

Law N°2005 of 27 July 2005 on the CRIMINAL PROCEDURE CODE

The National Assembly deliberated and adopted,

The President of the Republic hereby enacts the law set out below:

BOOK I GENERAL PROVISIONS

PART I PRELIMINARY PROVISIONS

Section 1: This law instituting the Criminal Procedure Code stipulates the rules which deal particularly with:

- (a) the investigation of offences;
- (b) the search and identification of offenders;
- (c) the method of adducing evidence;
- (d) the powers of those charged with prosecution;
- (e) the organization, composition and jurisdiction of courts in criminal matters;
- (f) verdict;
- (g) sentencing;
- (h) the setting aside of judgements in default and appeals;
- (i) the rights of the parties;
- (j) the methods of executing sentences;

Section 2: This Code shall be of general application except where there is provision to the contrary as provided in the Code of Military Justice or in any special law.

Section 3:

(1) The sanction against the infringement of any rule of criminal procedure shall be an absolute nullity when it is:

- (a) Prejudicial to the rights of the defence as defined by legal provisions in force;
- (b) Contrary to public policy.

(2) Nullity as referred to subsection (1) of this section shall not be overlooked and shall be raised at any stage of the criminal proceedings by any of the parties and shall be raised by the trial court of its own motion.

Section 4:

(1) The cases of infringement other than those provided for in section 3 shall result in relative nullity.

(2) Cases of relative nullity shall be raised by the parties in limine litis before the trial court. It shall not be considered after this stage of the proceedings.

Section 5: Any document rejected by a decision of the court shall be withdrawn from the case file and filed in the registry.

It shall be forbidden to obtain information from the document withdrawn for use against the person concerned under pain of a civil action in damages.

Section 6:

(1) A joint trial shall be obligatory in the case of indivisible offences and optional in the case of related offences.

(2) Offences are said to be indivisible:

- (a) when the same offence has been committed by several persons as co-offenders or with accomplices; or
- (b) when one and the same person commits several offences which are so connected that one cannot be tried, heard and determined without the other; or
- (c) when separate offences have been committed at the same time for the same objective.

(3) Offences are said to be related:

- (a) when they are committed at the same time by several persons acting together; or
- (b) when they are committed by different persons even in different places and at different times in pursuance of a conspiracy; or

- (c) when the offenders have committed the offences either to facilitate the commission of another offence or to ensure that the offence is not punished;
- (d) when there is a case of receiving property procured by the commission of a misdemeanour or felony whether knowing or having reason to suspect the criminal origin of the property;
- (e) in all cases where the relationship existing between them is as close as that of offences enumerated in this subsection.

Section 7: Time-limit in this code shall be calculated as follows:

- (a) the day when the act was committed shall not be included in calculating the time-limit;
- (b) the day on which the act was done which sets the time running shall not be included in calculating the time-limit;
- (c) The time-limit fixed in years or months shall be calculated from date to date;
- (d) Time-limit fixed in hours shall be calculated from hour to hour;
- (e) Time-limit shall be extended to the next working day when the last day is a Saturday, a Sunday or a public holiday.

Section 8:

(1) Any person suspected of having committed an offence shall be presumed innocent until his guilt has been legally established in the course of a trial where he shall be given all necessary guarantees for his defence.

(2) The presumption of innocence shall apply to every suspect, defendant and accused.

Section 9:

(1) A suspect shall be a person against whom there exists any information or clue which tends to establish that he may have committed an offence or participated in its commission.

(2) The defendant shall be any suspect whom an Examining Magistrate notifies that he is presumed henceforth either as the offender or co-offender, or as an accomplice.

(3) An accused shall be a person who must appear before the trial court to answer to the charge brought against him, whether in respect of a simple offence, a misdemeanour or a felony.

Section 10: Where in the course of the investigation or trial, it is established that a person has usurped a civil status or has been convicted under a false identity, the proceedings shall be stayed until such identity is rectified, at the instance of the Legal Department which shall, to this effect, and as the case may be, refer the issue to the competent judicial identity service or to the court whose decision contains the error on the identity of the convict.

PART II

COURT PROCESSES

Section 11:

(1) A court process shall be a written document by which a magistrate or a court orders either:

- the appearance or production of an individual before them; or
- the remand in custody of a suspect, a defendant, an accused, or
- a witness suspected of hindering the search for evidence; or
- the imprisonment of a convict; or
- the search of objects either used for or procured by the commission of an offence.

(2) The following shall constitute court processes:

summons, bench warrant, remand warrant, production, warrant, search warrant, warrant of arrest and imprisonment warrant.

Section 12:

(1)

(a) The State Counsel may issue summonses, warrants of arrest, search warrants, or production warrants;

(b) In cases of offences committed flagrante delicto, he may issue remand warrants

(2) The Examining Magistrate may issue, a summons, a bench warrant, search warrant, a remand warrant, and a production warrant.

(3) The trial court may issue a summons, a bench warrant, a search warrant, a remand warrant, an imprisonment warrant, and a production warrant.

Section 13:

(1) The purpose of a summons is to command the person named therein to appear before the State Counsel, an Examining Magistrate, or a trial court on the date and hour mentioned in the summons

(2) It shall be served on the person named therein by an officer or agent of the judicial police or by any other person who has been assigned such duties.

(3) Service shall consist of the delivering of a summons to the person named therein, an Ire shall sign the original which shall be returned to the magistrate who issued it. If he cannot sign, he shall make a right hand-thumb print or make a print by using any other finger. If he refuses to sign or to thumb-print, mention shall be made of this fact on the original.

(4) Where the person named therein appears, he shall without delay be heard. If he fails to appear, a warrant may be issued for his arrest.

Section 14:

(1) A bench warrant shall be an order given by a court to any officer of the judicial police to bring immediately before it, the person named therein. It shall be executed in accordance with section 27 herein.

(2)

(a) The signatory of the warrant shall hear the person named therein as soon as he is brought before him;

(b) At the end of the hearing, the said warrant shall have no further effect.

(3) If the person against whom a bench warrant has been issued is arrested outside the territorial jurisdiction of the court or outside the place of residence of the judicial authority who issued the said warrant, he shall be brought to the nearest Legal Department which, after ascertaining his identity, shall take all necessary steps to ensure his appearance before such authority.

(4) Throughout the formalities and the transfer referred to in the preceding sub-section, the person against whom the bench warrant has been issued shall be considered as having been remanded in police custody.

(5) If the person against whom the bench warrant has been issued cannot be found, a detailed report on the unsuccessful attempts to find him shall be drawn up and sent to the judicial authority who issued it.

(6) In the case provided for in sub-section (5) above:

- the original of the warrant is signed either by the head of the administrative unit, or the mayor, or the village or quarter head of the residence or the last known place of abode of the wanted person;
- a copy of the warrant shall be posted either at the residence or last known place of abode of that person, or at the offices of the administrative unit, the council office or the village community hall; mention of such posting shall be made on the original of the warrant;
- a report of the entire process shall be made, for transmission to the author of the warrant; a copy of the report shall be posted at the same place as the copy of the warrant.

Section 15: A remand warrant shall be an order given by the State Counsel in case of felony or misdemeanour committed flagrante delicto, the Examining Magistrate or the trial court to the superintendent of prison to receive and detain a defendant or an accused. It shall be issued in accordance with the provisions of the sections 218 to 221.

Section 16: A search warrant shall be an order given to a judicial police officer by the State Counsel, an Examining Magistrate or a trial court to enter any public or private place and search it for the purpose of seizing any articles or documents used in committing an offence, or which appears to be the product of an offence.

Section 17: A production warrant shall be an order given by one of the judicial authorities cited in section 12, to the superintendent of a prison that a defendant, an accused or a convict be brought before him or before a trial court.

Section 18:

(1) A warrant of arrest shall be an order given to an officer of the judicial police to arrest a defendant, an accused or a convict and bring him before one of the judicial authorities cited in section 12.

(2) If the defendant, the accused or a convict is at large, the Examining Magistrate or the trial court may issue a warrant for his arrest if the offence in question is punishable with loss of liberty, or in case of imprisonment sentence.

(3) If the defendant, or the accused or convict resides out of the national territory, and does not appear after having been summoned, the Examining Magistrate or the trial court may for purposes of extradition, issue a warrant for his arrest if the offence in question is punishable with loss of liberty of at least six (6) months, or if he is sentenced to the same term of imprisonment.

Section 19:

(1) A person arrested on a warrant shall be brought immediately before the Examining Magistrate or the president of the trial court who issued the warrant, who may order his immediate release if he fulfils any of the conditions referred to in section 246 (g).

(2)

(a) If he fails to fulfil the condition, he shall be taken immediately to the prison indicated on the warrant subject to the provisions of sub-section (3) of this section.

(b) Within forty-eight (48) hours of the detention of the person, he shall be interrogated by the Examining Magistrate or, as the case may be, at its next sitting by the trial court which issued the warrant.

(3) The Examining Magistrate or the trial court shall decide on his detention in accordance with sections 221 and 222.

(4) If the person is arrested outside the jurisdiction of the Examining Magistrate or of the trial court that issued the warrant, he shall be immediately taken before the State Counsel of the place of arrest who shall without delay, inform the Examining Magistrate or the president of the court that issued the warrant of arrest about the arrest and the action taken thereafter and shall request the transfer of the person arrested.

Section 20:

(1) If the person against whom a warrant of arrest is issued cannot be found after careful search, a copy of the warrant shall be left at his last known place of abode or with the village or quarterhead.

(2) A report on the steps taken to execute the warrant shall be made in writing and forwarded to the person who issued the warrant.

(3) The judicial police officer charged with executing the warrant shall have his report signed and stamped by one of the administrative authorities mentioned in section 14 (6) and shall leave a copy thereof with him.

Section 21:

(1) Except in cases of offences punishable with death, a warrant of arrest may contain an endorsement that the person to be arrested shall be released if he fulfils the conditions listed in the warrant, in such a case, the endorsement shall specify, apart from the magistrate before whom or the court before which the person to be arrested is to appear: either the number of sureties, if any, and the amount by which they bind themselves to pay in case of non-appearance; or the amount of security to be deposited by the person to be arrested.

(2) When such endorsement is made, the judicial police officer shall release the person if the conditions laid down in the preceding sub-section (1) have been fulfilled.

(3) The recognizance signed by the person arrested or his sureties or, where applicable, the particulars from the receipt of the security deposited shall be transmitted along with the report on the execution of the warrant to the magistrate before whom or the court before which the person is bound to appear.

Section 22: The judicial police officer charged with the execution of a warrant of arrest may be accompanied by a sufficient number of law enforcement officers to prevent the person from escaping.

Section 23: The judicial police officer charged with the execution of a warrant of arrest may not enter any place of abode before 6 a.m. or after 6 p.m. for purpose of executing the warrant.

Section 24: The judicial police officer who executes a warrant of arrest shall be bound to take steps to issue a notice of discontinuance of the search for the person arrested as soon as such person has been handed over to the competent judicial authority.

Section 25: An imprisonment warrant shall be an order given by a trial court to the superintendent of a prison to receive and detain a convict.

Section 26: With the exception of a production warrant, all warrants or summonses shall state the full name, date and place of birth, affiliation, occupation and address of the person named therein and it shall be dated, stamped and signed by the magistrate issuing it or by the president of the trial court.

A production warrant may state only the full name of the detainee and the prison where the person is detained.

Section 27:

- (1) Court processes shall be executed throughout the Republic of Cameroon.
- (2) A court process remains enforceable unless it is withdrawn by the competent magistrate.

Section 28: Subject to the provisions of section 23, any court process may be executed at any time and on any day including Sundays and public holidays.

Section 29: A court process may be executed notwithstanding the fact that the judicial police officer executing it does not have it in his possession at the time.

In such a case, all documents in thereof shall be shown to the person arrested, and the judicial police officer shall proceed as stipulated in section 19 (4).

PART III
ARREST

Section 30:

- (1) An arrest shall consist of apprehending a person for the purpose of bringing him without delay before the authority prescribed by law or by the warrant.
- (2) A judicial police officer, agent of judicial police or any officer of the forces of law and order effecting an arrest, shall order the person to be arrested to follow him and, in the event of refusal, he shall use reasonable force, necessary to arrest the person.
- (3) Any person may in case of a felony or misdemeanour committed flagrante delicto as defined in section 103, arrest the author of such an offence.
- (4) No bodily or psychological harm shall be caused to the person arrested.

Section 31: Except in the case of a felony or misdemeanour committed flagrante delicto, the person effecting the arrest shall disclose his identity and inform the person to be arrested of the reason for the said arrest, and where necessary, allow a third person to accompany the person arrested in order to ascertain the place to which he is being detained.

Section 32: Any officer or agent of the judicial police may, in a public place or a place open to the public, and subject to the provisions of section 83 (3), arrest the author of a simple offence who either refuses to disclose his identity or discloses an identity suspected to be false and, where necessary, detain him for not longer than twenty-four (24) hours.

Section 33: Any magistrate who witnesses a felony or misdemeanour being committed flagrante delicto may, verbally or in writing, and after disclosing his identity, capacity and functions, order the arrest of the offender and the accomplice and direct that they be brought before the competent authority.

Section 34: Judicial police officers shall forward daily a list of persons detained at their police stations to the competent State Counsel.

Section 35:

(1) The judicial police officer who arrests or to whom an officer of the forces of law and order or an individual hands over a suspect may search the suspect or cause him to be searched, take away and keep in safe custody all articles found in his possession except necessary clothing.

(2) An inventory of the articles seized shall be prepared and signed on the spot by the judicial police officer, the suspect and a witness.

(3) When a person arrested is released, any property seized from him which may not be used as an exhibit shall be immediately returned to him before witnesses, if any, and against his signature. A report shall be made of the restitution.

Section 36:

(1) Whenever an officer of the judicial police charged with the execution of a warrant has good reason to believe that the person to be arrested has taken refuge in a house, a place not open not to the public, the occupant shall be bound to facilitate his ingress therein.

(2) In the event of a refusal, the officer of the judicial police shall make a report thereof, and before available witnesses, break into the house or place.

Section 37: Any person arrested shall be given reasonable facilities in particular to be in contact with his family, obtain legal advice, make arrangements for his defence, consult a doctor and receive medical treatment and take necessary steps to obtain his release on bail.

Section 38: Every person shall be bound to assist a magistrate or officer or agent of the judicial police or a member of the forces of law and order when such assistance is required for the purpose of apprehending a person or for preventing him from escaping. In the case of refusal, the provisions of section 174 of the Penal Code shall be applicable.

PART IV
LEGAL NOTIFICATION, SUMMONSES AND SERVICE

CHAPTER I
LEGAL NOTIFICATION

Section 39: Legal notification shall consist of bringing a legal document to the knowledge of the interested party. It shall be done through administrative channels, in particular by registered letter with acknowledgment of receipt due, or by an officer of the judicial police who shall make a report thereon.

CHAPTER II
SUMMONSES

Section 40:

- (1) A summons shall be an order requesting a person to appear before a court.
- (2) A summons shall be served by the bailiff on the defendant, the accused, the civil party, the witnesses, on the person vicariously liable and where applicable, on the insurer.
- (3) A summons shall be issued at the request of the Legal Department or the aggrieved party or any other interested party.
- (4) It shall be served on the person, at his place of work, at his residence, at the mayor's office, or the Legal Department.

Section 41:

- (1) A summons shall state besides the date of service, the full name, affiliation, date and place of birth, occupation, address, residence and where necessary, the address for service on the complainant, the full name and address of the bailiff. It shall state the full name, affiliation and the full address of the addressee and particularly his residence or his place of work.
 - (2) A summons shall state the facts of the case and provisions of the law under which the defendant is charged.
- It shall also state, as the case may be, the Examining Magistrate or the court seized of the matter, the place, date and hour of the hearing, and shall specify whether the person has been summoned as defendant, accused, civil party, person vicariously liable, witness or as insurer.
- (3) The summons served on a witness shall in addition mention that non-appearance, refusal to testify or giving of false evidence is punishable by law.

Section 42: The civil party who institutes criminal action by private prosecution shall choose an address for service on himself within the jurisdiction of the court, if he is resident elsewhere.

Section 43:

(1) The bailiff shall make every effort to effect personal service. He shall state on the original as well as on the copy left for the person to whom the summons is addressed, not only the action which he has taken to effect service but also the replies to his eventual enquiries.

(2) The Legal Department, the Examining Magistrate or the court may order the bailiff undertake further action if it considers that former actions were incomplete.

Section 44:

(1) The person summoned shall sign the original and the copies.

(2) If he does not know how to sign or refuses to sign or cannot sign, mention shall be made of this fact on the original and the copies.

Section 45:

(1) Where the bailiff does not find the person summoned at home, in his residence or at his place of work, he shall leave a copy thereof to any person found on the place. Subject to the provisions of section 44 subsection (2), the person to whom the summons is handed shall sign the original and the copies.

(2) The bailiff shall indicate in the summons the full name and address of the person to whom he delivered the copy of the summons, as well as that person's relationship with the person to whom the summons is addressed.

(3) In the case referred to in subsections (1) and (2), the copy shall be delivered in a sealed envelope with only the full name and address of the person to whom it is addressed on the one side and the stamp of the office of the bailiff affixed on the cover flap on the other side.

Section 46:

(1) If the bailiff does not find any person at the address of the person to whom the summons is addressed, or if the person found therein refuses to receive the summons, he shall immediately ascertain the correctness of the address.

(2) If the address is correct, the bailiff shall mention on the original and on the copies what action he has taken and facts observed by him, then he shall have the mayor or the person acting for him, visa the documents, or in default, the village or quarter head. A copy shall be delivered in a sealed envelope as prescribed in section 45.

Section 47:

(1) In the cases referred to in sections 45 and 46, the bailiff shall immediately Worm the person summoned, by a registered letter with acknowledgement of receipt, of the person to whom the copy of the summons was delivered.

(2) Where it is found from the receipt that the person summoned received the registered letter within the time-limit prescribed in section 52 the summons shall be deemed to have been served on the person.

Section 48: Where the person to be summoned has no residence or abode, or known place of work, the bailiff shall have the State Counsel visa the original and the copies and shall leave a copy with him, to post at the entrance of the court hall.

Section 49:

(1) Where it is not established that the person summoned has received the registered letter addressed to him by the bailiff in accordance with the provisions of section 47 or where the summons was served on the Legal Department or the mayor's office, a judicial police officer may be requested by the Legal Department 10 undertake another search with a view 10 effectively notifying the person concerned.

(2) In all cases, the judicial police officer shall draw up a report of the action he has taken and forward it without delay to the Legal Department.

(3) Where a judicial police officer has effectively served the summons on the person cited therein, this shall be deemed personal service.

Section 50:

(1) Summonses on persons residing abroad shall be served on the Legal Department.

(2) The Legal Department shall send a copy in a sealed envelope to the Ministry in charge of Foreign Affairs, which shall cause the summons to be served without delay on the addressee through diplomatic channels.

(3) Where there is a judicial convention between Cameroon and the foreign country in which the person summoned resides, the Legal Department shall send the copy in a sealed envelope directly to the authority provided for the convention.

Section 51:

(1) The original of any summons shall be immediately sent to the party who requested it.

(2) If the summons was issued at the request of the Legal Department, a copy of the summons shall be attached to the original.

(3) The bailiff shall indicate at the bottom of the original and of the copies of the summons the cos15 of issuing and serving it; otherwise, he shall be liable to pay a civil fine of from 5.000 to

25.000 francs which shall be ordered by a ruling of the President of the court seized either of his own motion or at the request of the Legal Department.

Section 52:

(1) The interval between the day when the summons is issued and the day fixed for appearance shall be five (5) days if the person summoned resides in the town or the locality where he is to be heard.

(2)

(a) It shall be five (5) days, in addition to an additional day for every 25 kilometres, if the person summoned resides out of the town or locality where he is to be heard.

(b) This interval shall be calculated on the basis of the distance between the residence of the person concerned and the seat of court before which he is to appear.

(3) The interval shall be ninety (90) days if the person resides abroad.

Section 53: Where the prescribed time-limit of the preceding section are not observed, the following rules shall apply:

(a) If the person summoned does not appear, the summons shall be cancelled either by the court or by the Examining Magistrate who shall order that a new summons be issued.

(b) If the person summoned appears, he shall be informed that he has been irregularly summoned and that he has a right to either apply for an adjournment, accept to be heard or to have the matter proceeded with.

Section 54: A summons may be declared void where omissions or errors pointed out by one of the parties are prejudicial to his interest.

Section 55: Where the summons is declared void because of the fault of the bailiff, he shall be liable for the expenses of the irregular summons in addition to the costs of the decision declaring the summons void.

CHAPTER III SERVICE

Section 56:

(1) Service shall mean the delivery of a court process or judgment by the bailiff to the addressee. It shall be executed at the instance of the Legal Department or any other interested party.

(2) The provisions of sections 40 to 55 shall apply to service.

Section 57: Where personal service has not been effected it may be made at his place of residence, the council office, the Legal Department, on his surety or at his place of work.

Section 58: A bailiff shall not carry out his official duties either on himself, his spouse, his ascendants, his descendants, collaterals and their descendants, as well as those of their spouses, his parents in law and the relatives by marriage to the same degree, or his employees.

END OF BOOK ONE

BOOK II
INVESTIGATION AND PROSECUTION OF OFFENCES

PART I
CRIMINAL AND CIVIL ACTIONS

Section 59:

- (1) The commission of any offence may lead to the institution of criminal proceedings and as the case may be, to a civil action.
- (2) The institution of criminal proceedings aims at procuring a sentence or a preventive measure against an offender as provided by law.
- (3) Civil action is intended to provide compensation for damages resulting from an offence.

Section 60: Criminal proceedings shall be instituted and prosecuted by the Legal Department.

They may also be instituted by any government department or by the injured person under the conditions laid down by law.

Section 61: A civil claim may be made along side a criminal action before the same court so long as they arise from the same offence.

It may also be brought separately from a criminal action. In such a case, the court seized of the civil matter shall stay proceedings until a final decision on the criminal action has been pronounced.

Section 62:

(1) Criminal proceedings shall be discontinued in the following cases:

- (a) the death of the suspect, the defender or of the accused;
- (b) prescription;
- (c) amnesty;
- (d) repeal of the law ;
- (e) after a successful plea of convict or acquit;
- (f) by agreement between the parties, if the law expressly so provides ;
- (g) the withdrawal of a complaint, where the lodging of such a complaint is a precondition for the commencement of prosecution.;
- (h) the withdrawal of the complaint or the civil claim by the civil party who lodged the complaint in respect of a simple offence or a misdemeanour .

(2) The provisions of subsection (1) (h) above are applicable only where:

- the withdrawal is voluntary;
- the matter has not been heard on the merits; government department or by the injured person under the conditions laid down by law.
- the offence committed does not disturb public order or good morals; in case of many civil claimants, all of them withdraw their complaints or civil claims;
- the withdrawal is not as a result of violence, fraud or deceit.

(3) In the case referred to in sub-section (2) above, the court shall grant the application and award costs against the civil claimant.

Section 63: When a court has been seized at the same time of a criminal action and a civil action, except in the case provided for in sub-section I (h) above. The judge seized of the matter shall be bound to adjudicate thereupon.

Section 64:

(1) The Procureur General of a Court of Appeal may, by express authority of the Ministry in charge of Justice, enter a nolle prosequi, at any stage before judgement on the merits is delivered, if such proceedings could seriously imperil social interest or public order.

(2) In the case completed in sub-section (1) above, the Examining Magistrate or the court shall record the fact of the discontinuance of the criminal action, and order if need be, the cancellation of any warrant against the suspect or the accused.

(3) When the criminal action has been discontinued pursuant to sub-section (1) above, the

(4) The discontinuance of criminal proceedings shall be without prejudice to their reinstitution when this becomes necessary.

(5) Except for the cases contemplated in subsection (I) above and in section 62 (I) h), prosecution regularly instituted, shall not in anyway be discontinued or suspended, without the risk of a civil action for damages against the magistrate who so does.

Section 65:

(1) Prescription shall be the barring of prosecution following the failure to commence action within the prescribed limitation period.

(2) In the case of a felony, criminal proceedings shall be time-barred after the years have elapsed from the day following the day of commission of the felony, if within the interval no step is taken within the meaning of section 66.

(3) Where a step has been taken within that interval, prosecution can only be time-barred after ten years have elapsed from the day following the date of such step.

(4) In the case of a misdemeanour except where there are special provisions in relation to certain offences, the period of prescription shall be three years. It shall be calculated according to the circumstances specified in sub-sections (2) and (3).

(5) In the case of a simple offence period of prescription shall be one year shall be calculated according to the circumstances specified in sub-sections 1 and (3).

(6) In the case of prosecution for several related offences, the delay for prescription to be taken into consideration shall be that of the offence with the most severe punishment.

Section 66: Time shall start to run afresh if one or more of the following acts should occur: the lodging of a complaint, writs issued by the Legal Department instituting measures of investigations, processes served by bailiffs, reports of police investigations, court processes, hearing of the parties and witnesses during preliminary inquiry or in court, interlocutory rulings and declarations of appeal.

Section 67: Acts which set the time prescribed for prosecution to run afresh shall have an effect even as regards persons who are not implicated or named in such acts.

Section 68:

(1) The time-limit shall be suspended by any de jure or de facto bars which may prevent the commencement of criminal action.

(2) It shall be considered as de jure bars where:

- (a) there is an interlocutory plea against the judgement being given;
- (b) there is parliamentary immunity;
- (c) a fiat to prosecute is being awaited;
- (d) an appeal to the Supreme Court has been lodged;
- (e) there is a conflict of jurisdiction.

(3) De facto bars shall in particular include the following:

- (a) invasion of the territory by enemy forces;
- (b) insanity of the suspect, the defendant or the accused after the commission of the offence;
- (c) the escape of the suspect, defendant or accused;
- (d) the enlisting of the case for hearing;
- (e) adjournment of the case entered in the record-book;
- (f) the fact that a court by failing to perform an act within its jurisdiction, has prevented a party from exercising his legal rights to take action or to defend himself.

Section 69:

- (1) Prescription of prosecution shall be a matter of public policy.
- (2) The period of prescription shall be determined according to the statement of offence as laid down by the trial court when delivering judgement in the criminal matter.

Section 70: The withdrawal of a civil claim may not stay criminal proceedings except otherwise provided by law.

Section 71:

- (1) A civil claim based on an offence may be made by any natural or legal person who has suffered injury, loss or damage.

However an infant or any other person who has lost his legal capacity may not be himself make a claim before the court. He may do so only through his legal representative (committee or next friend).

- (2) A civil action instituted against someone who in law has no legal capacity shall be instituted through his legal representative (guardian ad litem), without involving the estate of the latter.

Section 72: The insurer may at the request of the victim of the offence or the person vicariously liable be summoned to appear before the court to be heard and to be found liable jointly with the accused to compensate the victim for the damage caused by the offence.

Section 73: In the event of the victim's death, his right of action shall devolve on his heirs.

Section 74:

- (1) Associations, trade unions and professional organisations may make civil claims in criminal actions only if they invoke specific damages and a collective or professional interest.
- (2) An insurance company shall not, in a criminal action, be competent to bring a civil claim against an accused person for the recovery of compensation paid by it by virtue of a contract of insurance.

Section 75:

- (1) A civil claim made in a criminal action, shall be entertained only where it is based on a direct, certain and actual damage.
- (2) Except where otherwise provided by law, a civil claim emanating from an offence shall be barred after thirty (30) years even where it is embodied in a criminal action.

Section 76: A party who brings a civil suit on the basis of specific facts, may afterwards, in respect of the same facts, either link his action to that of the Legal Department, or undertake a private prosecution, provided that he withdraws his initial civil suit.

Section 77: With the exception of international conventions, the provisions of section 76 shall be applicable where the civil suit was brought in a foreign court.

PART II **THE AUTHORITIES RESPONSIBLE FOR POLICE INVESTIGATION**

CHAPTER I **JUDICIAL POLICE**

Section 78:

- (1) The duties of the judicial police shall be performed under the supervision of the State Counsel by judicial police officers, judicial police agents and all other civil servants or persons to whom judicial police duties are assigned by law.
- (2) In this capacity, the persons referred to in the preceding sub-section shall be auxiliaries of the State Counsel.
- (3) In each jurisdiction of the Court or Appeal, the judicial police shall be under the control of the Procureur General. The Procureur General shall evaluate, at the end of each year, the work of judicial police personnel referred to in subsection (1).

SUB-CHAPTER I **THE STATUS OF A JUDICIAL POLICE OFFICER**

Section 79: The following shall have the status of judicial police officers:

- (a) officers and non-commissioned officers of the gendarmerie;
- (b) gendarmes in charge even in an acting capacity of a gendarmerie brigade or gendarmerie post;
- (c) superintendents of police;
- (d) deputy superintendents of police;
- (e) gendarmes and inspectors of police who have passed the judicial police officer's examination and taken the oath;
- (f) public servants even if they are temporarily performing the functions of head of an external service of the National Security.

Section 80: Public servants and other public employees who have been assigned judicial police duties by special instruments shall have in charge those duties under the conditions and within the limits fixed by the said instruments.

Section 81:

(1) Gendarmes who are not judicial police officers, police inspectors and constables shall have the status of judicial police agents.

They shall assist judicial police officers in the performance of their duties, and shall report to their superior officers of all offences which have come to their knowledge.

(2) Judicial police agents shall have no authority to take decisions to remand in police custody.

**SUB-CHAPTER II
DUTIES OF THE JUDICIAL POLICE**

Section 82: Judicial police shall be responsible for:

- (a) investigating of offences, collecting evidence, identifying offenders and accomplices and bringing them before the Legal Department;
- (b) executing rogatory commissions of judicial authorities;
- (c) serving court processes;
- (d) executing warrants and court decisions.

Section 83:

(1) Apart from the duties defined in section 82, judicial police officers shall receive complaints and reports against persons and shall make preliminary investigations according to the conditions provided for in sections 116 to 120.

(2) In cases of felonies and misdemeanours committed *flagrante delicto*, they shall exercise the powers conferred on them by sections 104 to 115.

(3) They shall have a right to request directly the assistance of the forces of law and order in the discharge of their duties.

(4) They shall receive instructions from the State Counsel to carry out all investigations or any additional investigation which he considers necessary.

(5) The State Counsel may stop any judicial police officer from continuing with the investigation. In such a case, he shall inform that officer's immediate superior of his reason for doing so.

Section 84: Subject to the powers conferred on the State Counsel by section 83 (5), the judicial police officer who is first detailed to carry out the investigation of an offence shall be the only competent officer to carry out the said investigation.

However, the judicial police officer shall automatically hand over the cases to any agent mentioned in section 80 above by virtue of their special knowledge.

Section 85: A non-military judicial police officer may investigate offences provided for in the provisions of the Military Justice Court when no military judicial police officer is available.

In such a case, he shall forward the case-file to the Ministry in charge of Military Justice.

Section 86:

(1) Judicial police officers shall be empowered to check the identity and situation of any suspected person, in accordance with the provisions of section 32, and where necessary, may detain him in a special police custody for not longer than 24 hours.

(2) Upon the expiry of this period, the person so detained shall be released, unless the detention is justified on some other legal ground otherwise the judicial police officer may be prosecuted under the provisions of section 291 of the Penal Code.

Section 87:

(1) A judicial police officer may, whether in a public place or a place open to the public, search or cause to be

be assisted by a judicial police officer serving within the area into which he has entered.

(b) The State Counsel of the area shall be informed of these operations by the State Counsel of the jurisdiction which ordered the commission.

Section 89:

(1) The judicial police officer shall without delay inform the State Counsel of the offences of which he has knowledge.

(2) At the close of the investigations he shall forward directly to the State Counsel the original and a copy of his report as well as all other relevant documents.

(3) An inventory shall be made of all the objects seized. They shall then be placed under seal and deposited with the Legal Department. A copy of the report on the seizure shall be given to the person who had possession of the objects.

Section 90:

(1) The police report shall state:

- (a) The date and time when each phase of investigations started and ended;
- (b) The full name and the status of the investigator;
- (c) Where necessary, the authorization referred to in section 88 (2).

(2) Each sheet of the original of the report or of the statement register shall bear the signature of the investigator;

(3) When all or part of a written report "!" is devoted to the recording of statements from or to the confrontation of persons the said persons shall, after the reading and, where necessary, interpretation of the statements, initial each sheet of the report and all erasures, alterations and interlineations therein. The interpreters shall also initial each sheet of the report and all erasures, alterations and interlineations not initialled shall be inadmissible.

(4) The last page of the report or statement register shall be signed by the maker, the investigator and by the interpreters, if any.

(5) Any person asked to sign a report or statement register but who does not know or cannot sign shall be asked to affix his right thumb-print to the document. Where this is not possible the investigator shall choose any other finger and authenticate its print.

(6) The investigator shall, in case of refusal to sign or thumb-print, mention this fact in his report.

(7) Any person asked to sign a report

or statement register may make any necessary reservations thereon before signing it. Such reservation shall be explicit and unambiguous.

(8) Any person who is called upon make a statement may either dictate it the investigator or write it in a statement register or where there is none, write it on - any sheet of paper.

Section 91: Unless otherwise provided by law, reports written by judicial police officers shall serve only as mere information.

**CHAPTER II
POLICE INVESTIGATIONS**

**SUB-CHAPTER I
GENERAL PROVISIONS**

Section 92:

(1) (a) A judicial police officer may, in the course of an investigation, question any person whose statement is likely to lead to the discovery of the truth.

