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- **Rules of Procedure and Gathering of Evidence With Regard to the Supreme Iraqi Criminal Tribunal**

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## Laws

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# The Supreme Iraqi Criminal Tribunal

## RULES OF PROCEDURE AND GATHERING OF EVIDENCE

Pursuant to the provisions of Article (16), law number (10) of 2005, which was approved by Article 48 of the Transitional Administrative Law (TAL), it was decided to promulgate the following Rules of Procedures and Evidence:

### SECTION 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. The Law: Law of the Supreme Iraqi Criminal Tribunal (SICT), number (10) of 2005
2. Judge: the Appellate Judge, the Trial Judge or the Investigative Judge
3. President: The President of the Supreme Iraqi Criminal Tribunal
4. Appellate Judge: Any judge of the Appeals Chamber
5. Presiding Judge: The judge presiding over the Trial Chamber, in accordance with the Law.<sup>1</sup>
6. Chief Investigative Judge: the Tribunal's Chief Investigative Judge
7. Investigative Judge: the designated judge
8. Prosecutions Department: The Prosecutions Department assigned the Tribunal
9. Chief Prosecutor: The Chief Prosecutor as referred to in the Law.
10. Public prosecutor: the Prosecutor assigned to the Tribunal.
11. Non-Iraqi judges: Those judges assigned to the Tribunal in accordance with this Law.
12. Experts: Those non-Iraqi nationals referred to in the Law.

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<sup>1</sup> This translation has rendered all instances of محكمة and محكمة الجنايات as "Tribunal" and "Trial Chamber" respectively.

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13. Victim: A person against whom a crime over which the SICT has jurisdiction has allegedly or has been found to have been committed.
14. Suspect: A person concerning whom the Investigative Judge possesses reliable information which brings to believe that he may have committed a crime over which the SICT has jurisdiction.
15. Transaction: A number of acts or abstentions, whether occurring as one event or as a number of events, at the same or different locations, and being part of a common plan or strategy constituting a crime
16. Investigation: All acts and activities undertaken pursuant to the Law and these Rules for the collection of information and evidence, whether before or after issuing an indictment.

### **Rule 2: Procedures taken outside the Seat of the SICT**

The Investigative Chamber or Investigative Judge may exercise part of its function outside Iraq, if so authorized by the President and if necessary. In so doing, the Chamber may resort to audio or video-link technology, email and other electronic devices, and take whatever measures it deems necessary for the implementation of this clause.

### **Rule 3: Non-compliance with the Rules**

First: The litigant shall raise his requests on the grounds of non-compliance with the Law or these Rules to the Tribunal at the earliest opportunity. The Tribunal shall respond to such requests if it finds that the allegations and requests are proven.

Second: The response as per this Rule shall be determined as the SICT deems appropriate to ensure consistency with the fundamental principles of justice.

### **Rule 4: Time Limits**

First: Unless otherwise mentioned in the Law or these Rules, the duration for any procedure shall follow the general rules as set forth in Iraqi laws.

Second: Unless otherwise ordered by the Trial Chamber, any plea to a request shall be filed within (14) days of the date of service of such plea on the requesting party. The response to the plea shall be filed within seven days of the date of service of such response.

## **SECTION TWO Cooperation and Judicial Assistance**

### **Rule 5: Pleas and Orders**

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1. If an Investigative Judge is convinced that a government official or other individual has failed to comply with a request made in accordance with Article 18 of the SICT Law, he may take legal measures against him and refer the case to the SICT in accordance with the clauses of the Code of Criminal Procedure.

## **SECTION THREE Organizational Structure of the SICT**

### **PART ONE The oath**

#### **Rule 6: Texts of the oath**

First: The Judges

All judges shall take the following oath before the President of the Federal Judicial Council as follows: "I swear by God to judge among the people with justice and to apply the law in all faithfulness."

Second: Public Prosecutors

Before beginning their mission, public prosecutors shall take the following oath before the President of the Supreme Judicial Council: "I swear by God to perform the functions of my office and to apply the law in all faithfulness and loyalty."

Third: Judicial Investigators

Before beginning their mission, judicial investigators shall take the following oath before the Appeals Chamber: "I swear by God to perform the functions of my office with justice and to apply the law in all faithfulness."

Fourth: The minutes of the oath-taking ceremony shall be preserved in the Tribunal's records.

### **PART TWO The Judges**

#### **Rule 7:**

First: Each Judge shall act with complete independence and shall not be subject or respond to instructions or directions issued by the Presidency of the Republic, the Council of Ministers, or any other government body or other party during his judicial mission.

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

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Third: A Judge must examine any case in which he has a personal interest or related concern or in which he has or had any personal association which might affect his impartiality.

Fourth: A Judge must withdraw from any case in which his impartiality or independence might reasonably be in doubt.

Fifth: The President must appoint another Trial Judge to replace the withdrawn Trial Judge when necessary. The Chief Investigative Judge must appoint another Investigative Judge to replace the withdrawn Investigative Judge, when necessary.

### **Rule 8:**

Any litigant may submit a request to the Appeals Chamber, which is supported by evidence considered as legal, in which he feels that the Judge has lost his judicial capacity. He shall receive an answer within three days.

### **Rule 9: Absence and Termination of Service of Judges**

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

Second: A Judge who decides to resign shall give notice of his resignation in writing to the President, who shall transmit this request to the Cabinet.

Third: If a Trial Judge, for any reason, is unable to continue sitting a case, the President must, as deemed necessary, appoint another Judge to this case.

