

Iraqi High Criminal Court Rules for Proceedings and evidence gathering

Pursuant to the provisions of Article (16) of the Law () of 2005, approved by Article (48) of the Transitional State Administration Law, decides to issue the following rules for proceedings and evidence gathering:

Chapter one Definitions and General Rules

Rule (1) : Definitions

Terminology used in this set of rules will have the meaning that is given to them, unless expressed otherwise by the context.

1. Law: shall mean the law of the Iraqi High Criminal Court number () of 2005.
2. Judge: shall mean judge sitting at the Court of Cassation, judge at the Criminal Court, or a judge at the Court of investigation.
3. President: shall mean the President of the Iraqi High Criminal Court.
4. Judge of Cassation: shall mean any judge at the Court of Cassation.
5. President of the Criminal Court: shall mean the Judge who presides over the Criminal Court pursuant to the law.
6. President of Investigative Judges: shall mean the President of the Judges at the Court of Investigation.
7. Investigative Judge: shall mean the designated Judge.
8. General Prosecution Body: shall mean the designated body in the Court.
9. President of the General Prosecution Body: shall mean the judge who presides over the general prosecution body as referred to in the law.
10. General Prosecutor: shall mean designated in the Court.
11. Non-Iraqi Judges: shall mean the judges designated by the present law.
12. Experts: shall mean non-Iraqi citizens who were referred to in the present law.
13. Victim: shall mean the person who claims or, realizes that a crime has been committed against [him] and that it falls under the jurisdiction of the Iraqi High Criminal Court.
14. Suspect: shall mean a person who, because of the information available to the Investigative judge, is suspected of committing a crime that falls under the jurisdiction of the Iraqi High Court.
15. Operation: shall mean number of actions or refusals that took place under one or more, events in one or more locations and it is a part of a bigger common plan or strategy that is considered a crime.

16. Investigation: shall mean the sum of all actions and measures performed pursuant to the law and the present rules to collect information and evidence prior to, or after, a referral decision.

Rule (2) : Procedures taken outside the Court

It is permissible to the Court or the Judge of Investigation, when necessary, to perform parts of their tasks outside of Iraq with an authorization from the President. In addition, it is permissible to the Court after that, to use electronic voice and video means and electronic mail and other electronic means. The Court shall decide upon the appropriate measures to implement the present article.

Rule (3) : Non consideration of the rules

First: the opponent shall immediately introduce [his] claims based on the infringement of the law or the present rules to the Court and the Court shall respond if the claims and demands are proven to be true.

Second: the decision to answer [the claim] shall be made pursuant to the present article and in consideration of what the Iraqi High Criminal Court shall see appropriate and pursuant to the general principles of justice.

Rule (4) : Time-frames

First: If the law or the present rules do not refer to the entry in force of the time frame for any proceedings, then there shall be recourse to the general rules of the Iraqi law.

Second: Pleas to all claims shall be made available within fourteen (14) days from the date of the notice given to the claimant as long as the Criminal Court did not decide otherwise, and an answer to the plea shall be made available within seven (7) days from the date of the notice.

Chapter two
Legal cooperation and assistance

Rule (5) : solicitations and orders

If the investigative judge is convinced that a certain government employee or another person, did not or, does not, act in response to what was expected from him, pursuant to article (18) of the Court Law, then the judge shall take the necessary legal measures against the individual and refer [him] to the Iraqi High Criminal Court pursuant to the provisions of the Code of Penal Procedure.

Chapter three

Organization chart of the Iraqi High Criminal Court
Section one
Oath

Rule (6) : Oath formulation

First: Judges

Judges shall take the following oath before the President of the Federal Judicial Council and according to the following formulation:

“I, do swear before God to judge among people with justice and to implement the laws with integrity!”

Second: Members of the General Prosecution

Members of the General Prosecution, before performing their duties, shall take the following oath before the President of the Federal Judicial Council:

“I do swear before God to perform my duties and tasks and to implement the laws with integrity and honesty!”

Third: Legal Investigators

Legal investigator, before performing their duties, shall take the following oath before the Board of Cassation:

“I do swear before God to perform my duties with justice and to implement the laws with integrity!”

Fourth: The records of the oath shall be saved in the Court registries.

Section two
Judges

Rule (7):

First: Judges shall perform their duties independently, shall not be subject or responsive to instructions or directions from the presidency of the republic, the council of ministers, or any other party, while performing [his] judicial duties.

Second: Judges shall perform their duties impartially during the investigation or the proceedings or the Cassation.

Third: No judge shall look into a claim if there is a personal conflict of interests, or has any personal relations to the claim, or had any personal relations to the claim, that might impact his life.

Fourth: a judge shall remove himself from any case that might, for logical reasons, impact his life or independence.

Fifth: the President of the Court shall, when necessary, nominate a different criminal judge to replace the judge who has been removed. The President of investigative judges shall, when necessary, nominate an investigative judge to replace the judge who has been removed.

Rule (8):

It is permitted to any opponent to introduce a claim to the Board of Cassation supported by legal evidence and notifying [him] of the loss of judicial qualification by the judge and to answer the claim within three days.

Rule (9): Absence of judges and termination of their duties

First: Judges at the Penal Court shall perform their duties from the time of the oath until they become unqualified to hold their seat at the Court, or until they are replaced by other judges due to the termination of the time determined to hold such seat.