(b) The person summoned for questioning shall appear and answer any question and if he fails to appear, the judicial police officer shall inform the State Counsel who may issue a writ of *capias* against him. Such person shall be brought before the said State Counsel

(2) A judicial police officer may:

- conduct the search of a house, or premises and make seizures in accordance with the provisions of sections 93 to 100;
- remand persons in police custody, pursuant to sections 119 and following;
- request the assistance of any expert or of any person capable of assisting him in any given phase of the investigation; make a request in writing for transportation with immediate effect, in any public or private road, railway, water or air transport vehicle. The original of the written request shall be left with the carrier.

(3) In cases of felonies and misdemeanours punishable with at least two years imprisonments, the judicial police officer may, on the written authorization of the State Counsel, and under the control of the latter, in accordance with the conditions laid down in section 245, in the course of the investigations:

- intercept, record or transcribe all correspondences sent by means of telecommunication;
- take any photographs at private premises.

(4) Any one heard as a witness or as a person vicariously liable, may not, in any circumstance, be subject to remand in police custody.

Section 93:

(1) Searches and seizures shall be carried out by judicial police officers who possess search warrants.

However, he may act without a search warrant in cases of a felony or a misdemeanour committed *flagrante delicto*.

(2) Any search or seizure shall be carried out in the presence of the occupant of the place and the person in possession of the objects to be seized, or in case of their absence, their representatives, as well as two witnesses chosen from among the persons or neighbours present.

(3) The occupant of the place and the person in possession of the objects to be seized, or in case of their absence, their representatives shall have the right to search the judicial police officer before the latter commences his search. He shall be informed of the said right and mention of it shall be made in the report of the fulfilment of this formality.

(4) In the absence of the occupant or of the person in possession of the objects or of their representatives, and in case of urgency, the State Counsel may, in writing, authorize the

judicial police officer to conduct the search or seizure in the presence of the witnesses described in sub-section (2) above and one other judicial police officer or two judicial police agents.

(5) Where the judicial police officer cannot get in touch with the Legal Department, he shall proceed with the search and as the case may be, seizure in accordance with the provisions of sub-section (4) above and shall mention the action he has taken in his report.

Section 94:

(1) In the absence of a search warrant, searches, and seizures of exhibits may be carried out only with the consent of the occupant or of the person in possession of the objects to be seized.

(2) The consent shall be a written declaration signed by the person concerned, and if he cannot sign he shall make a thumb-print at the bottom of the declaration.

(3) The consent of the person concerned shall be valid only if he had been informed before hand by the judicial police officer of his right to object to the search.

Section 95: Any judicial police officer conducting a search in connection with a specific offence may carry out a seizure in connection with another offence only if the latter attracts an imprisonment sentence.

Section 96:

(1) All articles seized shall be shown to the suspect or if he is not present, to his representative or to the person in possession of them so that he may identify them and initial them if necessary. Where he refuses to do so, mention of this fact shall be made in the report.

(2) Subject to the provisions of section 97, all articles seized shall in all cases be shown to the witnesses in order that they may identify and initial them if necessary.

(3)

(a) An inventory of the articles seized shall be made on the spot, described in full detail and kept under seal.

(b) If it is not convenient to make an inventory on the spot, the articles shall be provisionally put away under seal until an inventory is made and they are finally sealed. This shall be done in the presence of the persons mentioned in section 93 (2).

(c) If the sizes of the articles seized or of the conditions for their preservation so require, they may be put under seal without using a bag or envelope.

Section 97: When a judicial police officer conducts a search, he alone shall have the right to examine the contents of the documents found in the place before they are seized. He shall be bound by professional secrecy.

Section 98:

(1) The report on the search and seizure shall be drawn up in accordance with the provisions of section 90. It shall be signed by the occupant of the place and the person in possession of the articles or in case of their absence, their representative, as well as the witnesses and any other person who took part in the search.

(2) The report shall state the full name, status, names of parents, date and places of birth as well as the permanent addresses of the signatories.

Section 99:

(1) No search may be conducted on a private house and premises between six (6) p.m. and six (6) a.m.

(2) However, a search already begun may continue after six (6) p.m. on the authorization of the State Counsel.

(3) In case of impossibility of getting in touch with the State Counsel, the judicial police officer may exceptionally continue with the search after 6 p.m. and shall, without delay, keep the State Counsel informed.

Section 100: Failure to comply with the provisions of sections 93 to 99 shall render the search and seizure null and void.

However, where the search has been declared null and void, the articles seized in the course thereof may be admitted as exhibits if they are not contested.

Section 101:

(1) A judicial police officer may, in the course of an investigation, assign part thereof to any other judicial police officer under his authority.

(2) Any judicial police officer to whom any part of the investigation has been assigned shall in his report specifically mention the facts of such delegation.

Section 102:

(1) The entire judicial police investigation process shall be secret. However, the secrecy of the investigation shall not apply to the Legal Department.

(2) Any person who assists in these investigations shall be bound by professional secrecy subject to the penalties laid down in section 310 of the Penal Code.

(3) Notwithstanding the provisions of sub-section (1), judicial police officers may with the approval of the State Counsel, publish press releases and documents relating to certain matters which have been the subject of the investigation.

(4) Press releases and documents published by the judicial police shall be disseminated without comments by the press. Any violation of this provision shall be punished under sections 169 and 170 of the Penal Code.

SUB-CHAPTER II

FELONIES AND MISDEMEANOURS COMMITTED FLAGRANTE DELICTO

Section 103:

- (1) Felonies and misdemeanours are deemed to be committed flagrante delicto when they are in the course of being committed or when they have just been committed.
- (2) Shall also be classified as felonies or misdemeanours committed flagrante delicto when:
- (a) after the commission of the offence, the suspect is pursued by public clamour;
 - (b) soon after the commission of the offence, the suspect is caught in possession of an article or shows a sign or trace which tends to suggest that he took part in the commission of the felony or misdemeanour.
- (3) There shall equally be flagrante delicto where a person requests the State Counsel or a judicial police officer to investigate a felony or misdemeanour committed in a house, which he occupies, or over which he has charge.

Section 104:

- (1)
- (a) A judicial police officer informed of a felony committed flagrante delicto shall immediately inform the State Counsel of it.
 - (b) Any notice whether given by telephone or other oral communication shall be confirmed in writing. Within forty eight hours of the oral message.
 - (c) Mention of these measures shall be made in the report.
- (2) The judicial police officer shall without delay visit the place where the felony was committed and shall take all necessary steps particularly:
- (a) to prevent any person likely to supply useful information from leaving the place without his permission, subject to the punishment provided in the Penal Code for defaulting witness. He may not, under pain of prosecution for false arrest detain such person for more than 12 hours;
 - (b) to, where necessary, remand in police custody any suspected person;
 - (c) to ensure the preservation of evidence that may be used for the discovery of the truth;
 - (d) to seize any articles or documents used in committing, or which appear to be the product of the felony;
 - (e) to, in case of urgency, carry out his duties outside his territorial jurisdiction in accordance with section 88 (2);

- (f) to conduct searches in the houses of persons suspected of either keeping documents or articles relating to the particulars of the offence or of having participated in the commission of the felony.

Section 105: Articles which are not useful for revealing the truth shall, after the written approval of the State Counsel, be returned by the judicial police officer, to the owner or to any other person from whom they were seized, who shall acknowledge receipt thereof in the police diary. A report of the return shall be drawn up.

Section 106:

(1) Searches in an advocate's chambers shall be conducted only for the purpose of seizing documents or objects connected with legal proceedings or where the advocate is being investigated or where the documents or objects are unrelated to the practice of his profession.

(2) The search shall be conducted by the competent law officer of the Legal Department in the presence of the advocate and the President of the Bar Council or his representative.

It shall be conducted under conditions which safeguard professional secrecy and maintain the dignity of the advocate.

(3) Failure to comply with the provisions of the present section shall render the search null and void.

Section 107: Searches in the office of a physician, a public notary or all other persons bound by professional secrecy shall be conducted in the presence of the competent magistrate, and if necessary, of the person concerned and of the representative of his professional organization, if any.

Section 108: Except for the purpose of the investigation, any person who, without the authorization of the suspect or his counsel or of the person who signed or received the documents seized in the course of a search, reveals the contents thereof to a person not qualified to have knowledge of the same shall be subject to the punishment provided for in the Penal Code for breach of professional secrecy.

Section 109:

(1) Where it appears necessary in the course of an investigation to establish or to check the identity of any person, such person shall, at the request of a judicial police officer or one of the public servants mentioned in section 78 (1), make himself available for that purpose.

(2) Any refusal to submit to the identity check shall be punishable as a simple offence of the fourth class.

Section 110:

(1) Notwithstanding the provisions of section 88 (1) above, the judicial police officer may, in case of felonies and misdemeanours committed flagrante delicto, and where the investigations, necessitate, go outside, either his territorial jurisdiction, or outside the territorial jurisdiction of the Legal Department where he carried out his duties, to follow up his

investigations. In this case, he shall, under pain of nullity of the acts accomplished and disciplinary sanctions, obtain the authorisation of the State Counsel of his area of jurisdiction.

(2) The said State Counsel, shall, where necessary, inform the State Counsel of the jurisdiction to which the judicial police officer is going.

(3) The judicial police officer shall on his arrival and before carrying out his investigations, report to the competent State Counsel and in all cases, to the competent judicial police officer.

Section 111: In the case of a felony committed flagrante delicto, the State Counsel shall be competent to carry out the investigation.

When the State Counsel arrives at the scene of the commission of the offence, the powers of the judicial police officer to carry out the investigation shall cease immediately unless the said State Counsel decides otherwise.

Section 112: The State Counsel may issue a warrant or arrest against any person suspected of having participated in the commission of a felony and shall interrogate him on the spot upon his arrival.

He may only institute criminal proceedings against the suspect of a felony committed flagrante delicto after a preliminary inquiry.

Section 113: The provisions of sections 104 to 112 above shall be applicable in cases of misdemeanours committed flagrante delicto.

Section 114:

(1) A suspect arrested flagrante delicto shall be brought by the judicial police officer before the State Counsel who shall proceed to check his identity, interrogate him summarily and if he decides to prosecute shall place him under temporary detention or release him on bail with or without sureties.

(2) In all cases the State Counsel shall make a report on the measures he has taken and where he intends to prosecute him, he shall do so at the very nearest session of the court.

(3) The provisions of the present section shall not prevent the State Counsel from instituting criminal prosecution against the suspect, by way of a direct summons Or after preliminary investigation.

Section 115: In case of suspicious death the judicial police officer notified of such death shall immediately report to the State Counsel.

The provisions of section 104 and seq. shall be applicable.

**SUB-CHAPTER III
POLICE INVESTIGATION**

Section 116:

(1) Judicial police officers and agents shall carry out investigations either on their own initiative or on the instructions of the State Counsel.

(2) The originals of the Police case files shall be forwarded to the State Counsel without delay.

(3) As soon as investigations are opened, the judicial police officer shall, under the penalty of nullity, inform the suspect of:

- his right to counsel;
- his right to remain silent

(4) Mention of this information shall be made in the report.

Section 117:

(1) Judicial police officers shall conducting investigations have the powers provided for under sections 83 to 93,95,97,99,101,102,104,110,114, 15 and 116.

(2) At the close of the investigations, the suspect who has no known residence or who cannot fulfil any of the conditions referred to in section 246 (g) shall be arrested and taken before the State Counsel if there is strong corroborative evidence against him.

A suspect who has a known residence or who fulfils one of the conditions provided for in section 246 (g) shall be released on bail.

SUB-CHAPTER IV POLICE CUSTODY

Section 118:

(1) Police custody shall be a measure whereby, for purposes of criminal investigation and the establishment of the truth, a suspect is detained in a judicial police cell, wherein he remains for a limited period available to and under the responsibility of a judicial police officer.

(2) Except in case of a felony or a misdemeanour committed flagrante delicto, and unless strong corroborative evidence exists against him, a person with a known place of abode may not be remanded in police custody.

(3) Save in the cases provided for in sub-sections (1) and (2) above, no person may be remanded in police custody for the purpose of criminal investigation without the written approval of the State Counsel.

(4) Mention of this approval shall be made in the police report.

Section 119:

(1)

(a) where a judicial police officer intends to remand a suspect in police custody, he shall inform him of the grounds for the suspicion and invite him to give any explanation he deems necessary.

(b) Mention of these formalities shall be made in the police report.

(2)

(a) The time allowed for remand in custody shall not exceed forty-eight (48) hours, renewable once.

(b) This period may, with the written approval of the State Counsel, be exceptionally extended twice.

(c) Reasons shall be given for each extension.

(3) However, the period of remand in police custody shall not be extended solely for the purpose of recording the statement of a witness.

(4) Except in cases of felonies or misdemeanours committed flagrante delicto, remand in police custody shall not be ordered on Saturdays, Sundays or public holidays. However, where the remand in police custody has commenced on a Friday or on the eve of a public holiday, it may be extended as provided for in sub-section (2).

Section 120:

(1) Notwithstanding the provisions of section 119 (2), the period of remand in police custody shall be extended, where applicable, having regard to the distance between the place of arrest and the police station or the gendarmerie brigade where such remand has to be effected.

(2) The extension shall be twenty-four (24) hours for every fifty (50) kilometres.

(3) Mention of this fact shall be made on the report of arrest.

Section 121: The period of police custody shall start to run from the time the suspect presents himself or is brought to the police station or gendarmerie brigade. The time of his arrival at the station shall be mentioned in the station diary and in the police report.

Section 122:

(1)

(a) The suspect shall immediately be informed of the allegations against him, and shall be treated humanely both morally and materially.

(b) He shall be given reasonable time to rest fully in the course of the investigation.

(c) The period of rest shall be mentioned in the police report.

(2) The suspect shall not be subjected to any physical or mental constraints, or to torture, violence, threats or any pressure whatsoever, or to deceit, insidious manoeuvres, false proposals, prolonged questioning, hypnosis, the administration of drugs or to any other method which is likely to compromise or limit his freedom of action or decision, or his memory or sense of judgment.

(3) The person on remand may at anytime within the period of detention and during working hours, be visited by his counsel, members of his family, and by any other person following up his treatment while in detention.

4) The State shall be responsible for feeding persons remanded in police custody. However, such persons shall have the right to receive from members of their families or from their friends the means of subsistence and other necessities.

(5) Whoever violates or fails to comply with the provisions of this section or prevents their compliance with, shall be liable to prosecution without prejudice, where necessary, to disciplinary sanctions.

Section 123:

(1) The person remanded in police custody may, at any moment, be examined by a medical officer appointed by the State Counsel of his own motion. Such medical officer may be assisted by another chosen by the person on remand at his own expense.

(2) The State Counsel may also order such medical examination at the request of the person concerned, his lawyer or a member of his family. Such medical examination shall be carried out within twenty-four hours after the request.

(3) At the end of the police custody, it shall be obligatory to medically examine the suspect at his expense and by a doctor of his choice, on condition that either the suspect himself, his counsel or his family members so request. In all cases he shall be informed of this discretion.

(4) The report of the commissioned medical officer shall be put in the suspect's case file and a copy thereof given to him. It may be counter-signed by the medical officer chosen by the person so remanded who may, where necessary, endorse it with his views

Section 124:

(1) The judicial police officer shall mention in his report the reasons for remanding the suspect in police custody, the length of time within which he was subjected to questioning, the interval of rest during questioning, the day and hours when he was either released or brought before the State Counsel.

(2) The suspect shall sign the said entries and in the manner prescribed in section 90 (3), (4), (5) and (7). Where he refuses to sign, the judicial police officer shall mention that fact in his report.

(3) These entries shall be made in a special register kept in all the judicial police stations where suspects may be remanded. The said register shall be submitted to the State Counsel for inspection and control.

(4) The non-observation of the provisions of this section shall lead to the nullity of the police report as well as all subsequent acts, without prejudice to disciplinary sanctions against the judicial police officer concerned.

Section 125:

(1) Where by distance the judicial police officer is far from the seat of the court, he may apply for extension of the remand period from the State Counsel by telephone, radio message, hand mail, electronic mail, telecopy or any other means of urgent communication.

(2) The State Counsel shall notify his decision to the judicial police officer by the same means, and where necessary confirm in writing. The judicial police officer shall immediately inform the suspect of the decision.

(3) If the judicial police officer can not immediately get in touch with the State Counsel, he shall release the suspect on bail with or without sureties.

Provided that, and notwithstanding the provisions of section 119 and 120, the judicial police officer may, in the case of a felony or misdemeanour committed flagrante delicto or where the suspect does not have a known abode or cannot fulfil one of the conditions provided for in sect 246 (g), extend the remand in police custody for a maximum period of eight (8) days.

(4) Mention of this extension shall be made in the police report.

Section 126: Where an extension of remand in police custody is refused, the provisions of section 117 (2) shall be applicable.

PART III
THE LEGAL DEPARTMENT

CHAPTER I
COMMON PROVISIONS

Section 127:

(1) The Legal Department shall be indivisible.

Any judicial act done by any magistrate of the Legal Department shall be presumed to be done in the name of the entire Department.

(2) The Legal Department shall, as provided for in this section, comprise the magistrates in the Legal Department of the Supreme Court, the Court of Appeal, the High Court and the Court of First Instance.

(3) The Legal Department of the Supreme Court shall comprise the Procureur General at the said Court and all the magistrates of the said Legal Department. Its jurisdiction shall be that of the Supreme Court.

(4) The Legal Department of the Court of Appeal shall comprise the Procureur General at the said Court and all the magistrates of the said Legal Department. Its jurisdiction shall be that of the Court of Appeal.

(5) The Legal Department of the High Court shall comprise the State Counsel and all the magistrates of the said Legal Department. Its jurisdiction shall be that of the High Court.

(6) The Legal Department of the Court of First Instance shall comprise the State Counsel and the Magistrates of the said Legal Department. Its jurisdiction shall be that of the Court of First Instance.

(7) The magistrates of the Legal Department of the Supreme Court, a Court of Appeal, a High Court and a Court of First Instance shall under the control, direction and authority of the Heads of the said Legal Departments, exercise the powers conferred by the law on the Procureur General at the Supreme Court, the Procureur General at the Court of Appeal and the State Counsel respectively.

Section 128:

(1) The Legal Department shall be a principal party in a criminal trial before the court and shall always be represented at such trials under pain of rendering the entire proceeding and the decision null and void.

(2) Subject to the powers of the Presiding Magistrate to maintain order in court, the Legal Department may intervene at any stage of the trial.

(3) The Legal Department shall, at the close of the hearing in every case, address the court or tender written submissions without being denied the right of hearing or stopped when addressing the court.

Section 129: The Legal Department shall be heard even when its submissions are based only on the civil claim.

Section 130: The Legal Department may raise any procedural irregularity and seise the competent court with a view to annulling the irregular act.

Section 131: Where there is a ruling of no case or where is an acquittal, the Legal Department shall not be made to bear the costs of the proceedings or to pay damages to the party prosecuted.

CHAPTER II FUNCTIONS OF THE LEGAL DEPARTMENT

SUB-CHAPTER I FUNCTIONS OF THE PROCUREUR GENERAL AT THE SUPREME COURT

Section 132:

(1) The Procureur General at the Supreme Court shall be a party to appeals lodged by the parties and may of his own motion raise grounds for the annulment of the decision appealed against.

(2) He shall be the principal party in all appeals brought by him before the Supreme Court.

SUB-CHAPTER II FUNCTIONS OF THE PROCUREUR GENERAL AT THE COURT OF APPEAL

Section 133:

(1) The Procureur General at the Court of Appeal shall ensure that the criminal law is applied throughout the jurisdiction of the Court of Appeal.

(2) He shall have authority over all the magistrates of the Legal Department within his jurisdiction.

(3) He shall, in the exercise of his functions, have the right to call directly on the forces of the law and order.

Section 134:

(1) The Procureur General at the Court of Appeal may instruct the magistrates of the Legal Department within his jurisdiction to investigate offences of which he has knowledge, to close a case file or to institute proceedings.

(2) The Procureur General at the Court of Appeal:

- (a) Shall supervise the activities of the judicial police officers and agents working within the jurisdiction of the Court. of Appeal;
- (b) Shall submit half yearly reports to the Minister in charge of Justice on their activities and conduct;
- (c) May direct them to obtain any information which he deems useful for the proper administration of Justice;
- (d) Shall evaluate the work and give marks to each judicial police officer within his jurisdiction;
- (e) Shall forward his appreciation and the marks given to the judicial police officer concerned, to the head of his service of origin.

SUB-CHAPTER III FUNCTIONS OF THE STATE COUNSEL

Section 135:

(1)

(a) matters shall be brought to the State Counsel either by way of:

- a written information;
- a written or oral complaint; or
- a written report by a competent authority.

(b) He may also be seized of his own motion.

(2) Any person who has knowledge of an offence classified as a felony or misdemeanour shall directly and immediately inform either the State Counsel or any judicial police officer or in their absence, any administrative authority of the locality.

(3) Any administrative authority so informed shall be bound to bring such information to the knowledge of the nearest State Counsel or judicial police officer.

(4)

(a) When the written or oral report is made by the victim of the offence, it shall be considered as a complaint. If it is made by a third party, it shall be considered as information.

(b) Information and complaints shall not be subjected to any formalities or fiscal stamps. The authorities referred to in sub-section (2) shall be bound to receive the information or complaints.

(5) Any public servant as defined under section 131 of the Penal Code, who in the exercise of his duties has knowledge of a felony or a misdemeanour, shall be bound to inform the State Counsel and shall forward to him any document relating thereof.

Section 136: Failure to comply with the provisions of subsections 2, 3, 4, and 5 of the preceding section shall be punishable under section 171 of the Penal Code.

Section 137:

(1) The State Counsel shall direct and control the operations of the officers and agents of the judicial police.

(2) He may, at anytime, visit the police post or the gendarmerie brigade in order to verify the conditions of persons in custody provided for in section 124 (3). In the course of such control, the persons whose release he orders of his own motion or by virtue of an order of habeas corpus, must immediately be set free, under pain of prosecution for unlawful detention against the judicial police officers in charge of the police post or gendarmerie brigade where the custody takes place.

(3) The State Counsel may, at any time and place act as a judicial police officer

Section 138:

(1) The State Counsel shall, in the exercise of his duties, have the right to directly request the use of the forces of law and order.

(2)

(a) he may, in order to accomplish his duties, also request the assistance of any person who is likely to help in the discovery of the truth.

(b) the person so requested shall receive an allowance as provided for by the regulations in force.

Section 139: The original of case files concerning offences committed within his jurisdiction and triable by the ordinary law courts, shall be sent to the State Counsel.

Section 140:

(1) the competent State Counsel shall be either:

(a) That of the place of commission of the offence; or

(b) that of the place of residence of the suspect; or

(c) that of the place of arrest of the suspect.

(2) When more than one State Counsel are seized of the same matter, priority shall be given to the State Counsel in whose jurisdiction the offence was committed.

Section 141: A State Counsel before whom a criminal matter has been brought under conditions laid down in sections 135, 139 and 140, may:

(a) refer the information or complaint to a judicial police officer for investigation;

(b) return the case files to the judicial police for further investigation;

(c) decide to close the matter and inform the complainant of his decision. A copy of the decision closing the file shall be forwarded to the Procureur General at the Court of Appeal within a month.

(d) decide to put in the archives the written reports on simple offences for which fixed fines have been paid.

(e) decide to institute criminal proceedings against the suspect.

PART IV
PRELIMINARY INQUIRIES

CHAPTER I GENERAL PROVISION

Section 142:

- (1) Preliminary inquiries shall be obligatory in cases of felonies unless otherwise provided by law.
- (2) They shall be discretionary in case of misdemeanours and simple offences.
- (3) They shall be carried out by Examining Magistrate who shall be a magistrate on the bench.

Section 143:

- (1) Subject of the provision of section 157 the Examining Magistrate may carry out preliminary inquiries only if the State Counsel, by judicial act, requests him to do so.
- (2) The judicial act by which the State Counsel seizes the Examining Magistrate shall be called a holding charge.

Section 144:

- (1) The holding charge preferred by the State Counsel shall be in writing and made against a known or an unknown person.
- (2) It shall contain the statement of the offence committed, and mention that prosecution has not been discontinued by virtue of any of the circumstances referred to in section 62.
- (3) It shall be dated and signed by the State Counsel.

Section 145:

- (1) The holding charge shall be forwarded to the Examining Magistrate through the President of the court.
- (2) The State Counsel may at any stage of the preliminary inquiry, by an act known as an additional holding charge, request the Examining Magistrate to perform any acts which he deems necessary for the discovery of the truth and in particular to prefer new charges.

In this regard, the State Counsel shall ask for the inquiry file and return it to the Examining Magistrate with the additional holding charge within forty-eight (48) hours.

- (3) Whenever the Examining Magistrate forwards the file of the inquiry to the State Counsel, he shall, by a ruling, make an order known as a forwarding order which shall be included in the said file.
- (4) Where the Examining Magistrate does not deem it necessary to act as required by the State Counsel, he shall, by a ruling, make a reasoned order known as an order of refusal of further inquiry which shall be notified to the State Counsel within twenty-four (24) hours.

Section 146:

(1) Where there are several Examining Magistrates in a court, the president shall for each inquiry appoint the magistrate who shall be responsible for it.

(2) The State Counsel may, by a reasoned application, request the president of the court to replace the Examining Magistrate in charge of the inquiry with another Examining Magistrate, in the interest of the proper administration of justice.

(3) The defendant or the civil party may also by a reasoned application make such a request to the President of the court.

(4) The President of the court shall within five (5) days determine the issue by a reasoned ruling, which shall not be subject to appeal.

(5) In case of urgency and with respect to specific isolated acts, an Examining Magistrate may, with the authorization of the President of the court, urge another Examining Magistrate of the same court to perform such acts.

Section 147: As soon as the holding charge is received, the Examining Magistrate shall be bound to make an order of commencement of the inquiry.

Section 148: Notwithstanding the provisions of the section 147, the obligation to commence the inquiry shall cease when the Examining Magistrate discovers that, for reasons affecting the criminal prosecution itself, the facts cannot legally sustain a prosecution, or the facts do not legally constitute a criminal offence, or that the suspect has immunity.

Section 149: The Examining Magistrate shall make an order refusing to carry out the inquiry when he is faced with one of the situations mentioned in section 148 or when the criminal prosecution is considered discontinued for any of the reasons provided for in section 62.

Section 150:

(1) Where the Examining Magistrate decides to commence an inquiry, he shall carry out all acts he deems necessary for the discovery of the truth.

(2) He shall have powers to prefer a charge against any person he identifies to have taken part in the commission of the offence either as principal offender, co-accused or an accomplice.

Section 151:

(1) The Examining Magistrate may carry out or cause to be carried out, either by the judicial police officer or by any other authorized person, an inquiry into the antecedents and character of the defendant as well as into his material, family and social situation.

(2) The investigation of the Examining Magistrate shall be directed to the search for ingredients favourable or unfavourable to the defendant

(3) Where he is unable to carry all the measures of the inquiry himself, he may give rogatory commission to judicial police officers to carry out all the necessary measures under the conditions and subject to be provisions of section 191 and following.

Section 152: The Examining Magistrate shall not give rogatory commission to a judicial police officer to carry out on his behalf, the preferring of a charge against the defendant, interrogation and the issuing of court processes.

Section 153:

(1) The Examining Magistrate shall be assisted by a registrar.

(2) The registrar in the inquiry shall be responsible for the typing of order and documents of the inquiry. He shall serve or cause to be served on all interested parties all documents of the proceedings requiring formal notification.

(3)

(a) Services shall be effected on the person concerned.

(b) Failing this, the registrar shall forward the process by registered mail with acknowledgment of receipt.

Section 154:

(1) Preliminary inquiries shall be secret.

(2) Anyone participating in the proceedings shall be bound by professional secrecy subject to the penalties provided for in section 310 of the Penal Code; provided that the secrecy of preliminary inquiries shall neither apply to the Legal Department nor to the defence.

(3) Notwithstanding the provision 01 sub-section (1), the Examining Magistrate may, if he considers it necessary for the discovery of the truth, hold some of the proceedings in public or cause the State Counsel to publish some of the facts which have been brought to his knowledge.

(4) Any press release made by an Examining Magistrate, by virtue of sub-section 3 above shall, under pain of the penalties provided for under section 169 of the Penal Code, be published by media without comments, be they written, spoken or televised.

Section 155:

(1) Publication by any whatsoever of news, photographs, opinions concerning any pending preliminary inquiry shall, subject to the penalties provided for in section 169 of the Penal Code, be forbidden until the proceedings are closed by a no-case order or until the accused appears before the trial court upon a committal order by the Examining Magistrate.

(2) The same shall apply to any public expression of an opinion on the guilt of the accused.

Section 156:

(1) any publication adversely affecting the honour or private life of a person by any of the means provided under section 152 of the Penal Code, shall be punishable under section 169 of same.

(2) Any person convicted under this section shall be subject to the forfeitures provided under the 30 of the Penal Code.

**CHAPTER II
COMPLAINT WITH A CIVIL CLAIM**

Section 157:

(1) Any person who alleges that he has suffered injury resulting from a felony, or misdemeanour may when lodging a, complaint with the competent Examining Magistrate, file a claim for damages.

(2) The complaint in which a victim claims damages shall set the criminal action in motion.

(3) The provisions of sub section (1) shall not be applicable either to simple offences or to offences, the prosecution of which is solely reserved for the Legal Department.

Section 158:

(1) The victim who sets the criminal action in motion by virtue of section 157 (1) shall, at the risk of his complaint being inadmissible, deposit at the registry of the Court of First Instance an amount considered sufficient for defraying the cost of the proceedings.

The amount of the deposit shall be fixed by an order of the Examining Magistrate.

(2) An additional deposit may be fixed in the course on the inquiry.

Section 159:

(1) When the complaint does not reside within the jurisdiction of the court where the preliminary inquiry is held, he shall choose an address for service therein by preparing and depositing a document to that effect at the registry of the said court.

(2) Where he fails to choose his address for service, he shall not be heard to say that he had no knowledge of any documents which he ought to have been served with, as provided for by the law.

Section 160:

(1) As soon as the civil party has deposited the sum of money provided for in section 158, the Examining Magistrate shall forward the complaint to the State Counsel for his submissions.

(2) The submissions of the State Counsel may:

a) declare the civil claim inadmissible;

b) order the commencement of an inquiry against a known or unknown person.

(3) The State Counsel may also, in the case of a complaint without sufficient grounds or inadequate justification having regard to the supporting documents, request that the person mentioned in the complaint be heard as a witness by the Examining Magistrate.

Section 161: Where the Examining Magistrate seized of the matter is not territorially competent, he shall after the submissions of the Legal Department, rule on his lack of jurisdiction and shall request the civil party to seek redress elsewhere.

Section 162: Where a complaint involving a civil claim result in a no-case ruling, the defendant may bring a civil action for damages against the complainant for malicious prosecution.

Section 163:

(1) The State Counsel shall, when making his submission, not be bound by the statement of offence as given by the complainant who files acclaim for damages.

(2) The Examining Magistrate shall not be bound by the statement of offence in the complaint or that stated by the State Counsel in his submissions.

CHAPTER III PROCEDURE DURING THE PRELIMINARY INQUIRY

Section 164:

(1) The order for commencing an inquiry may be made against a known or unknown person.

It shall specify:

- (a) the full name and function of the Examining Magistrate who made it;
- (b) the statement of the offence committed;
- (c) the full name and identity of the defendant if he is known, or the sign if he is unknown;
- (d) a precise statement of the provisions of the law which have been violated;
- (e) the place and date of the commission of the offence.

(2) The order shall be sign and stamped by the Examining Magistrate who made.

Section 165:

(1) All proceedings in a preliminary inquiry shall be in writing. Records of the proceedings shall be typed by the registrar under the effective control of the said Examining Magistrate.

(2) A file shall be opened for every preliminary inquiry.

(3)

(a) An up-to-date detailed inventory shall be kept of the inquiry file.

(b) All documents in the file shall be numbered and listed by the registrar as soon as they are drawn up or received.

(4) All documents in the case file including the inventory shall be drawn up in at least two copies so that in the event of an appeal, a copy shall be forwarded to the court of appeal

(5)

(a) The Legal Department may request to be given certified true copies of the record of proceedings by the registrar of the inquiry.

(b) The other parties may also, at their request and upon payment of the required fees, be given copies of any document of the proceedings.

(6) Copies may be made by all means of reproduction.

Section 166:

(1) Any statement made shall give rise to the drawing up of the report in compliance with the provisions of the sections 164 and 165.

(2) The provisions of sections 182 to 190 shall apply.

SUB-CHAPTER I THE RIGHTS OF THE DEFENDANT

Section 167:

(1)

(a) On the appearance of the suspect, the Examining Magistrate shall, after verifying his identity, inform him of the case against him, and the provisions of the criminal law violated.

(b) Such information shall be known as the charging of the defendant.

(2) The preferring of a charge shall be the exclusive prerogative of the Examining Magistrate; it shall not be the subject of a rogatory commission except to another Examining Magistrate.

Section 168: The Examining Magistrate shall not be bound by the statement of offence which the police have given to the facts of the case.

Section 169:

(1) Where in the course of the inquiry the Examining Magistrate discovers fresh facts which constitute another offence, he shall transmit the case file of the inquiry to the State Counsel for further submission before proceeding to prefer an additional charge or count.

(2) He may also amend the charge where the inquiry permits a new statement of offence to be made on the facts.

(3) He may, in addition, prefer charges against any person who took part in the commission of the offence.

Section 170:

(1) The Examining Magistrate shall inform the defendant during his first appearance that he is now before an Examining Magistrate and may not thereafter be heard by the police or the gendarmerie on the same facts except by rogatory commission and that if the inquiry confirms the charges preferred against him, he shall be committed for trial before the competent court.

