

CRIMINAL PROCEDURE CODE

BOOK ONE

GENERAL PROVISIONS

— 7 —
PART I

PRELIMINARY PROVISIONS

CHAPTER I

Courts and Parties

Section I

THE COURTS

Article 1

Criminal Jurisdiction

Criminal jurisdiction shall be exercised in accordance with the provisions of the Constitution and of the Law on the Organization of the Judiciary by:

- a) District Courts;
- b) Regional Courts;
- c) Courts of Appeal;
- d) the Supreme Court.

Article 2

Jurisdiction and Composition of the Courts

1. Except as otherwise provided in this Code, the criminal jurisdiction and composition of the Courts both in regard to subject matter and territory shall be determined in accordance with the Law on the Organization of the Judiciary.

2. Notwithstanding anything contained in paragraph 4 of Article 2 of the Law on the Organization of the Judiciary, and except as otherwise provided in any special law, the Criminal Section of the District Courts shall have jurisdiction over all offences punishable with imprisonment up to three years or fine up to Sh. So. 3,000 or both.

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Article 3

Definitions

For the purposes of this Code, unless the context indicates otherwise:

- a) the term «Law on the Organization of the Judiciary» shall mean the Organization of the Judiciary approved by Legislative Decree No. 3 of 12 June 1962;
- b) the term «Court» shall mean any of the judicial organs enumerated in Article 1 of this Law or any section of such organs;
- c) the term «higher Court» shall mean:
 - 1) The Supreme Court with regard to the Courts of Appeal;
 - 2) the Court of Appeal with regard to Regional Courts and to the District Courts which are located within the jurisdiction of the same Court of Appeal;
- d) the term «lower Court» shall mean:
 - 1) The Courts of Appeal with regard to the Supreme Court;
 - 2) Regional Courts or District Courts with regard to the Court of Appeal within whose jurisdiction they are located;
- e) the term «competent Court» shall mean the Court which has jurisdiction over the offence or the proceedings;
- f) the term «President of the Court» shall mean the Judge who presides over the Court or over a section of the Court;
- g) the term «Judge» shall mean a member of the Judiciary who exercises judicial functions in a Court;
- h) the term «competent Judge» shall mean a Judge who exercises his functions in a competent Court.

Article 4

Subject Matter Jurisdiction

1. To determine whether the Court has jurisdiction over the subject matter, regard shall be had to the maximum punishment established by law for each offence for which a charge has been brought, taking into account any aggravating circumstances, but excluding the effects of recidivism.

2. Whenever any Court considers that it does not have jurisdiction over the subject matter of an offence, it shall make a ruling to that effect at the request of the prosecution or the defence, or on its own motion.

3. Non-compliance with the provisions regarding jurisdiction over subject matter shall render the proceedings void and a declaration to that effect may be made by a Court, also on its own motion, at any stage of the proceeding—that is, trial or appeal or revision.

Article 5

Territorial Jurisdiction

1. The place where the offence was committed shall determine the territorial jurisdiction.

In cases of:

- a) a «continuing offence», or
- b) a «permanent offence»,

the place where the last act or omission in a continuing or permanent offence occurs shall determine the Court at which the offence shall be tried:

2. When:

- a) it is possible to determine the Court which has jurisdiction in accordance with paragraph 1 of this Article, or
- b) the alleged offence was committed outside the territory of the Somali Republic,

the Supreme Court shall designate the Court which shall try the case.

3. Objections as to territorial jurisdiction shall be raised in the Court which is alleged not to have such jurisdiction, by the prosecution or the defence, as soon as the fact of such alleged lack of jurisdiction comes to the notice of the parties concerned. Or the Court on its own motion may declare itself incompetent.

4. Non-compliance with the provisions regarding territorial jurisdiction shall only render the proceedings null and void, if timely objection was made in the manner described in the preceding paragraph and as a result of such lack of jurisdiction the rights of the accused were prejudiced.

Article 6

Joinder of Accused or Offences

1. There is joinder when:
 - a) more than one person is alleged to have taken part in the commission of the same offence, or
 - b) one person is charged with more than one offence.
2. The competent Court, within the meaning of Articles 7 and 8, may, upon request of the prosecution or the defence or on its own motion, order that the persons or offences be tried separately for reasons of convenience.

Article 7.

Effects of Joinder on Subject Matter Jurisdiction over the Offences

1. When there is joinder within the meaning of Article 6 and:
 - a) some of the offences come under the jurisdiction of the Assize Section of the Regional Court, while other offences come under the jurisdiction of the General Section of the Regional Court, or of the Criminal Section of the District Court, all the offences shall be tried by the Assize Section of the Regional Court;
 - b) some of the offences come under the jurisdiction of the General Section of the Regional Court, while other offences come under the jurisdiction of the Criminal Section of the District Court, all the offences shall be tried by the General Section of the Regional Court;
 - c) some of the offences come under the jurisdiction of the Military Penal Section of the Regional Court, while other offences come under the jurisdiction of another Section of the Regional Court or of the Criminal Section of the District Court, all offences committed by members of the Armed Forces even if they have ceased to be such members after commission of the offence, shall be tried by the Military Penal Section of the Regional Court. The jurisdiction regarding offences committed by a person not belonging to the Armed Forces shall be determined within the meaning of sub-paragraphs a) and b) of this paragraph.

2. The non-observance of the above provisions regarding the effect of joinder with respect to jurisdiction over subject matter shall render the proceedings null and void, and such determination may be made also by the Court on its own motion at any stage of the proceedings.

Article 8

Effect of Joinder on Territorial Jurisdiction

1. When there is joinder within the meaning of Article 6 and when two or more Courts have territorial jurisdiction, then all offences shall be tried:

- a) by the Court within whose jurisdiction the most serious offence was committed, or
- b) when a number of offences of equal gravity were committed, by the Court in whose territory the largest number of the offences was committed.

2. When it is not possible to determine the competent Court in accordance with the preceding paragraph of this Article, the Court of Appeal shall designate the Court which shall try the case; or the Supreme Court shall designate the Court which shall try the case when the Courts are located within the territorial jurisdiction of different Courts of Appeal.