### **Rule 10: Seniority**

First: The seniority of Judges appointed on different dates shall take precedence according to the dates of their appointment. The seniority of Judges appointed on the same date shall take precedence according to their date of birth.

Second: In case of re-appointment, the total period of service as a Judge of the SICT shall be taken into account to assess his seniority.

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

## **PART THREE The Presidency**

### **Rule 11: The Vice-President**

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The position of Vice-President shall be held by the most senior Judge among the members of the Appeals Chamber.

### **Rule 12: Temporary Solutions to Replace the President or Vice-President**

If neither the President or the Vice-President are able to fulfill the functions of the Presidency, these shall be assumed by the next senior Judge, until such time as the President or Vice-President are able to resume their duties or a replacement President is elected.

## **PART FOUR The Director of the Administration Department**

### **Rule 13: The Administration Department Staff**

The Director of the Administration Department shall set up the yearly staff as adequate for the efficient functioning of the Administration Department. This staff is subject to the discussion and approval of the Tribunal Plenary Body.

### **Rule 14: Functions of the Director of the Administration Department**

First: The Director of the Administration Department shall provide administrative assistance and services to the SICT Trial Chambers, its plenary meetings, the Judges and the Public Prosecutors as well as the Defense Office in fulfilling their functions. Under the authority of the President, he shall be responsible for the administration and servicing of the Tribunal.

Second: While fulfilling his functions, the Director of the Administration Department shall present oral or written reports to the Tribunal's Chambers, related to any issue arising in the context of a particular case or that could affect the execution of these functions, including taking measures related to executing judicial decisions. He shall moreover take the necessary measures to notify the litigants when necessary.

Third: The Director of the Administration Department is responsible for the conditions of detention of suspects and accused persons. The Director, mindful of the need to ensure respect of human rights and fundamental freedoms (particularly the presumption of innocence until proven guilty), shall in consultation with the President, adopt or amend the instructions necessary to arrest persons, pending trial or appeal, or otherwise arrest persons as per other arrest proceedings.

### **Rule 15: Victims and Witnesses Unit**

First: The Director of the Administration Department shall set up a Victims and Witnesses Unit, which shall fulfill a specific function in accordance with the Law and these Rules, and pursuant to the orders of the Chief Investigative Judge and the Chief Prosecutor.

The function of this unit is related to all the witnesses and victims who appear before the SICT and all other individuals who are at risk on account of the testimony they give. Some of

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the functions that this unit shall carry out towards all these people, in accordance with their particular needs and circumstances, are:

- a- Present recommendations to the SICT on the adoption of protective and security measures for them;
- b- Provide them with sufficient safety measures and security arrangements, and develop long or short term plans for their protection and support;
- c- Make sure that they receive adequate support, counseling, medical assistance, physical and psychological rehabilitation, especially in cases of rape and sexual assault.

Second: The Unit personnel shall include experts in external adversity (or injury), including adversity related to crimes of sexual violence. When necessary, the Unit shall cooperate with non-governmental and intergovernmental agencies.

### **Rule 16: Minutes of the Plenary Meetings**

The Director of the Administration Department and the administrative staff shall be responsible for taking the minutes of the Plenary Meetings of the SICT and the instructions of the President.

## **PART FIVE The Chief Prosecutor**

### **Rule 17: Appointment of the Chief Prosecutor and his Deputy**

First: Pursuant to Article 9 (Fourth) of the Law, the Chief Prosecutor and his Deputy shall be appointed for a one-year, renewable term.

Second: If the Chief Prosecutor does not fulfill his work, resigns, or is removed from office before the expiration of his term, the other appointed prosecutors shall select a replacement from among their number for the remainder of the term, as per Article 9 (Fourth) of the Law.

## **PART SIX The Investigative Judges**

### **Rule 18: Appointment of the Chief Investigative Judge**

First: The Chief Investigative Judge and his Deputy shall be elected by a majority of 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 shall become the Chief Investigative Judge, as per Rule 10.

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Second: The Chief Investigative Judge and his Deputy shall be elected for a one-year, renewable term.

Third: If the Chief Investigative Judge does not fulfill his work, resigns, or is removed from office before the expiration of his term, the Investigative Judges shall appoint 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 carry out all other functions conferred on him as per the Law and these Rules.

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

### **Rule 20: Functions of the Deputy Chief Investigative Judge**

The Deputy Chief Investigative Judge shall carry out the functions of the Chief Investigative Judge, in case the latter is absent or unable to work.

## **SECTION FOUR Non-Iraqi Advisors/Experts**

### **Rule 21: Functions of the Non-Iraqi Advisors and Experts**

First: The Non-Iraqi advisors or experts, appointed in accordance with the Law, shall be assigned to the Prosecutions Department, Investigative Judges, the Trial Chambers and the Appeals Chamber, with each of these being considered as a separate functional entity. Anyone assigned as a non-Iraqi advisor or expert to one functional unit of the SICT may not concurrently act as an advisor to another functional unit of this Tribunal. However, a non-Iraqi advisor or expert may be reassigned from one functional unit to another, upon the approval of the President. In the event of a reassignment, the non-Iraqi advisor or expert may not participate to any degree in providing advice and expertise on a case he was previously associated with, prior to his reassignment.

Second: Upon approval of the President, the Director of the Administration Department shall provide non-Iraqi advisors or experts with all the necessary means and facilities for them to fulfill their functions.

Third: The non-Iraqi advisors or experts appointed to the Defense Office, as per Rule 30 of the present Rules, shall offer assistance in the administration of the Defense Office, including providing advice on any proposed amendments to these Rules or to any rules of the Code of Professional Conduct. They may not take any action that would stem from an attorney-client relationship with a suspect or accused, including representing a suspect or accused person in any proceedings before the SICT.