(2) The Examining Magistrate shall in addition inform the defendant that:

- (a) He is free to reserve his statement;
- (b) He has the choice to prepare his defence either without counsel; or with the assistance of one or more counsels;
- (c) Where he is represented by more than one counsel, he shall give the name and address of one of them to whom all summonses and other processes shall be addressed;
- (d) Where he cannot immediately brief counsel, he shall be free to do so at any time before the close of the inquiry.

(3) The Examining Magistrate shall finally inform the defendant that:

- (e) He shall choose an address within the seat of the court for service of all documents of the inquiry;
- (f) He shall inform the Examining Magistrate of any change of address.

(4) Where the defendant immediately briefs one or more counsel, the Examining Magistrate shall state the names and addresses of such counsel as well as the address of the one on whom all documents of the inquiry and summonses shall be served.

(5) Where the defendant who has briefed counsel manifests his intention to make a statement immediately in the absence of his counsel, the Examining Magistrate shall simply record the statement without asking him question concerning his criminal responsibility.

(6) The Examining Magistrate shall inform the defendant of all measures of restraint or of loss of liberty taken against him.

Section 171:

(1) where counsel for the defendant is present during the first appearance, the Examining Magistrate shall not be bound to give the case file of the inquiry to him in advance.

Provided that before any subsequent interrogation or confrontation, the Examining Magistrate shall be bound to summon the counsel of the defendant in accordance with the provisions of section 172.

(2) The statement of the defendant shall be included in the report. The formalities provided for under sections 183 (1), 185 and 186 shall apply to the interrogation and confrontation of the defendant.

Section 172:

(1) counsel for the defendant shall have the right to defend his client whenever he appears before the Examining Magistrate.

(2) He shall be notified in writing of the date and time of appearance at least forty-eight (48) hours before the said appearance, if the counsel resides within the seat of the court, and at least seventy-two (72) hours, if he resides outside the seat of the court.

(3) The case file of the inquiry shall be placed at the disposal of the counsel at the chambers of the inquiry twenty-four (24) hours before each interrogation or confrontation.

(4) Where the counsel who has been summoned does not appear, the inquiry shall continue in his absence and these facts shall be mentioned in the report.

(5) The same shall apply when the defendant expressly refuses to be heard or confronted except in the presence of his counsel

The refusal shall apply only to the interrogation or confrontation in question.

Section 173: The provisions of section 172 above shall also apply to the counsel of the civil party.

Section 174:

(1) The formalities provided for under sections 166 and 169 shall be included in the report of first appearance.

(2) Any violation of these formalities shall render the interrogation of the defendant null and void.

(3) However, the provisions of section 170 (2) and (5) shall not apply in the case of felony or misdemeanour committed flagrante delicto and in all urgent cases, notably where relevant

evidence may disappear or a witness may die. The Examining Magistrate shall in all such cases, from the first appearance of the defendant, proceed to charge and interrogate the defendant even against the latter's wish. He may also proceed to confrontations, which he deems necessary. The report shall mention the reason for the urgency.

Section 175:

(1) The defendant shall be allowed to directly cross-examine the witnesses, the co-defendants and the civil party. The civil party shall also have the right to cross-examine the witnesses and the other parties.

However, during the confrontation, the Examining Magistrate may stop the witness or any other party from answering any question which he deems irrelevant, injurious or against public party.

(2) The provisions of the preceding sub-section shall also apply to both the counsel for the defendant and for the civil party.

(3) When the Examining Magistrate exempts any person from answering a question, he shall record the question in the report and state the reasons for the exemption.

Section 176:

(1) The State Counsel may be present at the interrogation and confrontations *or* the defendant as well as at the hearing of the civil party and the witnesses. He shall inform the Examining Magistrate of his intention to do so.

(2) The provisions of section 175 above shall be applicable to the State Counsel.

**SUB-CHAPTER II
VISIT TO THE LOCUS IN QUO, SEARCHES AND SEIZURES**

Section 177:

(1) The Examining Magistrate may visit any area within his jurisdiction to carry out all measures of investigation necessary for the discovery of the truth, and in particular conduct searches and seizures.

(2) He may also visit area outside his jurisdiction after having notified the State Counsel of the area concerned.

Section 178:

(1) Searches of or visits to residential premises shall be made wherever they are likely to yield relevant evidence.

(2) Any error as to the place, justification or appropriateness of the search shall not be ground for any claim for damages.

Section 179:

(1) When the search is conducted in the house of the defendant, the Examining Magistrate shall observe the provisions of sections 92 to 99 of this code.

(2) When a search is conducted on premises other than other of the defendant, the occupant of the premises shall be asked to be present. If he is not present or refuses to be at the search, the search shall take place in the presence of two members of his family or in-laws or two witnesses.

(3)

(a) The Examining Magistrate shall read a letter and other documents found on the premises and decide on which articles and documents to seize.

(b) The provisions of sections 92 and 93 of this code shall be observed.

(4) The owners or persons in possession of documents seized may, at their request and expense obtain copies thereof. However the Examining Magistrate may, by a reasoned ruling, refuse their request.

(5) Any person laying claim to the articles and documents seized may file his claim before the Examining Magistrate who shall, after the submissions of the State Counsel, decide on it by ruling not subject to appeal and served on the parties.

**SUB-CHAPTER III
WITNESSES**

Section 180:

(1) The Examining Magistrate may summon any person whose testimony may, in his opinion, be relevant.

(2) Except in the case of force majeure, which shall be duly recorded in the report, there shall be confrontation between the witnesses and the defendant, after the witnesses have given evidence for the prosecution, even when the defendant indicates that he shall say nothing during the confrontation.

Section 181:

(1) Witnesses shall be summoned by a process of the bailiff.

(2) They may also be summoned, by ordinary mail or by registered letter with acknowledgement of receipt or through administrative channels.

(3) They may also appear voluntarily

Section 182: Witnesses shall be heard separately and, as much as possible, in the presence of the defendant.

Section 183:

(1)

- (a) Where a witness does not speak one of the official languages which the registrar and Examining Magistrate understand; the latter shall call on the services of an interpreter.
- (b) The interpreter shall not be less than twenty-one (21) years of age.
- (c) The registrar, witnesses and the parties shall not perform the functions of an interpreter.
- (d) The interpreter shall take oath to give a true interpretation of the statement of any person who speaks in different language or dialect. The facts of his having taken oath shall be mentioned in the record of the proceedings.

(2)

- (a) Unless otherwise provided for by law or custom, the witness shall, with head uncovered and his bare right hand raised, take the following oath: « I swear to speak the truth the whole truth and nothing but the truth»;
- (b) The oath may, at the request of the witness, be made in any other form or rites of his religion or custom which are not repugnant to public policy.
- (c) Where an oath has been taken, on no ground shall its validity be subsequently questioned.

Section 184:

(1)

- (a) The Examining Magistrate shall ask the witness his full name, age, civil status, profession and place of residence.

(2) He shall also ask him whether he is a servant, a relative or an in-law of one of the parties and to what degree.

(3) The question and their answers shall be written down in the report.

Section 185:

(1)

- (a) After witness has been heard, he shall be invited by the Examining Magistrate to read over his statement.
- (b) If the witness does not know how to read, the registrar shall read it and where necessary, have the statement interpreted to him.

(2) Every folio of the record shall be initialled by the Examining Magistrate, the registrar, the witness, the interpreter, if any, and the defendant in case of confrontation.

(3) The report is signed by the Examining Magistrate, the registrar, the witness who maintains his statement, and eventually by the interpreter and the defendant in case of confrontation.

(4)

(a) Where the witness is unable to sign, he shall thumbprint.

(b) Where he refuses to sign or thumb-print, mention shall be made in the report.

Section 186:

(1) The written statements of the witnesses shall not contain any interlineations.

(2) Any cancellation, alteration or inserted omission, shall be endorsed by the Examining Magistrate, the registrar, the witness and, where necessary, the requisitioned interpreter, and the defendant in case of a confrontation.

(3) Failing this, the erasures, insertions or interlineations shall be null and void.

Section 187: Children below fourteen (14) years of age shall not give evidence on oath.

Section 188:

(1) Any person summoned as a witness shall appear and take oath before testifying.

(2) If the witness summoned does not appear, the Examining Magistrate may issue a bench warrant against him without prejudice to the provisions of section 173 of the Penal Code.

Section 189: Where a witness is unable to appear the Examining Magistrate may, either visit him where ever he is and take his statement or give a rogatory commission to another magistrate in accordance with sections 191 to 196.

Section 190: Every witness shall be entitled to an allowance in accordance with the regulations in force.

**SUB-CHAPTER IV
ROGATORY COMMISSIONS**

Section 191:

(1) The Examining Magistrate may give a rogatory commission to any other Examining Magistrate and, subject to the provisions of section 152, to a judicial police officer to carry out any acts of the inquiry.

(2) The Examining Magistrate or the judicial police officer commissioned shall, within the limits of the rogatory commission, exercise all the powers of Examining Magistrate.

(3) In case of urgency the rogatory commission shall be communicated by all means with written proof; in such a case it shall specify the essential information of the original, namely; the charge, the name and function of the Examining Magistrate granting the rogatory commission. A copy of the rogatory commission shall be sent to the judicial officer or the commissioned magistrate.

Section 192: The commissioned magistrate may, subject to the provision of section 152, in turn delegate a judicial police officer to carry out on his behalf all or part of the acts prescribed by the rogatory commission referred to in the section 191.

Section 193:

(1) The rogatory commission shall state the nature of the offence which gives rise to prosecution. It shall be dated, signed and stamped by the magistrate who issued it.

(2) It may only order an inquiry into acts having a direct bearing on the offence mentioned in the charge.

Section 194: Where the Examining Magistrate granting the rogatory commission requires simultaneous operations in various parts of the territory, he shall forward the copy or a complete reproduction of the rogatory commission to the magistrates or to the judicial police officer responsible for its execution.

Section 195:

(1) Any witness summoned to be heard during the execution of a rogatory commission shall appear and take oath before testifying.

(2) If he does not appear, the commissioned judicial police officer shall seize the complete Examining Magistrate shall issue a bench warrant against the witness.

Section 196: Where in the course of hearing of the witness referred in to section 195, the judicial police officer finds out that the witness is likely to be charged as a co-offender or an accomplice to the offence which is the subject of the rogatory commission, he may remand him in custody in the forms and the duration provided for in sections 119 to 121. At the expiration of the period of remand, he shall be bound to bring such a person before the Examining Magistrate in the jurisdiction in which the rogatory commission is being executed. After such a person has been heard, The said Examining Magistrate may, in writing, extend the detention period for forty-eight (48) hours.

Section 197: The Examining Magistrate granting the rogatory commission shall fix the time-limit within which the report made by a magistrate or the judicial police officer commissioned shall be forwarded to him.

Section 198:

(1) The Examining Magistrate may carry out, by way of an international rogatory commission, all measures of investigation in a foreign country, in particular: the questioning of an individual charged in Cameroon the hearing of a witness, and searches and seizures.

(2) He shall send the rogatory commission accompanied by a detail report and essential documents for execution, to the State Counsel who shall dispatch it to the minister in charge of justice by hierarchical channel. After study, the Minister in charge of Justice shall forward the rogatory commission to the Minister in charge of External Relations who shall dispatch it by diplomatic channels subject to special conventions prescribing the direct transmission of rogatory commission between the Cameroonian and foreign judicial authorities.

(3) In case of urgency the rogatory commission may be transmitted directly between the Cameroonian and foreign judicial authorities. In such a case, a copy of such rogatory commission bearing the inscription « duplicate » and an indication of the date of direct transmission shall be forwarded at the same time or transmitted by the Procureur General to the Minister in charge of Justice who shall transmit it through diplomatic channels.

Section 199: When the presence of Cameroonian Examining Magistrate or of a Cameroonian judicial police officer is necessary to follow up the execution of a rogatory commission in a foreign country, the Cameroonian Government shall accredit him to the foreign Government.

Section 200: The Minister in charge of justice, if requested by diplomatic means, may in accordance with the Cameroonian procedure or any international convention duly ratified and published by Cameroon, ensure the execution of a rogatory commission emanating from foreign courts or he service of processes or notices from he said courts.

Section 201: All activities of the inquiry shall be carried out in accordance with the rules and regulations laid down by this code.

Section 202:

(1) In the case of sub-delegation as provided for in section 192, the judicial police officer shall after the execution of the rogatory commission, be bound to return it to the commissioned Examining Magistrate with all the documents of execution. The transmission of the file shall subject to international conventions signed by Cameroon, be made through the Minister in charge of Justice. Where no time-limit has been fixed, the report shall be forwarded within ten (10) days commencing from the day the inquiry ended.

(2) The Examining Magistrate shall verify the regularity of the above operations and shall, where necessary, re-do or have them re-done.

**SUB-CHAPTER V
EXPERT OPINION**

Section 203:

(1) Where a technical problem arises in the course of the preliminary inquiry, the Examining Magistrate may, of his own motion or on the application of any of the parties including the

insurer of liability, where necessary, make an order for expert opinion and appoint one more experts.

(2) Where the application for expert opinion is not granted, the Examining Magistrate shall give a reasoned decision therefore.

Section 204: The expert shall, subject to his report being declared null and void, take oath to perform his duties on his honour and in keeping with his conscience.

Section 205: Where an expert refuses to give his opinion or has an impediment, the Examining Magistrate shall, by a reasoned ruling, replace him.

Section 206:

(1) Expert shall be chosen from a national list.

(2) The conditions of enrolment of experts, striking them off the list and revision of the list shall be fixed by decree.

Section 207: As long as his name has not been struck off the national list, an expert shall not be required to take oath time he is commissioned.

Section 208:

(1) Exceptionally, the Examining Magistrate may, by a reasoned decision and with the consent of the parties, choose experts whose names do not appear on the national list.

(2) The experts, whose names do not appear on the national list, shall take the oath provided for in section 204 before the Examining Magistrate whenever they are commissioned. Failure to do so shall render their report null and void. The report on the oath shall be signed by the Examining Magistrate and the registrar.

(3) Where an expert cannot take the oath - taking ceremony orally, he shall do so by written document which shall be put in the case file.

Section 209: Any decision commissioning an expert shall specify the time-limit within which he shall submit his report. In case of necessity, the time-limit may be extended at the request of the expert by a reasoned order of the Examining Magistrate.

Section 210:

(1) Any expert, who fails to submit his report within the prescribed time-limit may, after a reminder from the competent Examining Magistrate, be immediately replaced. In such a case he shall:

(a) give an account of the investigation which he has already carried out;

(b) return, within forty-eight (48) hours from the moment of notification of his replacement, the objects and documents which were entrusted to him for the purpose of the investigation.

(2) He may, in addition, at the instance of the Legal Department, be prosecuted under section 174 of the Penal Code.

Section 211:

(1) The expert shall carry out his mission in close co-operation with the Examining Magistrate or the commissioned magistrate he shall, in particular, keep such magistrate informed of the progress of his investigation in order to enable him, at all times, to take any necessary measures.

(2) There shall be no violation of the right of the defence, where an order of the Examining Magistrate extends the mission of the expert to fresh facts likely to justify the preferring of an additional count.

Section 212: Where the expert so appointed requests clarification on a point which is outside his field of specialization, the Examining Magistrate may, on the proposal of the expert, appoint any person specially qualified to assist him. The person so appointed shall take the oath prescribed in section 204 and his report shall be annexed to that of the expert.

Section 213:

(1) Before handing over articles under seal to the expert, the Examining Magistrate shall present them to the defendant, and where necessary, record his observation.

(2) A report shall be made of the handing over, stating the state of the seal and where necessary, its content.

(3) The report shall make mention of the broken and unbroken seals as well as contain an inventory thereof.

Section 214:

(1) In the course of the expert inquiry, the parties may ask the Examining Magistrate to request the expert to carry out certain investigations or hear any person specifically named who is likely to furnish him with information of the technical nature.

(2) If the expert deems it necessary to hear the defendant, he shall do so in the presence of his counsel if he has any, as well as in the presence of the Examining Magistrate. However, a medical officer appointed as an expert to examine a defendant may also ask him questions in the absence of the absence of the defendant's counsel and of the Examining Magistrate

Section 215:

(1) The expert shall, at the end of this work, submit his report in as many copies as there are parties plus one extra copy. This report shall contain a description of all activities undertaken by the expert and his findings thereon.

(2) Where there is more than one expert, they shall submit a joint report; if they have different opinions each of them shall state his separately in the same report.

(3) The report and the exhibits under seal or their remnants shall be handed over to the registrar of the inquiry. The latter shall forthwith prepare a report of the handing over.

Section 216: The Examining Magistrate shall serve the parties with copies of the report. He shall fix the time-limit within which they may make their observations on it and, if necessary, make an application for an additional expert report or a counter expert report. Where the application is rejected, the Examining Magistrate shall give a reasoned decision therefore.

Section 217: An expert may be heard as a witness before the Examining Magistrate. In this case, before he is heard, he shall take the oath as provided for under section 183 (2) (a). While giving evidence the expert may consult his report.

CHAPTER IV REMAND IN CUSTODY

Section 218:

(1) Remand in custody shall be an exceptional measure which shall not be ordered except in the case of a misdemeanour or a felony. It shall be necessary for the preservation of evidence, the maintenance of public order, protection of life and property, or to ensure the appearance of an accused before the Examining Magistrate or the court.

Provided that a person with a known place of abode shall not be remanded in custody except in the case of a felony.

(2) The Examining Magistrate may at any time after charging the defendant but before the committal order, issue a remand warrant against him; provided that the offence is punishable with loss of liberty. He shall then make a reasoned ruling committing the defendant in custody; the ruling shall be notified to be the State Counsel and to the defendant.

Section 219: A remand warrant shall, in addition to the requirements contained in section 26, specify the period of its validity in accordance with the provisions of section 221.

Section 220:

(1) A remand warrant shall be prepared in duplicate.

(2) The original and the copy of the warrant shall be sent for execution to the superintendent of the prison who shall keep the copy in the detainee's file and immediately return the original to the Examining Magistrate with a statement that it has been executed.

Section 221:

(1) The Examining Magistrate shall specify the period of remand in custody in the remand warrant. It shall not exceed six (6) months. However, such period may, by reasoned ruling of the Examining Magistrate be extended for at most twelve (12) months in the case of a felony and six (6) months in the case of a misdemeanour.

(2) Upon expiry of the period of validity of the warrant, the Examining Magistrate shall, under pain of disciplinary action against him, order the immediate release on bail of the defendant, unless he is detained for other reasons.

CHAPTER V BAIL

SUB-CHAPTER I SELF BAIL

Section 222:

(1) The Examining Magistrate may, at any time before the close of the preliminary inquiry, and of his own motion, withdraw the remand warrant and grant bail.

(2) Where bail is not granted as of right, or by the Examining Magistrate of his own motion, it may be granted on the application of the defendant or his counsel and after the submission of the State Counsel, when the defendant enters into a recognizance to appear before the Examining Magistrate wherever convened and undertakes to inform the latter of his movements.

Section 223:

(1) The ruling withdrawing a remand warrant shall be known as an « order of bail».

(2) The ruling refusing an application for release on bail shall be known as «a refusal order»

(3) Where new facts require remand in custody, after bail has been granted, the Examining Magistrate may issue a new remand warrant.

SUB-CHAPTER II CONDITIONAL BAIL

Section 224:

(1) Any person lawfully remanded in custody may be granted bail on condition that he fulfils one of the conditions referred to in section 246 (g), in particular to ensure his appearance either before the judicial police or any judicial authority.

(2) The provisions of sub-section (1) above shall not apply to persons charged with felonies punishable with life imprisonment or death.

Section 225: Application for the bail may be made, as the case may be to the judicial police officer, to the State Counsel, to the Examining Magistrate or to the court seized of the matter.

Section 226: When the applicant presents several sureties for bail, the recognizance entered into by them may be taken separately.

Section 227: Bail may be cancelled on the application of the Legal Department or the civil party or, of its own motion, by the court seized of the matter.

Section 228:

- (1) The surety shall be responsible for the appearance of the person released on bail.
- (2) In the case of non-appearance of the person released on bail, the competent authority shall order his arrest and shall summon the surety to produce him.
- (3) Failing such production, the surety shall forfeit the sum of money mentioned in the recognizance, subject to being imprisoned in default of payment in accordance with the provisions of section 563 and following. However, a surety shall be discharged of his obligation if he proves that the non-appearance of the defendant was due to force majeure.

Section 229: The surety may at any time withdraw his recognizance.

In such a case, he shall be required to produce the person on bail before the competent authority who shall take note of the withdrawal and shall inform the person that he may remain on bail if he provides another surety or security.

Section 230: Where the authority who granted the bail is informed by a surety that the person on bail is trying to evade his obligation to appear before the court, such authority shall order his arrest and remand him in custody unless he provides another surety.

Section 231: Any person who is on bail shall be considered as being in lawful custody having regard to the provisions of section 193 of the Penal Code.

Section 232:

- (1) Where a person granted bail is required to deposit a security, it shall guarantee:
 - a) his appearance before any competent judicial authority;
 - b) where necessary, the reimbursement of costs incurred by the civil party, the compensation for damages caused by the offence and the payment of fines and cost. .
- (2) The security deposited shall be reimbursed in the event of appearance, a no case ruling, withdraw or at the end of judicial supervision.
- (3) Reimbursement shall be ordered by the competent judicial authority.

Section 233: Where a person granted bail provides one or more sureties to guarantee his appearance before any judicial authority, the obligation contained in sections 228 to 232 shall apply.

Section 234: Where a person jumps bail, the security deposited at the public treasury shall, without prejudice to the rights of the civil party, be forfeited.

Section 235: The reimbursement of the security deposited at the treasury during remand in police custody shall be ordered by the competent Legal Department.

CHAPTER VI COMPENSATION FOR ILLEGAL DETENTION

Section 236:

(1) Any person who has been 10- illegally detained may, when the proceeding end in a no-case ruling or an acquittal which has become final, obtain compensation if he proves that he has actually suffered injury of a serious nature as result of such detention.

(2) Illegal detention within the context in subsection (1) above shall mean:

- (a) detention by the judicial police officer in disrespect of the provisions of sections 119 to 126 of this Code;
- (b) detention by the State Counsel or the Examining Magistrate in disrespect of the provisions of sections 218 to 235, 258 and 262 of this Code.

(3) The compensation shall be paid by the State which may recover same from the judicial police officer, the State Counsel or the Examining Magistrate at fault.

Section 237:

(1) The compensation provided for under section 236 is awarded at first instance by the decision of a Commission.

(2) When the action is against a magistrate, the Commission shall be composed as follows:

President: A judge of the Supreme Court.

Members:

- two Court of Appeal magistrates;
- a representative of the Ministry in charge of Higher State Control;
- a representative of the Ministry in charge of the Public Service;
- a representative of the Ministry in charge of Finance;
- a member of parliament designated by the bureau of the National Assembly;

- the President of the Bar Council or his representative.

(3) When the action is against a judicial police officer, the Commission shall, in addition to the above, include a representative of the Department in charge of National Security or the Gendarmerie, as the case may be.

(4) Each substantive members shall be designated with an alternate member.

(5) The substantive and alternate member shall be designated for three (3) judicial years. Those from Government Departments and Institutions shall have at least the rank of director of the central administration.

(6) The Commission shall be seized of the matter by application within six (6) months from the date of the end of the illegal detention or from the date when the no case ruling or acquittal decision become final. The procedure to be followed shall be that application before Bench of the Supreme Court.

(7) The proceeding shall be in camera.

(8) The Commission shall deliver a reasoned decision, subject to appeal before the judicial Division of the Supreme Court. The decision is considered a civil judgment.

(9) The time-limits for appeal are those provided for in civil appeals to the Supreme Court.

(10) The functions of the Legal Department are performed by the Legal Department of the Supreme Court.

(11) The judgment of the Judicial Division of the Supreme Court on appeal shall be final.

CHAPTER VII VISITES AND CORRESPONDENCES

Section 238:

(1) In case of remand, the right to visit shall be accorded to spouses, ascendants, descendants, collaborators, in-laws and friends of the defendant during the hours fixed by the prison authorities in agreement with the State Counsel.

(2) A permanent visiting permit may be issued to any of the above mentioned persons by the Examining Magistrate who may at any time withdraw it. It shall cease to be valid at the close of the preliminary inquiry.

Section 239:

(1) A remanded defendant may, subject to contrary instructions given by the Examining Magistrate, correspond without restriction with any person of his choice.

(2) Such correspondence shall be read by the Superintendent of the Prison.

Section 240:

(1) Counsel shall visit his client, in detention only between the hours of six (6) am and six (6) pm.

(2) All visits outside the hours specified in subsection (1) shall be subject to the written authorization of the Examining Magistrate.

Section 241:

(1) Before any person referred to under section 238 visits the defendant, he may first be searched in order to avoid the bringing into the prison of any weapon or object which is likely to disturb public order or to facilitate the escape of the defendant.

(2) The search shall be carried out of the office of the Superintendent of the prison in a respectful manner by a person of the same sex and in the absence of the third party.

(3) After the search, he shall be immediately taken to meet the defendant in a room reserved for that purpose.

Section 242:

(1) The provisions of section 239 (2) are not applicable to correspondences between the defendant and his counsel or those between the defendant and the judicial authorities.

(2) Any information got in violation of subsection (1) above cannot be used against the defendant.

Section 243: The opening of correspondences for the purpose of their being read as provided for under section 239 (2) shall be carried out in the defendant.

Section 244:

(1)

(a) The Examining Magistrate may, subject to the provisions of section 242 above, by a ruling, direct the superintendent of the prison to send him all or part of the correspondence received or sent by a defendant with the exception of those between the latter and his counsel.

(b) Any correspondence thus sent shall after censorship and reproduction where necessary, be handed over to their addressees without delay unless the Examining Magistrate decides to seize it, in which case the defendant shall be informed thereof.

(2) The Examining Magistrate may at any time direct the superintendent of the prison to prohibit any visit or communication between the defendant and his co-detainees or his visitors, for a period of six (6) days renewable once. The ruling prescribing such a measure shall be notified to the defendant and the State Counsel. It shall not be subject to any appeal.

(3) The prohibition to communicate prescribed in sub-section (2) above shall apply neither to the State Counsel, nor to the counsel for the defendant.

Section 245:

(1) Subject to the provisions of section 244 (1), the Examining Magistrate may, by a ruling, direct the post-master to send to him all or part of the correspondences addressed to or sent by the defendant who is released with or without surety or placed under judicial supervision.

(2) The provisions of the section 242 shall be applicable.

(3) The measure provided for in sub-section (1) above may be revoked by the Examining Magistrate. If shall cease to omission charged with the enforcement of the measure shall be informed of its termination.

(4)

(a) The Examining Magistrate may, where the inquiry so demands, order the interception, recording and transcription of correspondences sent by means of telecommunication. These operations are done under his authority and control.

(b) The interception decision:

- shall be in writing;
- shall not have a judicial character and shall not be subject to appeal;
- shall contain all the elements for the identification of the means of communication to be intercepted, the offence which has 100 to this measure as well as its duration.

(c) The decision shall be taken for a maximum period of four (4) months, and may be renewed only under the same formalities and duration.

(d) The Examining Magistrate or the judicial police officer commissioned by him, may order the installation of an interceptive device by any qualified agent of a service or institution placed under the authority or supervision of the Minister in charge of Telecommunications or any qualified agent of the operator of a telecommunication network or a provider of authorized telecommunication services.

(e) The Examining Magistrate or the judicial police officer commissioned by him, shall transcribe the correspondences relevant to the case, and shall make a report thereof, the transcription is put in the case file.

Correspondences in national or foreign languages shall be transcribed in English or French with the assistance of a translator requisitioned for that purpose.

(f) The Examining Magistrate or the judicial police office commissioned by him shall make a report of each of the operations of the interception and recording; the report shall state the date and hour that the operation started and ended. The recordings shall be kept under seal.

- (g) The recordings shall be destroyed at the instance of the State Counsel or the Procureur General on the expiry on the prescription period for the criminal action. A report of the destruction shall be drawn up.
 - (h) Unless the President of the Bar Council is informed by the Examining Magistrate, no interception can be effected on the telephone lines of a barrister's officer or residence.
 - (i) No interception can be effected on the telephone lines of members of a public institution provided for by the Constitution and benefiting from immunity from prosecution.
- (5) Any action taken in violation of the provisions of this section shall be null and void.
- (6) The taking of photographs in private places shall be subject to the same formalities.

CHAPTER VIII JUDICIAL SUPERVISION

Section 246: The Examining Magistrate may, by a ruling, subject the defendant to judicial supervision or replace such measure, where the defendant is in detention, with one or more of the obligations provided for in sections 41 and 42 of the Penal Code, with one or more of the following:

- (a) limit movement to a .specific area determined by the Examining Magistrate;
- (b) prohibit visit of certain places specified by the Examining Magistrate;
- (c) to appear when summoned by the authority in charge of supervision and assistance or by any other person appointed by the Examining Magistrate;
- (d) to abstain from driving all or specified vehicles and, if need be, hand over his driving licence to be registry which shall issue a receipt in acknowledgement thereof;
- (e) to refrain from receiving certain persons named by the Examining Magistrate and from communicating with them in any from whatsoever;
- (f) to submit to medical examination, treatment or care, or to be admitted in hospital, especially in case of intoxication and contagious diseases;
- (g) in order to ensure his appearance he shall:
 - either deposit a sum of money, the amount and conditions of payment of which shall be fixed by the Examining Magistrate, taking into consideration the resources of the defendant;
 - or provide one or more sureties in accordance with the provisions of sections 224 and following;
- (h) to refrain from carrying out certain professional activities if the offence was committed within the scope or in the course of his professional duties, and if the Examining Magistrate is of the opinion that the continuation of those activities may cause him to commit another offence.

Section 247: The Examining Magistrate may, at any time cancel or modify one or more of the obligations resulting from judicial supervision.

Section 248:

(1) The Examining Magistrate may, at any state of the inquiry, either of his own motion or on the defendant, order judicial supervision to be revoked.

(2) He shall give a reasoned ruling on the application by the defendant within five (5) days.

Section 249: The powers conferred on the Examining Magistrate under sections 222, 238 and 246 to 248 shall also be exercised by the Court of Appeal sitting as a Control Chamber in accordance with section 272 and by the competent trial court from the time the committal order is made.

Section 250: If the defendant violates any of the obligations of judicial supervision, the Examining Magistrate may, regardless of the imprisonment term to which the defendant may be liable, issue a bench warrant, warrant of arrest or a remand warrant against him

CHAPTER XI

NULLITY OF ACTS DONE DURING A PRELIMINARY INQUIRY

Section 251:

(1) Any act of an inquiry done in violation of the provisions of sections 164, 167, 169 and 170 shall be null and void.

(2) A party may refuse to take advantage of nullity only if his interest alone is affected by it. However, any violation of the substantive provisions of this part of the Code shall lead to a nullity within the meaning of section 3 of this Code.

Section 252:

(1) Where the State Counsel considers that an act of the inquiry is a nullity, he shall inform the Examining Magistrate in writing and direct that the duplicate of the case file of the inquiry be forwarded to be President of the Inquiry Control Chamber of the Court of Appeal for the annulment of the act violated.

(2) In the case of refusal, the Examining Magistrate shall decide by a reasoned ruling which shall be notified to be the State Counsel and the other parties.

(3) Only the Legal Department shall have the right to appeal against the ruling.

The appeal shall be made within forty-eight (48) hours from the day following its notification.

(4) In case of an appeal, the registrar of the inquiry shall proceed in accordance with the provisions of section 253 (3).

Section 253:

(1) Where it appears to the Examining Magistrate that an act on the inquiry is null and void, he shall, in writing warn the State Counsel who shall request the transmission to the President of the Inquiry Control Chamber.

(2) The Examining Magistrate shall make a forwarding order to the President of the Inquiry Control Chamber. It shall be notified to the State Counsel and the parties.

(3) The registrar of the inquiry shall immediately forward the duplicate of the inquiry me together with the State Counsel's submissions to be the President of the Inquiry Control Chamber who shall proceed as provides for in sections 273 and following.

(4) Upon an appeal, the registrar of the inquiry shall proceed as provided for in section 253 (3).

Section 254:

(1)

(a) Where a party finds that an act of the inquiry, with the exception of orders listed in section 257 (1) adversely affects his interest or the proper administration of justice, he shall apply to the Examining Magistrate for the annulment of such an act.

(b) The Examining Magistrate may proceed as provided in section 253, and shall give a ruling either dismissing the application or transmitting the files to the Inquiry Control Chamber.

(2) The ruling shall notified to be the State Counsel and to the parties.

(3) The State Counsel and any other interested party shall be competent to appeal against the said ruling.

Section 255:

(1) The trial court to which a committal order is referred shall have jurisdiction to decide of the nullities provided for under this part of the Code, subject to the provisions of sections 253 and 254.

(2) Where the committal order is affected by acts which are null and void, the trail magistrate shall take cognisance of such nullity, proceed to determine the case on the merits and deliver a single judgment.

(3) However and subject to section 3 of this Code, the parties may refuse to take advantage of the nullities provided for in sub-section (2) above. In such a case, the waiver shall be declared at the opening of the hearing and before the trial of the case on the merits. Mention of these facts shall be made in the judgement.