Second: A judge who decides to retire shall inform the President of the Court by giving a written notice and the latter shall refer the notice to the Council of Ministers.

Third: When a judge at the Penal Court can no longer preside over a case for whatever reasons, the President of the Court shall, when necessary, shall nominate a different judge to preside over that case.

Rule (10):

First: Seniority of judges shall be determined at different dates based on the precedence of their nominations. Seniority regarding judges who were nominated at the same date shall be determined according to the date of birth.

Second: When a judge is nominated again, the total of the time spent at Court shall be taken into consideration to determine [his] seniority.

Third: All judges shall be equal when performing their judicial duties regardless of the date of nomination, age, citizenship or time spent in Court.

Section three Presidency

Rule (11): Vice President of the Court

The Most senior judge among the members of the Special Board shall be nominated to the vice presidency of the Court.

Rule (12) : provisional replacement of the President or Vice President

If the President or the Vice President of the Court are incapable of presiding over the Court, the most senior judge shall provisionally occupy the presidency of the Court until the President or the Vice President can be able to resume [his] duties or until a new President is elected.

Section Four Administrative Circuit Director

Rule (13): Administrative Circuit Employees

The Administrative Circuit Director shall fill the annual employment quota based on the appropriate needs for an effective performance of the administrative tasks. The Director shall provide the expanded Board of the Court with the list of the personnel for review and approval.

Rule (14): Mission of the Administrative Circuit Director

First: the Administrative Circuit Director shall provide administrative assistance and services to the Iraqi High Criminal Court and its expanded meetings, to judges and prosecutors and to the defense office as part of [his] mission. He shall be responsible, under the authority of the President of the Court, of managing the Court and its services.

Second: the Administrative Circuit Director while performing his mission, shall provide the Court with written or oral reports about any issues that may arise in the context of a specific case that affect or may affect [his] performance including procedures relative to the execution of judicial decisions. [He] shall take the necessary measures to inform the parties whenever necessary.

Third: the Administrative Circuit Director shall be responsible for the health and situations of the accused individuals under arrest, shall be concerned with the respect of human rights and basic liberties and especially, shall assume [his] innocence until proven guilty. To that effect, he shall consult with the President of the Court in order to take the appropriate measures or to adopt or change the necessary instructions that determine the arrest of individuals while awaiting the results of the proceedings or cassation, or their arrest and other procedures that regulate the arrest of individuals.

Rule (15): Victims and witnesses Unit

First: the Administrative Circuit Director shall establish a victims and witnesses' unit that performs its specific mission pursuant to the law of the Court and the present rules, and following the orders of the President of investigative judges and the President of the prosecution body.

The mission performed by this unit shall concern all victims and witnesses who stand before the Iraqi High Court as well as all other individuals who may be in danger because of the testimonials given before the Court. The following services shall be provided by the unit, to all these individuals based on their specific needs and situations:

- A. Provide the Iraqi High Criminal Court with recommendations regarding their needs for protection and safety measures.
- B. Provide adequate preventive measures and security procedures and set short term or long term plans and to commit to develop them in order to protect and assist them.
- C. Guarantee the appropriate support, consulting, medical assistance, physical and psychological therapy mainly regarding rape and sex abuse cases.

Second: the Unit shall comprise, among its personnel, experts in external forcefulness (or injuries) including injuries related to sexual assault crimes, and cooperate if necessary, with non-governmental and international governmental organizations.

Rule (16): minutes of expanded meetings

The Administrative Circuit Director and the administrative personnel shall be responsible for the minutes of expanded meetings held by the Iraqi High Criminal Court and the instructions of the President of the Court.

Section five: President of the General prosecution body**Rule (17): selection of the president of the general prosecution body and [his] deputy**

First: the president of the general prosecution body and [his] deputy shall be selected pursuant to article (9/fourth) of the law for a renewable one year term.

Second: If the president of the general prosecution body did not perform his mission, resigns or is removed before the end of his term, the members of the general prosecution body shall select a replacement among them for the remaining period of time pursuant to article (9), paragraph (4).

Section six
Investigative judges

Rule (18): the President of the investigative Court and [his] deputy shall be elected by investigative judges and by a majority of votes.

If the candidates have the same number of votes, the most senior of the candidates, pursuant to Rule (10) of the present regulations shall become president of investigative judges.

Second: the president of investigative judges and [his] deputy shall be selected for a renewable one year term.

Third: If the president of investigative judges did not perform his mission, resigns or is removed before the end of his term, investigative judges shall select a replacement among themselves for the remaining period of time.

Rule (19): Duties of the president of investigative judges

First: the president of investigative judges shall coordinate between the duties of the investigative judges and perform other tasks pursuant to the law of the Court and the present rules.

Second: the president of investigative judges shall, after consulting with investigative judges, issue work instructions that are compliant with the law of the Court and the present set of rules.

Rule (20): Duties of the vice president of investigative judges

The vice president of investigative judges shall perform the president's tasks when the president is not available or incapable of performing his duties.