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Fourth: The non-Iraqi advisor or expert assigned to the Investigative Judges, a Trial Chamber or the Appeals Chamber shall provide impartial, confidential and non-binding expert advice and recommendations. A non-Iraqi advisor or expert assigned to the Prosecutions Department or the Defense Office shall provide impartial, confidential and non-binding advice and recommendations.

## **SECTION FIVE Investigations and Rights of the Accused**

### **PART ONE Initiation of an Investigation**

#### **Rule 22: Initiation of the Investigation**

First: Investigative proceedings are initiated by an oral or written complaint raised to the Investigative Judge, pursuant to Article 18 of this Law.

Second: Iraqi ministers, governmental bodies, investigative officers, international organizations, or any other agency or organization may raise a complaint to the Investigation Judge of the SICT.

### **PART TWO Investigations**

#### **Rule 23: Conduct of Investigations**

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

- a. Review witness statements, summon and question suspects, question 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 secret witnesses and sources;
- c. Seek, with the concurrence of the Chief Investigative Judge, the assistance of any governmental authority or international body related to the issue, including the International Criminal Police Organization (INTERPOL);
- d. Present a deferral request, as per the law.

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Second: An Investigative Judge shall gather both [sic] exculpatory evidence.<sup>2</sup> The Prosecution Department may view all the evidence gathered by the Investigative Judge during his investigation.

Third: The Investigative Judge shall question the witness and victim away from the public, and pursuant to the regulations of the amended Penal Prosecutions Code 23 of 1971. However, this Rule does not prohibit a suspect's defense attorney from meeting individually with the secret victims and witnesses. The suspect or the defense attorney may provide evidence to an Investigative Judge and any of them may request the Investigative Judge to conduct any questioning of the witness that is deemed necessary and crucial.

### **Rule 24: Provisional Measures**

First: The Investigative Judge may order any governmental authority to carry out the following, if it deems it adequate:

- a. To arrest a suspect and place him under temporary detention as per the IST Law and these Rules, and other provisions of the Iraqi law as may be relevant;
- b. To seize all material evidence;
- c. To take adequate measures to prevent the escape of a suspect or an accused person, the harming or intimidation of a victim or witness, or the destruction or loss of evidence.

The Investigative Judge shall indicate in this written order the grounds upon which he based himself and, unless he simply wishes to question the suspect, he shall mention in the order the primary charge, with a summary of its contents upon which he has relied. He shall further specify<sup>3</sup> the initial time limit for the temporary detention of the suspect.

If the suspect is notified of this order, he must be told of his rights as specified in this Rule, subsequently, given as soon as possible a copy of the Investigative Judge's order.

Second: In deciding whether to issue such order, the Investigative Judge shall consider the following:

- a. Whether there is a reliable body of evidence that brings to believe that the suspect may have committed a crime that falls within the jurisdiction of the SICT;
- b. Whether temporary detention is a necessary measure to prevent the escape of the suspect, or to prevent the harming or intimidation of the victim or the witness, or the destruction or loss of evidence;

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<sup>2</sup> A word appears to have been omitted from the Arabic text.

<sup>3</sup> A typographic error means that the word could also be read as "renew", but "specify" is the most likely meaning.

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- c. Whether temporary detention is necessary for the effective conduct of the investigation.

Third: The suspect shall be released if:

The Investigative Judge or the SICT issues a subsequent release order.

### **Rule 25: Orders of Temporary Detention**

First:

1. The accused cannot be placed under temporary detention for a period exceeding 90 days, starting from the day following that in which he is consigned to any detention unit affiliated to the SICT. This detention period may be extended for an additional 30-day period, by further order of the Designated Judge. This term is renewable; however the total period must not exceed 180 days.
2. The 180-day period may only be extended by the Designated Judge following approval of the President.
3. The decisions mentioned in paragraphs (first – second) may be appealed.<sup>4</sup>

Second: The provisions of Rules 35 and 36 of these Rules shall apply to the execution of the accused person's temporary detention.

Third: The accused must be brought, without delay following his temporary detention, before the Investigative Judge who issued the initial arrest order, or another Investigative Judge appointed by the Chief Investigative Judge. The Investigative Judge shall establish that the right of the accused to counsel is respected. The accused is entitled, at his own expense, to a defense lawyer qualified under Rule 29 of these Rules. If the accused asks the principal lawyer to provide him with a defense lawyer, the Investigative Judge shall inquire into the accused's ability to pay for the lawyer's fees, and instruct the Defense Office to ensure such lawyer. The Defense Office shall charge the accused for any legal services provided unless the Trial Judge finds that the accused is unable to pay.

Fourth: Subject to Rule 59 of these Rules, the accused may be detained until the conclusion of his trial if such arrest is deemed necessary to ensure his appearance before the tribunal, or to protect any victim or witness, or to prevent the destruction or loss of evidence.

### **Rule 26: Preservation of Information and Evidence**

First: The Investigative Judge, Public Prosecutor or Investigator shall send a copy of information and material evidence to the unit responsible for collecting evidence and information affiliated to the Tribunal. This unit shall preserve this material.

Second: The Investigative Judge shall prepare an account of all the material gathered, including documents, books, papers, and other objects. He shall give a copy of this account to

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<sup>4</sup> The Arabic wording is ambiguous as to whether this refers to Rule 25 First (1) and (2) or Rule 25 First and Second.

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the individual from whom the material was seized. Material that is of no evidentiary value shall be inventoried and safeguarded until such time that it can be returned.