CHAPTER X CLOSURE OF PRELIMINARY INQUIRY

Section 256:

- (1) Where the Examining Magistrate deems that the inquiry is ended, he shall forward the file to the State Counsel for his «final submissions».
- (2) The inquiry file, together with the final submissions of the State Counsel shall within five (5) days, be returned to the Examining Magistrate.
- (3) The Examining Magistrate shall ascertain whether or not any offence is sustainable on the evidence against the defendant and shall make either a total or partial no case ruling or a committal order.
- (4) Where the Examining Magistrate finds that the facts constitute a simple offence or a misdemeanour, he shall make a committal order forwarding the case before the court having jurisdiction over simple offences or misdemeanours.
- (5) Where he finds that the facts constitute a felony, he shall make an order committing the defendant for trial before the Court having jurisdiction over felonies.
- (6) Where the Examining Magistrate finds that the facts do not constitute an offence or that the author of such offence is not identified or that there is insufficient evidence, he shall give a no case ruling.
- (7) Where the defendant is charged with several offences, the Examining Magistrate shall give a partial no-case ruling if some of the counts do not appear to him to be supported by sufficient evidence, whereas others do.

Section 257: The no-case ruling, the partial no-case ruling and committal order shall contain the full name, date and place of birth, filiations, residence and occupation of the defendant, the particulars and statement of offence, and the section of the law application.

They shall, in addition, state clearly and concisely the reasons for the existence or non-existence of evidence against the defendant.

Section 258:

- (1) A no-case ruling shall immediately set the defendant free unless he is being detained for some other cause and shall also revoke any measures of judicial supervision taken against him.
- (2) The Examining Magistrate shall, at the same time decide on the restitution of articles seized, and the case may be, on the security that was deposited. He shall fix the costs of the proceedings and charge them against the Public Treasury or the civil party depending on whether the prosecution was commenced by the Legal Department or on the basis of a complaint made by a civil party.

However, the Examining Magistrate may, by special reasons given in the same ruling, relieve the civil party of all or part of the cost if he is of the opinion that the civil party acted in good faith.

Section 259: A no-case ruling shall not bar the re-opening of the inquiry if new facts are discovered.

Section 260:

(1) A defendant in whose favour a no-case ruling is made and which has become final may institute an action for false report. He may also sue for damages before the competent trial court.

(2) In case of conviction the costs shall be borne by the civil party.

Section 261: The no-case ruling, partial no-case ruling or the committal order shall be notified to be the State Counsel and the order parties.

Section 262:

(1)

(a) Where the defendant detained or placed under judicial supervision is committed to the court having jurisdiction for simple offences, the committal order shall put an end to such detention or judicial supervision.

(b) Where he is committed to the court having jurisdiction over misdemeanours, the committal order shall not put an end to the measures of detention or judicial supervision taken against him, when the maximum penalty provided for the offence is superior to the period of custody.

(2) Where a defendant detained or placed under judicial supervision is committed to the court having jurisdiction over felonies, the committal order shall not put an end to the detention or judicial supervision.

(3) A defendant who is at liberty shall so remain until his appearance before the competent trial court.

Section 263:

(1) Issues of procedure raised but not adjudicated upon in the course of a preliminary inquiry shall be jointly brought with the main case before the competent trial court. However, they shall be raised before the trial of the case on the merits.

(2) The court seized of the matter shall declare an act which it considers irregular null and shall determine the scope of its effects.

However, the decision of the Inquiry Control Chamber committing the defendant to the court having jurisdiction in matters of felony shall expunge definitely all the nullities of the previous proceedings.

Section 264: An inquiry file which has been closed by a no-case ruling shall be filed at the registry of the trial court.

CHAPTER XI RE-OPENING OF PRELIMINARY INQUIRY

Section 265: Where a no-case ruling in favour of the defendant has become final, no further proceeding shall be brought against him on the same facts, even under a different statement of offence. However, a preliminary inquiry which has ended by a no case ruling may be re-opened at the instance of the Legal Department or the civil party if new evidence or facts come to light.

Section 266: Statements of witnesses, identification of the actual suspect in case of inquiry against an unknown person, exhibits, documents and reports which were not produced before the Examining Magistrate, but which are likely to either strengthen evidence which was considered insufficient or to give a new character to the facts that are useful in revealing the truth, shall constitute new evidence.

CHAPTER XII APPEALS AGAINST DECISIONS OF THE EXAMINING MAGISTRATE

SUB-CHAPTER I GENERAL PROVISIONS

Section 267: The decisions of the Examining Magistrate may be subject to appeal before the Inquiry Control Chamber in the forms and time-limits provided for in section 271 and 274.

Section 268: The Legal Department may, except otherwise provided by law, appeal against rulings of the Examining Magistrate in accordance with the provisions of sections 252 (3), 254 (1) and (3) and 271.

Section 269: The defendant may only appeal against rulings in respect of remand in custody, judicial supervision, request for expert or counter- expert opinion and of restitution of articles seized.

Section 270: The civil party may appeal only against rulings in respect of the refusal to commence an inquiry, the inadmissibility of an application to be a civil party n- in a criminal case, the rejection of an application for expert or counter - expert u. opinion, the restriction of articles seized and no case rulings.

Section 271: The time-limit for appeal is le forty-eight (48) hours with effect from the by following the date of service of service of the said ruling.

SUB-CHAPTER II

ORGANISATION OF AND PROCEDURE BEFORE THE INQUIRY CONTROL CHAMBER

Section 272:

- (1) Appeals against the decisions of the Examining Magistrate shall, - be brought before a special bench of the Court of Appeal known as the Inquiry Control Chamber.
- (2) The Inquiry Control Chamber shall be presided over by a judge of the court appointed for one judicial year by an order of the President of the said court.
- (3) The Legal' Department and the order parties shall be present in the sittings of the Chamber.
- (4) A registrar shall take part in the sittings of the Chamber.

Section 273: The Inquiry control Chamber shall meet, whenever necessary, when convened by its President or at the request of the Procureur General.

Section 274:

- (1) The appeal shall be made by way of an unstamped application in four (4) copies and addressed to be President of the Inquiry Control Chamber. A copy of the ruling appealed against shall be attached to his application.
- (2) The application for the appeal shall, under pain of its being declared inadmissible, clearly state and argue the grounds of appeal.
- (3) The report acknowledging receipt of the application and a copy of the application shall be served on the Procureur General of the Court of Appeal, and on the other parties.
- (4) The Procureur general and other parties shall have a time-limit of forty-eight (48) hours to file their submissions.
- (5) Subject to the cases referred to in sections 252 and 253, the President of the Inquiry Control Chamber shall cause the duplicate of the inquiry file to be forwarded to him.
- (6) The Procureur General and the parties shall be informed in writing of the hearing date.
- (7) A minimum time-limit of forty-eight (48) hours for cases of detention and of five (5) days for all other cases shall be observed between the date of service and that of the hearing. During this period, counsel for each of the parties, may consult the inquiry file at the registry of the Inquiry Control Chamber and produce a memorandum which shall be forwarded to the Legal Department and to the other parties.

Section 275:

- (1) The inquiry Control Chamber shall hear and determine the appeal within thirty (30) days after receiving the application.

(2) It shall be bound to deliver its ruling within ten (10) days after receiving the application, in case of remand in custody.

Section 276:

(1) The Inquiry Control Chamber may, either of its own motion, or at the request of the Procureur General or any other party, order any further inquiry which it deems necessary. This shall be done either by the president of the Inquiry Control Chamber himself or by a judge of the Court of Appeal or by an Examining Magistrate appointed for that purpose.

(2) After carrying out the further inquiry, the case shall be deposited at the registry of the Inquiry Control Chamber. It may be consulted there by the counsel for the parties.

Section 277:

(1) Where the Inquiry Control Chamber, in hearing an appeal against a ruling of the Examining Magistrate relating to remand in custody, judicial supervision, or the restitution of the objects seized, quashes such a ruling, it may, as the case may be, either cancel a remand or arrest warrant, or a judicial supervision measure against the defendant, or issue a remand or arrest warrant against the defendant set free in execution of the ruling in issue, or order the restitution or not, of the object seized.

(2) In such a case, the Procureur General shall immediately ensure the execution of the decision given notwithstanding any eventual appeal by the party concerned made in the form prescribed in section 480.

Section 278: Where Inquiry Control Chamber seized of an appeal filed against a ruling of an Examining Magistrate relating to any matter other than remand in custody, quashes the order, it may either return the inquiry file to the Examining Magistrate initially seized of the matter or to another Examining Magistrate of the same court with a view to continuing the preliminary inquiry.

Section 279: Where the Inquiry Control Chamber quashes a ruling relating to the closure of the preliminary inquiry, it may of its own motion hear and determine the inquiry de novo.

Section 280:

(1) The magistrate who carries out the further inquiry referred to in section 276 shall have prerogative of the Examining Magistrate. He may interrogate the defendant, hear witnesses and proceed where necessary with searches and seizures, give rogatory commissions and issue warrants.

However, he may neither decide on an application for bail nor make an order closing the inquiry.

(2) He shall, at the end of his mission, return the inquiry file to the inquiry Control Chamber.

Section 281:

- (1) The Inquiry Control Chamber seized in' accordance with the provisions of sections 277 and 278, shall examine the regularity of ail acts which are brought before it.
- (2) Where it discover that there is reason to declare an act null and void, it shall so declare and, where necessary, ail or part of the previous proceeding subsequent to the act.
- (3) After annulment, it may proceed as provided for in section 278.

Section 282: When the Inquiry Control Chamber ascertains that the Examining Magistrate did not decide on certain facts of which it was seized or that the holding charge failed to bring to the knowledge of the Examining Magistrate ail the facts contained in the police report, the Inquiry Control Chamber shall order that information concerning all offences emanating from the police report be given to it.

Section 283: Where the Inquiry Control Chamber seized of an appeal filed in accordance with sections 267 to 271, against a committal order or a no case ruling, finds that the facts do not constitute an offences, or that the defendant has remained unknown, or where there is insufficient evidence against the defendant, it shall deliver a no case ruling and shall, where necessary, rule on the restitution of the articles seized. The defendants in custody shall be released forthwith.

Section 284:

- (1) Where the Inquiry Control Chamber finds that the facts constitute either a felony, a misdemeanour or a simple offence, it shall refer the case to the court having jurisdiction over such offence.
- (2) In case of simple offences, the defendant if remanded, shall be released forthwith.

Section 285:

- (1) In all the cases mentioned in section 261 to 263 the Ruling of the Inquiry Control Chamber shall be served on the Examining Magistrate, the State Counsel, the Procureur general and the ; order parties.
- (2) Subject to the provision of sections 279,283 and 284 the inquiry file shall be returned without delay to the Examining Magistrate.
- (3) Only the Procureur General and e the civil party shall be competent to appeal, to the Supreme Court against rulings relating to the closure of the preliminary inquiry.

Section 286: In case of annulment of the la committal order or a no case ruling, the Inquiry Control Chamber may, in the interest of the proper administration of justice, appoint another Examining Magistrate or in default, another magistrate of the same court to continue with the preliminary inquiry.

Section 287: Appeals against a ruling delivered during a preliminary inquiry other than that relating to a committal order or a no case ruling shall not suspend preliminary inquiry.

END OF BOOK TWO

BOOK III
TRIAL COURTS

Section 288:

(1) A trial court shall be a legal body responsible for hearing and determining any matter brought before it in compliance with the law and where applicable, pronouncing the penalty or measure provided for by law.

(2) For the purpose of this Code the following shall be the ordinary courts of law:

- a) the Court of First Instance;
- b) the High Court
- c) the Court of Appeal, and
- d) the Supreme Court.

PART I
THE COURT OF FIRST INSTANCE

CHAPTER I
JURISDICTION AND INSTITUTION OF PROCEEDINGS BEFORE THE COURT OF FIRST INSTANCE

SUB-CHAPTER I
GENERAL PROVISIONS

Section 289:

(1) The Court of First Instance shall have jurisdiction to try simple offences and misdemeanours as defined in section 21 (1) (b) and (c) of the Penal Code.

(2) Where the Court of First Instance tries a simple offences, it shall apply the same procedural rules as in the case of misdemeanours, with the exception, of those rules applicable to misdemeanours committed flagrante delicto.

Section 290: Criminal proceedings in the Court of First Instance shall be commenced either by a committal order an Examining Magistrate, an order of the Inquiry Control Chamber, by «direct summons» or by application of the procedure relating to offences committed flagrante delicto.

Section 291:

(1) Expert in respect of offences committed flagrante delicto and private prosecutions by civil parties, the president of the Court shall, in consultation with the counsel, fix the date for arraignment.

(2) The date may, in case of necessity, be modified under the same conditions.

Section 292:

(1) The case file shall be forwarded to the State Counsel for service to be effected on the parties and the witnesses.

(2) Upon fulfilling the formalities referred to in the preceding sub-section, the case - file shall be returned to the registry.

Section 293: Where the Court of First Instance is seized of several cases referring to related offences, it may of its own motion or at the request of the Legal Department or at the request of the other parties, order a joint trial.

Section 294: A court shall have jurisdiction over a case when it is:

- (a) the court of the place of the commission of the offence; or
- (b) the court of the place of residence of the accused; or
- (c) the court of the place of arrest of the accused.

Section 295: A court is competent to try an accused shall also be competent to try co-offenders and accomplices, except where the law provides otherwise

Section 296:

(1) The Court of First Instance shall be competent to decide on any interlocutory objections raised by the parties in the trial save for objections raising issues that are within the competence of another court.

(2)

(a) When an interlocutory objection is held to raise issues that are within the competence of another Court, the Court of First Instance shall stay the proceedings until the competent court makes on the objection.

(b) The trial court shall grant the parties a time-limit to seized the competent court.

(c) If the parties fail to seize the competent court within the time -limit allowed, the objection shall, where they cannot justify their inability to act, be overruled.

(3) If the interlocutory objection is not upheld, the trial shall continue.

Section 297: Objections on grounds of the nullity of either the summons or previous proceedings shall, subject to their being barred, be raised before any defence on the merits.

SUB-CHAPTER II

OFFENCES COMMITTED FLAGRANTE DELICTO

Section 298: Any person apprehended for an offence committed flagrante delicto shall be brought before the State Counsel who shall act as provided for in section 114.

Section 299:

(1) A witness may be summoned in writing even by a judicial police officer or is agent. He shall be bound to appear in court.

(2) Where the witness fails to appear, he shall be served by the bailiff at the instance of the Legal Department. Where he still fails to appear, the court shall, on the application of the Legal Department, either issue a bench warrant against him, or dispense with his presence.

Section 300:

(1) When an accused appears at the first hearing for offences committed flagrante delicto, he shall be informed by the President of the court that the right to apply for three (3) days to prepare his defence.

(2) If the accused so applies, the court shall order an adjournment.

(3) Mention of this information and the decision of the accused shall be made in the judgment otherwise it shall be a nullity.

Section 301:

(1) Where a case is not ready for hearing, the court shall adjourn it to its very next sitting and may order the release of the accused on bail, with or without sureties. The court may also order judicial supervision.

(2) Where the case is ready for hearing, the court shall proceed in accordance with the provisions of sections 302 and following.

CHAPTER II

PUBLIC HEARING AND MAINTENANCE OF ORDER IN COURT

SUB-CHAPTER I

PUBLIC HEARING

Section 302:

(1) Hearing shall be conducted in public.

However, when a public hearing is repugnant to public order or morality, the court may, at any time, of its own motion, or on the application of one of the interested parties and after the submissions of the Legal Department, rule either that the proceedings or any part thereof shall be held in camera or that public hearing shall be restricted.

Mention of this fact shall be made in the judgment.

(2) In every case, judgment shall always be delivered in public.

SUB-CHAPTER II MAINTENANCE OF ORDER IN COURT

Section 303: The Presiding Magistrate shall ensure the maintenance of order in court and direct the proceedings.

For this purpose, he shall have at his disposal the forces of law and order for the duration of each session.

Section 306:

(1) The use of any recording or sound-broadcasting instrument camera, television or cinematographic equipment shall be prohibited in court and shall be punishable under section 198 (2) of the Penal Code, and where necessary, the said appliance shall be confiscated as provided for section 35 of the Penal Code.

(2) Notwithstanding the provisions of sub-section 1 above, the Presiding Magistrate may by a reasoned decision, authorize the installation of a sound system in the court room and the use of recording instruments or loudspeakers to enable a wider audience to follow the proceedings.

CHAPTER III EVIDENCE

SUB-CHAPTER I GENERAL RULES

Section 307: The burden of proof shall lie upon the party who institutes a criminal action.

Section 308:

(a) Except where otherwise provided by law, an offence may be established by means of proof.

(b) Any proof in rebuttal of an allegation may be established by any means.

- (c) Proof by means of wire tapping electronic listening devices or other instruments of surveillance is admissible under the conditions laid down in sections 92 and 245 above.

Section 309: Any accused who pleads any fact in justification of an offence or to establish his criminal irresponsibility, shall have the burden of proving it.

Section 310:

- (1) The judge shall be guided in his decision by the law and his conscience.
- (2) His decision shall not be influenced either by public rumour or by his personal knowledge of the facts of the case.
- (3) His decision shall be based only on the evidence adduced during the hearing.

Section 311: The court may not base its decision to convict the accused on the evidence of a co-accused unless it is corroborated by the evidence of a third party who is not implicated in the case or by any other evidence.

Section 312:

- (1) The court shall take cognisance of the criminal record and all other information concerning the character of the accused only after he has been found guilty.
- (2) Notwithstanding the provisions of sub-section 1 above, when in the course of a hearing the accused puts his good character in issue, or challenges the character of a prosecution witness, the prosecution may, at the hearing, adduce evidence of his bad character by producing all available information in its possession in proof thereof. In such a case, the judgment shall mention that it was the accused person who first adduced evidence of his good character or challenged the character of a prosecution witness.

Section 313:

- (1) The content of a document may only be proved by primary evidence or, where necessary, by secondary evidence oral evidence in proof thereof shall not be admissible.
- (2)
- (a) Primary evidence shall mean the original of the document where a document has been made in several copies by the same mechanical process, each copy shall be primary evidence of the said document.
- (b) Secondary evidence shall mean copies made from the original and certified by a competent authority.

Section 314: Secondary evidence may be admitted in the following cases:

- (a) when it is established before the court that the original is in the possession of the adverse party or of a third party who refuses to produce same after service of a notice to produce on him;

- (b) when the existence and the contents of the original are not disputed by the adverse party;
- (c) when it is established that the original has been destroyed or lost;
- (d) when the original can not be easily moved.

Section 315:

- (1) A confession is a statement made at any time by an accused in which he admits that he committed the offence with which he is charged.
- (2) A confession shall not be admissible in evidence if it is obtained through duress, violence, or intimidation or in exchange of a promise for any benefit whatsoever or by any other means contrary to the free will of the maker of the confession.
- (3) A voluntary confession shall constitute evidence against the person who made it
- (4) The probative value of a confession shall be left to the appreciation of the court which may however admit or reject it only by a reasoned decision.

Section 316: Any correspondence between the accused and his counsel shall not be admissible as evidence against the accused.

Section 317: The person who builds a case file or writes a report may in addition be heard as a witness; before the court.

Section 318:

- (1) When a judicial act appears to the court to be regular, it shall be presumed to have been issued in conformity with the conditions laid down for its regularity.
- (2) When a public servant within the meaning of section 131 of the Penal Code has acted within his competence, the acts done by him shall be presumed to be regular.

Section 319: Where the court deems that expert opinion is necessary for the discovery of the truth, it shall be ordered in conformity with the provisions of section 203 and following.

Section 320:

- (1) Where the authenticity of a document is contested, the court may compare it with another document the authenticity of which is not contested.
- (2) The court may require any person present in court and implicated by one of the parties, to write any words or figures or to make finger prints for the purpose of enabling the court to compare them with those that are attributed to him.

Section 321: The court may of its own motion or upon the application of any of the parties, order visits to the locus in quo. The presence of the parties and their counsel during the visits is obligatory in the same manner as they are obliged to attend court sessions.

A written report shall be made of the visit to the locus in quo.

SUB-CHAPTER II WITNESSES

Section 322:

(1) Any person of not less than fourteen (14) years of age may testify as a witness. However, a minor of any age who is a victim of an offence, may testify as a witness.

(2) When a court is of the opinion that the person called upon to testify as a witness is not capable of understanding the questions put to him or giving rational answers to them as a result of his physical or mental incapacity, it shall by a reasoned ruling, dispense with such a witness and continue with the hearing.

Section 323:

(1) An accused may, if he so desires, be a witness at any stage of the proceedings.

(2) The accused who has opted to give evidence, may be asked any question even where such questions tend to establish his guilt.

Section 324: Where the court deems it necessary to hear an accused person as a witness, and he is unable to appear before the court because of illness, and if there are serious reasons for not adjourning his examination, it may, by an interlocutory decision, move to the place where he is, or order by such decision, that he be heard by a magistrate commissioned for that purpose.

Section 325:

(1) Witness shall be summoned as provided for in section 41 to 53.

(2) Subject to the provisions of section 322 (2), any person summoned as a witness shall be bound to appear and take oath before giving evidence. However, and unless otherwise provided for by law, the oath taken shall not relieve the witness of his obligation to keep the secrets which have been confided to him by reason of his profession.

Section 326: The court may, by an interlocutory decision, order a fresh summons to be served on a witness who, though summoned, does not appear and offers no satisfactory explanation for his absence.

Where the witness still fails to appear, the provisions of section 188 (2) of this Code shall apply.

Section 327:

(1) The Presiding Magistrate shall, after having complied with the provision of section 338 (1) (b), order the witnesses to retire a room set aside for them, while waiting to be called there from to give evidence.

(2) The Presiding Magistrate shall take all necessary measures to prevent the witnesses from communicating with each other before giving evidence.

Section 328:

(1) The court shall call up the witnesses in accordance with the provisions of section 327 (1) to take oath in compliance with section 183 (2)

(2) The witness, after taking the oath, shall state his full name, age, occupation and residence. He shall also specify whether he is related by blood or by marriage or by reason of his employment to the accused, the civil party, the person vicariously liable or the insurer.

Section 329: A witness who has taken oath shall not renew it if he is heard again in the course of the same trial. The Presiding Magistrate shall remind him that he had taken the oath and that he is still bound by it.

Section 330:

(1) Witness shall give their evidence separately and orally.

However, a witness may, with leave of the court, consult any written document made at the time when the facts to which he is testifying occurred. This document shall be shown to the adverse party if he so requests.

(2) The witnesses for the prosecution shall be heard first, followed by those for the civil party, if any, and finally those for the defence.

(3) Any person not summoned but who is present in court may, if he spontaneously so requires, testify or produce any document in his possession for the purpose of information only. He shall not take oath.

This provision- shall not apply to the members of the court.

(4) The party producing a witness shall not be allowed to impeach his credit; however, where in the course of his examination-in-chief the witness gives evidence which is manifestly contradictory to his previous statement, the party calling him may apply to the court for leave to impeach his credit by subsectioning him to cross examination

Section 331:

(1) The examination of a witness by the party who called him shall be known as examination-in-chief.

(2) The examination of a Witness by the party other than the party who called, him shall be known as cross-examination.

(3) The examination of a witness after cross- examination. By the party who called him shall be known as re-examination.

Section 332:

(1) Every witness shall first; undergo examination-in-chief, then, if the - other party so desires, cross-examination and lastly, if the party who called him so desires, re-examination.

(2) In the course of examination-in-chief, the witness shall be invited to say what he knows about the facts of the case.

(3) The aim of cross-examination shall be two fold:

(c) to weaken, contradict or destroy the case of the opponent; and

(d) to obtain from the witness of the opponent, statements favourable to the case of the party cross-examining.

(4) Cross-examination may not be limited to the facts to which the witness testified during his examination-in-chief.

(5) No new fact shall be introduced during re-examination.

Section 333: If a witness speaks a language other than one of the official languages understood by the members of the court, or is deaf and dumb, or has an infirmity which hinders him from making himself understood, the provisions of sections 183, 354,355 and 357 shall be applicable.

Section 334: Any public servant who has reported a felony or a misdemeanour, in accordance with the provisions of section 135 (5) , shall be bound to appear in court and testify , if summoned.

Section 335: To be admissible, oral evidence shall be direct, that is to say:

(a) if it refers to fact which could be seen, it shall be the evidence of a witness who heard that fact;

(b) if it refers to fact which could be heard, it must be the evidence of a witness who heard that fact;

(c) if it refers to a fact which could be perceived by any other sense, it shall be the evidence of a witness who perceived that fact by that sense;

(d) if it refers to an opinion it shall be the evidence of the person who holds that opinion.

However, in case of capital murder, murder or assault occasioning death, the written or verbal statements of the victim relating to his death shall be admissible in evidence.

Section 336: Notwithstanding the provisions of section 335, the following shall be admissible in evidence:

- a) any statement made in the course of a judicial proceeding by a person who cannot be heard at subsequent proceedings either because he is deceased or because of insufficient time to get him to appear before the court, the excessive expenditure involved, or the impossibility of finding him;
- b) statement made in the course of judicial police investigations.

Section 337: In criminal proceedings, no magistrate, judicial police officer or judicial police agent shall be compelled to disclose the source of his information.

However evidence based on such an undisclosed source shall have any probative value.

CHAPTER IV PROCEDURE AT THE HEARING

SUB-CHAPTER I GENERAL PROVISION

Section 338:

- (1)
 - (a) The Presiding Magistrate shall declare the session open and ask the Registrar to call the cases listed for hearing.
 - (b) He shall, for each case called, ascertain whether all the parties and other persons summoned are present or absent.
 - (c) He shall verify the identity of every accused.
- (2) These formalities shall be mentioned in the record book and in the judgment by the Presiding Magistrate.

Section 339: The Presiding Magistrate, and in case of collegiality, the other members of the bench, shall not, in the course of hearing a case, portray their personal opinions or feelings.

Section 340:

- (1) A case shall be adjourned whenever the accused or any other party is not present, if from the case-file it is not evident that was duly served with the summons.
- (2) The same shall apply when an accused on whom personal service has been effected does not appear but gives an acceptable excuse for his absence.

Section 341: An adjournment shall be at the discretion of the court when the other person summoned are absent or when any of the parties applies for it.

Section 342: The Presiding Magistrate who order an adjournment shall, in a loud voice, announce the reason thereof and the date for the next hearing.

Section 343: The court shall not adjourn a case sine die, under pain of sanctions being taken against the magistrate concerned.

Section 344:

(1) Where a party is present when the adjournment is announced, he shall be deemed to have been notified of the date of the next hearing.

(2) Where an adjournment is announced in the absence of the party who, was properly summoned, that party may obtain information of the date of adjournment from the court registry.

Section 345: Where the Presiding Magistrate suspends the hearing, he shall specify the time and date of resumption.

Section 346: The Presiding Magistrate may, if he consider, it necessary for the discovery of the truth, other a summons to be served on any person who is not a party to the case, or order the production of any relevant document or article.

SUB-CHAPTER II APPEARANCE OF THE ACCUSED

Section 347: An accused, who is detained, shall be brought unfettered before the court by an officer of the forces of law and order.

Section 348:

(1) An accused on whom personal service has been effected shall be bound to appear before the court.

(2) An accused shall appear before the court if it is proved that the had knowledge of the summons in accordance with the provisions of sections 48 to 53.

Section 349: Where an accused on whom personal service has been effected does not appear and does not give a valid reason there for, no right of audience shall be given to his counsel except only to justify the absence of the accused and the judgment delivered shall considered as having delivered after full hearing.

Section 350:

(1) Notwithstanding the provisions of section 349:

(a) an accused summoned for an offence punishable with a fine or with a term of imprisonment equal to or less than two years may by letter, apply to be tried in absentia, this letter shall

be filed in the case file. Where he has counsel, his counsel shall be given the right of audience and, in both cases, the judgment delivered shall be considered as delivered after full hearing;

- (b) if the court considers that the personal appearance of accused is necessary, it shall so order by an interlocutory ruling and fix a new date for the hearing which shall be notified to him at the instance of the Legal Department;
- (c) if he fails to appear that date, the judgment delivered shall be considered as delivered after full hearing.

(2) A judgment shall also be considered as having been delivered after full hearing, where the accused has appeared at a hearing even if he no longer appears at successive adjourned hearings.

Section 351: Where substituted service is effected on the accused and he does not appear, he shall tried in absentia.

However, where the court considers that the personal appearance of the accused is necessary, it shall so order by an interlocutory ruling and fix a new date for the hearing , which shall be notified to him by the Legal Department.

Section 352: The accused who appears may be assisted by counsel.

Section 353: Where the civil party, the person vicariously liable and the insured t are absent but are represented by counsel, the judgment delivered shall be considered as delivered after full hearing.

Section 354:

(1) Where an accused speaks a language other than one of the official language understood by the members of the court, or where it is necessary to translate any document produced un court, the Presiding Magistrate shall of his own motion appoint an interpreter of not less than twenty-one (21) years of age, who shall take oath to interpret faithfully the testimonies of persons speaking in different languages or faithfully translate the document in question.

(2) The parties may recuse the interpreter. In this case, the court shall rule immediately on the recusal and such ruling shall not be subject to appeal.

Section 355:

(1) When an interpreter does not give a true and faithful interpretation, any party to the proceedings may point this out and move the court to have the interpreter replaced.

(2) The court may also of its own motion, point out an interpretation which is not true and faithful and shall proceed to replace the interpreter after having heard the parties.

Section 356: The Registrar in attendance, the parties or the witnesses, shall not, even with the consent of the accused, perform the functions of the interpreter.

Section 357: Where an accused is deaf and dumb and does not know how to write, the Presiding Magistrate shall of his own motion appoint as interpreter a person who can communicate with him. In this case, the provisions of sections 354 and 355 shall apply.

Section 358: If an accused deaf and dumb or has an infirmity which prevents him from being understood but is able to write, the registrar shall reduce into writing the questions or observations to be put to him. They shall hand to the accused who shall reply in writing. The registrar shall read out both the questions and the answers.

SUB-CHAPTER III THE TRIAL

Section 359:

(1) at the commencement of the trial, the Presiding Magistrate shall, after having complied with the provisions of section 338, cause the charge to be read out to be accused and shall ask him whether he pleads guilty or not guilty.

(2) An accused who pleads guilty may, where the court finds him guilty, benefit from the provisions of sections 90 and 91 of the Penal Code.

Section 360: If the accused pleads guilty:

- (a) the court shall record his plea;
- (b) the Legal Department shall present the facts of the case, give the statement of offence and state the provisions of the law application;
- (c) the civil party shall be called upon to address the court on the facts presented by the Legal Department;
- (d) the accused shall be given the right of audience to make any statement he deems fit;
- (e) (e) the court shall rule on the plea of guilty.

Section 361:

(1) If the court accepts the plea of guilty, it shall give the right of audience to the civil party or his counsel to apply for damages and the prosecution shall then produce the criminal record of the accused and make its submissions on the applicable penalty, and where necessary on the damages. The court shall then proceed to hear counsel for the accused, if he has one, and thereafter the accused shall be called upon to make his final statement.

(2) After the prosecution's submissions, the addresses of counsel and the final statement of the accused, the court shall declare the hearing closed and shall proceed as provided for in section 388.

Section 362:

(1) if the court finds that the facts of case as presented by the prosecution sustain a different offence, it shall amend the charge and inform the accused accordingly.

(2)

(a) Where the new charge is within the competence of the court, it shall ask the accused to plead to it and shall proceed, as the case may be, as provided for under section 361 or section 365.

(b) The court may either on its own motion or at the request of one of the parties, adjourn the case to a later date.

(3)

(a) Where the new charge is not within its competence, the court shall decline jurisdiction.

(b) The provisions of section 394 shall apply.

Section 363: If in the course of the hearing, new facts emerge against the accused, the Presiding Magistrate shall amend or after the charge in that respect and proceed as provided for in section 362 (1), (2) and (3).

Section 364: If the court does not accept the accused plea of guilty, it shall proceed with the case in accordance with the provisions of section 365.

Section 365:

(1) Where the accused pleads not guilty, the court shall hear the witnesses for the prosecution and for the civil party in compliance with provisions of sections 328 and 330.

(2) At this stage, notwithstanding the provisions of section 361, the Legal Department shall not make any reference to the criminal record of the accused or to any information concerning his character.

(3) If after hearing the witnesses, the submissions of the Legal Department and, where necessary, the observations of the civil party, the court finds that the evidence adduced does not sustain the offence or that the facts do not constitute any offence, it shall discharge the accused.

Section 366:

(1) if the court finds that there is evidence to warrant the accused to be put to his defence, it shall put the following three options to him:

(a) that he may make a statement in his defence not on oath;

(b) that he may say nothing; or

(c) that he may give evidence on oath as a witness.

(2) The Presiding Magistrate shall inform the accused that where he opts to say nothing or to give evidence not on oath, he shall not be asked any questions, and that where he opts to give evidence on oath, the prosecution, the civil party and the court may ask him questions.

(3) The Presiding Magistrate shall further inform the accused that evidence given on oath shall have more probative value.

(4) The Presiding Magistrate shall ask the accused whether he has witnesses he wants to call or other evidence to adduce.

Section 367: Failure to comply with the provisions of section 366 shall render the trial and the judgment null and void.

Section 368: If the accused pleads not guilty to some counts of the charge but guilty to others, the court shall proceed as if he had pleaded not guilty to all the counts.

Section 369: The accused who pleads not guilty may at any stage of the trial, change his mind and plead guilty. In this case, the court shall proceed in accordance with the provisions of sections 361 (1) and 362.

Section 370: If the accused refuses to plead, the court shall record this fact and proceed as provided under section 365.

Section 371:

(1) If it appears to the court that the accused is of unsound mind, it shall, by an interlocutory decision, order an expert to produce a medical report and shall adjourn the hearing to a later date.

(2) If it can be deduced from the report that the accused is of sound mind, the proceedings shall continue in accordance with the provisions of section 365.