Chapter four

Non Iraqi consultants/ experts

Rule (21): Duties of non Iraqi consultants and experts

First: non Iraqi consultants and experts shall be, pursuant to the law of the Court, referred to the personnel of the prosecution, investigative judges, penal courts and cassation committee while considering each of them a separate and independent work location. A non Iraqi citizen who is assigned to one of the said work locations within the Iraqi High Criminal Court as a consultant or expert, shall not perform tasks at the same time for a different work location within the said Court. However, it is permitted to reassign a non Iraqi consultant or expert to a different work location after the president's approval. A non Iraqi expert or consultants who was reassigned to a different location of work, shall

not participate in any way in providing services and expertise in a case that he handled in the past and prior to [his] reassignment.

Second: the Administrative Circuit Director shall provide non Iraqi experts and consultants with all means and services needed to perform their tasks and with the approval of the president of the Court.

Third: Non Iraqi consultants and observers assigned to the defense office shall, pursuant to rule (30) of the present set of rules, provide assistance to the Iraqi defense office including consultations regarding proposals to amend the present set of rules or any other rules specific to professional behavior. They shall not perform any service that may result into a relationship such as a relationship between an attorney and [his] suspect client or an accused individual, or to represent any suspect or accused individual, in any proceedings before the Iraqi High Criminal Court.

Fourth: non Iraqi consultants and experts assigned to investigative judges, the Penal Court or the cassation Committee shall provide impartial, confidential and non committal consultations and recommendations. Non Iraqi consultants and experts assigned to the prosecution or the defense shall provide impartial, confidential and non committal consultations and recommendations.

Chapter five

Investigation and suspects' rights

Section one/ Initiating the investigation

Rule (22): Initiating the investigation

First: Considering the provisions of article (18) of the Law, investigative procedures shall initiate with an oral or written claim introduced to the investigative judge.

Second: It is permitted to Iraqi ministers, government offices, investigative officers, international organizations or any other agency or organization to introduce a petition with the investigative judge in the Iraqi High Criminal Court.

Section two

The investigation

Rule (23): Conducting the investigation

First: the investigative judge, when conducting an investigation, shall perform the following:

- a. Review testimonials and evidence, send subpoena to suspects, depose them as well as the victims and witnesses, record their statements, collect evidence and conduct field investigation.
- b. Take all measures necessary to the investigation including, special measures to guarantee the safety of confidential witnesses and confidential sources.
- c. Look for any government assistance or international body in relation with the issue including Interpol, with the approval of the president of investigative judges.
- d. Provide adjournment requests pursuant to the provisions of the law.

Second: the investigative judge shall collect in the same way evidence of guilt and evidence of innocence. The prosecution, during the investigation, may consult all the evidence collected by the investigative judge during [his] investigation.

Third: the investigative judge shall depose witnesses and victims in closed sessions while considering the provisions of the Penal Code number (23) of 1971, amended, however, the present rule shall not restrict the suspect's defense attorney from meeting separately with the victims and confidential witnesses.

The suspect, or the defense lawyer may present an evidence to the investigative judge and both of them may present a petition to the investigative judge in order to conduct a critical and important examination of the witness.

Rule (24): Temporary measures

First: an investigative judge may order a government body in relation with the case to execute the following orders, if [he] sees it appropriate:

- a. Arrest the suspect and take [him] into provisional detention pursuant to the law of the Iraqi High Criminal Court, the present set of rules and any other Iraqi legal texts in relation with [that].
- b. Collect all material evidence.
- c. Take the necessary measures to prevent the suspect or the accused individual from escaping, harming or threatening the victim or the witness or prevent the suspect from destroying evidence.

The investigative judge shall point in writing and in this matter, to the evidence [he] relied upon, as well as the main accusation with a brief regarding the different aspects [he] relied upon as long as [he] did not intend only to examine the suspect. In addition [he] shall renew in order the period of provisional detention of the suspect.

If the suspect received a notice of the said order, [he] shall be made aware of his rights pursuant to the provisions of the present rule and [he] shall be provided immediately with a copy of the order of the investigative judge.

Second: in issuing such orders the judge shall consider the following:

- a. Availability of a set of evidence that may be relied upon and leads to [think] that the suspect committed a crime that falls within the jurisdiction of the Iraqi High Criminal Court.
- b. Conviction that the provisional detention is a necessary measure to prevent the suspect from escaping, harming or threatening the victim or the witness and to prevent the loss and destruction of evidence.
- c. Conviction that the provisional detention is necessary to the success of the investigation.

Third: the suspect shall be released if:

The investigative judge or the Iraqi High Criminal Court issued such order.

Rule (25): Provisional detention orders

First:

1. A suspect shall not be taken into provisional detention for a period of time that exceeds ninety (90) days, starting from the second day after the arrest in any detention unit belonging to the Iraqi High Criminal Court. However, the responsible judge may issue a new order to extend the detention period for an additional thirty (30) days, extendable by similar periods of time provided that the total does not exceed one hundred and eighty (180) days.
2. An extension exceeding one hundred and eighty (180) days shall be provided through an order issued by the responsible judge after the approval of the president of the Court.
3. The decisions referred to in paragraphs (first and second) are subject to appeal and cassation.

Second: Articles (35) and (36) of the present set of rules shall be enforced when taking a suspect into provisional detention.