Third: In a case the Trial Chamber requests documents from the Information Unit, the latter shall ensure a secured place for its transportation and storage.

### **Rule 27: Rights of the Accused during the Investigative Judge's Questioning**

First: The accused questioned by the Investigative Judge is entitled to rights, which the Investigative Judge shall notify him of prior to the questioning, in the language the accused speaks and understands. These rights are:

- a. The right to assistance of his own choosing, including the legal assistance provided by the Defense Office if he cannot afford to pay for the assistance;
- b. The right to an interpreter's services, free-of-charge, if he cannot understand or speak the language used during the questioning;
- c. The right to remain silent. In this regard, the suspect or accused shall be cautioned that anything he says may be used against him in court.

Second: The accused may waive his right to legal assistance during the questioning, provided the Investigative Judge establishes that the waiver is made in all liberty and awareness.

Third: If the accused practices his right to legal assistance, the Investigative Judge shall not question him without the presence of the lawyer, if the suspect does not voluntarily waive this right immediately after, in full knowledge of his right to the presence of the lawyer. In case of a waiver, if the suspect subsequently expresses the wish for the presence of a lawyer, the questioning shall cease only to be resumed in presence of the lawyer.

### **Rule 28: The Investigative Judge's Recording of the Questioning**

If the Investigative Judge questions the accused, he may record this questioning by audio or visual recording, or by a recording clerk.

## **PART THREE The Defense Counsel**

### **Rule 29: Appointment of the lawyer**

First: The lawyer appointed by the accused shall present his power of attorney to the designated judge at the earliest opportunity. The latter shall verify this lawyer's qualification, as per the Iraqi Law.

Second: Pursuant to Articles 18 (Third) and 19 (Fourth) of the SICT Law, the accused may retain one or more non-Iraqi lawyers.

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Third: In carrying out his functions, the lawyer shall adhere to the relevant provisions of the Law, these Rules and any other rules or regulations adopted by the SICT. Moreover, he shall adhere to any codes of practice and ethics governing his profession.

### **Rule 30: The Defense Office**

First: The Director of the Administration Department shall establish a Defense Office for the purpose of ensuring the rights of accused. The Defense Office shall be headed by a director chosen from among the lawyers, for a three-year, renewable term. The Director may remove the lawyer heading the office from his position for a valid reason, following a proper investigation and the approval of the President.

Second: In accordance with the Law and these Rules, the Defense Office shall provide counsel and assistance to each of the following:

- a. The accused placed in temporary detention in accordance with Rule 22 of these Rules;
- b. The accused who is being questioned by the Investigative Judge in accordance with Rule 27, even if the accused is not in detention;
- c. The accused persons standing before the Tribunal.

Third: Some of the main functions of the Defense Office include:

- a. Providing legal assistance to any accused unable to afford the service, or as ordered by the Tribunal;
- b. To charge or appoint a lawyer that is not located far from the detention unit and the seat of the Tribunal, to present himself to the detention unit when he is charged with providing legal assistance to the suspect or accused;
- c. Providing the required facilities to enable the lawyer in preparing his defense.

Fourth: The head of the Defense Office shall, in view of providing an effective defense for the accused, assign a highly qualified criminal defense lawyer.

Fifth: The demands and defense of the client, the accused, shall be presented by the lawyer with high precision.

Sixth:

- a. Pursuant to Rule 21(Third) of these Rules, the Director may, in agreement with the head of the Defense Office, contract with non-Iraqi experts and advisors to provide assistance and expertise to the Defense Office.
- b. The non-Iraqi advisors or experts shall be selected for their experience in Criminal Law in their countries, for their extensive knowledge of or expertise in international war crime trials, and for their integrity and high moral character.

### **Rule 31: Misconduct of Lawyer**

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First: The judge or the Trial Chamber may take legal measures against the lawyer if, in his/its opinion, the latter's misconduct has become offensive and harmful, or demeans the dignity of the SICT, or obstructs the proceedings.

Second: In case of a lawyer's misconduct, the judge or Trial Chamber may, upon the consent of the President, communicate to the body regulating the professional conduct in this lawyer's country of such conduct.

## **SECTION SIX Proceedings of the Investigation Judge**

### **PART ONE Multiple Crimes**

#### **Rule 32: Multiple Crimes**

a. If a person is accused of multiple crimes, measures shall be taken against the accused in accordance with the provisions of Article 132 of the Iraqi Code of Criminal Procedure No. 23 of 1971.

b. If a person is accused of more than one crime, he can be referred to the SICT to one case if these crimes are punishable by one article of the same law.

#### **Rule 33: Non-Disclosure of the Indictment**

First: The designated judge may order the non-disclosure to the public of any documents or information until further order, in exceptional circumstances and to serve the interest of justice.

Second: The Trial Chamber or designated judge may issue an order for the non-disclosure, in total or part, of any particular document or information, if necessary or is convinced that issuing such an order is required to give effect to the provisions of these Rules or to preserve the confidentiality of information obtained by the Investigative Judge or the Chief Investigative Judge, or otherwise serves the interests of justice.

### **PART TWO Orders and Warrants**

#### **Rule 34: General Provisions**

First: First based upon the request of any party or plaintiff, the Investigative Judge shall issue such orders, summonses, subpoenas, and warrants as may be necessary in the interests of justice for the purposes of the investigation.

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Second: First based upon the request of any party or plaintiff, the designated judge or the Trial Chamber may issue orders, summonses, subpoenas and warrants as may be necessary for the purpose of summoning the accused or the conduct of the trial.