3. Failure to observe the provisions regarding the effects of joinder with regard to territorial jurisdiction shall only render the proceedings null and void, if timely objection is made in accordance with paragraph 3 of Article 5, and as a result the rights of the accused were prejudiced.

Article 9

Conflicts of Jurisdiction

1. There is a conflict of jurisdiction when two or more Courts:

- a) take cognizance, or
- b) refuse to take cognizance

of the same offence.

2. In cases of conflict, the Court of Appeal shall designate the Court which shall try the case, or if the Courts in conflict are located within the territorial jurisdiction of different Courts of Appeal, then the Supreme Court shall designate the Court which shall try the case.

Article 10

Disqualification of the Judge

1. A Judge may not take part in a judicial capacity in any criminal proceedings if:

a) he participated in the same proceedings, as a Judge in another Court;

b) he acted in the same proceedings as:

i) a prosecutor,

ii) a defence counsel,

iii) a representative of any party,

iv) a witness,

v) an expert or technical consultant;

c) he is the party on whose report, complaint or request the proceedings were started;

d) he has any personal interest in the proceedings;

e) he is married to, is an «ascendant» or «descendant» of, is a brother or sister of, married to an «ascendant» or «descendant» or married to a brother or sister of any person who is taking part in the proceedings in any of the following capacities:

i) Judge,

ii) prosecutor,

iii) defence counsel,

iv) a representative of any party,

v) or any person who has any personal interest in the case;

f) he has given advice or expressed his opinion on the subject of the case outside the exercise of his duties as a Judge.

2. A Judge shall disqualify himself as soon as he becomes aware of the existence of any of the causes enumerated in paragraph 1 of this Article, and he shall refer the matter, through the President of the Court, to the higher Court which shall pass the necessary orders as provided in paragraph 3 of Article 11.

3. The provisions of paragraph 1 of this Article apply also to assessors. An assessor shall disqualify himself as soon as he becomes aware of the existence of any one of the causes enumerated in paragraph 1 of this Article; and such assessor shall refer the matter to the President of the Court who shall arrange to replace him with another assessor, according to the assessor's roll.

4. Any violation of the provisions of this Article shall render the proceedings null and void, and the Court may also so determine on its own motion at any stage of the proceedings.

Article 11

Transfer of Proceedings

1. When considered necessary in the interest of justice or public order:

- a) the Supreme Court may transfer the proceedings, upon request of the Attorney General or of the accused:
 - i) from one Court of first instance to another Court of first instance having equal subject matter jurisdiction;
 - ii) from one Court of Appeal to another Court of Appeal;
- b) the Court of Appeal may transfer the case, within the limits of its jurisdiction, upon request of the Office of the Attorney General or of the accused, from the Criminal Section of a District Court to the General Section of a Regional Court.

2. When a Judge of the competent Court:

- a) is himself the defendant, or
- b) is the injured party,

the higher Court, upon the request of the Attorney General or of the accused or also on its own motion, shall transfer the case to another lower Court having equal subject matter jurisdiction.

3. When a Judge of the competent Court is disqualified from taking part in a case for the reason stated in paragraph 2 of Article 10, the higher Court may:

- a) order that the trial be held in the competent Court without the participation of the Judge so affected, or
- b) transfer the case to another lower Court having equal subject matter jurisdiction.

Section II

THE PARTIES

Article 12

The Office of the Attorney General

1. The Office of the Attorney General shall exercise the functions laid down in Article 8 of the Law on the Organization of the Judiciary and any other functions conferred by law.

2. In Court proceedings, the Office of the Attorney General shall be represented by:

- a) the Attorney General or one of his Deputies before the Supreme Court and the Military Penal Sections of the Courts of Appeal and Regional Courts;
- b) the Attorney General or one of his Deputies or a Police Officer designated by the Attorney General before the Assize and General Sections of the Courts of Appeal and Regional Courts;
- c) the Officer commanding the Police or the Finance Guards within whose jurisdiction the Court is situated or another Police Officer designated by him, in conformity with the functions attributed to the latter by law, before the Criminal Section of a District Court.

3. For the purposes of this Code, unless the context indicates otherwise, the term «Attorney General» shall mean the person representing the Office of the Attorney General in accordance with the preceding paragraph of this Article.

4. The investigation and suppression of crimes shall be carried out by the Police under the direction of the Office of the Attorney General.

5. When so considered necessary, the Attorney General may, at any stage of the proceedings, order that his own Office shall take over the investigation or the prosecution of any case.

Article 13

The Accused

1. An accused is a person who, even without any warrant having been issued by a judicial authority, has been placed in a state of arrest under the control of a judicial authority, or who has been served with a summons to appear before Court.

Such a person shall be considered as the accused during all stages of the proceedings, until such time as the judgment of conviction or acquittal has become final, or until it has been decided not to proceed further with the case, which shall be equivalent to an acquittal, or until the decision to close the case is confirmed.

2. The accused is presumed innocent until the conviction has become final.

3. An accused, after having been finally convicted or acquitted or after orders not to proceed with the case have been lawfully given, cannot be charged again on the same facts, even if those

facts may be regarded as constituting a different offence, except under the provisions of the following paragraph of this Article or under the provisions of paragraph 2 of Article 77.

4. If an accused has been found guilty of an act which has had a consequence constituting a different and more serious offence, then the accused can be charged again if such consequence had not occurred or was not known to the Court at the time of conviction.

5. In those proceedings for which a written authorization is necessary, such authorization shall be requested by the Attorney General before any warrant is issued against the accused. If the accused has been caught in the act of committing an offence (*in flagrante delicto*), the authorization shall be obtained immediately.

Article 14

The Injured Party

1. For the purposes of this Code, unless the context indicates otherwise, the term «injured party» shall mean the person who is injured by the offence, or his legal representative.

2. The injured party may apply to the Court in order to recover from the accused damages for any civil liabilities arising from the offence.

3. Petitions under paragraph 2 of this Article shall be submitted to the Court, in written or oral form, before the beginning of the summing up of the case by the prosecution as provided in Article 119.