Third: A suspect shall be brought immediately after [his] provisional detention before the investigative judge who issued the initial order of arrest or before a different investigative judge designated by the president of investigative judges. In addition the investigative judge shall be convinced that the right of the suspect to legal representation has been respected. The suspect has the right, at [his] own charge, to be represented by a qualified defense lawyer pursuant to Rule (29) of the present set of rules and if the suspect asks the principal lawyer to provide [him] with a defense lawyer, the investigative judge shall ensure that the suspect is able to pay for the fees of such lawyer and order the defense office to provide the suspect with such lawyer. The defense office shall record any legal expenses and assign them to the suspect as long as the [Criminal Judge] does not find the suspect in a dire situation.

Fourth: A suspect may be detained until the end of the proceedings while considering the provisions of Rule (59) of the present set of rules, if the detention is necessary to

guarantee [his] presence before the Court and to protect the victim or the witness or to prevent the suspect from tampering with, or destroying the evidence.

Rule (26): Storage of information and evidence

First: the investigative judge, prosecutor or investigator shall send a copy of the material evidence and information to the unit in charge of collecting evidence and information within the Court, and the said unit shall store it.

Second: the investigative judge shall prepare a list of all the materials collected including, documents, books, papers and other materials, and deliver a copy to the individual who was found with the said materials. If there are valuable things among the materials collected, they shall be listed and stored until returned to their [owner].

Third: If the Criminal Court requests documents from the Information Unit, the Court shall secure a place for their transfer and their storage.

Rule (27): Suspect's rights while examined by the investigative judge

First: an investigative judge examining a suspect shall inform the latter of [his] rights prior to the examination and in the language spoken and understood by the suspect. They are:

- a. The right to assistance if the suspect [requests] it including legal assistance provided the defense office if [he] is not able to pay for the assistance.
- b. The right to free translation/ interpreting services if [he] does not the language in which the examination is conducted.
- c. The right to remain silent. In this particular case the suspect or the accused individual shall be warned that anything [he] says or states could be used against [him] during the trial.

Second: the accused individual may relinquish voluntarily [his] right to legal assistance during the examination provided that the investigative judge explains that the suspect relinquished this right by [his] own will.

Third: If the accused individual exercises [his] right to legal assistance, the investigative judge shall not examine [him] without the presence of a lawyer, as long as the suspect did not relinquish voluntarily his right to the presence of a lawyer. If the suspect relinquishes that right and expresses his wish for legal assistance, the investigative judge shall end the examination and shall not resume until a lawyer is present.

Rule (28): Recording the examination by the investigative judge

If the investigative judge examines the suspect, [he] may record the deposition by using audio, video recording or the services of a clerk.

Section three: defense lawyer

Rule (29): Designation of the lawyer

First: if a lawyer is hired by the suspect [he] shall immediately present the power of attorney to the responsible judge, and the latter shall confirm the lawyer's qualifications pursuant to the Iraqi Code of Legal Practice.

Second: The suspect, pursuant to articles 18/3 and 19/4 of the Iraqi High Criminal Court, may elect to be represented by one or more, non Iraqi lawyer(s).

Third: the lawyer, while performing his duty, shall respect the legal texts, whether the laws of the Court or in this set of rules, or any other rules and regulations considered by the Court. Therefore, and in addition [he] shall respect any laws specific to [his] practice or its code of ethics.

Rule (30): Defense office

First: the Administrative Circuit Director shall develop a defense office in order to guarantee the rights of suspects. The said office shall be presided by a director elected among lawyer for a renewable three year period. The director, after the initial investigation, may remove the lawyer director of the defense office for a reason that requires the said removal after the approval of the President of the Court.

Second: the defense office, pursuant to the law of the Court and the present set of rules, shall provide consultations and assistance to:

- a. The suspect in provisional detention pursuant to Rule (22) of the present set of rules.
- b. The suspect examined by the investigative judge pursuant to Rule (27) even if [he] is not under arrest.
- c. To accused individuals when appearing before the Court.

Third: Among the main duties of the defense office:

- a. Legal assistance to any accused individual unable to afford defense fees, or as decided by the Court.
- b. Assign or designate a lawyer not far from the detention unit and the Court to be present at the detention unit when asked to provide legal assistance to the suspect or the accused individual.
- c. Necessary assistance to enable the lawyer and prepare [his] defense.

Fourth: the president of the defense office, and to provide the accused individual with an efficient defense, shall select a highly qualified criminal defense attorney to defend the accused individual.

Fifth: the defense attorney shall present his requests and his defense on behalf of the accused individual with accuracy.

Sixth:

- a. The director, by nomination from the president of the defense office, shall contract non Iraqi experts and consultants to provide assistance and expertise to the defense office pursuant to Rule (21/3) of the present set of rules.
- b. The selection of non Iraqi experts and consultants shall be conducted based on their experience and expertise in criminal law in their respective countries and their vast knowledge or expertise of proceedings related to international war crimes and based on their impartiality and high moral.

Rule (31): Misconduct of a lawyer

First: If the Judge or the Criminal Court decides that the lawyer's conduct became aggressive and dreadful or harmful to the Iraqi High Court and disrespectful of its authority and consideration or obstructing to the procedures, then [they] shall take the necessary legal measures against the lawyer.

Second: the Judge or the Criminal Court may, with the approval of the President of the Court, notify the professional association regulating legal practice and behavior in the lawyer's country of any misconduct.