### **Rule 35: Enforcement of Arrest Warrants**

First: Pursuant to Rule 24 of these Rules, an arrest warrant shall be signed by an Investigative Judge and shall bear the seal of the SICT. It shall be accompanied by an account of the criminal charges brought against the accused, the legal text or the bill of indictment, and a statement of the rights of the suspect or the accused. The Director of the Administration Department shall communicate to the relevant Iraqi authorities three sets of certified copies of these documents.

Second: Taking into account Rule 24 of these Rules, the Director of the Administration Department shall request from the aforementioned authorities the following:

- a. To arrest of the suspect or the accused and transfer him to the Tribunal;
- b. To inform the suspect of the accused of the set of aforementioned documents related to the suspect or accused, and to read those documents that need to be read to the accused in the language he understands, and inform him of his rights in that language;
- c. To return a copy of the documents with proof of service to the SICT.

### **Rule 36: Non-Enforcement of Arrest Warrants**

First: When the relevant Iraqi authorities to whom the arrest warrant or orders referred to under Rule 24 or others, are unable to enforce the arrest warrant, they shall present a report to the Director of the Administration Department stating the reasons for their non-enforcement.

Second: If within a reasonable period after the arrest warrant or orders have been communicated to the relevant Iraqi authorities, no report has been presented about the action taken in this regard, this shall be considered as a non-enforcement of the arrest warrant or of the orders. The Presiding Judge of a Trial Chamber shall, upon his own initiative or at the request of an Investigative Judge, notify the President of this non-enforcement so that appropriate action can be taken.

### **Rule 37: Procedure upon Confession**

First: If the accused pleads guilty for the charge brought against him or requests to change his plea to guilty, the Tribunal shall need to establish that:

- a. The accused person makes his plea of his own free choice and will;
- b. The plea is unequivocal and there is a sufficient factual ground to establish the accused's responsibility for the crime.

Second: Thereafter, the Trial Chamber may find him guilty if the conditions referred to in paragraph (First) of this clause are met, and the Trial Chamber is convinced of criminating

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the accused of the action to which he pled guilty. Thereupon, the Trial Chamber shall instruct of the end of the trial and set the date for pronouncing the judgment.

Third:

- a. If the Trial Chamber is not convinced of any of the factors in paragraph (First) of this clause, or if, under applicable law, the criminal act is punishable by death, then the Trial Chamber shall enter a not guilty plea and pursue the trial.
- b. In case the Trial Chamber accepts the accused person's 'not guilty' plea for the act punishable by death, and if this plea is pursuant to Rule 38 of the present Rules, and if the Chief Prosecutor has recommended a sentence that is less severe than the death penalty, then the Trial Chamber must close the trial and issue the sentence.

### **Rule 8[sic]: Agreement on Confession**

The offer for pardon for those accused of ambiguous crimes shall be made in accordance with Article 129 of the Code of Criminal Procedure No. 23 of 1971.

### **Rule 39: Detention and Bail**

The detention and bail shall be in accordance with the Code of Criminal Procedure No. 23 of 1971, provided the place of detention is located within the detention facilities of the Tribunal.

## **PART THREE Presenting Evidence**

### **Rule 40: The Prosecutor's Disclosure of the Material Constituents of the Crime**

First: Pursuant to Rules 33 and 51 of the present Rules, the Public Prosecutor shall:

- a. Disclose to the defense lawyer all the witnesses' depositions and evidence, 45 days prior to the commencement of trial. For purposes of this sub-Rule, the depositions of witnesses shall be in written form and signed by the accused, or the witnesses shall make their statements, which shall be read, during the trial. The Trial Chamber shall order that additional copies of the witnesses' depositions be made available to the Defense within a prescribed time.
- b. Upon the request of the Defense, and pursuant to Rule 42 of the present Rules, the defense lawyer is allowed to examine the books, documents and photographs and obtain them in preparation for his Defense. He may also examine confidential materials,<sup>5</sup> peculiarities, books, documents, photographs and tangible material, or whatever he finds in the possession of the accused, and which is intended to be submitted as evidence to the Trial Chamber.

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<sup>5</sup> There is a typing error in the Arabic original. The Arabic reads المناصفات but tribunal officials have confirmed it is meant to read المصنفات .

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Second: During the investigation, and during the prosecutor's examination of documents and information, he could discover other issues that come against the public interest or that can affect the national security interests of any State. In such case, the prosecutor shall ask the Chief Investigative Judge to entrust a designated Judge with the investigation in secret, and whose identity shall not be disclosed, as an exception to sub-Rule (a) of this Rule.

When taking such a procedure, the prosecutor shall provide the information and material that is kept as confidential.

### **Rule 41: Reciprocal Disclosure of Evidence**

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

- a. At least 45 days prior to the commencement of trial, the prosecutor shall notify the defense lawyer of the names of witnesses whose statements shall be heard to establish the responsibility of the act imputed to the accused.
- b. The defense lawyer shall notify the prosecutor of the names of the witnesses who shall be called in for the rebuttal of the charge, of which the prosecutor has received notice in accordance with sub-Rule (Third) (a) of this Rule, or any charge that appears in the case during the period referred to in clause (3) (c) of this paragraph;
- c. Fifteen days prior to the commencement of the trial, the defense lawyer shall tell, notify or inform the prosecutor the following:
  1. Present the evidence that establishes that the accused was not present at the scene of the crime, and specify the place at which the accused was at the time of the crime, with the names and addresses of corroborating witnesses and any other evidence upon which the accused relies to establish his statement in such case;
  2. Any special defense, including restraints on mental responsibility, with the names and addresses of witnesses and any other evidence upon which the accused relies to establish this special defense;
  3. Stating or proving the victim's consent to the sexual assault perpetrated by the accused against her;
  4. Hand the prosecutor any books, documents, photographs or tangible evidence which the court decides that the prosecutor needs to examine or copy.
- d. At least 15 days prior to the commencement of the trial, the defense lawyer shall notify the prosecutor of the names of the defense witnesses who shall make a deposition.