(3) If it is found that the accused is of unsound mind, the court shall order his confinement in a health institution and stay the proceedings. The provisions of sections 44 (2) of the Penal Code and 68 (3) (b) of this Code shall be applicable.

Section 372: No particular number of witnesses shall be required to prove any fact..

Section 373:

(1) After a witness has testified, the Presiding Magistrate shall ask the adverse party if he wants to cross-examine the witness, and thereafter the party calling the witness if he wants to re-examine him.

(2) The Presiding Magistrate or any member of the court where it is sitting as a collegiate bench, may finally put questions to the witness.

Section 374: Where there are several accused persons each of them may be cross-examined by each of the other accused persons and in that case, such cross-examination shall take place before cross-examination by the civil party and by the prosecution.

Section 375: Where there are several accused persons each of them may cross-examine a witness called by the civil party and the prosecution. Re-examination of such a witness shall proceed only after all the cross-examinations on the said witness have taken place.

Section 376: The Presiding Magistrate shall show the exhibits to the witnesses and to the other parties and shall, where necessary, record their observations thereon.

Section 377:

(1) The Legal Department, the other parties and their counsel shall have the right of examination-in-chief and re-examination subject to provision of section 379.

(2) They shall have the right to cross-examine the witnesses of the other parties.

(3) The parties may, with leave of the Presiding Magistrate, proceed to cross-examine their own witnesses in accordance with the conditions laid down in section 330 (4).

Section 378: A witness may withdraw after giving evidence, unless the Presiding Magistrate decides otherwise.

Section 379:

(1) the Presiding Magistrate may disallow any question which is:

- (a) indecent, offensive, scandalous, or leading;
- (b) related to facts so remote in time that verifying them will be impossible; c) of such a nature as to prolong the proceedings unnecessarily.

(2) The question and the decision of the Presiding Magistrate shall have been written in the record book.

Section 380:

(1) Any question suggesting the answer which the person putting it wishes or expects to receive shall be known as a leading question.

(2) Leading questions shall not, if objected to by the adverse party, be asked during examination-in-chief or in re-examination, except with leave of the Presiding Magistrate.

(3) The Presiding Magistrate may permit leading questions as to matter which are undisputed or which have been already sufficiently proved.

(4) leading questions may be asked in cross-examination.

Section 381:

- (1) The record of proceedings shall be taken down in the record book by the Presiding Magistrate.
- (2) The record of proceedings taken down in every trial shall be signed by the presiding Magistrate and, in the case of a collegiate bench, by all the other members of the panel.
- (3) The record of proceedings shall be presumed to be the authentic record of the trial.
- (4) In case of appeal, a copy of the record of proceedings shall be included in the case file.

Section 382:

- (1) The prosecution shall during the hearing make any oral or written submission in compliance with the provisions of section 128 (3).
- (2) The other parties may also make oral written submissions.
- (3) The court shall, in the same judgment, decide first on subsidiary issue and objections, and then on the merits of the case.
- (4) It shall, by a separate decision, rule on any objection taken on grounds of public policy.

Section 383:

- (1)
 - (a) If the testimony of a witness appears to be false, the Presiding Magistrate may, either of his own motion, or on the application of the Legal Department or of one of the parties, draw the attention of the witness to his false statement and inform him that he may withdraw it.
 - (b) If the witness persists, the Presiding Magistrate may order him to remain in the court hall and, if need be, under the supervision of the forces of the law and order.
- (2) In such a case, the provisions of sections 164 of the Penal Code and 305 (2) of this code shall be applicable.

Section 384:

- (1) If the hearing cannot be finished in one sitting, the Presiding Magistrate shall adjourn it and announce the day and hour when it shall resume.
- (2) The parties and witnesses who were not heard or those who had been invited to remain at the disposal of the court shall appear without a fresh summons on the date to which the case is adjourned.

**SUB-CHAPTER VI
CLAIM BY A CIVIL PARTY**

Section 385:

- (1) Anyone who alleges that he suffered injury as a result of the commission of an offence may make an oral or written application for damages in court.
- (2) The civil party shall indicate the damages which he is claiming
- (3) Where the victim of an offence has not make an application for damages, the Presiding Magistrate shall ask him if he intends to do so.
- (4) The application for damages by a civil party shall be made before the end of the proceedings otherwise it shall be inadmissible.
- (5) When a person has applied for damages as a civil party, mention of this fact shall be made in the judgment.
- (6) Where the victim of an offence summoned as a civil party does not appear to indicate his claim for damages, the court shall decide on the criminal action only.

In this case, the victim shall retain his right to bring a civil action.

Section 386: The withdraw by a civil party of his claim for damages during a criminal trial shall not bar his right to claim damages before a civil court

CHAPTER V JUDGMENT

SUB-CHAPTER I NATURE AND DELIVERY OF JUDGMENTS

Section 387:

- (1) in respect of each of the parties, a judgment shall either be considered as having been delivered after full hearing or in default.
- (2) A judgment is always said to be delivered after full hearing in respect of the Legal Department.

Section 388:

- (1) Judgment shall either be delivered immediately or in the ext fifteen (15) days after the hearing dosed. When the matter is adjourn for judgment, the Presiding Magistrate shall inform the parties of the day when it shall be delivered.
- (2) If he finds it necessary, he may reopen the hearing before passing the judgment.
- (3) The verdict of the court as described in sub-section 389 (5) and (6) shall written in the record book.

SUB-CHAPTER II ESSENTIAL PARTS OF A JUDGMENT

Section 389:

(1) Every judgment shall consist of three parts: the hearing, the reasons and the verdict.

(2) The part of the judgment comprising the hearing shall include:

- a) date of the verdict;
- b) name of the court;
- c) full names of the members of the court;
- d) full names and age of the interpreter;
- e) mention of the oath taken by the interpreter;
- f) full names and age of the accused and the full names of his counsel, if any;
- g) full names of the other parties and their counsel, if any;
- h) full names of witnesses.

(3) The part of the judgment comprising the reasons shall set forth the facts and the law on which the judgment is based. The reasons shall relate to the criminal action, and where applicable, to the civil claim.

The court shall in its reasoned judgment, deal with each count and reply to the submissions made on it.

(4) The part of the judgement known as the verdict shall indicate the nature of the judgment, the level of the court, and whether the accused is guilty or not.

If guilty, it shall state the offence for which he has been found guilty, the relevant sections of the law applied, the sentence pronounced and where necessary, the civil award.

If not guilty, the provisions of sections 395 and 400 of this code shall be applicable

The verdict shall furthermore tax and make an order as to the payment of the costs, and also mention the warning provided for in section 399.

(5) In case of a collegiate bench, the member of that bench who holds a minority opinion may write his dissenting judgment and insert it in the case file.

(6) The Presiding Magistrate shall read the judgment in open court.

(7) The non compliance of the formalities prescribed in this section shall render judgment null and void.

SUB-CHAPTER III

DECISION OF THE COURT OF FIRST INSTANCE

Section 390:

(1)

(a) If the court consider that there is need for additional inquiry, it shall by an interlocutory ruling order such inquiry and shall commission either a magistrate or a judicial police officer to carry it out.

(b) The authority so commissioned shall have the power defined in sections 191 to 195.

(2) The additional inquiry shall be carried out in accordance with the rules laid down in sections 167 to 176.

Section 391:

(1) Where the court finds an accused guilty of a simple offence or of a misdemeanour, it shall sentence him to the penalties provided by law. It shall, where applicable, decide on the civil claim.

In addition, the court shall order the convict to pay costs.

(2) If the court acquits some of the co-accused, it shall by a reasoned ruling determine the amount of cost to be paid by those convicted.

(3) The court shall order the reimbursement of sums of money deposited by the civil party.

Section 392:

(1) If the court is not yet in a position to assess the quantum of damages due to the civil party, it may, subject to the conditions provided by law, make an award to him which should be enforced notwithstanding any objection or appeal.

(2) In case of non-payment, the award shall bear interest at the legal rates in force as from the date of the judgment.

Section 393:

(1)

(a) With the exception of civil awards, fines and costs shall be paid immediately by depositing the said sums of money at the court registry.

(b) The convict shall, if he fails to pay immediately, serve a term of imprisonment in default of payment in accordance with the provisions of sections 564 and following of this code.

(2) If on appeal the decision is reversed in favour of the convict, the sums deposited shall be totally or partially reimbursed as the case may be.

Section 394:

(1) If the court finds that the facts alleged against the accused constitute a felony, it shall decline jurisdiction and shall order the case me to be forwarded to the Legal Department.

(2) The accused under detention shall so remain until otherwise decided.

Section 395:

(1)

(a) Where the fact do not constitute an offence, the court shall acquit the accused and declare itself incompetent to proceed with the civil claim.

(b) The same shall apply where facts have not been proved or where the facts though proved do not implicate the accused.

(2) In case of doubt, the accused shall be acquitted. Mention of the benefit of doubt shall be made in the judgment.

(3) Anyone finally acquitted or convicted of an offence shall not be retried on the same facts even under a different statement of offence.

Section 396:

(1)

(a) Any accused person who is detained but finally acquitted or whose imprisonment or fine is finally suspended shall, without prejudice to the application of the provisions of section 393 as regards costs, be immediately set free unless the detention is for some other reason.

(b) The same shall apply where he is sentenced to a term of imprisonment which is equal to or less than the period of remand.

(2) In case of fine which is not suspended, the provisions of section 393 shall apply.

Section 397:

(1) When the court pronounces a sentence of loss of liberty, it shall issue an imprisonment warrant or a warrant of arrest against the convict.

However, when the convict has indicated his intention to lodge an appeal and if his term of imprisonment does not exceed one year , the court may on the application of the verdict, grant him bail until the time for appeal has expired, if he fulfils one of the conditions provided for in section 246 (g)

(2) Where the verdict released in accordance with the preceding sub-section does not eventually meet an appeal, the Presiding Magistrate shall issue a warrant of arrest against him.

Section 398: An accused who has been acquitted may proceed against the civil party who institute the criminal action as provided for under section 162.

Section 399: The Presiding Magistrate shall, after passing judgment inform the parties that they have a right to lodge an appeal within the time -limit provided for under sections 434 and following.

Section 400:

(1) An Accused who is acquitted shall not be required to pay costs.

(2) Such costs shall be defrayed by the public treasury where the prosecution was initiated by the Legal Department.

(3) They shall be borne by the civil party where prosecution was initiated by him.

(4) However, the court may by a reasoned judgment, exempt the civil party who acted in good faith from the payment of all or part of the cost.

Section 401:

(1) The costs shall be taxed and set out in the judgment.

(2) In case of difficulty in enforcing the order for payment of costs, the court that dealt with the matter may be moved by any party concerned.

Section 402: The court may of its own motion or at the request of any party, order the restitution of any exhibits or articles seized.

Section 403:

(1) Any person other than the parties to the proceedings who claims to have a right to the exhibits or any other articles seized may apply to the court for restitution.

(2) The court shall rule on the application by a separate order, without costs, after hearing all the parties concerned.

(3) Even if the court grants restitution, it may only effectively take place after the expiry of the time-limit within which to appeal.

Section 404:

(1) Perishable articles seized shall be sold by public auction at the instance of the State Counsel.

(2) The proceeds of the sale shall be placed under seal and deposited with the registry of the court.

Section 405: The judgment shall be typed. The original shall be signed by the Presiding Magistrate and the other magistrates in case of a collegiate bench and the Registrar. It shall be kept at the registry of the court.

Section 406: The judgment shall be numbered and recorded in a special register kept at the registry of the court for judgments delivered.

PART II **THE HIGH COURT**

CHAPTER I **JURISDICTION AND INSTITUTION OF PROCEEDINGS IN THE HIGH COURT**

Section 407:

(1) The High Court shall have jurisdiction to try felonies, and where applicable, related misdemeanours and simple offences.

(2) It shall have jurisdiction to try all accused persons referred to it.

Section 408: The rules territorial jurisdiction applicable to the High Court shall be those provided for under section 294 of this code.

Section 409: Proceedings in the High Court shall be instituted either by a communal order signed by an Examining Magistrate, by the judgment of the Inquiry Control Chamber or by the procedure application to offences committed flagrante delicto, where the law so provides.

CHAPTER II **PROCEDURE BEFORE THE HEARING**

SUB-CHAPTER I **GENERAL PROVISIONS**

Section 410:

(1) An accused in detention shall be notified of the committal order by the Examining Magistrate or the committal judgment of the Inquiry Control Chamber in accordance with the provision of section 39 of this code.

(2) The notice shall be served on him personally.

(3) Where the accused is not detained or is under judicial supervision or is at large, he shall be served in accordance with the provisions of section 57.

Section 411: As soon as the accused person under detention is notified of the committal order or judgment, he shall be transferred to the place where the trial will take place.

Section 412: When the case is not tried at the seat of the Court of First Instance, the case file and the exhibits shall be forwarded to the registry of the High Court where the sitting will take place.

Section 413:

(1) Where the accused has briefed counsel or the presiding Judge of his own motion has assigned one to him, the counsel may at any time obtain information from any document in the case file.

(2) Any document deposited in the case file between the close of the preliminary inquiry and the end of the hearing shall be brought to the knowledge of the counsel for the accused who may if he deems it necessary, ask for an adjournment.

(3) The decision dismissing an application for an adjournment shall be supported with reasons.

Section 414:

(1) The prosecution and the civil party shall inform the accused and the person vicariously liable as well as the insurer of the list of their witnesses at least five (5) days before the hearing begins.

(2) The accused, the person vicariously liable and the insurer shall also inform the prosecution and the civil party of the list of their witnesses within the time-limit prescribed in sub-section (1).

(3) Where the formalities referred to in sub-sections (1) and (2) have not been complied with, the witnesses shall be barred from being heard. However, the court may, with the consent of the parties and of the Legal Department proceed to hear them mention of such consent shall be made in the judgment.

SUB-CHAPTER II POWERS OF THE PRESIDING JUDGE

Section 415:

(1) The Presiding Judge shall, at least ten (10) days before the trial, cause the accused person under detention to be brought before him.

(2) He shall check his identity and ensure that he has been notified of or served with the committal order or judgment.

(3) He shall inform him of the date of the trial fixed in accordance with the provisions of section 291 of this code.

Section 416: If the accused is not present, the Presiding Judge shall issue a bench warrant against him if he is not found, he shall be tried in absentia

Section 417:

(1) The Presiding Judge shall ascertain whether the accused has briefed counsel for his defence

(2) Where the accused is being prosecuted for a felony punishable with death or loss of liberty for life and he has no counsel, the Presiding Judge shall of his own motion assign one to him.

(3) The Presiding Judge may of his own motion assign only counsel accused person where their interest do not conflict.

Section 418:

(1) The Presiding Judge shall, at least ten (10) days before the trial summon an accused who is not in detention to appear before him.

(2) He shall proceed as laid down in sections 415 (2) and (3) and 417.

CHAPTER III PROCEDURE AT THE HEARING AND JUDGMENT

Section 419: The provisions of sections 303 and 306 relating to the maintenance of order shall be applicable before the High Court.

Section 420: The procedure before the High Court shall be that before the Court of First Instance as laid down in sections 307 to 389.

Section 421:

(1) Where for the same felony, several committal orders have been made against different accused persons, the court may, of its own motion or at the request of the prosecution, order a joint trial, by an interlocutory ruling.

(2) The court may also order a joint trial where more than one committal order have been made against the same accused person for different offences.

Section 422: The provisions of sections 387 and following shall also be applicable to judgments of the High Court.

PART III
JUDGMENT IN DEFAULT

SINGLE CHAPTER
GENERAL PROVISIONS

Section 423:

- (1) Judgment in default shall be given in the cases referred to in sections 351 and 416.
- (2) Applications to set aside judgments in default shall be entertained.

Section 424:

- (1)
 - (a) Any accused person tried in absentia in accordance with sections 351 and 416 shall be presumed to have pleaded not guilty. In this case the procedure shall be that laid down in section 368.
 - (b) He shall not be represented by counsel.
- (2) The judgment pronounced in default shall be served in accordance with the provisions of sections 56 and following of this code.

Section 425:

- (1) The absence of an accused person shall, in no case suspend the hearing or delay the trial of the other accused persons who are present.
- (2) After the trial of the accused persons present, the court may order the restitution of the exhibits in accordance with the provisions of sections 402 and 403. The person to whom the exhibits are returned shall sign for them in a register kept for that purpose.

Section 426:

- (1) Where, by a judgment in default, a convict is sentenced to term of imprisonment without suspension or to death, the court shall issue a warrant of arrest against him.
- (2) If before the prescription of the sentence the convict appears on his own, or is brought before the Legal Department, the latter shall make a report of his appearance and shall immediately cause him to be brought before the president of the competent trial who shall fix a date for his trial if he applies to set aside the judgment, and shall accordingly remand him in custody.
- (3) The Presiding Magistrate or judge shall in addition warn the verdict that in case of escape he shall not be allowed to object to the execution of the judgment to be delivered.

(4) The procedure applicable in case of an application to set aside a judgment in default shall be that laid down in sections 432 and following.

END OF BOOK THREE

BOOK IV
SETTING ASIDE OF JUDGMENT IN DEFAULT, APPEALS AND REVIEW

PART I
SETTING ASIDE OF JUDGMENTS IN DEFAULT

CHAPTER I
CONDITIONS FOR AND EFFECTS OF SETTING ASIDE OF JUDGMENTS IN DEFAULT

Section 427: With the exception of the Legal Department, any party to the case may file an application for the setting aside of a judgment in default.

However, if a civil party has been duly served but does not appear in court or does not submit or is not represented at the trial and does not sufficiently excuse his absence, he shall be considered as having abandoned his civil action. In such a case, he shall not be allowed to apply for the setting aside of the judgment delivered. If prosecution was commenced by the defaulting civil party, the court shall limit itself to the criminal proceedings after the submissions of the Legal Department.

Section 428:

(1) In case of any application to set aside a judgment in default, the execution to the judgment shall stay.

However, the warrant issued by the court or the award granted in accordance with the provisions of section 392 shall remain enforceable.

(2) The application to set aside a judgment in default may be limited to the criminal or civil aspect of the judgment.

Section 429:

(1) In case of an application to set aside a judgment in default, the court that delivered the judgment shall have jurisdiction to try the matter de novo.

(2) If the convict has been arrested by virtue of a warrant of arrest issued by the trial court that delivered the judgment in default, the matter shall be listed for the next hearing or at the latest within seven (7) days of the application to set aside the judgment, failing which he shall be released on bail, if he fulfils one of the conditions provided for in section 246 (g)

Section 430:

(1) The time-limit for applying to set aside a judgment shall be ten (10) days from the day following the date of personal service of the judgment on a convict who resides in Cameroon.

(2) It shall be three (3) months as from the day following the date of personal service of the judgment on a convict who resides abroad.

(3) If service of the judgment was made in accordance with section 57, the time-limit for the application shall be ten (10) days with effect from the day following service.

(4) In the case of referred to in sub-section 3, if it is not proven that the party concerned had personal knowledge of the service, the application shall remain admissible up to the expiration of the period of prescription of the sentence as provided for in section 67 of the Penal Code.

Section 431: The date of arrest of a convict abroad in pursuance of an extradition order shall mark the commencement of the three (3) months time-limit for the application as provided for in section 430 (2).

CHAPTER II PROCEDURE AND JUDGMENT IN CASE OF AN APPLICATION TO SET ASIDE A JUDGMENT IN DEFAULT

Section 432:

(1) The court process by which the judgment delivered in default is served shall expressly state that the party has been informed of his right to apply for the setting aside of the judgment or to appeal, and that if he appeals, he shall be barred from applying to set aside the very judgment.

(2) An application to set aside a judgment shall be made in any of the following ways:

- a) by a declaration recorded in the court process if it is personal service;
- b) by the statement filed at the registry of the court which delivered the judgment;
- c) by telegram against receipt or by a registered letter with acknowledgment of receipt addressed to the Registrar-in-Chief of the court which delivered the judgment; or
- d) by any other means with written proof and precise date.

(3) In the case provided for in sub-section (2) (b), the Registrar-in-Chief shall up a report of the of the statement and shall send a copy thereof to the Legal Department and to the other parties.

(4) In the case of provided for in sub-section (2) (c) the following special formalities shall be observed:

- (a) as soon as the Registrar-in-Chief receives the registered letter or telegram or application by any other means with written proof and precise date, he shall draw up a report mentioning such date or where applicable the date of despatch as indicated by the postmark and such date shall be considered as the date of the application;
- (b) the Registrar-in-Chief shall forward a copy of the report to the Legal Department and to the other parties.

Section 433:

(1) The president of the court shall cause the Legal Department, the parties and the witnesses to be notified of the case on which the matter shall be retried.

(2) The notice shall expressly state that if the party applying does not appear at the hearing on the said date, his application shall be null and void and he shall be stopped from objecting to the enforcement of the judgment.

Section 434: When the party in default has not applied to have the judgment set aside within the prescribed time-limit he may file an appeal in the forms and time-limit provided for in sections 437 to 444 herein.

Section 435:

(1) Where within the prescribed time-limit there is an application to set aside a judgment in default and appeal against the same judgment, the application to set aside the judgment shall be dealt with before referring the matter to the Court of Appeal.

(2) If, however, the Court of Appeal has begun hearing the appeal before the ruling is made on the application to set aside the judgment, any interested party may draw the court's attention to the existence of such application. In such a case, the court shall stay the hearing of the appeal until the application is dealt with.

**PART II
APPEALS TO THE COURT OF APPEAL**

**CHAPTER I
GENERAL PROVISIONS**

**SUB-CHAPTER I
JUDGMENTS SUBJECT TO APPEAL**

Section 436: Every judgment including that delivered by a Military Court, shall be subject to appeal, unless otherwise provided by law.

Section 437:

(1) When the court delivers an interlocutory ruling determining a procedural issue, any appeal against that ruling shall be admissible. The time-limit and form of the appeal shall be as provided for under sections 271 and following, and 441 and following.

(2) The Court of Appeal shall give its decision within seven (7) days with effect from the date following the date of receipt of the appeal file.

(3) As soon as the Court of Appeal has been given its decision, the parties shall be notified thereof and the case file returned to the registry of the trial court.

Section 438: Any interlocutory ruling ordering an investigation shall be immediately enforceable. It shall not be subject to appeal.

SUB-CHAPTER II CONDITIONS OF APPEAL

Section 439: The following persons shall have the right to appeal:

- a) the convict;
- b) the person vicariously liable;
- c) the insurer, if he has been a party to the proceedings;
- d) the civil party;
- e) the State Counsel;
- f) the Procureur General at the Court of Appeal;
- g) the government department which commenced the prosecution as provided for in section 60 of this code.

Section 440:

(1) The time-limit allowed for filing an appeal shall be ten (10) days with effect from the day following the date the judgement after full hearing was delivered, for all the parties, including the legal Department.

(2) The time-limit for filing a cross appeal shall be five (5) days from the day following the date other parties were notified of the main appeal in accordance with the provision of section 443.

(3) If the judgement was delivered in default, the time-limit for appeal shall start to run from the day following the expiry of the time-limit allowed for the application to set aside the judgment in default.

SUB-CHAPTER III INSTITUTING APPEALS

Section 441:

(1) To be admissible, an appeal shall be lodged at the registry of the Court that delivered the judgment either by a notice filed therein, or by ordinary mail or by registered letter with acknowledgment of receipt, or by telegram against receipt or by any other means with a written proof and precise date addressed to the Registrar-in-Chief of that court.

(2)

- (a) In the case of an appeal made by telegram, by ordinary mail or by registered letter, the date of the appeal shall be that on the stamp of the post-office of despatch.
- (b) In case of an appeal lodged by any other means with written proof, the date of appeal shall.
- (c) The notice of appeal, telegram, registered letter ordinary mail or any means , with a written proof and a precise date, shall be filed in a chronological order in special registrar kept in the registry of the court referred to in sub-section (1).

Any party to the case shall, on his application be entitled to a copy.

Section 442:

(1) The notice of appeal shall be filed either by the party concerned in person or by his counsel or by his representative having a duly authenticated power of attorney.

(2)

- (a) The notice of appeal be signed by the registrar and the appellant or by his representative.
- (b) Where the declarant can not sign, he shall thump-print on the declaration.
- (c) Where the declaring can neither sign nor thump-print, this fact shall be mentioned by the registrar on the declaration.

(3) The power of attorney of the representative shall be annexed to the report referred to in section 443.

(4) Notwithstanding the provisions of sub-section (1), the notice of appeal filed by a representative who has not got a duly authenticated power of attorney, shall be valid if afterwards, the appellant personally regularizes his appeal by producing the memorandum provided for in section 443.

Section 443:

(1) The registrar who receives the notice of appeal shall immediately make a report thereof and shall with written proof or by a writ of the bailiff, request the appellant to file his memorandum of grounds of appeal, as well as all supporting documents within fifteen (15) days from the day following the date of registration of the appeal, otherwise the appeal shall be inadmissible. Mention of such notice shall be made on the report.

(2) If the appeal is lodged by telegram, by ordinary mail, by registered mail, or by any other means with written proof, the Registrar-in-Chief shall inform the appellant by a registered letter with acknowledgment of receipt of his obligation to file the memorandum referred to in sub-section (1) the time-limit for the production of this memorandum shall commence from the day following the receipt of the letter from the Registrar-in-Chief, a copy of the report or the notice of appeal.

Section 444:

(1) Where the appellant is detained, his appeal may also be made by a declaration to the registry of the Court of First Instance or of the High Court of the place of detention, or by a letter addressed through the Superintendent of the prison.

(2) In case of declaration to the registry of the court, the prison Superintendent shall be bound to bring the appellant in detention before the Registrar-in-Chief of the court.

(3) In case of appeal by letter, the superintendent of the prison through whom it is forwarded shall:

(a) record it in special register kept for that purpose. The register shall be dated, signed by the Superintendent and countersigned by the appellant;

(b) establish in three copies a receipt mentioning the date of delivery of the letter and its subject matter.

(c) immediately give a copy of the receipt to the appellant, keep the second copy in the prison file of the person concerned and attach the third to the letter of appeal;

(d) forward this letter and third copy of the receipt within forty-eight (48) hours, by any means with written proof, to the Registrar-in-Chief of the court which delivered the judgement appealed against.

(4) upon receipt of the documents prescribed in sub-section (3) (c) above, the Registrar-in-Chief shall proceed as indicated in section 443 and 445.

Section 445:

(1) The Registrar-in-Chief shall immediately forward to the State Counsel and to the other parties, a copy of the report or the notice of appeal by registered mail with acknowledgment of receipt or by any means with a written proof in the appeal file.

(2) Upon the expiry of the time-limit for the production of the memorandum prescribed in section 443, the Registrar-in-Chief shall prepare the record of appeal of the proceedings which shall in particular comprise:

- the notice of appeal the power of attorney, if any;
- the report prescribed in sub-section (1);
- the record of appeal of the police investigation; court processes; the submissions and memoranda produced by the parties before the court; the record of proceedings; all the interlocutory rulings given by the court; a copy of the judgment being appealed against.

(3) The appeal file shall immediately be forwarded to the Registrar-in-Chief of the Court of Appeal.

Section 446: Upon receipt of the record of appeal, the Registrar-in-Chief shall forward to the president of the court who shall, after consultation with the Procureur General, fix a date for hearing.

Section 447:

(1) The president shall forward the record of appeal to the Procureur General for summoning the parties and the witnesses.

(2) When the matter is of an urgent nature, the president may except otherwise requested by the Procureur general, reduce by two-fifths the time-limit for summoning the parties and witness, as provided for in section 52.

Section 448: After the formalities referred to in section 447, the Procureur general shall return the record of appeal to the registry of the court.

Section 449:

(1) The procedure before the Court of Appeal shall be the same as that before the Courts of First Instance and High Courts.

However, the court may, with the written consent of the convicts detained outside the seat of the court, hear the appeal in their absence. In this case, the court shall rely solely on the records of proceedings and the judgement delivered shall be deemed to have been delivered after full hearing, even if the convict was not represented by counsel. The judgment may only be enforced after the convict has been served with it.

(2) If the court deems it necessary, it may order the personal appearance of the parties.

(3) The appellant and the other parties may make oral submissions based on their grounds of appeal before the court.

Section 450:

(1) The parties shall be heard in the following order:

- the appellant;
- the cross appellant or respondent;
- the Legal Department.

(2) In every case, the convict shall have the last word.

Section 451: The court shall not be bound to rehear the witnesses who had testified before the lower court.

However, where an application is made for any of those witnesses to testify, the court shall, where the application is not granted, give a ruling, justifying the refusal.

Section 452:

(1) If the court considers that the appeal is time-barred or improperly filed, it shall declare it inadmissible and order the appellant to pay costs.

(2) Where the court considers that the appeal, even though admissible is not founded, it shall uphold the judgment appealed against and order the appellant to pay costs.

(3) Where after hearing the appeal, the court considers that the appeal, is founded, it shall quash and reverse the judgement appealed against and order the public treasury or the respondent to bear the costs, as the case may be.

(4) Where an appeal by the Legal Department is dismissed, the costs shall be defrayed by the public treasury.

(5) If the court considers that the appeal is only partly founded, it shall proceed in accordance with the provisions of sub-sections (2) and (3) and may either apportion the costs between the appellant and the respondent or have them defrayed by the public treasury.

**SUB-CHAPTER IV
EFFECTS OF APPEAL**

Section 453: All appeal shall stay the enforcement of the judgment.

However, all custody warrants shall remain enforceable and the provisional awards made to a civil party in accordance with the provisions of section 392 (1) shall be paid to him.

Section 454:

(1) Subject to the provisions of section 455, the Court of Appeal shall decide only on the issues raised at the trial Court.

(2) It may amend the statement of offence upheld in the judgment appealed against.

Section 455:

(1) The victim of the offence shall not file a civil claim for the first time before the Court of Appeal.

(2) The civil party, whether appellant or respondent, shall not make a new claim before the Court of Appeal. However, an application for an increase in damages for fresh injury suffered after the delivery of the decision appealed against and which is directly connected to the offence may be filed. Such application shall not constitute a new claim.

(3) Where an appeal is made by the Legal Department, the civil party who is not an appellant may, in accordance with sub-section (2), file an application for increase in damages.

Section 456:

(1) Where only the civil party appeals, the Court of Appeal shall only decide on the civil claim.

(2) Notwithstanding the provisions of section 455, if the judgment appealed against acquitted the accused, the court shall be bound to verify whether or not the judgment is founded. If the court finds that an offence has been committed, it shall reverse the judgment appealed against, find the accused guilty and state that no sentence may be pronounced against him in the absence of an appeal by the Legal Department, and award to the civil party damages in compensation for the injuries suffered.

Section 457: In the absence of a cross appeal by the Legal Department, the Court of Appeal shall not reverse the decision of the lower court in a manner prejudicial to the appellant, except in the cases provided for in section 456.

Section 458: Where the Legal Department appeals, the Court of Appeal may, either uphold or reverse wholly or partially the judgment of the trial court in a manner favourable or unfavourable to the accused.

Section 459:

(1) Notwithstanding the provisions of section 457, where a lower court has passed a sentence lower than the minimum prescribed by law, the Court of Appeal shall, where it upholds the conviction of the accused, substitute the sentence with the legal minimum.

(2) Where the sentence passed is higher than the legal maximum, the Court of Appeal may, if satisfied with the conviction of the accused, pass a sentence at most equal to the maximum provided by law.

**CHAPTER II
JUDGMENTS OF THE COURT OF APPEAL IN MISDEMEANOURS AND SIMPLE
OFFENCES**

Section 460:

(1) The Court of Appeal may, in an appeal by the Legal Department, pass a sentence against an accused acquitted by the Court of First Instance, or by a Military Court, increase or reduce the sentence passed on conviction or acquit the accused.

(2) It may uphold or reverse all or part of the other points of the judgment appealed against.

Section 461: When the court finds that the facts constitute a felony, it shall declare the Court of First Instance as having no jurisdiction, nullify the judgment of the lower court, and refer the case to the Legal Department to take appropriate action. In this case, the Legal Department having been heard, the court may in the same decision issue a remand warrant or a warrant of arrest against the accused.

Section 462: If the court finds that the facts do not constitute a misdemeanour but a simple offence, it shall amend the statement of offence and decide on the matter.

Section 463: Where in accordance with the provisions of section 3 (1) of this code, the court annuls the judgment appealed against, it shall review the evidence and decide the case on the merits.

CHAPTER III JUDGMENTS OF THE COURT OF APPEAL IN CASES OF FELONY

SUB-CHAPTER I PROCEDURE PRIOR TO HEARING

Section 464: The provisions of sections 410 to 416 shall apply before the Court of Appeal sitting in cases of felony.

SUB-CHAPTER II PROCEDURE AT THE HEARING

Section 465:

(1) The Court of Appeal shall sit on the day, at the place and at the hour fixed for hearing and the Presiding Judge shall cause all the parties to be called.

(2) The provisions of sections 417 to 422 shall apply to the Court of Appeal.

Section 466: The Presiding Judge shall question the convict on his identity and make sure that the formalities of section 415 (1) are fulfilled.

Section 467: The procedure before the Court of Appeal sitting in cases of felony shall be that of the High Court.

Section 468: At the end of the trial, the Presiding Judge shall declare the hearing closed and may adjourn for deliberation and fix a date for judgment.

SUB-CHAPTER III JUDGMENT

Section 469: In the case of an adjournment as provided for in section 468, the deliberations shall take place in a room of the Court which guarantees discretion.

Section 470:

(1) Only the judges and the assessors who heard the case shall participate in the deliberations; the Legal Department shall not take part.