Chapter six
The Investigative judge proceedings

Section one / multiple crimes

Rule (32): multiple crimes

- a. If an accused individual has been charged with multiple crimes, necessary measures shall be taken pursuant to the provisions of Article (132) of the Code of Penal Procedure number (23) of 1971.
- b. If an accused individual has been charged with more than one crime, [he] may be referred to the Iraqi High Criminal Court for one crime if the sentence for all the said crimes is based on the same article from the same law.

Rule (33): Non disclosure of the referral decision

First: the Judge responsible may order, in exceptional situations and for the purpose of justice, the non disclosure to the public of any documents or information until a final order is issued.

Second: the Criminal Court or the assigned judge may order the non disclosure of all, or part of specific documents or information if necessary or [he] is convinced that such order is necessary to enforce the provisions of the present set of rules or to guarantee the confidentiality of information collected by the investigative judge, the president of the investigative judges or something to this effect and to ensure justice.

Rule (34) General Judgments

First: Based on the petition of any party or the demand of a claimant, the investigative magistrate has the right to issue orders, summonses, commissions and memorandums for appearance in front of the court if that was necessary to serve justice for investigation purposes.

Second: Based on petition of any party or a claimants demand, the presiding judge or the criminal court has the right to issue orders, summonses and appearance commissions if that was necessary for the purposes of bringing the defendants or for the course of the trial.

Rule (35) Execution of Arrest memoranda.

First: According to rule (24) of these rules, states that the order to arrest must be signed by the investigating magistrate and to have the seal of the Iraqi Supreme Court; enclosed with it what criminal act the defendant had been commissioned with, and the legal clause, the pleading, and the declaration of the suspects and/or the defendants rights; which at that point, the director of the administration office transfers the endorsed copies of the transcripts to the Iraqi contact authorities.

Second: In compliance with the judgments of rule (24) of these rules, the director of the Administrative Office asks of the mentioned Iraqi parties the following:

- A. Execute the arrest of the defendant or the suspect and transfer him to court.
- B. Notify the records group in regards to the suspects or the defendants and recitation of the requested documents using the languages of the suspect or defendant and make him comprehend his rights in that language.
- C. The return of a copy of the documents together with the affirmation of the notification to the Iraqi Supreme Court.

Rule (36) The absence of executing the Arrest Memoranda.

First: When the authority that has a jurisdiction transfers arrest memoranda or the stipulated orders in rule (24) and the others are unable to execute it, it ought to present a

report to the Director of the Administrative Office clarifying the reasons for not executing it.

Second: If it appears that after a reasonable time that the arrest memoranda or orders delivered to the Iraqi contact authorities did not present a report about the procedure in this matter, then it is considered that the execution of the orders and the arrest memorandum did not take place; therefore the criminal court presiding judge himself or the investigating magistrate can take the necessary action regarding this matter.

Rule (37): The procedure resulting from confessions:

First: If the defendant confesses the act commissioned to him or asked to change his statement that he is guilty, then the court has to be convinced with the following:

- A- The defendant pleaded willfully and freely.
- B- The plea is not subject to interpretation and there is an adequately reasonable ground to determine the defendant's responsibility to the crime.

Second: Subsequently the criminal court might find him guilty in case all the conditions mentioned in paragraph one of this article are met. Thus, if the criminal court is convinced of convicting the defendant with the act he confessed to, then the court has to explain its closing arguments and appoint a date to pronounce the sentence.

Third: A- If the criminal court is not convinced in any of the mentioned elements in paragraph (first) of this article, or if the implemented law imposes the death sentence to the criminal act, the criminal court confirms his plea that he is innocent and the court continues its course.

- C- If the criminal court accepts the defendant's innocent plea to the act that imposes the death penalty, and that plea is in agreement with rule (38) of these rules, the prosecution would recommend a lesser sentence than the death sentence so the court has to close the trial and rule a judgment.

Rule (38): The agreement to the admission of guilt.

To offer the pardon to the defendant in the mysterious crimes goes in accordance to article (129) from penal code number (23) for the year 1971.

Rule (39): Arrest & Bail.

Arrest and Bail are in accordance to penal code number (23) for the year 1971, on condition that the arrest is in the jail quarters that are under the court's authority.

Section Three: Presenting the Evidences

Rule (40): The District Attorney's discovery of the physical elements components in the crime.

First: In requirement to rules (33) and (51) of these rules, the district attorney has:

- A- To disclose to the defense attorney all the witnesses' statements and the evidence (45) days before the trial. For the articles in this paragraph, the witnesses' statements are written and signed by the defendant on condition that the statements were taken from the victims' testimonies during the trial, and the criminal court ought to order to provide the defense with extra manuscripts from the witnesses' statement during a specific time.
- B- Based on the defense's request, and according to rule (42) of these rules, the defense attorney is allowed to read the letters, the documents, and the pictures, and to process them in order for him to prepare the material for the defense; also, he has the right to view the classifieds, the related materials, the books,

documents, pictures, tangible elements and whatever was found in the possession of the defendant which are to be entered into evidence in the criminal court.