Second: Failure of the defense lawyer to provide such information as per this Rule shall not preclude the accused from presenting his defense, and the issue of relying upon it shall be at the discretion of the Tribunal.

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Third: In order to assist the prosecutor in fulfilling his obligations referred to in these Rules, the defense lawyer shall, at least 15 days prior to trial, provide the prosecutor with the Defense plea, which must include:

- a. The nature of the charge ascribed to the accused in general;
- b. An indication to the issues for which the Prosecutor was asked to take measures;
- c. For every issue in the case, for which the Prosecutor took a measure, there should be a mention as to the reason for this measure.

Fourth: If either party discovers additional evidence or information or material which should have been produced earlier pursuant to these Rules, that party shall immediately notify the other party and the Tribunal of the existence of such additional evidence, information or material.

### **Rule 42: Disclosure of Exculpatory Evidence**

First: In extraordinary circumstances, and based on a request by either party that serves the cause of justice, the Trial Chamber or the Chief Investigative Judge – depending on the situation - may delegate one of the court members or an Investigative Judge to hear a witness' testimony and take a deposition of it.

Second: The Prosecutor shall disclose to the defense lawyer the probative evidence he has available, which serves to exculpate the accused of the imputed crime or alleviate it, or that may affect the credibility of a prosecution witness or the validity of prosecution evidence. The Prosecutor shall continuously disclose the motives for penalties.

### **Rule 43: Matters not Subject to Disclosure**

First: Taking into account the provisions of Rules 40 and 41 of the present Rules, reports, memoranda, and other internal documents put forward by one of the parties, and which help, or have any connection with the investigation or the preparation of the case, are not subject to disclosure or notification, in accordance with the aforementioned provisions.

Second: If the Tribunal is in possession of information presented to it on a confidential basis, and which it accepted on the grounds that it is confidential, and which was used solely for the purpose of generating new evidence, this information and its origin - notwithstanding Rule 42 of the present Rules - shall not be disclosed by the Tribunal without the consent of the person or party that provided this information.

Third: Upon the written consent of the person or party that provided information pursuant to sub-Rule (Second) of the present Rule, the Prosecutor shall chose any of this information as evidence in a testimony or present a document, or any other material so afforded, provided the accused receives prior notice if this, in accordance with Rule 42 of the present Rules. The Trial Chamber may not order either party to produce additional evidence obtained from a person or party, and may rule against presenting such additional information or using a person or a party's representative as witness or again, it may on the contrary, order their attendance.

## **Laws**

Fourth: The right of the accused to disclaim the evidence presented in his case remains unaffected and is subject only to the precisions mentioned in sub-Rules (Third) and (Fourth) of the present Rule.

## **PART FOUR Depositions**

### **Rule 44: Depositions**

At the request of either party with the view of serving justice, the Tribunal shall issue an order that a deposition be recorded outside the courtroom. To this end, it shall delegate one of its judges or an Investigative Judge to preside over the written deposition and prepare a record about this, taking into account the provisions of Rule 28 of the present Rules,

## **SECTION SEVEN Trial Proceedings**

### **PART ONE Judgments**

### **Rule 45: Trial Proceedings**

The trial proceedings shall be in accordance with the Code of Criminal Procedure No. 23 of 1971, and with the present Rules.

### **Rule 46: Intervenors in the lawsuit**

The Trial Chamber may invite any organization or person to provide his expertise on any issue, if the Tribunal believes that such expertise can help it reach a fair decision in the case.

### **Rule 47: Medical Examination of the Accused**

The Trial Chamber, at its own initiative or upon one of the parties' request, may order that a psychiatric or psychological examination of the accused be made.

### **Rule 48: Protection Measures of Harmed Victims (Victims) and Witnesses**

First: Upon the initiative of the Trial Chamber or at the request of any party, the harmed person or the witness concerned, or the victims and witnesses together, who request appropriate security protective measures and measures for the special protection of the harmed person or the witness, provided these measures are consistent with the rights of the accused, the Tribunal shall order that such measures to protect the harmed person or the witness be taken before the indictment is confirmed or at any other time.

Second: The Tribunal shall hold private deliberations to determine the following:

## **Laws**

- a. Measures to prevent the disclosure to the public or the media of the whereabouts of the harmed person or the witness, or of the persons who are important in the offense, or the witnesses, by such means as:
  1. Expunging the name and identifying information mentioned in records (minutes) of the SICT;
  2. Non-disclosure to the public of any records identifying the harmed person or the witness;
  3. Prohibition of filming the testimony, or registering it through voice-altering devices or closed-circuit television, video link or other technological devices;
- b. Holding closed sessions in accordance with Rule 71 of the present Rules;

Third: the Tribunal shall oversee the questioning of witnesses without harshness or intimidation.

Fourth: When taking a decision pursuant to sub-Rule (First) of this Rule, the Trial Chamber shall mention whether it is possible to copy the witnesses' statements and whether these can be made available in other proceedings before the SICT.

Fifth: Once protective measures have been ordered in any trial before the SICT, such measures shall remain unless they have to be replaced in subsequent trials before the SICT, or rescinded, changed or augmented in accordance with the procedure set out in sub-Rule (Seventh) of the present Rule.

