgement shall be implemented in accordance with these rules and the provisions of Iraqi Criminal Procedure law No.23 of 1971.

Second: If, by a previous decision of the Trial Chamber, the convicted person has been provisionally released, or is otherwise at liberty, and he is not present when the judgement is pronounced, the Trial Chamber shall issue a warrant for his arrest. On arrest, he shall be notified of the conviction and sentence, and the procedure provided in Rule 68 and article 151 of the Iraqi Criminal Procedure law No. 23 of 1971 shall be followed.

Rule 67: Forfeiture of Property

With due consideration given to article (307) of the Iraqi Criminal Procedure law No. 23 of 1971 and paragraph 7 of article 24 of the Iraqi Special Tribunal Statue after a judgement of conviction containing a specific finding as provided in Rule 58(Second), the Trial Chamber, at the request of the Prosecutor or at its own initiative, may hold a special hearing to determine the matter of property forfeiture mentioned in the previous article if it did not decide to forfeiture.

Rule 68: The Appeal

The appellate proceedings and the time limit for the appeal should be consistent with the Iraqi Special Tribunal law and Iraqi Criminal Procedure law No.23 of 1971.

- (A) The judgment of the investigation Judge can be appealed before the cassation panel within 15 days starting from the date when the judgment being or consider being notified.
- (B) The appeal before the cassation panel should be in accordance with Iraqi Criminal Procedure Law No. 23 of 1971.

Rule 69: The Re- Trial

The procedures of re-trial should be consistent with the Iraqi special tribunal law and Iraqi Criminal Procedure law No.23 of 1971.

Rule 70:

These rules shall be deemed as an annex to the Iraqi High Special Tribunal Law No. (10) of 2005.