(2) At the end of the deliberations, the members of the court shall vote and the majority opinion shall be the judgment of the court.

(3) No member of the court shall abstain from voting.

(4) Where there is a dissenting judgment, it shall be put in the case file.

Section 471:

(1) On the date fixed for judgment, the presiding Judge shall cause the parties to appear and, he or any other member of the bench shall deliver the judgment in open court.

After the deliberations and after the judgment has been written and signed, the judgment delivered shall be valid even if one of the members who heard the case is unavoidably absent.

(2) In case of a conviction, the Presiding Judge shall inform the convict of his right to appeal to the Supreme Court and of the time-limit for appeal; this fact shall be stated in the judgment.

PART III
APPEALS TO THE SUPREME COURT

CHAPTER I
CONDITIONS OF APPEAL

SUB-CHAPTER I
DECISIONS SUBJECT TO APPEAL

Section 472: Judgments delivered by Courts of Appeal may be appealed against to the Supreme Court.

Section 473: An appeal against an interlocutory ruling shall be admissible only if it is brought at the same time as the substantive appeal.

However, where the interlocutory ruling orders measures which are illegal or might obstruct the normal course of justice, it may be appealed against to the Supreme Court before judgment on the merits under the conditions laid down in section 474.

Section 474:

(1) In the cases of illegal measures or obstruction of the normal course of justice referred to in section 473, the appellant shall file his petition to the President of the Supreme Court and

shall specify the violation of the law on which it is based. The petition shall be filed at the registry of the Court of Appeal for transmission.

(2) The Registrar-Chief of the Court of Appeal shall within ten (10) days, forward to the Registrar-in-Chief of the Supreme Court the case me together with the notice of appeal, the petition of the appellant and a copy of the interlocutory ruling.

(3) The case file shall immediately be forwarded to the Procureur General at the Supreme Court for his submissions. It shall be returned to the registry of the said court within ten (10) days.

(4) The Supreme Court shall give a ruling in chambers not later than ten (10) days after the return of the case file and 1 shall order its decision to be notified to the President of the Court of Appeal, the Procureur General of the said court and the parties or their counsel.

(5) The case me shall be returned to the Registrar-in-Chief of the Court of Appeal within fifteen (15) days, with effect from the date of judgment of the supreme Court.

Section 475: In the case of an appeal la the Supreme Court and until its decision, the interlocutory ruling appealed against shall not be enforceable and the Court of Appeal shall not deliver judgment on the merits.

SUB-CHAPTER II

DECISIONS NOT SUBJECT TO APPEAL TO THE SUPREME COURT

Section 476: Judgments delivered in default shall not be appealed against to the Supreme Court until the time-limit for an application to set aside the judgment has expired.

CHAPTER II

TIME-LIMIT FOR APPEALS TO THE SUPREME COURT

Section 477: Any person who has been a party to the proceedings as well as the Procureur General of the Court of Appeal may appeal to the Supreme Court within the time-limits prescribed under sections 478 and 479.

Section 478:

(1) The time-limit for appeal to the Supreme Court against a judgment on the merits shall be ten (10) days. It shall be seven (7) days for interlocutory rulings referred to in section 473.

(2) The time-limits for appeal to the Supreme Court shall begin to run from the day following the date on which the judgment was delivered, if such judgment is deemed to have been delivered after full hearing.

However, such time-limits shall only be to run from the day following the date of service of the decision in the following cases:

- (a) where a party after a full hearing was neither present nor represented in court on the day the judgment was delivered and where it is not evident from the judgment that the Presiding Judge after having adjourned the hearing for deliberation, had expressly informed the parties of the date on which the judgment was to be delivered;
 - (b) where the accused had applied to be tried in absence as provided for in section 350 (1).
- (3) The time-limit for appeal against a judgment in default shall be thirty (30) days. This period shall, in respect of the appellant, run as from the day following the date of expiry of the time-limit for applying to have the judgment set aside.

Section 479:

- (1) The time-limit for lodging an appeal against a ruling of the Inquiry Control Chamber shall be five (5) days with effect from the date of service of the said ruling on the Legal Department and on the parties or their counsel.
- (2) The appellant shall address to the President of the Supreme Court an application setting out and arguing the grounds of appeal. The application shall be filed at the registry of the Inquiry Control Chamber for onward transmission.
- (3) The Registrar of the Inquiry Control Chamber shall, within ten (10) days, forward the case file, together with the notice of appeal, the application of the appellant and a copy of the decision appealed against to the Registrar-Chief of the Supreme Court.
- (4) The provisions of section 474 (3), (4) and (5) shall apply.

CHAPTER III FORMS OF APPEAL TO THE SUPREME COURT

Section 480:

- (1) To be admissible, an appeal to the Supreme Court shall be lodged either by the party in person or by his counsel or by his representative having a duly authenticated power of attorney. It shall be made by a notice filed at the registry of the Supreme Court or that of the Court of Appeal that delivered the judgment or by telegram against receipt, or by registered letter with acknowledgment of receipt or by any other means with written proof and precise date. It shall be forwarded to the Registrar-in-Chief of either court.
- (2) In the case of an appeal by telegram, registered letter, or by any other means with written proof, the date of appeal shall be that of the date stamp of the post-office or the date of despatch in the case of any other means.
- (3) The notice of appeal, telegram, registered letter or any other means with written proof, shall be entered in a special register kept in the registry of the court to that effect.

(4) Notwithstanding the provisions of sub-section (1), the notice of appeal filed by a representative without a duly authenticated power of Attorney shall be valid if the appellant later personally regularizes the appeal; in particular, by briefing counsel to represent him or by applying for legal aid within the time-limit provided for in section 482.

Section 481:

(1) When the appellant is in custody, he may also file an appeal to the Supreme Court either by a declaration to the registry of the Court of First Instance of the place of detention, or by a letter addressed through the Superintendent of the Prison where he is detained.

(2) In case of declaration to the registry of the court, the Superintendent of Prison shall be bound to bring the appellant in detention before the Registrar-Chief of the court.

(3) In case of appeal by letter, the Superintendent through whom it is addressed shall:

- (a) record it in a special register kept for that purpose; the register shall be dated, signed by the Superintendent and countersigned by the appellant;
- (b) issue in three copies a receipt mentioning the date when the notice of appeal was submitted;
- (c) give a copy of the receipt to the appellant, keep the second copy in the prison file of the appellant and attach the third copy to the notice of appeal to the Supreme Court;
- (d) forward this notice of appeal and the third copy of the receipt within forty-eight (48) hours to the Registrar-in-Chief of the court which delivered the judgment appealed against, by any means with written proof.

Section 482: When the Registrar-in-Chief of the Court of Appeal receives the notice of appeal, he shall notify the appellant in writing that he has under pain of foreclosure, a time-limit of thirty (30) days, within which to provide the Registrar-in-Chief of the Supreme Court with the name of his counsel, or to apply for legal aid if he considers himself qualified for it. In this case, the application for legal aid, shall have as annexures a certificate of lack of means issued by the Mayor of the council of his place of residence, a tax certificate or a certificate of his fiscal situation, issued by the competent authority, otherwise it shall be inadmissible.

Section 483:

(1) The Registrar-in-Chief who receives the notice of appeal shall notify the Legal Department of the Court of Appeal and the other parties by registered letter with acknowledgment of receipt or by any other means leaving written proof in the case file. He shall make a report in respect thereof.

(2) The report drawn up in four copies shall, in addition to mentioning the notice of appeal, also mention the notification provided for in section 479 (1).

(3) A copy of the report shall be addressed to the appellant and to the Registrar-in-Chief of the Supreme Court who shall open a case file upon receiving it.

(4) Where the notice of appeal was received by the Registrar-in-Chief of the Supreme Court, he shall address a copy of the report to the Registrar-in-Chief of the Court of Appeal, the judgment of which has been appealed against. The latter shall mention the fact of the appeal on the margin of the said judgment.

Section 484:

(1) The Registrar-in-Chief of the Court of Appeal shall prepare the case file which shall comprise in particular the following documents:

- the notice of appeal;
- the report referred to in section 483;
- the submissions and memoranda produced by the parties before the trial court and the Court of Appeal;
- the record of proceedings of the trial court and the Court of Appeal;
- all the interlocutory rulings delivered by the trial court and the Court of Appeal;
- a copy of the judgment appealed against and a copy of the judgment of the trial court.

(2) This case file shall be forwarded to the Registrar-in-Chief of the Supreme Court.

CHAPTER IV GROUNDS OF APPEAL TO THE SUPREME COURT

Section 485:

(1) The grounds of appeal to the Supreme Court shall include:

- (a) want of jurisdiction;
- (b) misrepresentation of the facts of the case or of the documents of the proceedings;
- (c) absence, or contradictions or insufficiency of reasons;
- (d) failure to reply to the submissions of the parties or of the Legal Department;
- (e) procedural irregularity, in particular: where, subject to the provisions of section 470 (1), the decision appealed against was not delivered by the number of judges prescribed by law or was delivered by judges who had not participated in the entire hearing; where the Legal Department was not given the right to be heard or it was not represented at the hearing; where subject to the exceptions provided for by law, the rule pertaining to public hearing was not observed;
- (f) ultra vires;
- (g) violation of the law;
- (h) violation of a general principle of law;
- (i) failure to follow precedents of a joint session of the Bench of the Supreme Court or a joint session of the Benches of the Supreme Court.

(2) The Supreme Court may of its own motion raise any of the grounds of appeal referred to in sub-section (1) above.

Section 486:

(1) An error in stating the offence charged or in citing the applicable section of the law shall not constitute a ground of appeal where the sentence provided for the offence charged is the same as that for the offence which was in fact committed, provided that the offences are of a similar nature.

(2) Except in cases of absolute nullity provided for by the law, the appellant shall not be allowed to raise as a ground of appeal to the Supreme Court, any irregularity committed by a trial court if he did not raise the point before the Court of Appeal.

**CHAPTER V
PROCESSING OF AN APPEAL IN THE SUPREME COURT**

Section 487: The Registrar-in-Chief of the Supreme Court shall register the case file as soon as he receives it and shall forward the same to the President of the Supreme Court who, after having had it produced in five (5) copies, shall forward it to the competent section.

Section 488:

(1) The Registrar-in-Chief shall forward a copy of the documents specified in section 482 to the appellant's counsel or the Procureur General, where he is appellant, and shall inform him at the same time by any means with written proof, or by writ of a bailiff that he has a time-limit of thirty (30) days within which to file a memorandum of submissions in support of the appeal at the registry, otherwise the appeal will be foreclosed.

(2) The time-limit fixed in the preceding subsection may be reduced by half, by an order of the President of the section seized.

Section 489:

(1) Where the appellant has applied for legal aid, the Registrar-in-Chief shall inform the Procureur General of this fact and shall prepare the file for legal aid and submit it to the commission for legal aid at the Supreme Court.

(2) On the delivery of the decision granting legal aid to the appellant, the President of the Supreme Court shall assign counsel for his defence and the Registrar-in-Chief shall issue notices as provided for in section 483.

(3) Where the application for legal aid is rejected, the Registrar-in-Chief shall notify the applicant by any means with written proof or serve it by writ of a bailiff on the appellant and shall invite him to forward the name of his counsel within a time-limit of fifteen (5) days, under pain of forfeiture of his right to appeal.

Such time-limit shall run from the day following the date of notification or service.

Section 490: Where an appellant sentenced to life imprisonment or to death has not briefed counsel, the President of the Supreme Court shall of his own motion, assign one to him as soon as the application for appeal is received in the registry of the said court.

Section 491:

(1) During the whole hearing before the Supreme Court, the appellant shall be presumed to have elected his address for service at the chambers of the counsel he briefed or of the one assigned to him officially.

(2) Where he has several advocates, notification or service on one of them shall be deemed sufficient unless he elected the chambers of the advocate to which all notifications and services should be addressed.

(3) However, where he has asked for legal aid, it shall be considered that his address for service shall be the address on his application for legal aid. If this address is not specified, the notification referred in section 483 shall be sent to the Mayor's office of the place of residence of the appellant, or to his place of work or to the registry of the Court of Appeal.

Section 492: The memorandum of submissions in support of the appeal shall, under pain of foreclosure, be filed in the registry within the prescribed time-limit. Mention of this fact shall be made in a special register which shall be dated and signed by the Registrar-in-Chief and countersigned by the person who filed the memorandum. A receipt shall be issued to him. Non-compliance with the prescribed time-limit shall constitute not only a professional fault, but also a fault liable to give rise to an award of damages against the defaulting counsel.

Section 493: The memorandum of submissions in support of the appeal shall, under pain of the appeal being declared inadmissible, cite the provision of the law violated and argue the legal grounds of the appeal. It shall be produced in as many copies as there are parties plus five (5) other copies.

Section 494:

(1) As soon as the Registrar-in-Chief receives the memorandum of submissions in support of the appeal, he shall notify the respondents by any means with written proof or by the writ of a bailiff.

(2) The respondent shall within the time-limit of thirty (30) days with effect from the said notice, under pain of foreclosure, personally or through his counsel, forward his submissions to the Registrar-in-Chief of the Supreme Court in as many copies as there are parties plus five (5) other copies.

Section 495:

(1) As soon as the written submissions of the respondent are received, the Registrar-in-Chief shall ensure that the appellant is notified by any means with written proof or by the writ of a bailiff.

(2) The appellant may, if he deems it necessary, within fifteen (15) days with effect from with effect from the date of notification or personal service, send a rejoinder in reply through his counsel to the Registrar-in-Chief of the Supreme Court. The respondent shall file a reply to the rejoinder within fifteen (15) days of service, if he deems it necessary.

Section 496: The case file shall be deemed 10 be ready if on the expiry of the time-limit of fifteen (15) days, the respondent has not filed his written submissions in reply or if after fifteen (15) days of service of the written submissions of the respondent. the appellant has not filed a rejoinder.

Section 497: When the case file is ready. the Registrar-in-Chief shall forward it to the President of the section in order to appoint a rapporteur.

Section 498:

(1) The rapporteur may of his own motion raise grounds of appeal. He shall propose precise solution to the case.

(2) The rapporteur shall return the case file to the registry within a maximum period of thirty (30) days without annexing his report thereto.

(3) The rapporteur shall forward, under confidential cover, his report in six (6) copies to the President of the Supreme Court who shall in turn forward a copy thereof under confidential cover to the Procureur General and the other copies to the President of the section concerned.

Section 499: When the case file is returned to the Registrar-in-Chief, he shall forward it immediately to the Procureur General.

Section 500:

(1) The Procureur General may of his own motion raise grounds of appeal.

(2) The Procureur General shall in his submissions propose a precise solution to the case.

(3) The Procureur General shall transmit his submissions within thirty (30) days, under confidential cover to the President of the Supreme Court, who shall forward them to the President of the section concerned. He shall return the case file to the registry thereafter.

Section 501: As soon as the Procureur General returns the case me to the Registrar-in-Chief, the latter shall submit it to the President of the section to fix the date for hearing.

The date shall be notified to the Procureur General and to the members of the section by the Registrar-in-Chief who shall also serve the parties through their chosen place of service a'1d post the cause list on the notice board of the court.

Section 502: The President of the section may, at any time, by an order made at the request of the Procureur General or of the appellant, reduce to half the time-limit provided for in sections 488 (1),494, 495 (2), and 496.

The decision of reduction of the time-limit shall be notified to the parties by the Registrar-in-Chief of the Supreme Court.

CHAPTER IV

EFFECTS OF APPEALS TO THE SUPREME COURT

Section 503:

- (1) An appeal to the Supreme Court shall not stay the execution of a judgment; in particular:
 - (a) any warrant either issued or upheld by the Court of Appeal shall continue to produce its effects;
 - (b) measures of judicial supervision ordered or confirmed by the Court of Appeal shall continue to produce their effects;
 - (c) where there is an acquittal or suspended sentence or a fine by the Court of Appeal or where the term of imprisonment is less or equal to the time spent in detention, the appellant in detention shall be immediately released, subject to the provisions of section 393.
- (2) However, the accused may apply to the Supreme Court for suspension of the measures of judicial supervision, or the cancellation of the warrant.

Section 504: Notwithstanding the provisions of section 503, appeals to the Supreme Court in matters of interlocutory proceedings provided for in section 473 and in matters of conflict of jurisdiction referred to in sections 601 and 602, shall stay the proceedings of the lower courts.

Section 505:

- (1) The laws in force relating to stay of execution of civil awards shall be applicable before the Supreme Court.
- (2) The President of the Supreme Court or the President of the section that he delegates for this purpose, shall decide alone on the application for stay of execution of civil awards referred to in sub-section (1) after receiving the submissions of the Procureur General.

CHAPTER VII

PROCEDURE BEFORE THE SUPREME COURT

SUB-CHAPTER I

PROCEDURE AT THE HEARING

Section 506: The provisions of sections 302 to 305, 446 and following relating to public hearing, maintenance of order and to the procedure at the trial shall be applicable before the Supreme Court.

Section 507:

(1) Before the date fixed for hearing, the members of the court who are to sit shall receive the documents referred to in sections 482, 484, 493 and 495.

(2) At the hearing, counsel for the appellant shall be heard first, followed by counsel for the respondent and finally by the Procureur General, if he is not the appellant.

Section 508:

(1) At the hearing, the rapporteur shall read his report, the advocates of the parties and the Procureur General shall present their arguments basing same on their memoranda and submissions.

(2) No adjournment shall be granted unless the court deems it necessary.

(3) However:

- a) when the solutions proposed by the Procureur General and the rapporteur are different, the case shall be adjourned for deliberation;
- b) any member of the court who, before the hearing, had neither had knowledge of the report nor the contrary submissions of the Procureur General, may request to have knowledge thereof before he gives an opinion. In such a case, the matter shall be adjourned for deliberation to a later date.

Section 509: Where the appeal is groundless and where the court of its own motion cannot raise any grounds, the appeal shall be dismissed.

Section 510: Where the grounds of appeal filed by the parties or raised by the court of its own motion are founded, the Judicial Bench of the Supreme Court shall quash and annul the decision appealed against.

In this case, it shall examine and determine the matter on the merits.

**SUB-CHAPTER II
JUDGMENTS OF THE SUPREME COURT**

Section 511:

(1) Before the Supreme Court hears an appeal on the merits, it shall ascertain whether the appeal has been properly filed.

(2) If it finds that certain formalities required by law have not been satisfied, it shall, as the case may be, deliver a judgment of inadmissibility.

(3) If the appeal is without merits, the court shall dismiss it.

Section 512:

- (1) The decision of the court shall be that of the majority;
- (2) The provisions of section 389 (5) shall apply.

Section 513: The decision shall be delivered either immediately or on an adjourned date not later than fifteen (15) days after deliberations.

Section 514:

- (1) The President of the Supreme Court may, where he considers that a case is complicated, order that be heard in a plenary session of all the sections of a Bench.
- (2) The criminal section of the Judicial Bench of the Supreme Court, sitting with three members may, by majority decision, transfer a case to a plenary session of all the sections of the Bench.

Section 515: Where an appeal before the Supreme Court is based on the admissibility of the appeal before the Court of Appeal and the Supreme Court quashes the judgment appealed against by declaring the appeal admissible, it shall remit the case to the same Court of Appeal which shall be differently constituted, for a decision to be taken on the merits.

It shall be likewise where the Court decides on an appeal against an interlocutory ruling.

Section 516:

- (1) The Supreme Court may entertain an application for bail by a convict only if all the following conditions are satisfied:
 - (a) the convict has appealed against the judgment on the merits delivered by the Court of Appeal;
 - (b) the appeal is admissible.
- (2) Counsel for the convict shall be bound to file a reasoned application for bail.

Section 517: The order of the Supreme Court granting bail may prescribe any measure of judicial supervision. It shall be executed forthwith.

Section 518:

- (1) The appellant's right of appeal is forfeited in the following cases:
 - (a) failure to brief counsel;
 - (b) failure by counsel to file a memorandum of submissions in support of the appeal;
 - (c) where counsel files the memorandum of submissions in support of the appeal out of time.

(2) The forfeiture is declared by a ruling of the President of the Supreme Court.

(3) The Registrar-in-Chief shall notify the parties or their counsel of the decision of forfeiture by registered letter or by any means with written proof.

Section 519: The Supreme Court may set aside any order of forfeiture, upon a reasoned application by the appellant or his counsel and after the submissions of the Procureur General.

The application shall, subject to being declared inadmissible; be made within thirty (30) days with effect from the day following the day of notification of the decision of forfeiture.

Section 520: The setting aside of an order of forfeiture shall be as of right when the forfeiture results from the failure to file or from filing out of time of the memorandum of submissions in support of the appeal by the Procureur General at a Court of Appeal.

Section 521:

(1) Where the forfeiture results from the failure to file or from filing out of time of the memorandum of submissions in support of the appeal by counsel holding state brief, the President of the Supreme Court may, after the submissions of the Procureur General either appoint another counsel of his own motion or admit the memorandum of submissions in support of the appeal made out of time.

(2) The costs of the order of forfeiture as well as the order to set aside shall be borne by the defaulting counsel.

Section 522:

(1) With the exception of the Legal Department, any party to the proceedings may withdraw his appeal. In such a case, the file shall be immediately forwarded to the President of the section for the matter to be listed for the nearest hearing date.

(2) Where the civil party or the party vicariously liable withdraws his appeal, the Supreme Court shall deliver a decision granting the withdrawal.

(3) The costs of the withdrawal shall be borne by the party withdrawing the appeal.

Section 523:

(1) The withdrawal by the insurer shall only be admissible if it is unconditional. It shall have no effect on the criminal action.

(2) The decision appealed against shall be considered as never having been appealed against.

Section 524:

(1) The withdrawal by the convict shall take effect from the day of the notice of appeal.

(2) Where the withdrawal by the convict appears regular, the Supreme Court shall accept it and order him to pay costs.

(3) The provisions of section 526 shall be applicable, notwithstanding the withdrawal of the convict's appeal.

Section 525: If during the appeal, a less severe law is promulgated, the Supreme Court shall apply it.

Section 526:

(1) Subject to the provisions of section 521 (2), the appellant shall be liable to pay the costs of the proceedings at the Supreme Court when the court delivers a judgment of inadmissibility, forfeiture, withdrawal or of dismissal. However the appellant may be exonerated from paying part or all of the costs.

(2) In case of inadmissibility or dismissal of an appeal filed by the prosecution, the costs shall be borne by the Public Treasury.

Section 527:

(1) The Supreme Court may quash a decision in part or in whole.

(2) Where the whole judgment is quashed, the case and the parties shall be placed in the same position in which they were before the judgment so quashed was delivered. In this case, the Supreme Court shall examine and determine the whole matter on the merits.

(3) Where the judgment appealed against is partially quashed, the Supreme Court shall decide only on the issues quashed.

Section 528: A copy of the quashed decision shall be forwarded by the Registrar-in-Chief of the Supreme Court to the Legal Department and to the competent Registrar-in-Chief to be recorded in the registry of the Court of Appeal from which the decision quashed emanated.

Section 529: Judgments of the Supreme Court shall contain:

- (a) the composition of the court;
- (b) the names and rank of the representative of Legal Department;
- (c) the full name, occupation and address of the parties and of their counsel;
- (d) a summary of the facts and the procedure;
- (e) an analysis of the grounds of appeal argued or those raised by the court of its own motion;
- (f) the reasons and the verdict;
- (g) the signature of the judges who delivered the judgment and that of the clerk of court.

Section 530: The Registrar-in-Chief of the Supreme Court shall forward to the President and the Procureur General of the Court of Appeal whose judgment was appealed against, a copy of the decision delivered by the Supreme Court to be entered in the registers of the Court of Appeal and of the Legal Department.

Section 531:

(1) When an appeal is dismissed or when a judgment is quashed, the Registrar-in-Chief of the Supreme Court shall return the case file containing the decision of the Supreme Court to the Registrar-in-Chief of the Court of Appeal the decision of which was appealed against.

(2) A copy of the decision of the Supreme Court shall be forwarded to the Legal Department of the court the decision of which was appealed against.

(3) The Registrar-in-Chief of the Supreme Court shall also notify the parties of the decision of the Supreme Court by registered letter with acknowledgment of receipt.

Section 532: The Registrar-in-Chief of the Supreme Court shall forward a copy of all decision of the Supreme Court to the Procureur General of the said court without delay.

CHAPTER VIII APPEAL IN THE INTEREST OF THE LAW

Section 533:

(1) Any court decision which violates the law and which has not been appealed against in the form and within the prescribed time-limit provided by law, may be appealed against to the Supreme Court by the Procureur General at the said court in the following circumstances:

- (a) in the sole interest of the law and on the initiative of the Procureur General; in this case, the parties may not take advantage of the ruling of the Supreme Court;
- (b) on the instructions of the Minister in charge of Justice; in this case, the decision of the Supreme Court shall be binding on all the parties.

(2) The appeals referred to in subsection shall not be subject to any time-limit.

Section 534:

(1) Where the Supreme Court is seized of one of the appeals mentioned in section 533, it shall state the applicable legal provisions and, in the case where the decision in question is quashed, determine the matter by taking any one of the following measures:

- (a) by cancelling anything illegal in the sentence; or;
- (b) of its own motion, by passing on the convict the minimum legal sentence provided by law; or;

(c) of its own motion, by ordering any accessory penalty or preventive measure which ought to have been ordered.

(2) Where the Supreme Court, of its own motion, passes a minimum sentence of loss of liberty on the convict as provided for by law, it shall issue a warrant of arrest against him.

(3) The judgment that is quashed on an appeal made in the interest of the law by the Procureur General of the Supreme Court shall continue to be binding on all the parties.

The decision of the Supreme Court quashing that of the lower court shall be entered in the register of the registry of the court that delivered it.

PART IV **REVIEW OF CRIMINAL PROCEEDINGS**

CHAPTER I **APPLICATION FOR REVIEW**

Section 535:

(1) A review of criminal proceedings may be applied for in favour of any person convicted of a felony or misdemeanour in the following circumstances

- (a) when, after a conviction for murder fresh evidence is adduced to prove that the alleged victim is still alive;
- (b) when it is found, after conviction, that the person convicted was innocent even if he was responsible for the error that misled the court;
- (c) when a person other than the person ; convicted admits before credible witnesses that he committed the felony or misdemeanour and confirms such admission before a judicial police officer;
- (d) when, after a conviction, new documents or facts have come to light and are of such a nature as to establish the innocence of the person convicted.

(2) An application for review shall be admissible only when the judgment has become final.

Section 536: The enactment of a new law shall not constitute a ground for review.

Section 537:

(1) The right to apply for review shall be exercised by:

- (a) the Minister in charge of Justice;
- (b) the convict or, in the event of his disability, his legal representative;

(c) any person interested in doing so, in the event of the death of the convict or his having been judicially declared absent.

(2) The application for review shall not be subject to a time-limit.

Section 538: The application for review together with a copy of the judgment appealed against and any other supporting document shall be submitted to the Procureur General of the Supreme Court, who shall prepare the case file and submit it to the court.

CHAPTER II REVIEW PROCEDURE

Section 539: In considering an application for review, the Judicial Bench of the Supreme Court shall sit in a joint session of all its sections.

Section 540: If the application is not admissible, the court shall so declare it.

Section 541:

(1) Where the application is admissible and the case is ready for hearing, the court shall:

(a) dismiss it where it finds that the application is baseless;

(b) quash the judgment appealed against and acquit the convict, if it finds the application justified.

(2) When the court finds that the application is admissible but is not ready hearing, it shall, by an interlocutory ruling, order all necessary measures of inquiry. In such a case, if the sentence has not been executed, its enforcement shall be stayed or suspended.

Section 542:

(1) Where the application for review is not admissible or is dismissed, the applicant other than the Minister in charge of Justice shall be liable to pay costs.

(2) Where the court acquits the applicant, or where the application has been made by the Minister in charge of Justice, the costs shall be borne by the Public Treasury.

Section 543:

(1) If the applicant so requests, the judgment of acquittal shall be:

(a) posted at any council office of his choice;

(b) published in extract form in any of the national newspapers indicated by the Supreme Court in its judgment.

(2) If the application for publication is made after the judgment of acquittal has been delivered, the publication shall be made by an order of the President of the Supreme Court.

(3) The costs of publication shall be borne by the Public Treasury.

Section 544:

(1) The decision of acquittal may serve as the basis for an application for compensation before the competent commission provided for in section 237 above.

(2) Where the victim of a miscarriage of justice is deceased, the right to claim damages under the same conditions shall be open to all his heirs.

END OF BOOK FOUR

BOOK V
EXECUTION OF JUDGMENTS

PART I
GENERAL PROVISIONS

Section 545:

- (1) The Presidents of all courts shall ensure that the orders and judgments of their courts are enforced.
- (2) A bench or remand warrant or a decision granting bail or any other court order shall be immediately executed at the instance of the Legal Department, which shall forward them directly to the authorities responsible for their execution.
- (3) The prosecution and the parties shall each in their own sphere, follow up the execution of a judgment that has become final.

Section 546: A register for the execution of court decisions shall be established in the registry and in the Legal Department of each court.

Section 547: Subject to the provisions of section 545 (2) and of section 22 of the Penal Code, a decision shall be enforceable when it can no longer be set aside or appealed against, except otherwise provided for by law.

Section 548: Whenever there is an error which does not affect the substance of a judgment but hinders its execution, the court that delivered the judgment shall be called upon to rectify it.

Section 549:

- (1) When a party considers that an aspect of a decision delivered in a criminal case is obscure or ambiguous, he may, by an application request the President of the said court to interpret it.
- (2) The court seized shall proceed with this interpretation by referring particularly to the reasons it gave in support of the decision.
- (3) The right of interpretation shall not permit the court to change its decision.

Section 550: The applications for rectification or interpretation provided for in sections 548 and 549 shall not be allowed when the judgment delivered has been challenged.

PART II
IMPRISONMENT

Section 551: Any person detained by virtue of a judicial warrant shall be confined in a prison.

Section 552: The execution of an order of transfer or of a production warrant, in respect of detainees, shall be carried out by the police, gendarmerie or by prison authorities.

Section 553:

(1) Accused persons on remand shall be confined in special quarters separated from those of persons already convicted and shall, as far as possible, be kept in individual cells. They shall if they so desire be engaged in maintenance work at the prison.

(2) Detainees shall keep their personal effects in their custody, unless otherwise decided by the prison authority for the maintenance of order, security or cleanliness or by the judicial authority in the interest of preliminary inquiry.

Section 554: Remand shall be transformed into imprisonment as soon as the judgment becomes final.

Section 555:

(1) Persons convicted and sentenced to a term of imprisonment shall be placed in various categories of prisons.

(2) The conditions of the execution of prison sentences shall be defined by a special enactment in such a manner as to reconcile the requirement of discipline with the needs of social rehabilitation of the convict. They shall take into account the nature of the offence, the length of the term to be served, the sex, the age, the mental and physical health and the behaviour of the convict.

PART III **PECUNIARY SENTENCES**

CHAPTER I **PAYMENT OF PECUNIARY AWARDS**

Section 556:

(1) Fines and costs shall be paid to the Registrar-in-Chief of the court that delivered the judgment.

(2)

(a) Before payment, the Registrar-in-Chief shall issue to the convict without costs, a copy of the judgment containing a break-down of the pecuniary sentence which he has to pay as provided for in section 558 (2) a).

(b) After payment, the Registrar-in-Chief shall:

- (i) issue to the convict a receipt from a receipt book with counterfoil and when the decision becomes final a copy thereof without costs;
 - (ii) forward to the Legal Department a copy of the receipt and an extract of the judgment when it becomes final.
- (3) Civil awards shall be recovered at the instance of the party concerned from the date following the day on which the decision becomes final.

CHAPTER II

IMPRISONMENT IN DEFAULT OF PAYMENT

Section 557: Imprisonment in default of payment shall be a procedure which aims at compelling a convict to execute a pecuniary sentence pronounced against him or make restitution ordered by a court in a criminal case.

It shall be applicable without prior notice at the instance of the Legal Department in the event of non-execution of a pecuniary sentence or non-restitution of property.

It shall consist of a term of imprisonment during which the debtor shall be obliged to work.

Section 558:

(1) Where imprisonment in default of payment is ordered against a prisoner, it shall be enforced on expiry of the previous imprisonment unless he furnishes sufficient sureties to guarantee the payment of the pecuniary sentence within a period of two (2) months from the date of recognizance.

(2)

(a) The judgment shall fix the breakdown of the pecuniary sentence to be paid to the state or to the civil party, as well as the duration of imprisonment in default in accordance with the provisions of section 564 above.

(b) Where the pecuniary award is made to the state, an imprisonment warrant shall immediately be prepared and signed at the time of delivery of the judgment and forwarded for execution to the Legal Department.

(c) Where the award is for the civil party and the judgment has become final, an imprisonment warrant shall issue at the instance of the civil party who has not been satisfied.

Section 559: Any person who is not detained and against whom an imprisonment warrant has been issued for non-payment of the pecuniary sentence may either forestall or terminate the execution of the said warrant by payment of the pecuniary sentence.

Section 560:

(1) After the execution of the imprisonment warrant, the convict may request its suspension by furnishing a surety guaranteeing payment of the pecuniary sentence within a period of two (2) months from the day following the signature of the recognizance by the surety.

(2) Where at the time of his arrest, the convict has furnished a surety, the judicial police officer charged with the execution of the warrant shall hear the surety and include his statement in the report.

(3) A copy of the file of the arrest shall be forwarded to the President of the court and another to the Legal Department of the court that issued the imprisonment warrant.

Section 561:

(1)

(a) The President of the Court of First Instance of the place of execution of the warrant shall rule in chambers on the application, after hearing the convict and the proposed surety.