Second: During the course of investigation and after the District Attorney views the documents and information, other matters could be discovered that stand against the public interest and the national security to any government. At that time, the District Attorney requests from the investigating magistrate to name a competent judge to commission the investigation confidentially and his identity doesn't get revealed; except from (A) of this article. When executing such a procedure, the District Attorney has to reveal the information and the materials that are kept confidential.

Rule (41): Discovery of Evidences.

First: Concerning the discovery of evidences, what follows proceeds:

- A- The District Attorney notifies the Defense Attorney at least (45) days before the start of the trial with the names of the witnesses' that are asked to testify in the commissioned act against the defendant.
- B- The Defense Attorney informs the District Attorney the name/s of the witnesses' that the court summoned for the crime that the District Attorney was informed about; according to article (3)(A) of this rule, or any accusation that comes up in the case within the time mentioned in provision (3) of (C) from this paragraph.
- C- The Defense Attorney is mandated to inform to apprise or reveal to the District Attorney (15) days before the beginning of the trial the following:
 - 1) To present the evidence that confirms that the defendant has no alibi and the statement of the names and the addresses of the witnesses' and any evidence that the defendant depends on to confirm his statements at that time.
 - 2) Any special defense supported by reason of mental impairment and mentions the name of witnesses' and their addresses and any other evidences that the defendant depends on to support his defense case.
 - 3) Statement or proof of consent from the victim to the sexual assault that was inflicted on her.
 - 4) Provide the District Attorney with any letters, documents, pictures, or tangible proves that the court determines that the District Attorney must be provided with to inspect and copy.
 - 5) The Defense Attorney has to inform the District Attorney with the names of the defense witnesses' who are going to testify at least (15) days before the beginning of the trial.

Second: When the Defense Attorney doesn't present this information according to this article, the defendant is not forbidden from defending himself and its left to the court's discretion to decide that.

Third: In assisting the District Attorney in executing his declared obligations according to these rules, the Defense Attorney has to present to the District Attorney at least (15) days before the beginning of the trial the defense table that must include:

- A- The nature of the crime that the defendant is commissioned with in general.
- B- To point to the issues that the District Attorney was asked to make a decision about.

C- To mention the cause of each issue in the case that the District Attorney performed or took in through procedure.

Fourth: In case of discovering any of both parties extra evidences or information on elements that had to be presented at an earlier time according to the rules, the other party and the court must be provided immediately with these extra evidences, information, and elements.

Rule (42): Discovery of Evidences that pardons from liability.

First: In exceptional circumstances and based on the request from either party for the sake of serving justice the criminal court on the investigating magistrate can deputize any member of the court of the investigating magistrates to listen to the witnesses' testimony and to record it.

Second: The District Attorney has to reveal to the defense the confirming evidences that are available to him that can exonerate or give the defendant a lesser offense which can effect the credibility of the witnesses' or the validity of the criminal evidences and to continuously reveal the retribution reasons.

Rule (43): Issues that are not subject to Discovery.

First: In compliance with the provisions of rule (40) and (41) of these rules, the reports, memorandums and other inside documents that one of the parties presented which helps or corresponds to the investigation or in preparing the case, are not subject to discovery or declaration according to the mentioned provisions.

Second: When secretly providing the court with this information and its originals without referring to rule (42) of these rules, they must not be revealed by the court without the consent of the person or the party that provided that confirmation.

Third: After receiving the written approval to the person or party that provided the information according to Article (second), from this article, the District Attorney has to choose any of them as an evidence in the testimony to present it as a document; also any other element he was provided with one condition, that the defendant was informed according to rule (42) of these rules and to the criminal court may not rule to any of the parties to present extra evidences that were received from a person or element and might not allow to present such extra information or use, the person or a representative of that party as a witness, or order them to appear.

Fourth: If the person or the representative of the party that presented the information were summoned according to (second) from this article, then the criminal court won't force the witness to answer interrogatories that were confidential.

Fifth: The defendant has the right to refuse the presented evidences in his case, but he remains in custody and is subjected to the conditions stipulated in paragraph (third & fourth) of this article.

Fourth Section: The Statement

Rule (44): The statement based on the request of either party and in order to serve justice, the court has the right to issue a determination and record the mentioned confessions in compliance with the judgments of rule (28) of these rules.

Chapter 7 Trial Proceeding's Section One: Judgments

Rule (45): Trial proceedings.

Court proceedings must be in accordance with the rules stipulated in the penal code number (23) for the year 1971 and the rules are:

Rule (46): The interveners in a case.

The criminal court can call any organization or any person to state his expertise in any matter that the court views as helpful in reaching a just decision in the case.

Rule (47): The defendant's medical examinations.

The criminal court or a request from any party can decide in the performance of physical and psychological examinations for the defendant.

Rule (48): The arrangements of protecting the victims and the witnesses.

First: Based on the action of the criminal court or any party and the victim or the witness in the case or the victims and the witnesses together a request was submitted to provide suitable proceedings to protect the safety and safeguard of the victim or the witness on condition that the proceedings are in harmony with the rights of the defendant and the criminal court can take those proceedings for the safety of victim or witness before confirming the submission or in any other time.

Second: The court holds deliberation sessions to decide:

A- Procedures of restraining the announcement to the public or to the media in identifying the residence of the victim or the witness or the important person/s in the offense or the witness by adopting the following:

1. To expunge the name and the identifying information recorded in the public records of the Supreme Criminal Court of Iraq.
2. Not to disclose to the public the identity records of the victim or witness.
3. Not to allow to photograph the testimony or to use voice-changing systems closed satellites or videotaping or any technological tool.