Article 15

The Defence

1. The accused may be defended by one or more defence Counsels.

2. In the cases indicated in sub-paragraph (b) of paragraph 2 of Article 14 of the Law on the Organization of the Judiciary, the Court shall appoint an *ex officio* defence Counsel for the accused whenever the accused has not appointed his own defence Counsel.

3. The appointment of an *ex officio* defence Counsel shall not be refused without reasonable justification.

4. Where there is no conflict of interest, two or more accused may be represented by a single defence Counsel.

5. An accused who has been arrested shall have the right to confer freely with his defence Counsel at all stages of the proceedings.

6. The injured party may be represented by one Counsel only.

7. A Counsel may act on behalf of and appear for the party he represents, except when that party must appear in person.

Article 16

Duties of the Defence Counsel towards the Accused

1. A defence Counsel shall not, without reasonable cause, abandon his duties as a defence Counsel nor absent himself from hearings in Court in such a way that the accused is deprived of legal assistance.

2. If any defence Counsel violates the provision of paragraph 1 of this Article, the Court may order that he:

- a) pay a sum of money not exceeding Sh. So. 5,000/- to the accused as compensation; and
- b) pay a sum of money, not exceeding Sh. So. 2,000/-, to the State Treasury; or
- c) be suspended from practising his profession for a period not exceeding one year.

3. The abandonment of his duties by a legal Counsel for an injured party shall not in any case prevent the proceedings from continuing.

CHAPTER II

Information, Complaints and Reporting of Offences, Police Investigations, Suppression of Offences

Section I

INFORMATION, COMPLAINTS AND REPORTING OF OFFENCES

Article 17

Authorities to whom Complaints and Reports regarding Offences shall be made

Information, complaints and reports of offences shall be made to a Judge, to the Office of the Attorney General or to any Police Officer.

Article 18

Reporting of certain of Classes of Offences

A public officer or a person entrusted with a public service who becomes aware of the commission of an offence in respect of which proceedings are initiated by the State shall immediately report the offence.

Article 19

Reports by Members of the Medical Profession

A member of the medical profession who renders professional services to any person who appears to have been involved in an offence in respect of which proceedings are initiated by the State shall report the matter immediately. This provision shall not apply when the report would expose the person assisted to criminal proceedings.

Article 20

Reports by the Public

1. Every citizen who has knowledge of the commission of an offence against the Personality of the State for which the law prescribes the punishment of death or life imprisonment shall immediately report the offence.

2. Any person, even if he is not the injured party, who has knowledge of the commission of an offence in respect of which proceedings are initiated by the State, may report the offence.

Article 21

Complaints

1. The person injured by an offence other than those for which proceedings are initiated by the State may submit a complaint for the institution of proceedings in accordance with the provisions of Article 84 of the Penal Code.

2. The right of making complaints may not be exercised when the injured party has:

- a) expressly or tacitly renounced such right;
- b) started civil proceedings for restitution or recovery of damages;
- c) reached a settlement of the damage arising from the offence.

Article 22

Form of the Reports, Information and Complaints

1. Information, a report or complaint relating to the commission of an offence may be in written or oral form and:
 - a) if in written form, shall be signed by the person concerned;
 - b) if in oral form shall, by the authority receiving it, be:
 - i) recorded;
 - ii) read over to the person concerned, and
 - iii) signed by such person.
2. The provisions of the preceding paragraph shall be observed insofar as applicable to the withdrawal of the complaint or the refusal to accept the withdrawal of the complaint.

Section II

POLICE INVESTIGATIONS

Article 23

Definitions

1. For the purposes of this Code, unless the context indicates otherwise, the term «Police» shall include:
 - a) the Police Force;
 - b) the Finance Guards;
 - c) any other military or para-military Service and any civil organ of the State which is required by law to collect information about, and to enquire into, specified types of offences and to provide the proof necessary for the application of the penal law.
2. For the purposes of this Code, unless the context indicates otherwise:
 - a) the term «Police Station» shall include a territorial or special unit of one of the Forces or Services referred to in paragraph 1 of this Article;
 - b) the term «Police Officer» shall mean every member of the Forces or Services referred to in paragraph 1 of this Article.

Article 24

Investigations

1. A Police Officer in charge of a Police Station who receives, in the manner provided in the previous section or in any other way, information relating to the commission of an offence shall immediately:

- a) notify the Office of the Attorney General and the competent Court;
- b) conduct, either personally or through his subordinates, such investigation of the alleged offence as he shall consider necessary.

2. The Police Officer who undertakes the investigation may:

- a) examine any person whom he believes to be acquainted with any of the circumstances of the case and,
- b) record, in accordance with the provisions of sub-paragraph b) of Article 22, any statement made by any person so examined.

3. No statement recorded during the course of the investigation shall be used in any criminal proceedings against the person making the statement unless it falls within the meaning of a confession as provided in this Code.

4. When, during the course of investigation, it appears necessary to obtain a warrant of arrest or search or seizure, the Police Officer undertaking the investigation shall apply to the competent Court for such warrant, at the same time informing the Office of the Attorney General.

5. In case of urgent necessity the Police Officer undertaking the investigation may, without a warrant:

- a) arrest a person suspected of committing a crime, in accordance with Article 38;
- b) undertake a search or seizure, in accordance with Article 58.

Article 25

Diary of Investigation

1. The Police Officer undertaking the investigation shall daily record the details of the investigation, in the appropriate diary, mentioning specifically:

- a) the date of the beginning and end of the investigation;

- b) the action taken during the investigation;
 - c) the circumstances arising from the investigation;
 - d) the evidence obtained.
2. Any warrants or orders received from or any superior, a Court or the Office of the Attorney General, shall likewise be recorded.

Article 26

Closure of Investigation

1. Police investigation shall be brought to a conclusion without any unjustified delay.
2. The Police Officer in charge of a Police Station, as soon as the investigation has been concluded, shall prepare an accurate report containing:
 - a) the facts of the case, and any surrounding circumstances which may affect the criminal proceedings;
 - b) details of the evidence obtained;
 - c) personal details or any other information useful in identifying:
 - i) the accused,
 - ii) the injured party,
 - iii) any person having information concerning the circumstances of the offence.
3. The report called for in the preceding paragraph shall be sent forthwith to the Office of the Attorney General together with:
 - a) the investigation diary;
 - b) the records relating to the investigation;
 - c) material objects seized in the course of the investigation.