(b) Such a ruling shall not be subject to appeal.

(2)

(a) Where the application is granted, the President shall explain to the surety the consequences of his recognizance and shall request him to sign a document by which he shall undertake to pay the debt or failing that, to be subjected to imprisonment in default in place of the convict on expiry of the time limit provided for in section 560;

(b) After the surety has read and signed the recognizance, the President shall cause the debtor to be released forthwith;

(c) The provisions of section 185 (1) (b) above are applicable if the surety cannot read and write.

(d) Notice of the ruling shall be served forthwith on the Superintendent of Prison and a copy each shall be forwarded to the President and the Legal Department of the court that issued the imprisonment warrant.

(3) Where a surety is not accepted, the convict may make new proposals as many times as he wishes.

(4) Imprisonment resulting from failure of the surety to abide by his obligation, shall be terminated before the expiry of the prescribed period, only when total payment has been made.

Section 562: In case of part payment of the debt, the duration of imprisonment in default shall depend only on the balance due.

Section 563:

(1) The period of remand served by an accused sentenced only to a fine shall be deducted from the duration of imprisonment in default. This deduction shall be made by the President of the court at the time he signs the imprisonment warrant.

(2) The provisions of sub-section (1) shall apply only to fines and costs.

Section 564:

(1) In matters of fines and costs, the duration of imprisonment in default shall be fixed as follows:

- (a) twenty (20) days for amounts not exceeding 10.000 francs;
- (b) forty (40) days, for amounts higher than 10.000 francs but not exceeding 20.000 francs;
- (c) three (3) months, for amounts higher than 20.000 francs but not exceeding 40.000 francs;
- (d) six (6) months, for amounts higher than 40.000 francs but not exceeding 100.000 francs;
- (e) nine (9) months, for amounts higher than 100.000 francs but not exceeding 200.000 francs;
- (f) twelve (12) months, for amounts higher than 200.000 francs but not exceeding 400.000 francs;
- (g) eighteen (18) months, for amounts higher than 400.000 francs but not exceeding 1.000.000 francs;
- (h) two (2) years, for amounts higher than 1.000.000 francs but not exceeding 5.000.000 francs;
- (i) five (5) years, for amounts exceeding 5.000.000 francs.

(2) In matters of damages to the civil party, the periods provided for in sub-section (1) shall be reduced by half

Section 565: An order of imprisonment in default of payment shall not be passed against a person less than eighteen (18) years of age or more than sixty (60) years old, or against pregnant women at the time of its execution.

Section 566: An order of imprisonment in default shall not be executed simultaneously against husband and wife even for the recovery of sums relating to different sentences.

Section 567: On the expiry of the time limit for prescription of the sentence, no imprisonment warrant shall be issued any longer for the recovery of fines and costs.

Section 568:

(1) No imprisonment warrant for the recovery of damages or for restitution may be issued ten (10) years from the date following the date when the judgment became final.

(2) The execution of an imprisonment warrant issued before the expiry of the period of ten (10) years shall be enforceable until the prescription of the debt

Section 569: Imprisonment in default shall not be pronounced against:

- (a) persons declared vicariously liable;

- (b) insurers.

CHAPTER III

EFFECTS OF IMPRISONMENT IN DEFAULT

Section 570: Any person imprisoned by virtue of an order of imprisonment in default shall be subject to the same prison regulations as those convicted under the ordinary law.

Section 571:

(1)

- (a) A convict who has been subjected to imprisonment in default shall not be absolved from payment of fines, costs and damages, or from making restitution for which imprisonment in default has been executed.
- (b) The Legal Department or the civil party may at any time attach movable or immovable property of the convict up to the amount of the debt in accordance with the Procedure for the enforcement of civil judgments.

(2) The time limit for taking of the action provided for under subsection (1) (b) above shall be thirty (30) years, to run from the day after the imprisonment in default has ended.

Section 572: When the duration of imprisonment in default has been served no other order of imprisonment shall be made for the same debt.

PART IV

CRIMINAL RECORD

CHAPTER I

CRIMINAL RECORD CARDS

Section 573:

(1) A criminal record shall be established:

- (a) at the registry of each Court of First Instance;
- (b) at the Ministry in charge of Justice,

(2) The criminal record established at the registry of the Court of First Instance and known as district index card shall concern persons born within the jurisdiction of the said court.

(3) The criminal record kept at the Ministry in charge of Justice, and known as the central index card shall centralize particularly:

- (a) the index cards of the criminal records of persons of Cameroonian or foreign nationality born abroad;
- (b) the index cards of the criminal records of persons of foreign nationality born in Cameroon whose birth has not been declared at the Cameroonian civil status registry and who reside in Cameroon;
- (c) the index cards of the criminal records of persons of Cameroonian or foreign nationality whose place of birth is unknown or who have doubtful nationalities.

Section 574: Where a Cameroonian court in a criminal case passes a sentence or preventive measure, the Registrar-in-Chief of the said court shall transcribe the verdict of the judgment on an index card known as «the criminal record index card», which he shall establish in five (5) copies. Two (2) copies of this index card shall be forwarded to the registry of the Court of First Instance of the place of birth of the convict for filing in his criminal record. Two (2) copies of this index card shall be forwarded to the central criminal record office where they shall be filed alphabetically and according to their finger prints.

The fifth copy shall be inserted in the case file.

Section 575:

(1) Copies of index cards sent to the sub-divisional and central card indexes shall bear, if necessary, mention of an appeal.

(2) Where an appeal has been lodged after the distribution of these copies, the Registrar-in-Chief of the court that delivered the decision shall forward a copy of the notice of appeal to the offices where the different index cards are filed, in order that mention thereof be made as provided for in the preceding sub-section.

Section 576: The criminal records of each person shall contain as many index cards as there are convictions or preventive measures separately pronounced against him by a Cameroonian or a foreign court.

Section 577: The index card of a criminal record shall contain:

- (a) information on identity, photograph, finger prints, anthropomorphic and morphological marks;
- (b) sentences and preventive measures pronounced by national or foreign courts;
- (c) sentences for simple offences;
- (d) the special measures pronounced in application of sections 46, 48 and 49 of the Penal Code;
- (e) notices of wanted persons;
- (f) judgments declaring bankruptcy or ordering winding up;
- (g) pardons;

- (h) rehabilitation orders.

Section 578:

- (1) Index cards shall be withdrawn from criminal records where the sentences or preventive measures recorded therein have been nullified by a judgment of acquittal which has become final.
- (2) The same shall apply to sentences that are:
 - (a) nullified as a result to review proceedings;
 - (b) expunged by amnesty or rehabilitation.
- (3) Index cards withdrawn in accordance with the provisions of sub-sections (1) and (2) above shall be filed in the archives of the criminal records and no information shall be obtained there from without the written authorization of the Legal Department.

Section 579:

- (1) Where a sentence or a preventive measure has been modified as a result of an appeal, mention of such modification shall be made on the corresponding index card of the criminal records.
- (2) Where after a modification only an accessory penalty or a preventive measure subsists, a new index card shall be made stating such penalty or measure. The original index card shall be withdrawn and filed in the archives of the criminal records.
- (3) Where as a result of an amnesty or rehabilitation order, an accessory penalty or preventive measure subsists, the original card index shall be withdrawn and filed in the archives of the criminal records.

Section 580:

- (1) The information taken from the index card known as «extract of the criminal record» shall be issued on application to administrative and judicial authorities or to the person concerned in the form of a criminal record bulletin.
- (2)
 - (a) The bulletin issued by the Registrar-in-Chief of the Court of First Instance shall be signed by the State Counsel.
 - (b) The bulletin issued by the central criminal record office shall be signed by the Minister in charge of Justice or his representative.

**CHAPTER II
CRIMINAL RECORD BULLETINS**

Section 581:

(1) There exists three types of criminal record bulletins, namely: bulletin n° 1, bulletin n° 2 and bulletin n° 3:

- (a) bulletin n° 1 shall be a complete statement of the index card concerning a given person. It shall be an extract of all sentences, preventive measures and expulsion orders issued against a given person;
- (b) bulletin n° 02 shall be an extract which is less complete than bulletin n° 1. It shall not mention decisions expunged by amnesty and rehabilitation;
- (c) bulletin n° 03 shall be delivered only to the owner of the criminal record. It shall mention only sentences to loss of liberty not expunged by amnesty or rehabilitation. It shall in addition, for foreigners, mention all penalties relating to traffic offences.

Bulletin n° 1 and 2 shall be delivered to administrative and judicial authorities at their request.

(2) Where the criminal record is blank or where the index cards have not become final, the bulletin delivered shall bear the mark «nil».

Section 582:

(1) Any person who wishes to rectify any fact on his criminal record shall make an application in two copies to the President of the court that delivered the judgment.

(2) The Legal Department shall have the right to act of its own motion in the same manner in rectifying any facts on the criminal record.

(3) The President shall decide in chambers after having heard the applicant, the Legal Department and any other person whose evidence he deems necessary.

(4) Where an application is dismissed, the applicant shall pay the costs.

(5) If the application is granted, the Public Treasury shall bear the costs.

(6) The decision ordering the rectification shall be mentioned on the criminal record.

Section 583: The provisions of section 582 shall apply in the event of any litigation in respect of rehabilitation as of right or by application of the law on amnesty.

END OF BOOK FIVE

BOOK VI
SPECIAL PROCEDURE

Section 584:

(1) The President of the High Court of the place of arrest or detention of a person or any other judge of the said court shall have jurisdiction to hear applications for immediate release based on grounds of illegality of arrest or detention or failure to observe the formalities as provided by law.

(2) He shall also have jurisdiction to deal with applications filed against administrative remand measures.

(3) The application shall be filed either by the person arrested or detained or on his behalf by anyone else. Such application shall be unstamped.

Section 585:

(1) An application for habeas corpus shall be supported by an affidavit and shall state:

(a) the identity of the applicant and where necessary, that of the person arrested or detained;

(b) the place of arrest or detention;

(c) a precise summary of the facts constituting the alleged illegality.

(2) The application shall be addressed in four (4) copies to the President of the High Court and filed in the registry of the said court.

(3) The President seized of the application shall order the custodian of the person detained to produce him on the day and hour mentioned in the order with the documents authorizing the arrest or detention.

He shall forward a copy of the application and the order to the Legal Department for its submissions.

(4) Where the arrest or detention appears to be illegal, the President shall order the immediate release of the person detained.

(5) In case of non appearance of the detainee, the President or such other judge appointed shall consider the reasons for his non-appearance and decide on the basis of the documents produced before him in compliance with the foregoing sub-section.

Section 586:

(1) When the President gives an interlocutory ruling on a preliminary issue, such ruling shall not be subject to appeal.

(2) When he gives a judgment on the merits on the application for habeas corpus, that judgment shall be subject to appeal. However, that decision shall be enforced immediately notwithstanding an appeal.

(3)

(a) The time-limit within which to appeal shall be five (5) days with effect from the date following the day on which the decision was given.

(b) The appeal shall be lodged in accordance with the provisions of section 274.

Section 587:

(1) Where an appeal is lodged, the case shall be forwarded to the President of the Court of Appeal within five (5) days following the notice of appeal.

(2) The President of the Court of Appeal or any other judge of that court appointed by him shall hear and determine the appeal within the time-limit of ten (10) days provided for under section 275 (2) above.

Section 588: The procedure of habeas corpus shall also be applicable to measures of deprivation of liberty taken against any person who has been acquitted, discharged or released by an ordinary court of law or by a special tribunal.

PART II

EVIDENCE BY MEMBERS OF GOVERNMENT AND REPRESENTATIVES OF DIPLOMATIC MISSIONS

Section 589: Members of Government and representatives of diplomatic missions may be summoned to give evidence in court. They may, at their request or at the request of the Legal Department be heard in camera. Except as otherwise provided by law, their evidence shall be received in the manner prescribed in this Code.

Section 590:

(1) Evidence given by a representative of a diplomatic mission shall be in conformity with the principles of international conventions ratified by the Republic of Cameroon.

(2) The letter inviting a representative of a diplomatic mission to testify shall be addressed to him through the Minister in charge of External Relations.

(3) Where the representative of a diplomatic mission accepts to give evidence but is unable to appear due to unavoidable circumstances, a questionnaire shall be addressed to him by the magistrate through the Minister in charge of External Relations.

(4) The reply of the representative of a diplomatic mission who takes oath in writing shall be returned in a sealed envelope to the magistrate through the Minister in charge of External Relations who shall forward same without taking cognisance of its contents.

PART III

CHALLENGE AGAINST A MAGISTRATE OF THE BENCH OR A JUDGE

Section 591: Any Magistrate of the bench or a Judge may be challenged for any of the following reasons:

- (a) where he or his spouse is a relative, guardian or relative by marriage up to the degree of uncle, nephew, first cousin or the child of the first cousin of one of the parties;
- (b) where he or his spouse is employer, employee, next of kin, donee, creditor, debtor, companion of one of the parties, or director of an enterprise or company involved in the case;
- (c) where he has previously taken part in the proceedings or if he has been an arbitrator or counsel or witness;
- (d) where he or his spouse is a party in a case which shall be tried by one of the parties;
- (e) where he or his spouse is involved in any incident tending to show friendship or hatred toward any of the parties and likely to cast a doubt on his impartiality.

Section 592: Any magistrate of the bench who thinks that he could be challenged for any of the reasons provided for under section 591 above, or who has good reasons to abstain from hearing and determining a case shall inform his superior.

In such a case the provisions of sections 593 to 598 hereinafter shall apply.

Section 593: A Magistrate of the Legal Department may not be challenged.

Section 594:

(1) The application stating the challenge shall be in writing and shall be forwarded in two (2) copies:

- (a) to the President of the Court of Appeal if it is directed at a judge of the Court of Appeal other than the president, or a magistrate of a lower court;
- (b) to the President of the Supreme Court if it is directed at the President of a Court of Appeal or a member of the Supreme Court other than its president.

(2) A copy of the application shall also be forwarded by the applicant to the magistrate concerned.

(3) The application shall, under pain of being inadmissible, state the names of the magistrate or magistrates concerned and the grounds thereof, together with supporting evidence;

Section 595:

(1) The President of the Supreme Court or the President of the Court of Appeal, as the case may be, shall after receiving the explanation of the magistrate concerned and the submissions of the Legal Department, give a ruling without costs.

(2) The ruling of the President of the Court of Appeal on an application challenging a magistrate or a judge shall not be subject to appeal.

Section 596:

(1) If the application is directed at the President of the Supreme Court, it shall be filed at the registry of the said court.

(2) A reasoned ruling on the application shall be made in chambers by a joint session of the Benches of the Supreme Court without the participation of the President, and it shall be notified to the parties and the Legal Department.

Section 597: No person may challenge more than a third of the members of the Supreme Court.

Section 598: As soon as the magistrate receives a copy of the application in conformity with section 594 (2) the proceedings shall be stayed until a ruling is given on the application.

Section 599:

(1) Where the application is granted, the magistrate shall no longer hear the case.

(2) Where the application is dismissed, the applicant may, without prejudice to the award of damages, where necessary, be ordered to pay a civil fine of from 100.000 to 500.000 francs.

(3) Such ruling shall be notified to the applicant and to the magistrate concerned.

PART IV SETTLEMENT OF CONFLICTS OF JURISDICTION

Section 600:

(1) Where two Examining Magistrate within the jurisdiction of the same Court of Appeal are seized of the same offence and the assume or decline jurisdiction, the conflict thus created shall be resolved by the Court of Appeal

(2) Where two different Courts of First Instance or two High Courts of the jurisdiction of the same Court of Appeal, assume or decline jurisdiction, the conflict thus created shall be resolved by the Court of Appeal.

Section 601: Where two Examining Magistrates or two Courts of First Instance or two High Courts within the jurisdictions of two different Courts of Appeal are seized of the same offence and they assume or decline jurisdiction, the conflict thus created shall be resolved by the Supreme Court.

Section 602:

(1) The Supreme Court shall have jurisdiction to deal with conflicts of jurisdiction resulting from two final judgments delivered respectively by an ordinary court and a special court, the judgments of which undermine the normal course of justice.

It shall be likewise where the final judgments are delivered by two ordinary or special courts.

(2) The Supreme Court shall be seized of the matter by way of a reasoned application at the instance of the Legal Department or of any other party.

Section 603: The decision settling the conflict shall be notified to the Legal Department and to the other parties at the instance of the Registrar-in-Chief of the court that delivered the decision. It shall not be subject to appeal.

PART V
TRANSFER OF A CASE FROM ONE COURT TO ANOTHER

Section 604:

(1) The Supreme Court may, on the ground of suspicion or in the interest of public policy, withdraw a case from any court and transfer it for trial to another court of the same jurisdiction or appoint magistrates within the jurisdiction of a different Court of Appeal to hear and determine the matter.

(2) The application for transfer may be made by the Legal Department or by any other party. However, only the Legal Department may base its application on grounds of public policy.

(3) The filing of an application shall not, on its own, stay the hearing of a case. However, the President of the Supreme Court may order the president of the court seized of the matter to stay the hearing of the matter.

Section 605: The Registrar-in-Chief of the Supreme Court shall cause all rulings on an application for transfer to be notified to the court concerned and to the parties.

PART VI
FIXED FINES

CHAPTER I
GENERAL PROVISIONS

Section 606:

(1) A fixed fine shall be a pecuniary sentence application to simple offences, the quantum of which is determined in advance by law.

(2) A fixed fine shall not be applied where:

- a) the simple offence caused bodily or material injury;
- b) the simple offence is related to a felony or misdemeanour;
- c) the simple offence is related to the management or the operation of a liquor premises;
- d) a legal provision imposes on a person vested with the powers to charge an offender an obligation to take an administrative measure such as the impounding of a vehicle or the withdrawal of a driving licence or any other document;
- e) the person who committed the simple offence is in a state of manifest drunkenness in a public place.

Section 607:

(1) Judicial police officers shall be competent to collect fixed fines.

(2) Agents of the judicial police and public servants vested with the powers of the judicial police shall only collect such fixed fines where they are duly empowered to do so.

(3) The authority provided for in sub-section (2) shall be general or special in relation to certain simple offences.

Section 608: Agents authorized to charge persons with simple offences and to collect fixed fines shall act under the supervision of the Legal Department to which they shall send their reports in accordance with section 89 (2).

Section 609: Agents authorized to charge persons with simple offences and receive fixed fines shall first take the oath before the Court of First Instance within the jurisdiction of which they are to carry out their duties.

Section 610: Before performing his duty, the officer shall first disclose his identity to the offender by producing either his professional card or any other document empowering him in that regard.

Section 611:

(1) Any person empowered to collect fixed fines shall be in possession of a special counterfoil receipt book numbered and initialled by the competent Legal Department.

(2) For every fixed fine collected, a report shall be made and a receipt issued on the spot from the said counterfoil receipt book.

(3) Any person who collects fixed fines without issuing a receipt in conformity with sub-sections (1) and (2) above shall be liable to the penalties provided under section 142 of the Penal Code.

Section 612: The rate for fixed shall be fixed according to the class of the simple offence as follows:

- (a) 1.000 francs for the first class;
- (b) 2.400 francs for the second class;
- (c) 3.600 francs for the third class;
- (d) 25.000 francs for the fourth class.

Section 613: The payment of fixed fines shall be optional and the person preferring the charge shall so inform the offender.

Mention of this fact shall be made in the report.

Section 614:

(1)

- a) Any vexatious or intimidating measures against any person who has committed a simple offence and who is not willing to pay the fixed fine shall be liable to the penalties provided for under section 140 of the Penal Code.
- b) The following, in particular, shall constitute vexatious or intimidating measures; illegal seizure of property belonging to the offender; the impounding of a vehicle for refusal to immediately pay for the simple offence or the refusal to report at the office of the person authorized to prefer a charge.
- c) Where the charge is preferred in the absence of the offender, a copy thereof shall be sent to him, and he shall be invited to pay the fixed fines due in the office of the person authorized to prefer the said charge.

Section 615: The report indicating the commission of a simple offence shall be drawn up in accordance with the provisions of section 90 above. It shall also state the amount of the fixed fine to be paid, specifying whether it has been paid or not and, where it has been paid, the number of the receipt issued.

Section 616:

(1) Monies collected as fixed fines shall be paid forthwith into the Public Treasury.

(2) A copy of the payment voucher, signed by the treasurer or by any other authorized person of the treasury and the person who preferred the charge, shall be forwarded by the latter to the competent State Counsel.

CHAPTER II ANNULMENT OF FIXED FINES

Section 617: Where the State Counsel finds that a fixed fine is illegal having regard to sections 611 and 612 he shall proceed as provided for in sections 619 and 620.

Section 618: Where the provisions of section 614 (1) have been violated, the annulment of the fixed fine may only be ordered at the request of the offender.

Section 619: Where the amount of the fixed fine collected by the person preferring the charge is either higher or lower than the legal rate, the State Counsel shall redress the situation by an order. The offender shall be notified of such order.

Section 620:

(1) Where the readjustment results in an increase of the fixed fine and the offender refuses to pay the difference, the State Counsel shall proceed as provided for under section 623 (2).

(2) Any assessment of the fixed fine lower than the amount prescribed, shall constitute a simple offence of the 4th class.

CHAPTER III PAYMENT OF FIXED FINE

Section 621: The payment of a fixed fine shall put an end to prosecution subject to the provisions of sections 617 to 620.

Section 622:

(1) Where a fixed fine ought not to have been paid or where the amount paid was higher than the legal rate. The Public Treasury shall refund the amount paid or the difference, as the case may be.

(2) The refund shall be made on the presentation of either an extract of a judgment or of an order issued by the State Counsel without costs.

PART VII TRIAL OF SIMPLE OFFENCES

Section 623:

- (1) In the cases provided under sections 606 (2) and 620 or in the event of non-payment of the fixed fines, the State Counsel may, as soon as he receives the report, commence prosecution.
- (2) The Court of First Instance seized of the matter shall decide in accordance with section 362 of the Penal Code.

PART VIII
OFFENCES COMMITTED DURING A COURT SESSION

Section 624: Offences committed during court sessions shall be tried in accordance with the following provisions:

- (a) Where the offence committed is a simple offence, the Presiding Magistrate shall immediately prefer a charge based on the facts, hear the offender, the witnesses, the Legal Department, and deliver judgment;
- (b) Where the offence committed is a misdemeanour, the court shall proceed as provided for in paragraph (a) above;
- (c) Where the offence committed in court is a felony, the Presiding Magistrate or judge shall order the offender's arrest, record his statement and direct that he be taken to the State Counsel who shall proceed as provided by law.

PART IX
RECONSTITUTION OF DOCUMENTS

Section 625: When the original of a judgment has been lost, it shall be reconstituted in conformity with the provisions of sections 626 to 628.

Section 626:

- (1)
- (a) Where there is a certified true copy of a lost or destroyed judgment, it shall become the original.
 - (b) On the orders of the President of the court which delivered the judgment, its custodian shall hand over the copy to the registry of the court.

(2) From the original so reconstituted, the registrar shall deliver a copy of the judgment to the original holder without costs.

Section 627: Where there is no certified true copy of a lost or destroyed judgment, the original shall be reconstituted from the record book by the court that delivered it.

Section 628: Where a document in a case file or the whole case file is missing, the President of the court seized of the matter or any party shall cause the said document or case file be reconstituted.

PART X **PRIVILEGED PROCEEDINGS**

Section 629:

(1) Where a judicial or legal officer is likely to be charged with committing an offence, the competent Procureur General shall request the President of the Supreme Court to appoint an investigating magistrate as well as three other magistrates of a grade at least equal to that of the magistrate incriminated and they shall, if necessary, hear and determine the matter at first instance.

(2) The President of the Supreme Court shall in addition indicate the town wherein the case shall be heard.

Section 630: The provisions of section 629 shall also apply where the aggrieved party files a complaint embodying a civil claim before the President of the Supreme Court against a magistrate.

Section 631: The magistrate appointed shall personally conduct the preliminary inquiry and his jurisdiction shall extend throughout the national territory.

Section 632: In the event of an appeal, the matter shall be heard by the judges of the Supreme Court appointed by the President of the said court and sitting as a collegiate bench.

Section 633: When the magistrate prosecuted is the most senior in the highest grade, his case shall be heard by a joint session of the Benches of the Supreme Court.

Section 634:

(1) Where a Governor of a province has committed a felony or a misdemeanour, within or outside the performance of his duties, the Procureur General at the competent Court of Appeal shall address a report to the President of the Supreme Court who shall transfer the matter to a competent court in accordance with the provisions of sub-sections (2) and (3) of this section.

(2) Where a senior Divisional Officer or any other head of administrative unit or a judicial police officer has committed a felony or a misdemeanour even if unconnected with the exercise of his duties, the State Counsel shall transmit the case file to the competent Procureur General who shall seize the President of the competent Court of Appeal. The latter shall in turn designate both the Legal Department in charge of instituting prosecution and the competent trial court to hear and determine the matter.

(3) In the cases referred to in the preceding sub-sections, prosecution, investigation and trial shall be assigned to jurisdictions other than those of the province, division, sub-division, or district where the accused performs his duties.

PART XI **EXTRADITION**

CHAPTER I **GENERAL PROVISIONS**

Section 635: Extradition shall be an act whereby requested state hands over a foreigner found in its territory to a requesting State in order that he be prosecuted for one or more specified offences of ordinary law or to subject him to a term of imprisonment passed against him after a criminal trial for an offence of ordinary law.

Section 636: Whoever is found in the national territory to be an accomplice to a felony or misdemeanour committed abroad may be tried in Cameroon according to the foreign law and Cameroonian law on condition that the principal act has been established by a final decision emanating from a competent foreign court.

Section 637: Cameroonian courts shall also have jurisdiction to try any one who while abroad, is an accomplice to a felony or misdemeanour committed in Cameroon.

Section 638: Any proceedings brought under sections 636 and 637 shall be null and void to all intents and purposes if:

- (a) prosecution is commenced by any person other than the Legal Department which in cases of misdemeanour under Cameroonian law Can only act, if a complaint is brought to it by the injured party or if it receives an official information from the competent authority of the place of commission of the principal act;
- (b) the defendant shows that he has been tried abroad for the same acts and final judgment passed, and that if sentenced, he has either served his sentence or has been absolved of it by prescription or by pardon;
- (c) the prosecution is barred by amnesty. or by any other cause, according to the law of the state where the acts were committed, or would be so barred according to the laws of Cameroon if the acts had been committed in Cameroon.

Section 639: Prosecution may be commenced against the accused either before the court of the place of residence of the accused, or of the place where he was arrested or of his last known place of abode in Cameroon.

However, the Supreme Court may, on application of the Procureur General at the said court and in the interest of justice, order the transfer of the case to another court.

Section 640: For the purposes of this law, an offence shall be deemed to have been committed in Cameroon if:

- (a) an ingredient of the offence was perpetrated in Cameroon;
- (b) it consists of counterfeiting or of altering the official seal of the Republic of Cameroon or the currency being legal tender in its territory;
- (c) it is against the security of the Republic of Cameroon. However this paragraph shall not apply to a foreigner unless he has been arrested in Cameroon or extradited to Cameroon.

CHAPTER II EXTRADITION REQUESTED BY A FOREIGN GOVERNMENT

Section 641:

(1) The President of the Republic may, by decree order the extradition to a foreign government applying for it, of any foreigner charged with or convicted of an offence, in the requesting State.

(2) The President of the Republic may, by decree, on an application made through diplomatic channels permit, the despatch to any foreign authorities of exhibits or documents in the possession of a Cameroonian authority on condition that, in the case of originals, they shall be returned without delay.

(3) The status of foreigner shall be determined as at the date of the commission of the offence.

(4) No request for appearance as a witness in a foreign court of a person in detention inlay be granted even if he is serving a term of imprisonment in default of payment except on the express condition of his return without delay to Cameroon and of all expenses being borne by the requesting State.

SUB-CHAPTER I CONDITIONS OF EXTRADITION

Section 642:

(1) Any act serving as a ground for extradition shall:

- (a) by the laws of the requesting State and of Cameroon, either constitute an offence punishable with a minimum sentence of loss of liberty of not less than two (2) years for which prosecution is not barred by prescription, amnesty or otherwise; or consist of a term of loss of liberty which is still legally enforceable within six (6) months at least notwithstanding imprisonment in default of payment;
- (b) by Cameroon law, constitute an ordinary law offence;
- (c) from the circumstance show that extradition is not requested for political, religious or racial reasons, or based on the nationality of the person concerned.

(2)

- (a) Felonies and misdemeanours which are not directed against any kind of government shall be considered as common law offences and may justify extradition.
- (b) Offences of universal jurisdiction provided by international conventions and ratified by Cameroon shall be considered as ordinary law offences.

Section 643:

(1)

- (a) Felonies and misdemeanours directed against the Constitution, the sovereignty of the State and Public Authorities shall be considered as political offences, for which extradition shall not be granted.
- (b) The assessment of the political, religious or racial nature or reasons, or racial nature or reasons or of the grounds for citizenship, for the application shall lie with the government to which the application is made;
- (c) Where the offence is in itself political, religious or racial or based on citizenship, it shall be left to the requesting State to prove the contrary.

(2) The following shall also be considered as basis for which extradition may not be granted.

- (a) offences committed by a foreigner outside the territory of the requesting State though punishable in Cameroon, if the laws of the state where the acts were committed do not consider the said acts as an offence;
- (b) offences that are related to political, religious and racial offences, or based on citizenship;
- (c) offences which have been amnestied in any of the countries referred to above;
- (d) mistake of identity of the person whose extradition is requested.

Section 644: Except where otherwise provided by law, no Cameroonian citizen may be extradited.

Section 645: Extradition shall not be applicable:

- (a) to the temporary transfer of detainees for the purpose of hearing or questioning them;
- (b) in respect of simple summonses by virtue of which, on the basis of an international convention, certain individuals detained may be brought for trial in Cameroon;

- (c) to deportation operations which neither relate to the punishment of an offence or the enforcement of a sentence or preventive measure pronounced by a foreign court;
- (d) where there are reasons for the country requested to believe that the person concerned shall be subjected to torture and other punishment or treatment which is cruel, inhuman and humiliating, in the requesting country.

SUB-CHAPTER II

PROCEDURE FOR EXTRADITION

Section 646: Where a foreigner is subject to prosecution or to the execution of a sentence, he may be extradited to appear before the courts of the requesting State only after judgment has been delivered on the merits or after the execution of an imprisonment sentence.

Section 647: The provisions of section 646 shall apply to a foreigner who is incarcerated as a result of imprisonment in default of payment of fine.

Section 648: Where extradition is requested concurrently by more than one state for the same offence, preference shall be given to the state against whose interest the offence was committed or on whose territory it was committed.

Section 649: An application for extradition shall be dismissed when:

- (a) the offences for which it is requested were committed in Cameroon;
- (b) the prescription of the offence is established or the sentence passed is expunged according to Cameroonian law or that of the State requesting extradition at the time the application is received;
- (c) the offences in question have already been heard and determined by Cameroonian courts.

Section 650:

(1) Subject to international conventions, any request for extradition shall be made through diplomatic channels. To this application shall be attached, as the case may be:

- (a) a copy of the judgment, even if the person was convicted *in absentia*;
- (b) a document ordering that the accused be brought before a court for preliminary inquiry or for trial;
- (c) a warrant of arrest or any other document having the same effect and issuing from the competent foreign authority. However, the said document shall specify the offence on which it is founded and its date.

(2) The judgment carrying a conviction and the document mentioned in sub-section (1) b) above shall be the original or a duly certified copy thereof.

(3) The requesting Government shall at the same time attach a copy of the law applicable to the offence charged, and an account of the facts of the case.

(4) In the case of a judgment in default, the requesting government shall, in addition, furnish evidence that the person concerned had knowledge of the trial, and sufficient legal means for his defence.

Section 651: The me containing the application for extradition shall, after the documents have been checked by the Minister in charge of External Relations be forwarded to the Minister in charge of Justice who, after ascertaining that the procedure is in order, shall further seize the Legal Department of the foreigner's place of residence for enforcement.

Section 652: In case of emergency, notwithstanding the provisions sections 641 and 642 above, the Legal Department shall have the power to order the arrest of a foreigner, on the direct application from the foreign judicial authorities and on simple notice with written proof of the existence of any one of the documents mentioned in section 641.

The request of the foreign authorities shall, without delay, be regularized in accordance with the provisions of section 641 above.

Section 653:

(1) Within twenty-four (24) hours of arrest, a magistrate of the Legal Department of the Court of First Instance shall proceed, in necessary with the aid of an interpreter, to examine the foreigner as to his identity, serve on him the document supporting his arrest and record any statements he may make after warning him that he is not bound to make any, and informing him of his right to brief counsel.

(2) A report shall be drawn up of the proceedings and shall be signed by the magistrate, the interpreter if any, and by the foreigner, or shall bear a note, where necessary, that the foreigner refuses or is unable to sign.

Section 654: The foreigner shall without delay be transferred to the prison at the seat of the Court of Appeal within the jurisdiction of which he was arrested.

Section 655: The Procureur General may, at any time, examine or cause a magistrate of his department, to examine the foreigner afresh in accordance with section 653 above in the presence of his counsel duly summoned, if any.

Section 656: As soon as the file mentioned in section 651 is received, the Procureur General shall, after having ascertained that the formalities provided in sections 653 and 654 have been fulfilled, forward it together with his submissions to the President of the Court of Appeal who shall list the case for hearing and notify the foreigner and, where necessary, his counsel.

Section 657:

(1) The court shall examine the application for extradition in chambers in the presence of the Legal Department and of the foreigner, and if need be, of his counsel and of an interpreter. It shall ascertain whether the documents provided under section 650 have been duly produced, and shall examine all the evidence adduced.