B- To convene secretly according to rule (71) of these rules.

Third: The court must oversee the witness's interrogation without threat or force.

Fourth: When deciding in accordance with paragraph (first) of this article, the criminal court can mention if its possible to videotape the witness's testimonies and the possibilities of using them in the course of the trial before the supreme court.

Fifth: When assuming the safety proceedings in any trial before the Supreme Court, they continue unless it became necessary to alternate them in consecutive trials before that court or to annul them or change them or increase them according to what was stipulated in paragraph (seven).

Sixth: In case of the subsequent safety proceedings or changing or increasing them from those that were undertook initially the following must be applied:

A- The same safeguard continues in every criminal court whatever its formation was.

B- If the initial safeguard doesn't last, then the court has the right to keep the subsequent safeguard.

Seventh: Before adopting a procedure, according to paragraph (sixth) of this article, the criminal court that kept the subsequent safeguard proceedings can obtain all the information from the initial safeguard and deliberate with any of the judges who ordered to undertake the initial safeguard proceedings.

Eighth: When referring in this rule to the criminal court it includes the Judge in the criminal court or the designated judge.

Rule (49): Taking oath of the translator/interpreter before executing any duty on the part of the interpreter or the expert they must take an oath that he'll perform his duty with all honesty, fairness and willfully with total respect to the confidentiality of the duty.

Rule (50): Open hearing.

The trial hearings are made public and before the criminal court and videotaping, photographing, broadcasting or recording of the trial to the public is prohibited unless the criminal court allows it or for the purpose of recording for the Iraqi Supreme Court

according to rule (57) of the rules, also the deliberations of the criminal court are done secretly.

Rule (51): Closed sessions.

First: During the trial, the criminal court orders the exclusions of the media and the public from some or all of the trial sessions in these circumstances:

- A- If the distribution of information harms the national security of Iraq.
- B- To protect the security of the court.
- C- To preserve the privacy of people as in the sexual assaults in trial cases where there are children or women.
- D- The publicity harms the intent of justice.

Second: Unless the court allows, no one has the right to release the information pertaining to the private hearings.

Third: If another sovereign state views that the release of information harms its national security, then reasonable measures including secret hearings undertaken by the criminal court to assure of not harming the security of the states, and if the state found that its still worried about its national security after the criminal courts determination it can appeal that judgment and this appeal must be presented within (7) days from the date of issuance and this appeal will be looked at urgently, this appeal will not stop the course of the trial.

Rule (52): Observing the Trial.

First: The criminal court has the right to exclude any persons from the court for the purpose of protecting the defendant's rights in a fair and public trial to preserve the dignity of the course of the trial.

Second: The defendant must never be removed from the trial court room during the case trial unless he caused a disruption to the order of the court, the proceeding continues in this case until he returns and the court must inform him with whatever proceedings happening during his absence.

Rule (53): The recordings of the trial and the presentations of evidences.

First: The director of administration and services has to maintain the trial's records including the voice recordings and the documents also the video recording of the criminal court requests.

Second: The criminal court can order to reveal all or part of a secret recording to the trial when there is no reason to restrain the release.

Third: The director of administration and services can maintain all the physical evidence that were brought before the court during the trial.

Chapter Two Court procedures

Rule (54): single and joint (collective) trials

Provisions of criminal trial laws (23) of 1971 shall be applied to single and joint (collective) trials

Rule (55): means of handcuffing

The defendant shall appear before court without handcuffs or chuckles, and the court shall take the necessary measures to ensure security in the courtroom.

Rule (56) Trial start

To the exception of the required presentations according to the law or to these rules, the trial shall be conducted according to the procedures stipulated in Article (167) of the criminal trials laws (23) of 1971

Rule (57) Presentation of evidence

First: Considering provisions of Article 168 of the criminal trial laws, the questioning and discussion with the witness of the other party must be permitted in each case in order to refute his statements and newly questioning him; the party requesting the testimony shall assume the discussion with the witnesses and questioning them and the party that has not requested the witnesses shall also assume the questioning. After the discussion with the witnesses and their questioning, the party that has requested the testimony of the witnesses shall be the first to question them. The judge may ask the witness at any time and the defendant shall not question the witness directly except with the court approval.

Second: evidence may be directly presented to the criminal court through media including video and satellite TV by order of the court.

Rule 58: Judgment

First: The judgment shall be read to the defendant in public in the hearing assigned to it.
Second: should the criminal court issue a judgment convicting the defendant and sentencing him, and the items collected from the crime were confiscated according to Articles 101, 117 of the penal code 111 of 1979.

Third: the decision shall be taken by the majority of five judges presiding over the case accompanied with the opinion of the dissenting judges in writing and the dissenting view shall be entered in the case file.

Section Three
The Rule of Gathering Evidence

Rule (59): General Judgments

First: The Criminal court implements the rules of establishment stipulated in the penal code number (23) of the year 1971; these rules which are not obligated in implementing other evidence rules used in any other court.