Section III

ASSISTANCE IN THE SUPPRESSION OF OFFENCES

Article 27

Assistance from Members of the Public

Every person, when lawfully and reasonably so requested, in case of urgent necessity shall lend assistance to a Judge, to the Office of the Attorney General or to a Police Officer, in order to:

- a) take into custody or prevent the escape of any person whom the said authorities are authorized to arrest;
- b) prevent or suppress an offence,

PART II

**METHODS OF SECURING THE APPEARANCE OF ACCUSED
PERSONS IN COURT**

CHAPTER I

Arrest

Section I

ARREST IN GENERAL

Article 28

Arrest

An arrest, with or without a warrant, may only be made in those cases and in the manner expressly provided by law.

Article 29

Execution of Arrests

1. A person to be arrested shall be so informed, together with the reasons for the arrest.

2. If the person to be arrested:

- a) forcibly resists the arrest;
- b) attempts to escape,

the person making the arrest may use all lawful means necessary to effect the arrest.

3. A person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

4. If it is absolutely certain that an arrest was made by mistake, the person arrested shall be released immediately, even by the person who carried out the arrest.

Article 30

Entry Into private Places for the Purpose of Arrest

1. Whoever is required to arrest a person on the grounds of:
 - a) such person being caught in the act of committing an offence (*in flagrante delicto*);

b) a warrant of arrest;

may enter without warrant any place, including a dwelling house, where the person to be arrested has taken refuge provided:

- i) there is an urgent necessity so to do, and
- ii) there are grounds for belief that a search warrant cannot be obtained without affording the person to be arrested the opportunity to escape or the opportunity to destroy or interfere with items of evidence.

2. If the person in charge of a place refuses to allow such entry, force may be used to effect the entry.

3. When the place to be entered under this Article is occupied by a woman who according to custom does not appear in public, the person intending to make the arrest shall, before entry, allow such woman every reasonable opportunity to retire to a suitable place or to cover herself adequately.

Article 31

Search of Arrested Persons

1. A person making an arrest may search without warrant:

- a) the person arrested;
- b) the place in which such arrest was made;
- c) any place which the person to be arrested entered while trying to evade arrest.

2. A person making a search may seize any article found on the person arrested or in the place searched which may be used as evidence in the case.

Article 32

Provisions relating to Arrest to be strictly Observed

1. A Judge to whom an arrested person is taken, in accordance with Articles 39 and 45, shall enquire whether:

- a) the provisions of Section II and III of this Chapter were strictly followed in making the arrest, and
- b) there has been any unjustifiable delay in bringing the arrested person before him.

2. If the Judge finds any violation of the said provisions or finds unjustified delay in the presentation of the arrested person, he shall:

- a) cause criminal proceedings to be instituted against the person responsible, if such violation or delay amounts to an offence;

- b) order that disciplinary action be taken by the competent authority against the person responsible, if the violation or delay does not amount to an offence.

Article 33

Reporting of Arrests

Every Police Officer in charge of a Police Station shall immediately report to the Office of the Attorney General and to the competent Court:

- a) the arrest of any person, and
- b) the release of any arrested person,

which takes place within the limits of the area of his command, stating the reasons therefor.

Section II

ARREST WITHOUT WARRANT

Article 34

Person who may arrest without a Warrant

1. A Judge, the Attorney General and his Deputies and a Police Officer may arrest without warrant, in accordance with the provisions of this Section.

2. A private person may arrest without warrant in the cases indicated in Article 35. A private person who makes such arrest shall immediately take the arrested person to a Police Officer.

Article 35

Mandatory Arrest of Persons caught in the Act of committing a Crime (in Flagrate Delicto)

A person shall be arrested without warrant if caught in the act of committing (*in flagrante delicto*):

- a) any offence, attempted or committed, against the Personality of the State for which the punishment is imprisonment or a more serious punishment;
- b) any offence, attempted or committed, of:
 - i) escape from lawful custody;
 - ii) devastation and pillage;
 - iii) slaughter;

- iv) knowingly causing epidemics, poisoning of water or foodstuff;
 - v) carnal violence, acts of lust committed with violence, unnatural offences committed with violence, abduction for purposes of lust;
 - vi) abortion without consent;
 - vii) murder, infanticide, death caused to a person with his own consent with aggravating circumstances, grievous or very grievous hurt, pre-intentional homicide, affray with aggravating circumstances;
 - viii) insult with aggravating circumstances in respect of which proceedings are initiated by the State;
 - ix) reduction to slavery, dealing and trading in slaves, enforced subjection;
 - x) seizure of a person;
 - xi) theft in respect of which proceedings are initiated by the State, robbery, extortion, killing or injuring of animals belonging to another in respect of which proceedings are initiated by the State.
- c) any other offence for which the law prescribes mandatory arrest of a person caught *in flagrante delicto*.

Article 36

Discretionary Arrest of Persons caught in Flagrante Delicto

A person may be arrested without warrant when caught *in flagrante delicto* for an offence:

- a) punishable with maximum imprisonment of more than one year or with a heavier penalty;
- b) punishable with imprisonment and the offence relates to:
 - i) drunkenness,
 - ii) firearms, ammunition or explosives,
 - iii) games of chance,
 - iv) unjustified possession of valuables, animals, altered keys, or pick-locks,
 - v) harmful substances or narcotic drugs;
- c) punishable with imprisonment where the offence is committed by:
 - i) a person released on bail,
 - ii) a recidivist under the terms of Article 61 of the Penal Code;

d) for which arrest without warrant is authorized by law.

2. In the cases referred to in the preceding paragraph, where the offence may only be prosecuted on the complaint of the injured party, arrest *in flagrante delicto* may be made when the injured party reports to the nearest Judge, Office of the Attorney General or Police Officer that he has the intention to make a complaint for such offence.