Sixth: In case of subsequent protective measures, or in case these are changed or augmented compared to those ordered the first time, the following shall apply:

- a. This same protection remains standing in every Trial Chamber, regardless of its formation;
- b. If the initial protection does not remain, then the Trial Chamber must retain the subsequent protection.

Seventh: Before applying sub-Rule (Sixth) of the present Rule, the Trial Chamber that retains the subsequent protective measures shall obtain all relevant information from the earlier protection and consult with any Judge who ordered the initial protective measures.

Eighth: References in this Rule to the Trial Chamber includes the Judge of that Trial Chamber or the Designated Judge.

### **Rule 49: Solemn Oath of Interpreters and Translators**

Before performing any duties, the interpreter, translator or expert shall solemnly swear to do so in all integrity, impartiality and independence, with full respect for the confidential nature of the duty.

## **Laws**

### **Rule 50: Public Sessions**

All trial sessions before the Trial Chamber shall be held in public. Photography, video, or audio broadcasting or recording of public proceedings shall be prohibited, unless authorized by the Trial Chamber or for recording purposes for the SICT pursuant to Rule 57 of the present Rules. Also, all deliberations of the Trial Chamber shall be confidential (closed).

### **Rule 51: Closed Sessions**

First: The Trial Chamber shall order that the press and the public be excluded from some or all the Chamber's sessions when:

- a. If the release of information causes prejudice to the national security of Iraq;
- b. It is necessary to ensure the security of the SICT;
- c. It is necessary to protect the privacy of persons, as in cases of sexual assaults involving women and children;
- d. Making the session public causes prejudice to the interests of justice.

Second: In case the Tribunal does not grant permission, no person is allowed to disclose information related to a closed session.

Third: If in the opinion of another sovereign State, the disclosure of information harms its national security, then reasonable steps to include such information in closed sessions shall be taken by the Trial Chamber to ensure that the security of this State are not prejudiced. If a State remains worried for its national security after the Trial Chamber has taken its decision, it can appeal this decision. Any such appeal must be raised within 7 days of the date it is issued, and the appeal shall be considered as an urgent issue but shall not hinder the continuation of the trial.

### **Rule 52: Control of Trial**

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

Second: The accused cannot be moved away from the courtroom during the prosecution, unless he acts in such a way that disrupts the order during the trial. The proceedings shall remain in this case until it is possible to continue the trial in his presence. The Chamber shall notify him of the proceedings that took place during his absence.

### **Rule 53: Records of Trial and Preservation of Evidence**

First: The Director of the Administration and Services preserve all records of the trial, including audio recordings, transcripts and, when deemed necessary by the Trial Chamber, video recordings of the trial.

## **Laws**

Second: The Trial Chamber may order the disclosure of all or part of the records of closed sessions when the reasons for non-disclosure no longer stand.

Third: The Director of the Administration and Services shall preserve all physical evidence presented during the trial.

## **PART TWO Trial Proceedings**

### **Rule 54: Single and Joint (Group) Trials**

The provisions of the Code of Criminal Procedure No 23 of 1971 shall be applied to Single and Joint (Group) trials.

### **Rule 55: Means of Restraint**

The accused shall be brought to the courtroom without any form of restraint or handcuffs, and it is up to the Chamber to take the necessary measures to ensure order in the courtroom.

### **Rule 56: Commencement of Trial**

Except where expressly required by the Law or the present Rules, the trial shall be conducted in accordance with the procedures stipulated in Article 167 of the Code of Criminal Procedure No. 23 of 1971.

### **Rule 57: Presentation of Evidence**

First: Taking into account the provisions of Article 168 of the Code of Criminal Procedure, in every case, the litigants must be allowed to question and examine the witness, in view of refuting his statements and re-questioning him. The party calling for the witness statement shall conduct the debate with the witnesses or their questioning. The party who did not call a witness shall conduct the cross-examination. After the debate and questioning, the party calling a witness shall conduct the re-examination. The party that called the witness shall conduct the questioning of the witness first. The Judge shall at any stage direct the question to the witness. The accused shall not question the witness directly except through the Trial Chamber).<sup>6</sup>

Second: Evidence may be submitted directly to the Trial Chamber, [or] via such media communications, including video or satellite channels, and as the Tribunal may order.

### **Rule 58: The Judgment**

First: The judgment of the accused shall be pronounced in public, during the session especially scheduled for its announcement.

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<sup>6</sup> This is the literal translation of the Arabic original, which is itself unclear.

## **Laws**

Second: If the Trial Chamber issues a judgment that convicts the accused and orders a sentence, it shall order the forfeiture of any objects acquired from the crime, in accordance with Articles 101 and 117 of the Penal Code No. 111 of 1969.

Third: The judgment shall be rendered by a majority of the five judges assigned to the Trial Chamber. The opinions of the dissenting judges shall be appended to it with each reason written separately, and the dissenting opinion shall be preserved in the file of the case.

## **SECTION THREE Rules for Gathering Evidence**

### **Rule 59: General Provisions**

First: The Trial Chamber shall apply the rules of evidence stipulated in the Code of Criminal Procedure No.23 of 1971 as well as in these Rules, and shall not be bound by rules of evidence used in any other tribunal.

Second: In the absence of a law stipulating the application of rules of evidence, the Trial Chamber shall apply rules of evidence that are most adequate to achieve a fair decision and that are consistent with the spirit of the law<sup>7</sup> and general principles of law.

Third: The Tribunal shall accept any relevant evidence that has probative value.

