

Annex Number One (1) to the Criminal Procedure Code
on Terrorist Crimes and Crimes against Internal and External Security

Presidential Decree 76, of Sept. 2015 (now before Wolesi Jirga for consideration)
Published in Official Gazette Number 1190, Year 1393 (19 Oct. 2015)

Translation by UNAMA (Rule of Law, Version 3 with corrections, see footnotes)
Date of version 11 Jan. 2016

Purpose of Enactment

Article 1:

This annex has been enacted for effective prosecution of the perpetrators of terrorist crimes and crimes mentioned in articles 1, 2, 3, 6, 7, 8, 9, 10, 12, 13, 14, 15, 18, 23, 27 and 28 of the Law on Crimes against Internal and External Security.

Determining of Losses for Legal Proceedings

Article 2:

The detective and investigative organs shall be duty bound to determine the casualties and financial losses resulting from terrorist acts that has incurred on persons and public and private properties and facilities and submit it to the relevant prosecution office for legal proceedings.

Request for Verification of [Lawfulness of] Proceedings to the Relevant Division

Article 3:

Following any covert detective operations on terrorist crimes and crimes against internal and external security, Security Personnel shall be duty bound to seek verification of lawfulness of their activities from the relevant division of the Supreme Court through the prosecution office within a period of five (5) days.

Time Period for Submission of Documents and Evidences to the Prosecution Office

Article 4:

- (1) Security Personnel, after learning about the occurrence of a crime or arrest of the suspect, shall handover to the relevant prosecution, within a maximum period of ten (10) days, the suspect and their activity report, documents, evidences and other collected substantiating materials.
- (2) Within the time period set forth in paragraph (1) of this article, security personnel¹ shall obtain views of the experts if required, and cooperate with the prosecution office in gathering documents, evidences and other incriminating evidences and in identifying the perpetrator and his/her accomplices.

Suspects of Terrorist Crimes and Crimes against Internal and External Crimes Held in Custody

Article 5:

Security Personnel may hold in custody the suspects of terrorist crimes and crimes against internal and external security for up to 10 days in order to complete proceedings and gather incriminating evidences and inform prosecution office of the arrest within (24) hours after the arrest.

Detention of the Accused during Investigation

Article 6:

The assigned prosecutor may, in case of availability of sufficient incriminating evidences, issue a warrant after confirmation of the higher prosecutor for detention of the suspect of misdemeanor and felony crimes respectively for 30 and 60 days.

¹ Changed “law enforcement” to “security personnel”.

Continuation of Detention of the Accused in case of Acquittal and Conviction

Article 7:

In a felony crime, when the prosecutor protests against the verdict issued by the Appeal Court with regards to acquittal of the accused or his/her sentence to the period he/she has already spent in detention center, the prosecutor shall present his/her request for continuation of detention of the accused to the relevant division of the Supreme Court. The division shall take a decision regarding extension of detention or release of the accused within 30 days prior to hearing the main case.

Detention of the Accused during Trial

Article 8:

(1) The court may decide to detain the accused of terrorist crimes and crimes against internal and external security during trial as follows:

1. (60) days for proceeding² of the case by the Primary Court;
2. (60) days for proceeding at appeal stage by the Appeal Court;
3. (90) days for court of cassation - the Supreme Court

(2) The total period for detention in all phases of trial (Primary, Appeal and Supreme Court) may not exceed 210 days.

Prosecution of Suspects and Accused

Article 9:

(1) Prosecution of suspects and accused of terrorist crimes and crimes against internal and external security including crimes of felony including the juveniles and those suspects transferred to the Justice Center in Parwan, or handed over to Afghanistan by foreign states shall be carried out by the General Department of Prosecution for Crimes against Internal and External Security and the competent courts at the Justice/ judicial Center of Parwan at primary and appeal stages.

² Changed erroneous "investigation" to "proceeding."

- (2) When a child commits terrorist crimes or crimes against internal and external security, he/she shall be sentenced to confinement in accordance with the provisions of the Law on Investigation of Children Violations.

Exercising of Precautionary Measures

Article 10:

- (1) Precautionary measures shall be taken in the following circumstances:
1. The person is suspected of committing terrorist crimes or crimes committed against internal and external security but gathering of incriminating evidences is not possible and as a result of detective activities, based on strong indications or reliable information, there is a strong probability that he/she will commit a crime if released.
 2. The person has been sentenced to imprisonment for commission of terrorist crimes or crimes against internal and external security and has served his/her sentence term and based on strong indications and reliable information, there is a strong probability that he/she will again commit crimes if released.
- (2) National Directorate of Security shall propose to the Supreme Court detention of the suspect or the convict stated in paragraph (1) of this article after obtaining the agreement of the relevant prosecution office and confirmation of the Attorney General's Office.
- (3) The period for exercising of security measures shall be one year and in case the situation set forth in paragraph (1) of this article continues, it may be extended consecutively.
- (4) Persons mentioned in paragraph (1) of this article shall be kept in a special place under the supervision of the prosecutor, separate from the detention center and prison.

Prohibition of Commutation and Pardoning of Penalties

Article 11:

Convicts of terrorist crimes and crimes against internal and external security may not benefit from the decrees on pardoning and commutation of penalties.

Actions regarding Proceeds of Crimes

Article 12:

Security Personnel, prosecution offices and courts shall be duty bound to identify the properties of suspects and accused of crimes stated in this annex which are under their possession or have, somehow been transferred to other persons and determine the proceeds of the crime and take action to seize, freeze and confiscate such proceeds in accordance with the Law on Prevention of Money Laundering and Proceeds of Crimes.

Restrictions

Article 13:

Provisions on Alternatives to imprisonment, suspension of enforcement of the sentence, temporary release, release on parole, and granting of time offs shall not be applicable to convicts of terrorist crimes and crimes against internal and external security.

Enforcement Date

Article 14:

This annex shall be enforced upon endorsement and shall be published in the official gazette.

This is a UNAMA Rule of Law translation –

if you have any corrections, please email: Hartmann@un.org and Kamula@un.org