Article 37

Definition of «Flagrante Delicto»

1. For the purposes of this Code, unless the context indicates otherwise, the expression «a person caught *in flagrante delicto*» shall mean a person who:

- a) is caught in the act of committing an offence;
- b) is pursued, immediately after the commission of the offence, by:
 - i) a Police Officer, or
 - ii) an injured party, or
 - iii) any other person;
- c) is caught, immediately after the commission of the offence, with objects or traces which clearly show that he committed the offence.

2. The following offences shall be regarded as committed *in flagrante delicto*:

- a) any permanent offence until such time as the permanence of the offence has ceased;
- b) escape from lawful custody until such time as the fugitive has been arrested or surrenders.

Article 38

Arrest of Persons Suspected of having committed an Offence

A Police Officer may arrest a person without warrant:

- a) in case of urgent necessity when there are grounds to believe that:
 - i) the person to be arrested has committed an offence for which the maximum punishment is imprisonment for more than 2 years or a heavier punishment;
 - ii) a warrant of arrest cannot be obtained in time;
 - iii) it is likely that the person to be arrested will not be found if he is not arrested immediately;

- b) under the provisions of paragraph 2 of Article 50.

Article 39

Person Arrested without Warrant to be taken before a Judge

1. A person arrested without warrant shall be taken immediately, and in any case not later than 48 hours from the time of his arrest, before the competent Court or before the Court nearest to the place of arrest: provided that the time necessary to travel to the Court from the place of arrest shall not be included in the 48 hours.
2. A Police Officer taking an arrested person before a Judge shall, at the same time, prepare and submit to him a summary report showing:
 - a) the facts of the case and the reasons for the arrest;
 - b) details of the evidence obtained;
 - c) when possible, the personal details of:
 - i) the arrested person,
 - ii) the injured party,
 - iii) any person having information concerning the circumstances of the offence.
3. Having examined the summary report, the Judge:
 - a) if the case falls within the provisions of paragraph 2 of Article 70, shall order that no proceedings shall be instituted against the person arrested, in accordance with the provisions of Article 77, and order the immediate release of the person arrested;
 - b) if:
 - i) the offence committed is one for which a warrant of arrest cannot be issued in accordance with the provisions of Articles 42 and 43; or
 - ii) the arrest was not carried out in conformity with the provisions of Articles 35, 36, 38 or 50; the Judge shall order the immediate release of the person arrested;
 - c) in other cases shall confirm the arrest and remand the arrested person to custody, in accordance with the provisions of Article 46, unless he releases him on bail in accordance with Articles 59 and 60.
4. If the arrest is not confirmed by the Judge within a period of 8 days from the day when it took place, the arrest shall be considered as rescinded and the arrested person shall be released.

5. In the cases referred to in sub-paragraph (c) of paragraph 3 of this Article, the Judge shall:

- a) explain to the person arrested the substance of the charge;
- b) inform the arrested person that, at the present stage of the proceedings, he is not required to make any statement, but that any statement which he does make may be used as evidence against him;
- c) record any statement made by the arrested person.

6. A Judge shall not question the arrested person unless:

- a) the arrested person wishes to make a statement, and
- b) any such questions asked by the Judge are for the purpose of clarifying any statement so made by the arrested person.

7. Any measure taken by a Judge in accordance with the provisions of this Article shall be immediately notified, by the Police Officer who has brought the arrested person before the Judge, to:

- a) the Office of the Attorney General, and
- b) the competent Court, if the arrested person had not been brought before a Judge of such Court.

Section III

ARREST WITH WARRANT

Article 40

Condition required for the Issue of a Warrant of Arrest and Authorities empowered to issue such Warrant

1. A warrant of arrest may be issued when there are grounds to believe that:

- a) an offence has been committed;
- b) the offence was committed by the accused person.

2. A warrant of arrest may only be issued by:

- a) the competent Judge, up to the time of the commencement of the trial in a Court of first instance;
- b) the President of the competent Court, at any other stage of the proceedings.

Article 41

Form of Warrant of Arrest

1. Every warrant of arrest shall be issued in duplicate, and shall contain:

- a) the name of the Court issuing the warrant;
- b) the date on which the warrant is issued;
- c) the personal details of the accused, or, if these are not known, any other indication by which he can be identified with reasonable certainty;
- d) the essential elements constituting the offence for which the arrest has been ordered;
- e) the signature of the Judge and the seal of the Court which issued the warrant.

2. No person arrested under a warrant shall be released solely on the grounds that the warrant is defective in form.

Article 42

Cases in which the Issue of a Warrant of Arrest is mandatory

1. A warrant of arrest shall be issued against a person accused of:

- a) any of the offences referred to in Article 35;
- b) an offence for which the maximum punishment is imprisonment for not less than 10 years, or a heavier penalty;
- c) any other offence for which a warrant of arrest is mandatory by law.

2. A warrant of arrest shall be issued also:

- a) in accordance with the provisions of paragraph 4 of Article 47;
- b) in accordance with the provisions of paragraph 1 of Article 63.

Article 43

Cases in which the Issue of a Warrant of Arrest is discretionary

A warrant of arrest may be issued:

- a) for an offence for which the minimum punishment is imprisonment for not less than 6 months;
- b) for any other offence for which the issue of a warrant of arrest is authorized by law;

- c) against a person who has received a summons to appear before a Court:
 - i) if there are grounds to believe that such person has left or is about to leave the territory of the State, or intends not to appear before the Court; or
 - ii) if such person has failed, without justifiable reason, to appear before the Court at the time and place specified in the summons or in any subsequent order.

Article 44

Execution of Warrant of Arrest

1. Every Police Officer shall execute a warrant of arrest as soon as possible.

2. If the accused is:

- a) a pregnant woman or woman nursing her own child;
- b) a person in a very serious state of ill-health;

the Court which issued the warrant may order a stay of execution of the warrant until such time as the cause of the stay of execution no longer exists.

3. Unless there is an urgent necessity, a warrant of arrest shall not be executed in a private dwelling house between the hours of 6 p. m. to 7 a. m.

4. A Police Officer who executes a warrant of arrest shall:

- a) inform the person to be arrested of the substance of the warrant;
- b) serve the warrant on the person to be arrested as soon as possible.