Fourth: The Trial Chamber may not accept evidence if its probative value does not have a substantial impact and which may incur prejudice, undue delay, waste of time, and is not needed as evidence.

Fifth: The following factors shall be taken into consideration when determining the admissibility of evidence under this Rule:

- a. Confirming the authenticity of the evidence obtained outside the court;
- b. Selecting those statements and circumstances that can verify or impugn the statement;
- c. Respecting other extensions,<sup>8</sup> limited to whenever these are of interest in that they confirm the validity of the evidence and its trustworthiness;
- d. Considering the means by which the evidence was obtained and whether it is refused, as a basis for relying on it.

### **Rule 60: Testimony of Witnesses**

First: The statement is given directly or as stipulated in Rule 60 of the present Rules. When sub-Rule (Fourth) of the Rule 59 is applied, the Chamber may accept that the testimony of witnesses be made by telephone, audiovisual or other means. In any case, when the Trial

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<sup>7</sup> The text here may refer either to “the law” or the law of the SICT, but most likely the former.

<sup>8</sup> A literal translation of the original Arabic, the meaning of which is unclear.

## **Laws**

Chamber assesses the statement, it takes into consideration the variables in the testimonies and the extent to which these have an impact on the testimonies given by the witnesses.

Second: Prior to making his statement, the witness, who is over 15 years old, shall take the oath that he shall speak the truth and nothing but the truth. In case the witness is below the aforementioned age, he can be heard for the sake of argumentation, without him taking the oath.

### **Rule 61: False Testimony**

If the Tribunal has strong grounds to believe that a witness has knowingly and willfully given a false testimony, it shall approach the Investigations Chambers to take the legal procedures against him.

### **Rule 62: Testimony of Experts**

First: The testimony of experts is that which is given by witnesses qualified as experts by knowledge, skill, experience, training, or education, and who have scientific, technological, or other specialized expertise that will help the Trial Chamber in understanding the evidence.

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

### **Rule 63: Rules for Gathering Evidence in Cases of Sexual Assault**

First: In cases of sexual assault and if there is reasonable cause, there is no need for the testimony of the harmed person.

Second: Consent as a defense shall not be allowed if the harmed person:

- a. Is subject to threats with or has reason to fear violence, coercion, duress, detention or psychological harm, or believes that he is a victim of compulsion, threat or fear.

Third: The evidence submitted by the accused must prove the consent of the harmed person, devoid of any shortcomings in that consent.

## **SECTION FOUR Procedures for Issuing the Judgment**

### **Rule 64: Status of the Acquitted Person**

First: When the judgment of acquittal or release is pronounced, the Prosecutor shall inform the Trial Chamber during the same session of his intention to file notice of appeal within the legal duration from the date on which the full judgment is rendered, and present subsequently the appeal plea. The Trial Chamber shall then order the continued detention of the accused, pending the result of the appeal.

## **Laws**

Second: In case of acquittal or release, and the Prosecutor announces that he has no intention to appeal the judgment pursuant to sub-Rule (First), and in case there is no other case against the accused, the Trial Chamber shall order the release of the accused.

### **Rule 65: Sentences**

First: In issuing a judgment, the Trial Chamber takes into account the factors mentioned in Article 24 of the Law, as well as the following factors:

- a. The aggravating circumstances;
- b. Any attenuating circumstances including the substantial cooperation of the criminal person with the Chief Prosecutor or the Investigative Judge before and after the conviction;
- c. The provisions of Article 30 (Third) of the Law.

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

Third: The period of detention or arrest of the accused person shall be counted from the moment this person was detained or arrested until he was delivered to the SICT, either for the trial or pending the result of the appeal. This period does not include the time, if any, during which the accused was detained by the government of another sovereign State, unless that State was acting in a primary way, at the bequest of the Iraqi Council of Ministers or the successor government, taking into consideration that the date of the recovery of sovereignty is June 1, 2004.

### **Rule 66: Enforcement of Sentence**

First: The sentence shall be enforced in accordance with the present Rules and the provisions of the Code of Criminal Procedure No. 23 of 1971.

Second: If the Trial Chamber had previously ordered that the convicted person be on conditional release or is otherwise at liberty, and is not present when the sentence is pronounced, the Trial Chamber shall issue a warrant for his arrest. Upon his arrest, he shall be notified of the conviction and the sentence, and shall follow the procedures stipulated in Rule 68 of the present Rules and Article 151 of the Code of Criminal Procedure No. 23 of 1971.

### **Rule 67: Confiscation of Property**

After a sentence of conviction or incrimination, which contains specific procedures as provided in Rule 58(Second) of the present Rules, the Trial Chamber shall, at the request of the Prosecutor or at its own initiative, hold a special session to determine the matter of property forfeiture stipulated in the aforementioned clause, if it does not decide to forfeit the property taking into consideration Article 307 of the Code of Criminal Procedure No. 23 of 1971 and Paragraph 7 of Article 24 of the Law.

## **Laws**

### **Rule 68: The Appeal**

The appeals proceedings and the time limit for the appeal should be consistent with the Law and the Code of Criminal Procedure No. 23 of 1971.

- a. The judgment of the Investigation Judge may be appealed before the Appeals Chamber within 15 days starting from the date he was notified or considered to be notified.
- b. The appeal before the Appeals Chamber of the verdicts and judgments issued by the Trial Chamber shall be in accordance with the Code of Criminal Procedure No. 23 of 1971.

### **Rule 69: Retrial**

The retrial procedures shall be consistent with the Law and the Code of Criminal Procedure No. 23 of 1971.

### **Rule 70:**

These Rules shall be considered as an addendum to Law 10 of 2005 of the SICT.