Second: In the absence of the legal provisions that must be implemented in the establishment of evidence, then the criminal court has the right to implement the rules of evidence that are more suitable to achieve justice and in accordance with the essence of the law and the principles of the general laws.

Third: The court accepts any evidence that is valuable and relevant to the establishment of evidence.

Fourth: The Criminal Court has the discretion of not taking the evidence of its value in the establishment isn't inherently effective, and can cause harm and unnecessary delay, and waste of time, thus is useless as an evidence.

Fifth: To comply with the following elements in accepting the establishing evidence according to this article:

- A- To validate the evidence that was obtained from outside the court.
- B- To choose the statements and the circumstances that corresponds to the statements or rebukes them.
- C- To respect other evidences of amplitude with the distinction that whatever value it contains supports the validity of the evidence and its authenticity.
- D- Observing the means of obtaining the evidence and if it is basically rejected in order to depend on it.

Rule (60): Testimony of the Witnesses

First: The testimony is given directly or as it is stipulated in rule (60) of these rules when implementing paragraph (fourth) of this rule (59) the court accepts the testimonies being taken by telephone or visual means or any other way. However when evaluating a testimony in the criminal court the valuables, the statements and the scopes of their effects on the testimonies of the witnesses follow into consideration.

Second: The witness who reached 15 years of ages takes the oath to testify with the truth, the whole truth and nothing but the truth. As for those who haven't reached that mentioned age they can be listened to in order to seek information without taking the oath.

Rule (61): Perjury

If the Court finds strong ground to believe that the witness knows and intends to give false statement to the court, then the court can approach the investigative court to take the necessary legal procedures against him.

Rule (62): Expert witnesses

First: Expert witness is the witness presented by qualified witnesses as information experts or have skill and expertise or practice, or intellectuals deeply familiar with science, technology or other specialized sciences which help the criminal court in understanding the evidence.

Second: If any party wishes to present a written statement of the expertise in the testimony rather than presenting it verbally, all the statements in this testimony shall be communicated to the other party as early as possible.

Rule (63): Rule of collecting evidence in sexual assault cases

First: in sexual assault cases and in case a justifiable reason for exempting the victim from testifying

Second: consent shall not be admitted as defense if the victim:

A-Was under threat or has reasons of fearing force and coercion of detention or psychological harassments or is believed to be a victim of submission, threat or fear.

Third: the evidence presented by the defendant must be free of the admission defects in order to prove the consent of the victim

Chapter Four

Judgment issuance procedures

Rule (64): Status of the persons acquitted

First: when the not guilty judgment is pronounced or release, the prosecutor must notify the criminal court ruling on the same hearing to explain the judgment indicated, of his intention to appeal the judgment or not within the legal period and present the specific list subsequently. The court shall then decide to detain the defendant as a result of the appeal.

Second: in case of acquittal or release and the announcement of the prosecutor or not to appeal according to Paragraph: First” and in case no other case against the defendant, the criminal court shall order his release.

Rule (65): sentencing

First: When sentencing, the court shall take into account the factors indicated in Article 23 of the law as well as the following factors:

- 1- Extremes circumstances
- 2- Mitigation circumstances including essential cooperation with the prosecutor or the investigating magistrate from the criminal offender before and after the conviction.
- 3- Application of provisions of Article 30 Para. 3 of the law

Second: the criminal court must decide whether multiple judgments for prison terms shall be implemented by succession or in embedding.

Third: counting the period of detention or arrest of the defendant from the date of his arrest or detention until he is handed over to the Iraqi Supreme Criminal court, or for trial or as a result of appeal and does not include the detention period in another country with sovereignty unless this country acts mainly according to the recommendation of the Cabinet of Ministers succeeding it without disregarding the restore of sovereignty on 6/01/2004.

Rule (66): Implementation of the judgment

First: The judgment shall be implemented according to the provisions and rules of this law pertaining to the criminal court laws 23 of 1971

Second: if the court had previously issued an acquittal judgment for the convicted person with condition or if he was released and did not appear at the time the judgment was pronounced, the criminal court must issue a judgment for his arrest. When arrested, he

shall be notified of the conviction and punishment and the procedures stipulated in rule 68 and article 151 of the criminal trials law 23 of 1971.

Rule (67): confiscation of funds

After the conviction and criminalization judgment is issued including specific procedures as required by paragraph "Second" of rule 58 of these laws, the criminal court, by a request of the prosecutor, or by its own decision at a special hearing, decides to confiscate the funds stipulated in paragraph indicated if it has not done the same before while considering Article 307 of the criminal trial law 23 of 1971 and item seven of Article 23 of the court procedure law.

Article Eight: Distinctive procedures

Rule (68): Distinctive appeal

The distinctive appeal and legal distinctive periods shall be according to the rule of criminal trials law 23 of 1971.

- A- Distinctive appeal of the investigating magistrate decision may be filed before the distinctive body within fifteen days from the date the appeal request is actually received.
- B- Appeal before the distinctive body against the judgments and decisions issued by the criminal court shall be according to the rules of criminal trials law 23 of 1971.

Article Nine: Retrial

Rule (69) Retrial:

The procedures of retrial go in accordance with the stipulation of the codes of the court and the penal code number (23) of the year 1971.

Rule (70):

The rules are considered appendant to the penal code number () of the Iraqi Supreme Court of the year 2005.