Article 45

Person arrested on a Warrant of Arrest to be taken before a Judge

1. Unless he is released on bail in accordance with the provisions of paragraph 2 of Article 62, a person arrested on a warrant of arrest shall, without unnecessary delay, be taken before:

- a) a competent Judge, or
- b) a Judge of the Court nearest to the place of the arrest, if the competent Judge is situated more than 50 kilometres from such place.

2. Insofar as applicable, the provisions of sub-paragraph (c) of paragraph 3 and of paragraphs 5, 6 and 7 of Article 39 shall apply, provided that, if bail is granted by a Court other than the competent Court, such decision may be modified or revoked by the competent Court.

Section IV

CUSTODY BEFORE TRIAL

Article 46

Remand of Accused Person to Custody

An order remanding an arrested person to custody, issued by a competent Judge or by the competent Court, shall provide that the accused:

- a) shall be detained in prison or elsewhere;
- b) shall be brought before a Court in accordance with the conditions of the order.

Article 47

Duration of Custody before Trial

1. Unless the Court has ordered the trial of the accused in accordance with sub-paragraph b) (i) of Article 75, the accused shall be released when the period of custody has exceeded:

- a) 90 days, if the offence falls within the jurisdiction of the Assize Section or the Military Penal Section of the Regional Court, and the punishment laid down by law is death or life imprisonment;
- b) 60 day for other offences which fall within the jurisdiction of the Assize Section or of the Military Penal Section of the Regional Court;
- c) 45 days when the offence falls within the jurisdiction of the General Section of the Regional Court;
- d) 15 days when the offence falls within the jurisdiction of the Criminal Section of the District Court,

provided that the Court of Appeal, on application from the Attorney General or one of his Deputies, may allow the period of custody to be increased for a further period not more than the maximum period of custody provided above for each type of offence.

2. The period of custody shall, for all purposes, commence on the day on which the accused was arrested.

3. Until the date of the trial has been fixed, an accused in custody shall be brought before the Judge every seven days. In any case when this provision has been violated the Judge shall, in accordance with Article 32, take action against the person responsible.

4. When releasing an accused person in accordance with paragraph 1 of this Article, the Judge may impose on the accused any conditions which he deems appropriate to ensure the appearance of the accused before the competent Court.

If:

- a) the accused breaks any conditions imposed upon him, or
- b) there are grounds to believe that the accused has left or is about to leave the territory of the State,

a warrant for his arrest shall be issued and thereafter the time-limit prescribed for custody shall begin to run again.

CHAPTER II

Summons to Appear before a Court

Article 48

Conditions for the Issuance of a Summons and Authorities empowered to issue it

1. A summons to appear before a Court shall be issued when there are grounds to believe that:

- a) an offence has been committed;
- b) the accused committed the offence.

2. A summons to appear before the Court may only be issued by a competent Judge, in accordance with sub-paragraph b) (2) of Article 75. Such summons shall consist of an order, directed to an accused who is not in custody, to appear before the competent Court, at the time and in the place stated, to answer a specific charge.

Article 49

Form of Summons

Every summons to appear before a Court shall be issued in duplicate and shall contain:

- a) the name of the authority issuing it;
- b) the date on which the summons is issued;

- c) personal details of the accused, or any other indications by which he can be identified with reasonable certainty;
- d) the essential facts constituting the offence for which the summons to appear has been issued;
- e) the name of the Court before which the accused must appear, together with the time and place of appearance;
- f) the signature of the authority issuing the summons and the seal of the Court.

Article 50

Obligation to furnish information regarding identification

1. A person against whom a summons to appear has been issued must provide full personal details of himself, together with his address, if so required by a Police Officer.

2. A Police Officer may arrest without warrant any person who, having been lawfully requested to provide his personal details referred to in paragraph 1:

- a) refuses to provide full personal details of himself, together with his address;
- b) provides details which the Police Officer requesting them has grounds to believe to be false.

3. A person arrested in accordance with the preceding paragraph shall be released from custody, by the person who arrested him or by any other competent authority, as soon as the correct personal details and address are known. If for any reason such person is not released, then such person shall be brought before a Judge in accordance with the provisions of Article 39.

Article 51

Service of Summons to appear

- 1. A summons to appear shall be served by:
 - a) a Police Officer;
 - b) a Court Officer;
 - c) any other person as the Court may direct.

2. Service of the summons shall be executed by delivering one of the duplicates of the summons to the accused who shall, if so required by the serving officer, sign a receipt for it on the back of the other duplicate. If the accused refuses to accept the summons or to sign a receipt for it, the officer serving the summons shall record the fact on the summons, which shall then be deemed to have been served.

3. If, despite the exercise of due diligence, the accused cannot be found, the summons shall be served by leaving one of the duplicates for delivery to the accused with:

- a) a member of his family,
- b) an employee who lives in his house, or
- c) his employer.

Whoever accepts the summons shall, at the request of the officer serving it, sign his name on the back of the other duplicate. Under no circumstances can a summons be delivered in accordance with the provisions of this paragraph to a person who:

- i) is less than 14 years of age;
- ii) is clearly of unsound mind;
- iii) is clearly in a state of drunkenness;
- iv) is an injured party in the case.

4. If, despite the exercise of due diligence, it is not possible to serve the summons in accordance with the provisions of paragraphs 2 and 3 of this Article, the summons shall be served by affixing one of the duplicates to some conspicuous part of the house or place in which the accused ordinarily resides.

5. If the accused is in the active service of the Government or other public body, the summons may be sent for service to the head of the office in which the accused is employed. The head of the office shall cause the summons to be served in the manner provided in paragraph 2 of this Article, and shall cause one of the duplicates to be returned to the issuing authority.

6. When the accused is outside the territorial jurisdiction of the competent Court, the summons shall be sent to the Court within whose territorial jurisdiction the person to be summoned is to be found for service in accordance with this Article.

CHAPTER III

MISCELLANEOUS MEASURES

Section I

SEARCH AND SEIZURE

Article 52

Search and Seizure

Search and seizure, whether with or without a warrant, shall only be undertaken in the cases and in the manner prescribed by law.