(2) During the inquiry, the court may accept as valid evidence all the statements and other documents obtained under oath by the competent authorities of the requesting State, as well as all warrants, attestations, authenticated documents or copies thereof mentioning the sentence.

Section 658: Upon examination of the application for extradition, the court may, after hearing the Procureur General, grant bail to the foreigner if he fulfils one of the conditions provided for in section 246 (g).

Section 659:

(1) Where the foreigner renounces the right to benefit from Cameroonian legislation on extradition and formally accepts to be handed over to the requesting State, the court shall rule accordingly.

(2) The decision made in chambers shall be forwarded without delay by the Procureur General to the Minister in charge of Justice who shall submit same in the form of a draft decree ordering the extradition, to the President of the Republic for signature.

(3) The decree referred to the subsection (2) above shall be notified without delay to the foreigner and the State requesting extradition. It shall not be subject to appeal.

Section 660: The court shall give a reasoned ruling in chambers on the request for extradition. Only the Procureur General may appeal against this decision before the Supreme Court.

Section 661:

(1) Where the application is dismissed, either because the evidence adduced is deemed insufficient, or because the legal conditions are not fulfilled, or because there is a mistake of identity of the person whose extradition is requested, the court shall order the immediate release of . the person if there are no other occasions for detaining him.

(2) The ruling shall be forwarded by the Procureur General without delay to the Minister in charge of Justice who shall transmit same in the form of a draft decree rejecting the extradition, to the President of the Republic for the signature.

Section 662: Where the application for extradition is dismissed, the foreigner may not later be the subject of extradition to the same country for the same offence.

Section 663: Where the application is granted, the ruling of the court shall be forwarded to the Procureur General. He shall proceed as provided in section 659 (2) and (3).

Section 664: The case file shall in all cases provided in sections 661 and 662, be transmitted by the Procureur General to the Minister in charge of Justice without delay in order to be returned to the requesting State;

Section 665: The court shall have jurisdiction to authorize the forwarding to the requesting Government of the whole or part of any document, securities or objects seized from the foreigner, notwithstanding the fact that the application for extradition is dismissed or can no longer be reopened for any reason whatsoever.

It shall order the restitution of documents, securities or objects seized not relevant to the offence with which the foreigner is charged, and shall decide by order, not subject to appeal on any claim to them by third parties.

It Section 666 The foreigner shall be released and his extradition may no longer be requested by the same State for the same offence, if three (3) months elapse after the communication 10 the requesting State of the decree of extradition, without delivery of the prisoner having been requested by the representative of the requesting State.

Any dispute on the application of this section shall be brought before the competent Court of Appeal which shall, within eight (8) days, and after the submissions of the Legal Department, determine the issue. The decision of the Court of Appeal shall be subject to appeal before the Supreme Court. Only the Legal Department or the foreigner may appeal to the Supreme Court. The provisions of sections 657 and following of this code shall be applicable.

SUB-CHAPTER III EFFECTS OF EXTRADITION

Section 667:

(1) The decree granting extradition shall be subject 10 the condition that the person extradited may not, without the special consent of the Government of Cameroon, be prosecuted or punished in the requesting country for any offence committed before his being handed over, other than that for which he was extradited.

(2) However, a foreigner extradited by Cameroon, who has had thirty (30) days after his final release during which he was to leave the territory of the requesting State, shall no longer be subjected to subsection (1).

Section 668:

(1) Where after extradition, the requesting Government seeks permission to prosecute the person extradited for an earlier offence, such permission may not be granted until the court before which he had earlier appeared has given its opinion, but the said opinion may be given merely on the documents forwarded in support of the new application.

(2) The foreign Government shall also forward to the court for submission the remarks of the person extradited, or his declaration that he has none to make. The foreigner may also hand in written submissions, and if he so desires, be represented by counsel of his choice.

Section 669:

(1) After extradition has been granted in favour of Cameroon, an application to nullify same shall be filed at the Court of Appeal within whose jurisdiction the person extradited is in custody, if there is a violation of any of the conditions laid down in sections 643 and 644. Application for a declaration of nullity under the foregoing subsection may be made by the person extradited at any time up to the expiry of his sentence.

(2) The courts having the aforesaid jurisdiction may also determine the nature of the offence for which the application for extradition was made.

Section 670: Where an extradition has been declared null and void the person extradited is not claimed back by the Government from which extradition was requested, he shall be released and may not be prosecuted or punished either for the offence in respect of which extradition was obtained or for any earlier offence, unless he was arrested in Cameroon more than thirty (30) days after the date on which it was lawfully possible for him to leave the national territory.

Section 671:

(1) A person of any nationality extradited by any foreign State to another State may transit through Cameroonian territory, including a Cameroonian vessel or aircraft only on the authorization granted by the Minister in charge of External Relations on a simple application through diplomatic channels supported by documents showing that the offence is neither political, religious, racial nor based on the citizenship of the person concerned or is not a purely military offence.

(2) Such transit shall, if necessary, be effected under the close supervision of Cameroonian agents at the expense of the requesting State.

Section 672: The costs of the proceedings, custody and of extraditing the person, shall be paid by the Cameroon Public Treasury and reimbursed by the requesting State.

CHAPTER IV EXTRADITION REQUESTED BY THE GOVERNMENT OF CAMEROON

Section 673: In addition to the provisions of this chapter, sections 637 to 640 shall apply to extradition requested by the Cameroon Government.

Section 674: The procedure for extradition requested by the Government of Cameroon shall be as follows:

- (a) the State Counsel shall transmit a file to the Procureur General of the Court of Appeal containing, as the case may be, the following documents:
- a copy of the judgment or a warrant of imprisonment;
 - warrant of arrest issued by the Examining Magistrate or by the Inquiry Control Chamber or the court which delivered the judgment;
 - a committal order issued by the Examining Magistrate or a committal order issued by the Inquiry Control Chamber if the person is an accused;
 - if necessary, a copy of the legal provisions relating to accessories, attempt, joinder of charges and prescription;

- an extract of bulletin n °2 of the criminal record;
- (b) The Procureur General shall transmit the case file to the Minister in charge of Justice accompanied by a report stating the facts which warrant extradition and the date of commission of the offence;
- (c) Subject to international conventions, the Minister in charge of Justice shall transmit the file thus prepared to the Minister in charge of External Relations who shall forward it through diplomatic channels to the requesting State.

Section 675: No foreigner extradited to Cameroon on request may be extradited by Cameroon to a third State without the consent of the first State. Provided that such consent shall be required only if the request by the third State is based on acts committed before the extradition to Cameroon.

Provided further that the said consent shall not be necessary if the person extradited had thirty (30) days after his final release in Cameroon within which he was able to leave the national territory.

PART XII REHABILITATION

Section 676:

(1) Rehabilitation is a measure which, unless otherwise provided by law, expunges a conviction for felony or misdemeanour. It puts an end to any accessory penalty and any preventive measure except to confinement in a health institution and closure of an establishment.

(2) Where a person has been convicted more than once, rehabilitation shall apply to all the convictions.

Section 667: Rehabilitation shall be as of right or by the judgment of a court.

Section 678: Any convict may apply to the court for rehabilitation from a conviction.

In the case of death of the convict, the application may be followed up or even filed by his spouse, his ascendants or his descendants.

In the case of the death of the applicant, any application for rehabilitation already filed may be continued by the Legal Department.

Section 679:

(1) Rehabilitation may only be applied for after five (5) years in the case of a conviction for felony and after three (3) years in the case of a conviction for misdemeanour. These time-limits shall run from the date following the day of his release in the case of a sentence to loss of liberty, or payment in the case of a fine.

(2) The time-limit prescribed in this section shall be doubled in the case of persons with a previous conviction.

Section 680:

(1) An offender who has not had any further sentence of imprisonment for felony or misdemeanour shall as of right be rehabilitated on the expiry of the following periods:

- five (5) years, for a sentence of fine;
- ten (10) years for a single sentence of imprisonment of up to six (6) months;
- fifteen (15) years for a single sentence of up to two (2) years;
- twenty (20) years for a single sentence of up to five (5) years.

(2) The period shall be fifteen (15) years for an aggregate sentence of more than one (1) year but not more than two (2) years.

(3) Sentences ordered to run concurrently shall be counted as a single sentence.

(4) The said periods shall run, in the case of a sentence of fine, from the date of payment or of prescription, and in the case of loss of liberty, from the date of expiry of the sentence, taking into consideration any remission or prescription.

(5) The partial or total remission of a sentence shall amount to its partial or total execution.

Section 681: Any person who has been rehabilitated and who has been convicted again shall not be allowed to apply for rehabilitation except after the expiry of fifteen (15) years.

Section 682:

(1) In order to be rehabilitated a convict shall show proof that he has paid all costs and damages or of any reduction thereof granted to him. In the absence of such proof, he shall prove that he served imprisonment in default of payment.

(2) Where he is convicted of fraudulent bankruptcy, he shall prove the discharge of his liabilities relating to capital, interest and expenses or prove that a reduction was granted to him.

(3) Where the civil party cannot be found, the monies due to him shall either be paid to his representative or in default, into the deposit account.

(4) Where the convict claims that the civil party has refused to accept the money due to him, he shall show proof of such refusal and pay the said money into the deposit account:

(5) The prescriptive time-limit of four (4) years shall not be applicable in this matter.

Section 683: The Court of Appeal of the place of residence of the convict shall have jurisdiction in matters of rehabilitation.

Section 684:

(1) The convict shall address his application for rehabilitation to the State Counsel of his place of residence and shall indicate therein where he has lived since his release.

(2) To the application shall be annexed:

- a copy of the judgment convicting him;
- an extract of his criminal record;
- Any other necessary documents, showing that he has paid fines, costs and damages.

Section 685: In order to process the application for rehabilitation, the State Counsel shall ensure that he is given:

- a copy of the judgment convicting the accused;
- an extract from the punishment register of the prison where the sentence was served, attesting to the conduct of the convict;
- an extract of bulletin n° 1 of the criminal record of the convict.

He shall forward the file with his opinion to the Procureur General of the Court of Appeal.

Section 686: The Procureur General shall seize the Court of Appeal of the application for rehabilitation. The court shall, in a public session, give a ruling within two (2) months from the date it was seized of the matter, after duly hearing the Procureur General, the convict and/or his counsel.

Section 687: Where an application is dismissed, a new one may not be filed before the expiry of three (3) years unless the reason for dismissing the first one is that it was made in disregard of the time-limit provided for in section 680.

Section 688:

(1) Where the application is granted, a note thereof shall be made on the various index cards of the criminal record. In this case, the extract of the criminal record shall no longer mention the expunged conviction.

(2) The person rehabilitated may obtain, without cost, a copy of the rehabilitation order.

(3) An extract of the order of rehabilitation shall at the instance of the Procureur General at the Court of Appeal be recorded in the margin of the decision convicting or upholding the conviction of the appellant.

Section 689:

(1)

- a) Rehabilitation shall not as of right restore any decoration nor j automatically reintegrate the person rehabilitated in any orders forfeited. Police supervisory and security measures against the convict shall remain enforceable.
- b) Amounts paid in satisfaction of pecuniary fines and confiscations from the person rehabilitated shall remain with the Public Treasury and not be refundable.

(2) Rehabilitation shall not as of right reinstate anyone in the public service or employment, rank, public or ministerial offices nor shall it give rise to any reconstitution of his career.

However, the person rehabilitated shall recover the rights which were forfeited such as parental authority, guardianship, electoral rights and the right to appear as a witness in court.

(3) Rehabilitation shall not bar an application for review of judgment with a view to establishing innocent.

Section 690: The judgment of the Court of Appeal may be appealed against the Supreme Court in the prescribed manner and within the prescribed time-limit.

PART XIII **RELEASE ON LICENCE**

CHAPTER I **GENERAL PROVISIONS**

Section 691:

(1) Release on licence shall mean the premature release of a person sentenced to loss of liberty or subjected to a security measure of the same nature by the court decision. Both grant and revocation of such licence shall be by decree.

(2) The general conditions and detailed procedure for grant and revocation of release on licence shall be prescribed by decree.

(3) Release on licence not revoked shall become final on expiry of the term of imprisonment.

CHAPTER II **SUSPENSION OF MEASURES**

Section 692: The decree granting release on licence may also suspend enforcement of any order of confinement in a special health establishment or of preventive confinement, or of post-penal supervision and assistance, or of banned occupation which would follow on release from the principal penalty. Such suspension shall become final five (5) years after the expiry of the principal penalty.

CHAPTER III CONDITIONS FOR GRANT

Section 693:

(1) Release on licence from a principal penalty may not be granted before service of half of the sentence, or the aggregate of consecutive sentences, regard being had to remissions, if any. Where there are previous convictions, the convict may not be released before service of two thirds of the sentence or sentences.

(2) Release on licence from preventive confinement may not be granted before service of five (5) years of the sentence.

CHAPTER IV REVOCATION

Section 694:

(1) Release on licence may be revoked on conviction for felony or misdemeanour later committed or for breach of any of the general or special conditions of the licence.

(2) In case of revocation the period of liberty shall not be counted in the duration of the sentence.

PART XIV FELONIES AND MISDEMEANOURS COMMITTED ABROAD

Section 695:

(1)

(a) Cameroonian courts shall have jurisdiction to try any Cameroonian national or any resident who either as a principal or accessory, has committed abroad any offence considered to be a felony or misdemeanour, by the laws of Cameroon on condition that it is punishable by the law of the place of commission.

(b) However criminal proceedings shall be instituted only by the Legal Department and only after a complaint by the victim or an official request to the Government of the Republic of Cameroon by the Government of the place of commission of the offence.

(2) This section shall apply to persons of Cameroon nationality who acquired their citizenship after the alleged offence.

Section 696:

(1) Any person in Cameroon who commits a felony or a misdemeanour abroad or has been an accessory to such an offence or attempted to commit it, may be prosecuted and tried in Cameroon in accordance with the laws of Cameroon, if the principal offence is punishable both by Cameroon law and by the law of the place of commission, and on condition that the existence of the principal offence has been established by a final decision emanating from a competent foreign court.

(2) Any person who has been an accessory abroad to any felony or misdemeanour committed in the Republic of Cameroon may be prosecuted in Cameroon.

Section 697: Any proceedings instituted in pursuance of the provisions of sections 695 and 696 above shall be null and void where:

- (a) the conditions of section 695 (1) b) are not fulfilled;
- (b) the defendant is able to show that he was tried for the same offence abroad and that the judgment of the court was final and further more that any sentence passed on him was served or time-bared or that he was granted a pardon;
- (c) prosecution is time-barred or has been expunged by amnesty or by other means pursuant to the laws to the country where the offence was committed or would have been prescribed or expunged in accordance with the laws of Cameroon, had the offence been committed in Cameroon.

Section 698: Action may be taken either before the competent court in the place where the accused resides, or before the competent court in his last known place of abode in Cameroon.

Notwithstanding the foregoing, the Supreme Court, acting on the request of the Procureur General, may order the case be transferred to another jurisdiction in the interest of justice.

Section 699: An offence shall be considered as having been committed in Cameroon:

- (a) where one of the ingredients of the offence was committed in the Republic of Cameroon;
- (b) where it is an offence of fraudulently changing the seal of the Republic of Cameroon or any counterfeiting of currency being legal tender in Cameroon;
- (c) where it is an offence against the law relating to narcotic drugs, psychotropic substances and precursors;
- (d) where it is an offence against the law relating to toxic wastes;
- (e) where it is an offence against the law relating to terrorism;
- (f) where it is an offence against the law relating to money laundering.

PART XV
PROSECUTION AND TRIAL OF JUVENILES

CHAPTER I
INSTITUTION OF PROSECUTION

Section 700:

- (1) A preliminary inquiry shall be compulsory for a felony or a misdemeanour committed by minors aged less than eighteen (18) years.
- (2) Where a minor aged less than eighteen (18) years is accused of committing a felony or misdemeanour, preliminary inquiry shall be carried out in accordance with the rules of ordinary law subject to the provisions of this part:
- (3) Except in the case of a simple offence, an infant shall not be prosecuted by direct summons.
- (4) The State Counsel or the Examining Magistrate shall inform the parents, guardian or custodian of the infant that proceedings have been instituted against the minor.

Section 701:

- (1) The Examining Magistrate shall carry out all measures of investigation necessary to reveal the personality of the minor.
- (2)
 - (a) He may, in particular, order a social investigation into the material and moral situation of the family of the minor, his character and antecedents, his attendance at school and general behaviour, and the conditions of his upbringing.
 - (b) He shall entrust the investigation to the social welfare service or failing this, to any other qualified person.
- (3) The Examining Magistrate may order a medical examination and any psychiatric tests, if need be.
- (4) He may, by a reasoned ruling, decide to place the minor in a welfare reception centre or in an observation centre.

Section 702:

- (1) The Examining Magistrate may entrust the custody of a minor to:
 - (a) his parents, guardian, custodian or any other trustworthy person;
 - (b) a welfare centre or an observation home;

- (c) any specialized institution;
- (d) a vocational training or health centre.

(2) Any order to place a minor in one of the institutions mentioned in sub-section (1) shall always state the reasons for the custody and shall specify the duration thereof not to exceed the date when judgment is delivered.

(3) Measures of custody of a minor shall be taken in the best interest of the minor, and may be cancelled or changed at any time.

Section 703:

(1) In the absence of a birth certificate of the infant, his age shall be determined by a medical officer who shall issue a medical certificate of apparent age.

(2) Where only the year of birth of a person is known, he shall be presumed to have been born on the 31st day of December of that year.

CHAPTER II TEMPORARY DETENTION OF JUVENILES

Section 704: A minor of twelve (12) to fourteen (14) years of age shall not be remanded in custody, except when he is accused of capital murder or of assault occasioning death.

Section 705: A minor aged between fourteen (14) and eighteen (18) may be remanded in custody only if this measure is considered indispensable.

Section 706:

(1) Infants shall be detained only in:

- a Borstal institution;
- a special section of a prison meant for the detention of minors.

(2) Where there is no Borstal institution or special section of a prison, the infant may be detained in a prison for adults but must be separated from them.

Section 707: Where minors are being transferred, or when they are brought before an Examining Magistrate or before the court, steps shall be taken to prevent any contact with adult detainees, or with the public.

Section 708: When an infant is released on bail, the Examining Magistrate or the court require:

- a written undertaking binding him over to be of good behaviour and to appear at any time when he is required to do so;

- a recognizance entered into by his father, mother, guardian or custodian to guarantee his appearance in court when so required;
- an oral engagement by any person worthy of trust, guaranteeing the minor's appearance in Court.

CHAPTER III

COMPOSITION OF THE COURT OF FIRST INSTANCE SITTING IN CASES OF JUVENILE DELINQUENCY

Section 709:

(1) The Court of First Instance sitting in cases of juvenile delinquency shall comprise:

- a magistrate of the bench, President;
- two Assessors, members;
- a Representative of the Legal Department;
- a Registrar.

(2) Assessors and alternate assessors shall be appointed for a term of two (2) years by a joint decision of the Ministers in charge of Justice and of Social Affairs. They shall be chosen from among persons of both sexes of Cameroonian nationality aged thirty (30) years at least, and who are known for the interest they take in matters affecting juveniles or for their competence in that field.

(3) Prior to assuming their duties, they shall take oath before the Court of First Instance to be true and loyal in the discharge of their duties and scrupulously keep the secrets of deliberations.

(4) A report on the oath-taking shall be made.

Section 710: Assessors shall have the right to deliberate and vote on the sentences and measures to be taken against the infant.

They shall be consulted on all other issues.

Section 711: Where the assessors who are duly summoned fail to be present, the President shall, after ascertaining their absence, sit alone and mention of this fact shall be made in the judgment.

Section 712: A special register shall be kept in the registry containing all decisions relating to infants of less than eighteen (18) years.

CHAPTER IV JURISDICTION

Section 713: The Court of First Instance sitting in cases of juvenile delinquency shall have jurisdiction to try all felonies, misdemeanours and simple offences committed by minors aged more than ten (10) years but less than eighteen (18) years of age. However, where there are accomplices or co-offenders who are adults, only the ordinary law courts shall have jurisdiction to hear the case.

Section 714: The following courts shall have jurisdiction to try minors:

- the court of the place where the offence is committed;
- the court of the place of residence of his parents, custodian or guardian;
- the court of the place where the minor has been found;
- the court of the place where the minor has been placed permanently or provisionally.

Section 715: The provisions of section 59 above shall be applicable in cases of prosecution of minors.

Section 716: Where an infant is involved in the same case as one or more adults, the preliminary inquiry shall be carried out in conformity with the rules of ordinary law, subject to the provisions of sections 701 and following of this code.

CHAPTER V TRIAL

Section 717: The court shall take cognizance of the social welfare report drawn up in accordance with section 702 (2) only after the infant has been found guilty.

Section 718:

(1) The Presiding Magistrate shall explain to the minor in simple language the nature of the charges brought against him. Then, he shall enquire whether he admits the commission of the offence either as a principal or accessory.

(2) Irrespective of the infant's reply, the court shall:

- hear the testimonies of witnesses; enable the minor or his representatives to put relevant questions to the witnesses;
- hear any statement the minor himself may wish to make, in which case the Presiding Magistrate shall put questions to the witnesses, or to the minor as he deems fit.

SUB-CHAPTER I FULL TRIAL

Section 719:

- (1) The Court of First Instance sitting in cases of juvenile delinquency shall apply the procedure applicable in ordinary courts subject to the provisions of sections 721 and following.
- (2) A minor shall be assisted by counsel or by any other person who is a specialist in the protection of children's rights.
- (3) Where the minor has no counsel, the court shall, of its own motion, assign one to him.
- (4) Where the minor's counsel, who has been summoned by all means with written proof, does not attend two consecutive court sessions, the court shall assign another counsel. Mention of this fact shall be made in the record book and in the judgment.

Section 720:

- (1) Under pain of the trial being declared a nullity, the hearing of any matter in which a juvenile is implicated shall be in camera.
- (2) Notwithstanding the provisions of subsection (1), the only persons entitled to attend the hearing shall be the parents, the infant's custodian or guardian as well as the witnesses, counsel, the representatives of services or institutions dealing with problems relating to children and probation officers.

However the Presiding Magistrate may:

- (a) authorize the presence of the representatives of organizations responsible for the protection of human rights and the right of the child at the hearing;
- (b) read out the statement of the social welfare officer drawn up pursuant to section 701 and put any question relevant to this information either to the infant himself or to his parents or guardian.
- (3) The Presiding Magistrate may, at any time, request the infant to withdraw during all or part of the rest of the hearing. He may likewise order the witnesses to withdraw after giving evidence.

Section 721:

- (1) The court shall not stay the trial except in the following cases:
 - (a) where the minor's age cannot be ascertained;
 - (b) where it is deemed necessary to proceed to a further medical examination, medico psychological or further inquiry;
 - (c) if it is deemed necessary to fix an observation period.

(2) Judgment shall be pronounced at a public hearing in the presence of the minor and may be published provided that no mention be made of the minor's name or initials and that no personal or family particulars be disclosed concerning him, under pain of the penalties provided for in section 198 of the Penal Code.

Section 722: The court may also order the restitution of any goods or chattels impounded by law.

SUB-CHAPTER II JUDGMENT IN DEFAULT

Section 723:

(1) Where a minor has absconded or disappeared, the court may order any measures which it deems necessary to ensure the appearance of the infant in court. It may in particular, by a reasoned decision, order that the infant be brought and detained in a prison subject to the conditions provided for in this section.

(2) The minor shall appear at the earliest possible date before the court which made the decision referred to in sub-section (1).

(3) Where the minor cannot be found and the interest to third parties requires that the matter be adjudicated upon, the minor shall be tried in absentia.

CHAPTER VI APPLICATION MEASURES AND PENALTIES

Section 724: If a minor aged fourteen (14) years or less is found guilty, the court shall admonish him before ordering one of the following measures :

- (a) entrusting the infant to the custody of his parents, guardian, custodian or to any trustworthy person;
- (b) placing him on probation;
- (c) placing him in a vocational or health centre;
- (d) placement in a specialised institution;
- (e) requiring him to enter into a preventive recognizance.

Section 725:

(1) Where a minor aged more than fourteen (14) years but less than eighteen (18) years is found guilty, the court shall, by a reasoned decision:

- (a) pass sentence in accordance with the provisions of sections 80 (3) and 87 of the Penal Code;

(b) order one of the measures provided under section 724 above.

(2)

(a) In the case of a non-suspended term of imprisonment, only probation may be ordered in addition.

(b) The probation order shall take effect after the term of imprisonment has been served.

Section 726:

(1) When one of the measures provided for in sections 724 and 725 has been decided upon, the judgment delivered shall place the infant in custody until the end of his education, until he attains civil majority.

(2) Any minor placed in an authorized institution or granted leave of absence by the director thereof, shall be deemed to be in a state of legal detention and shall be arrested by warrant in the event of escape and sent back to the institution.

(3) The court may, before a decision on the merits, order provisional probation for a particular length of time as an observation period.

Section 727: All judgments delivered by courts sitting in cases of juvenile delinquency shall be exempted from stamp duty and shall be registered free of charge.

Section 728: The methods for the reimbursement of maintenance, re-education and supervisory expenses for minors entrusted to persons, institutions or services shall be laid down by statutory instruments.

CHAPTER VII SIMPLE OFFENCES

Section 729:

(1) Where a minor aged fourteen (14) to eighteen (18) years is found guilty of a simple offence, the court shall reprimand the minor as well as his parents, guardian or custodian and shall warn them of the consequences of its re-commission. This reprimand is entered into a special register.

(2) Where the minor fails to appear in court, the reprimand which is destined for him shall be served on his parents, guardian or custodian, as the case may be, by registered letter. The letter shall also contain a warning of the consequences of its re-commission.

(3) In case of a previous conviction, the measures and penalties provided for under sections 725 and 726 shall be applicable to the minor.

(4) If the court deems it necessary to apply a measure of judicial supervision, it shall order that the infant be placed on probation.

CHAPTER VIII

PROBATION OF THE JUVENILE

Section 730: The probation of a juvenile shall be a measure whereby an infant is entrusted to his parents, guardian or custodian and is supervised by specially trained persons known as probation officers. Probation shall consist of means of support, protection, supervision and education.

Section 731:

(1) The re-education of infants placed on probation shall be entrusted to regular and voluntary probation officers acting under the authority of the President of the Court of First Instance.

(2) Regular probation officers shall be appointed by a joint order of the Minister in charge of Justice and Minister in charge of Social Affairs. They shall be responsible for directing and coordinating the action of voluntary probation officers and for re-educating infants specially entrusted to their care by the court.

Section 732: A voluntary probation officer shall be designated either in the judgment or by order of the President of the Court of First Instance. He shall submit a report to the President of the court on his mission according to the calendar fixed in the judgment or order and each time the circumstance so warrants.

Section 733: The parents, guardian or custodian of an infant placed on probation shall be bound to:

- (a) supervise, protect, educate and support the minor;
- (b) abstain from any act whatsoever likely to impede the work of the probation officer;
- (c) present the minor to the President of the court according to the calendar fixed in the judgment or order.

Section 734: In the event of death, serious illness, change of address or unauthorized absence of the minor, his parents, guardian or custodian shall inform the probation officer without delay.

Section 735:

(1) In the event of infringement of one of the obligations provided for under section 733, the President of the court may, after receiving the opinion of the Legal Department, order the parents, guardian or custodian of the infant, to enter into a recognizance, and, if necessary, with viable sureties, to pay an amount of money in case of a fresh infringement. The said amount shall be fixed taking into consideration the financial situation of the parent, guardian, custodian or sureties.

(2) The sum thus fixed shall be paid to the Registrar-in-Chief of the Court of First Instance.

Section 736: The provisions of sections 557 and following, of this code relating to imprisonment in default of payment shall not apply to infants.

CHAPTER IX REVIEW OF PROBATION MEASURES

Section 737:

(1) An measures taken against juveniles by virtue of the provisions of section 724 may be reviewed at any time at he request of the Legal Department, the infant himself, his parents, guardian, custodian or the probation officer.

(2) The following shall have jurisdiction to entertain an application for review:

- (a) the court which pronounced the initial decision ; and
- (b) the court of the place where the parents, guardian or custodian of the infant reside.

CHAPTER X SETTING ASIDE OF JUDGMENTS IN DEFAULT AND APPEALS

Section 738:

(1) A judgment of the Court of First Instance sitting in cases of juvenile delinquency is subject to an application to set aside, or to an appeal to the Court of Appeal or to the Supreme Court in the manner and within the time-limits provided in this code.

However, appeals shall not stay the execution of any measures pronounced against a minor.

(2) Ordinary law procedure in respect of applications to set aside and of appeals shall be applicable to judgments passed against minors.

(3) Appeals may be lodged by the parents, the guardian, custodian, counsel or probation officer without any power of attorney.

CHAPTER XI COURT OF APPEAL SITTING ON CASES OF JUVENILE DELINQUENCY

Section 739: Appeals against judgments of the Court of First Instance shall be brought before the Court of Appeal sitting on cases of juvenile delinquency.

Section 740:

(1) The Court of Appeal sitting in cases of juvenile delinquency, shall be composed of:

- a President, who shall be a magistrate of the bench;
- two Assessors, members;
- a representative of the Legal Department; and
- a Registrar.

(2) The provisions of sections 710 to 712 shall be applicable before the Court of Appeal.

CHAPTER XII CRIMINAL RECORD IN RESPECT OF JUVENILES

Section 741:

(1) All judgments delivered against minors pursuant to sections 725 and 726 shall be entered in the criminal record.

(2) The provisions of sections 573 to 583 shall be applicable. However, mention of the judgment passed against minors shall be made only on extracts of criminal record issued to magistrates and public services.

CHAPTER XIII COSTS ARISING FROM MEASURES FOR THE PROTECTION OF JUVENILES

Section 742:

(1) The travelling expenses incurred by regular and voluntary probation officers in the course of their assignment shall be refunded in accordance with the general rules and regulations for the reimbursement of expenses incurred in criminal matters.

(2) The fees of counsel assigned by the court of its own motion shall also be paid as expenses incurred in criminal matters.

Section 743: Whenever a minor has been entrusted to the permanent or temporary custody of a person other than his father, mother, guardian or the person to whose custody he had been previously entrusted, or to some institution, the decision shall specify that a portion of the monthly maintenance and travelling expenses be charged to the family. Such expenses shall be recovered as court fees in criminal matters for payment into the Public Treasury.

PART XVI COURT FEES IN CRIMINAL MATTERS

Section 774: A special instrument shall fix court fees in respect of felonies, misdemeanours and simple offences by specifying the amount to be paid, the conditions of payment and recovery.

Section 745: Costs incurred by the Legal Department for commencing and carrying out criminal prosecutions and preliminary inquiries as well as the execution of judgments shall be advanced by the Public Treasury. The cost shall be borne by the party who fails except in cases where the court in its reasoned decision rules otherwise.

PART XVII **MISCELLANEOUS AND FINAL PROVISIONS**

Section 746:

(1) All previous provisions repugnant to this law are hereby repealed, in particular:

- a) The « ordonnance du 14 Février 1838 portant Code d'Instruction Criminelle »;
- b) The « loi du 20 Mai 1863 sur l'instruction des flagrants délits » ;
- c) The « loi du 22 Juillet 1867 relative à la contrainte par corps » ;
- d) The«décret du 30 Novembre 1928 irlstituant les juridictions spéciales pour les mineurs»;
- e) The « décret du 26 Février 1931 sur l'instruction préalable » ;
- f) The« décret du 02 Septembre 1954 relatif au casier judiciaire » ;
- g) The« arrêté du 20 Août 1955 fixant le taux de consignation d'aliments sur l'exécution de la contrainte par corps » ;
- h) The« loi n° 581203 du 26 Décembre 1958 portant adaptation et simplification de,la procédure pénale » ;
- i) The« n° 641LF/13 du 26 Juin 1964 fixant le régime de l'extradition » ;
- j) The decree n° 66/DF/512 of 15 October 1966 to codify the rules in force in East Cameroon concerning the prosecution of offences ;
- k) The provisions of the Criminal Procedure Ordinance (Cap 43 of the Laws of Nigeria 1958);
- l) The Evidence Ordinance (Cap. 62 of the Laws of Nigeria 1958) as regards criminal trials;
- m) The Children and Young Persons Ordinance (Cap 32 of the Laws of Nigeria 1958);
- n) The Prisons Ordinance, (Cap 159 of the Laws of Nigeria 1958);
- o) The provisions of the Southern Cameroon High Court Law 1955 as regards criminal trials;

- p) The provisions of The Magistrates Courts (Southern Cameroons) Law 1955;
- q) Ordinance n° 72/6 of 26th August 1972 to fix the organisation of the Supreme Court, as regards criminal trials;
- r) Law n° 90/45 of 19th December 1990 to simplify criminal procedure in respect of some offences;
- s) Law n° 75/16 of 8th December 1975 fixing the procedure and functioning of the Supreme Court with regard to criminal matters;
- t) The Prevention of Crimes Ordinance (Cap. 157 of the Laws of Nigeria, 1958);
- u) The provisions of the Federal Supreme Court Ordinance 1960 parts IV, V and VI as regards criminal trials;
- v) The provisions of the Federal Supreme Court Rules 1961 Orders VIII and IX as regards Criminal trials.

(2) All references made in this law, to the repealed provisions of local law shall be deemed to refer to those which replaced them.

Section 747: This law, which shall come into force on the first day of the thirteenth month following that of its promulgation, shall be registered and published in the Official Gazette in English and French.