

## **Decree 82 for the year 2008**

### **Rules of procedures for Anti-terrorism courts**

#### ***Office of the Chief Justice***

Pursuant to the provisions of section 10 (e) of the Judiciary Act, 1986, read with section 13 (2) of the Anti-terrorism Act, 2001, and after consultation with H.E. the Minister of Justice; the following rules are hereby issued:

#### Title and Commencement

These regulations shall be cited as the Rules of Procedures for Anti-terrorism Courts, and shall come into force commencing from the date signed.

#### Competence

Courts formed under sections 13 and 14 of the Anti-terrorism Act shall be competent to prosecute persons accused of violating the provisions of this Act, Criminal Act and/or any other Act as in accordance with the procedures set forth in these rules.

#### Trial proceedings

The accused has the right to appoint a lawyer to undertake defence on behalf of him and shall therefore be allowed to meet with the accused, address the court and questioning/examining witnesses but within the limit of evidences given by witnesses.

Taking into account the requirements of security and order, court hearings shall be held publicly, and the court may issue orders as it deems appropriate to this effect. However, the court may hold in-camera proceeding(s).

Person accused of violating the Anti-terrorism Act or any other Acts may be tried in his presence or in absentia.

The accused shall be served a notice on the charge sheet, at least 48 hours prior to date scheduled for the hearing.

- a. Once notified of the hearing, the accused shall assign his lawyer.
- b. If unable to appoint a lawyer, the Court shall assign the Minister of Justice to appoint a lawyer to represent the accused in case that the charge is punishable by death or imprisonment for life.

- c. If the defence representative comes to constitute a council to defend all the accused-persons, only one representative nominated by them shall be permitted to address the court.
- d. Hearings shall not be disrupted due to the absence of the counsel of the accused or his withdrawal.

Trial proceedings begin by recording the name of the accused-person(s) or data related to them.

(a) The prosecution representative shall initiate his case by an opening speech describing the offence and briefly indicating the evidences based on which the defendant's conviction is anticipated to be established.

(b) The prosecution panel shall be obliged to submit its list of witnesses and make them appear before the court.

The inquiror, in his capacity as the 1<sup>st</sup> prosecution witness, shall produce the documents and exhibits he obtained in relation to the accusation case. The prosecution representative may examine the witnesses. The accused or his counsel may also cross-examine them. Then the accusation representative may re-examine the witness(s). The court may, after having heard the prosecution witness(s), examine the accused-person and ask him any questions it deems necessary for enabling him clarify any circumstances of evidential matters shown against him.

In case there are more than one accused-person; the statements given by one of them upon his examination shall be taken into consideration by the court and shall be deemed acceptable evidence against any other accused-person or in favor thereof.

If the accused refuses to answer such questions or gives false statements, he shall not be subject to any punishment, however the court may deduce from such refusal or answer whatsoever it deems appropriate and fair.

Then, the accused shall be addressed with charge(s) which shall, where necessary, be explained to him, and after that shall be asked whether he is guilty or not of offence(s) accused to have committed.

If the accused-person responds that he is guilty; in this case his confession must be recorded and that the court may, in its own discretion, decide to convict the accused on the basis of such confession.

If the accused-person responds that he is not guilty or does not respond to the charge; then in this case the court shall proceed with its proceedings and the accused or his counsel in these cases shall clarify the line of defense.

After been examined, the accused shall be asked whether intends to call defense witnesses from the list submitted.

In case the accused responds that he does not intend to call any defence witnesses, the prosecution representative shall summarize his case.

- a. If the accused-person wants to summon - if any- witnesses, the defence or the accused shall be required to submit a list of witnesses, as well as providing a summary including the statements given by each witness, which shall be handed over to the court 24 hours from the date upon which charge is addressed and responded to.
- b. The defence or accused shall be required to call witnesses in the hearing scheduled for such a purpose.
- c. The magistrate (the court) has right to exclude from among witnesses any one whose statements are deemed non-productive or non-related to the suit in subject.

The accused, or his advocate, may examine witnesses in accordance with the list he submitted, and may, after examination and cross-examination are finalized, present his final pleading.

If the accused-person is accused of committing a specific offence and then it is appeared, based on evidence, that he committed a different offence of which he could have been accused pursuant to the provisions of any Act, he may be convicted of the offence appeared to have committed even if he has not been firstly accused of.

Acceptance of evidence and weight thereof are deemed absolute competences of court of subject-matter, which shall be exercised in accordance with these Rules, taking into account the following:

- (a) The court may establish its decision of conviction on basis of the confessions recorded before the magistrate, if so given before a judge appointed pursuant to the Judiciary Act.
- (b) The court may, when feels assured, accept non-judicial confessions as evidence.
- (c) The court may, when feels assured, accept frequent hearsay evidence.
- (d) The Court may seek assistance to examine any witness whose statements given before court are found differed from his statements as recorded in the Case Inquiry Diary.
- (e) Documents including data recorded in writing or sound or digital photographs shall be taken as evidence.

The court is not required to record statements and requests it considers unproductive in the suit.

The court may seek assistance of a clerk to record hearings.

Procedures and orders issued by the court of subject-matter during the proceedings shall not be subject to appeal or review, unless after sentence is passed.

Any person against whom a sentence is passed in accordance with the provisions of the Anti-terrorism Act may appeal to the Appeal Court of Anti-terrorism within seven days after the date upon which the sentence is passed; provided that each sentence on death or imprisonment for life passed by the Courts of Anti-terrorism shall be

submitted for confirmation by the Appeal Court of Anti-terrorism. Nevertheless, the sentence on death, if so confirmed, may not be executed unless approved by the President of the Republic.

The Court of Appeal, upon considering confirmation or appeal, may exercise any of the following powers:

1. Confirm the judgment in whole.
2. Confirm the conviction, and alter the penalty, by diminution or by substituting the same by any other penalty authorized by the Anti-terrorism Act.
3. Alter the conviction decision, of an offence, to a conviction decision of another offence, which the accused would have been convicted of committing the same, upon the charge, or evidence; on condition that the commission of the other offence shall not be punishable with a severer penalty, and alter the penalty accordingly.
4. Quash the judgment and annul the procedures resulting therefrom, and the same shall be deemed as quashing the criminal suit, unless the Court of Appeal orders re-trial before it.
5. Quash or amend any subsidiary order.

Notwithstanding the provisions provided for by the Criminal Procedure Act and Evidence Act, the court shall apply the rules contained in this Decree.

Issued under my hand on this day the twenty-ninth of the month of May 2008.