Article 53

Issue of Warrant of Search and Seizure

A search warrant, or a warrant of seizure, may only be issued by:

- a) a competent Judge, up to the time of commencement of proceedings by a Court of first instance;
- b) the President of the competent Court at any other stage of the proceedings.

Article 54

Form of Warrant of Search and Seizure

Every warrant of search or seizure shall be issued in duplicate and shall contain:

- a) the name of the issuing authority;
- b) the date on which the warrant is issued;
- c) reasons for the issue of the warrant;
- d) personal details of the person to be searched or wanted or, if these are not known, any nicknames or other indications by which he can be identified;
- e) details and whereabouts of the place or object to be searched;
- f) a description of the object to be seized and of any person with control over possession of such object;
- g) the signature of the authority issuing the warrant, and the seal of the Court.

Article 55

Cases in which Warrants to Search or Seize may be issued

1. A search warrant may be issued:
 - a) when there are grounds to believe that:
 - i) an object pertinent to an offence may be found on some specified person, or on or in some specified place or object;
 - ii) on search of some specified place, a person to be arrested may be found therein;
 - iii) on search of some specified place, a person unlawfully detained may be found therein;
 - b) when it is necessary to search any specified person, place or thing, for the purpose of finding any material evidence which may have a bearing on the offence.

2. A warrant of seizure may be issued when there are grounds to believe that a certain object pertinent to an offence may be found and seized.

3. Any object, which is pertinent to an offence and is found during a search, may be seized on the strength of a search warrant, when the person who has control over or possession of the object to be seized refuses to deliver it. The warrant of seizure shall be deemed to include the power to search, to the extent necessary to fulfil the execution of the warrant of seizure.

Article 56

Execution of Warrants of Search and of Seizure

1. A warrant of search or of seizure may not be executed in a private dwelling house between the hours of 6 p. m. and 7 a. m. unless:

- a) there is some urgent necessity for its execution; or
- b) the issuing authority has authorized its execution at any hour.

2. One of the duplicates of the warrant shall be given to the person to be searched or to the person in charge of the place or object to be searched or seized.

Article 57

Other Rules to be observed in Search and Seizure

1. The person making the search or seizure may:

- a) use reasonable force to carry out the search or seizure if resistance or refusal to allow the search or seizure is offered;
- b) search any person present in the place being searched, if there are grounds to believe that such person is concealing an object pertinent to the offence.

2. Any person subject to search, or any person in charge of a place subject to search or of an object subject to search or seizure, shall afford all reasonable facilities for the execution of such search or seizure.

3. In carrying out the search of a person:

- a) decency shall be fully observed, and
- b) the search of a woman shall only be undertaken by a woman.

4. If a woman is in charge of the place to be searched, or of the object to be searched or seized, and such woman does not, according to custom, appear in public, such woman shall be given every reasonable opportunity to retire to a suitable place or to cover herself adequately.

5. No papers or documents which are in the custody of Counsel or technical consultants in connection with the performance of their duties shall be seized, unless such papers or documents are the subject, instrument or fruit of the offence.

Article 58

Search and Seizure without Warrant — Confirmation by the Judge

1. A Police Officer in charge of investigations in accordance with Article 24 may undertake a search or seizure, without warrant, in case of urgent necessity, when there are grounds to believe that during the time required to obtain such warrant:

- a) material evidence may be destroyed or altered;
- b) the wanted person may abscond.

2. A Police Officer who has undertaken a search or seizure without warrant shall forthwith so inform the competent Judge or a Judge of the Court nearest to where the search or seizure took place, and also the Office of the Attorney General, stating:

- a) the reasons necessitating, and
- b) the results of

such search or seizure.

3. If such search or seizure without warrant is not confirmed by a Judge within 8 days, such search and seizure shall be deemed to have been unauthorized and shall be null and void.

4. Insofar as applicable, the provisions of Article 32 and of paragraph 7 of Article 39 shall be observed in regard to searches or seizures undertaken without a warrant.

Section II
RELEASE ON BAIL

Article 59

Bail

1. Release on bail shall mean:
 - a) refraining from arresting an accused person against whom a warrant of arrest has been issued, in the cases referred to in paragraph 2 (a) of Article 60;
 - b) releasing a person who has been lawfully arrested.
2. Release on bail may be granted:
 - a) subject to the execution of a bond:
 - i) by the accused person, or
 - ii) by other persons, or
 - iii) by both the accused person and by other persons jointly, for the specific purpose of ensuring the appearance of the accused in the competent Court;
 - b) subject to any other conditions which the Court may deem fit.
3. Except as otherwise provided in this Code, bail shall not be granted in those cases where the issue of a warrant of arrest is mandatory.

Article 60

Grant of Bail

1. Except as otherwise provided in this Code, bail may only be granted:
 - a) by a Judge before whom an arrested person has been brought, or by a competent Judge up to time of commencement of proceedings in a Court of first instance;
 - b) by the President of a competent Court, at any other stage of the proceedings.
2. In those cases for which bail is allowed, bail may be granted:
 - a) by virtue of an order allowing bail contained in the warrant of arrest, or
 - b) at any later stage in the proceedings, in accordance with the provisions of paragraph 2 of Article 59.

Article 61

Type and Amount of the Bond

1. A bond shall consist of an amount of money which the guarantor, in accordance with the directions of the Court granting the bail, shall:
 - a) deposit with the Court, or
 - b) guarantee to pay if any of the conditions of the bail are broken.
2. On granting bail, a Court shall determine:
 - a) the number and the financial position of the guarantors;
 - b) the amount of the bond;
 - c) whether the amount:
 - i) shall be deposited in Court, or
 - ii) shall be paid in cases of violation of the obligations relating to the bail.

The amount of the bond shall be fixed with due regard to the circumstances of the parties concerned, and shall not be excessive.

Article 62

Release dependent upon Fulfilment of Conditions

1. A person shall only be released on bail provided the conditions laid down in regard to the bond have been fulfilled.
2. Where the warrant of arrest contains an order allowing bail, the person executing the warrant shall refrain from arresting the accused or shall release him and shall not bring him before a Court, in accordance with Article 45, provided the conditions relating to the bond are fulfilled in time.

Article 63

Revocation of Bail

1. The Court competent to grant bail, in accordance with the provisions of paragraph 1 of Article 60, may order the revocation of the bail and may issue a warrant of arrest against the accused if:
 - a) the accused breaks any of the conditions imposed upon him;
 - b) there are grounds to believe that the accused has left, or is about to leave, the territory of the State;

- c) the amount of the bond:
 - i) is not sufficient because of fraud, mistake or similar cause;
 - ii) has subsequently become insufficient for any other reason.
- d) any of the guarantors:
 - i) applies, for any reasonable cause, to be released from the bond;
 - ii) has died;
 - iii) must leave, or there are grounds to believe he has left, the territory of the State.

2. If bail has been revoked for any of the reasons stated in sub-paragraphs c) and d) of the preceding paragraph, bail may be granted again to the accused.

3. A guarantor, who has requested to be released from a bond, shall only be so released after the accused has been arrested in accordance with paragraph 1 of this Article.

Article 64

Forfeit of Bond Money

1. If any conditions of bail are broken, the Court granting the bail, in accordance with paragraph 1 of Article 60, may order that the sum deposited or guaranteed shall be paid over in whole or in part to the Treasury.

2. If a guarantor fails to pay, without reasonable justification, within the time-limit set by the Court the sum which the Court has ordered to be paid in accordance with paragraph 1 of this Article, proceedings shall be instituted against the guarantor for the recovery of the sum in conformity with the procedure applicable to the execution of civil judgments.

Section III

PROCEDURE FOR SAFEGUARDING PERSONAL LIBERTY

Article 65

Search for Persons unlawfully deprived of personal Liberty

A competent Judge, when he has grounds to believe that any person is deprived of his personal liberty and that such deprivation may constitute an offence, may issue a search warrant, in accordance with the provisions of paragraph 1 of Article 55,

for the purpose of finding such person. If any such person is found, the person undertaking the search shall immediately take such person before a Judge, who shall take such measures as may be necessary or desirable, taking into account the relevant circumstances.

Article 66

Habeas Corpus

The Supreme Court, or the Court of Appeal within the limits of its own jurisdiction, may order that any person held in arbitrary detention or in cases other than those provided by law shall be set at liberty at once.

Article 67

Order to produce a Person

A Regional Court or District Court may order, when it considers it necessary, that any person who is found within the limits of its jurisdiction shall be brought before it to be dealt with according to law.

Section IV

RECORD OF CONFESSIONS

Article 68

Rules to be observed by a Judge receiving a Confession

1. A Judge may receive a confession made to him at any time.
2. A Judge shall not receive a confession unless he is convinced, by examination of the person making it, that the confession is being made voluntarily.
3. The confession shall be:
 - a) recorded in writing in full by the Judge;
 - b) read over by the Judge to the person making the statement;
 - c) signed by:
 - i) the person making the confession,
 - ii) the Judge;

- d) certified by the Judge, before he signs it, to have been recorded strictly in compliance with the provisions of this Article.

4. Non-compliance with the provisions of this Article shall make the confession null and void, and the Court may so declare on its own motion or on the request of one of the parties at any stage of the proceedings.

PART III

PRE-TRIAL PROCEDURE

CHAPTER I

Responsibilities of the Attorney General

Article 69

Duties of the Attorney General

Except as otherwise provided by law, the Attorney General shall initiate penal proceedings against an accused person.

Article 70

Responsibilities of the Attorney General before a Trial

1. On receiving a report of Police investigations in the manner laid down in paragraph 3 of Article 26, the Attorney General:

- a) if he is satisfied that the evidence collected provides a *prima facie* case that an offence has been committed and that it was committed by the accused, shall:
 - i) frame a charge in accordance with the provisions of Article 71;
 - ii) present such charge before the competent Court;
 - iii) request the Court to fix a date for the trial and to take any other necessary steps for purposes of trial, except in the cases laid down in the following paragraph;

- 42
- b) if he is satisfied that the evidence collected does not provide a *prima facie* case that an offence has been committed and that it was the accused who committed it, may:
 - i) order further investigations to be made, if he considers that such investigations will bring more evidence to light, or
 - ii) otherwise proceed to close the case in accordance with the provisions of Article 72.
2. When it is evident that:
- a) an offence was not committed;
 - b) the offence was not committed by the accused;
 - c) the author of the crime is not liable:
 - i) because, in accordance with the provisions of Article 50 of the Penal Code, he was by reason of infirmity, in a state of mind such as to preclude capacity of understanding and of volition;
 - ii) because, in accordance with the provisions of Article 59 of the Penal Code, he had not, at the time of committing the crime, attained 14 years of age;
 - d) the offence has been extinguished:
 - i) by the death of the accused, under Article 143 of the Penal Code;
 - ii) by amnesty, in accordance with Article 144 of the Penal Code;
 - iii) when, in accordance with Article 145 of the Penal Code, in case of offences punishable on complaint of the injured party, the complaint has been withdrawn and the withdrawal has not been expressly rejected under the terms of Article 87 of the Penal Code, or the injured party has died;
 - iv) by the compounding of a contravention under the terms of Article 146 of the Penal Code;
 - e) proceedings cannot be instituted against the accused:
 - i) because, in accordance with the provisions of Article 81 of the Penal Code, the offence concerned is one that may only be punishable upon complaint of an injured party and no such complaint has been made;

- ii) because, in accordance with paragraph 3 of Article 13 of this Code, he has, on the same facts, been finally convicted or acquitted, or orders for the case not to be proceeded with have been lawfully given;
- iii) because, under the terms of paragraph 5 of Article 13 of this Code, the necessary authorization to prosecute was not granted or was denied;
- iv) because, in accordance with the provisions of Article 73 of this Code, penal action could not be initiated because of the expiration of the time-limits laid down in the aforesaid article;

then the Attorney General, stating his reasons therefor and producing necessary evidence thereof, shall request the competent Court to order that proceedings be terminated and any other necessary steps be taken.

Article 71

Form of Charge

1. A charge shall be in duplicate and shall contain:
 - a) the name of the authority making the charge;
 - b) the date on which it is made;
 - c) the personal details of the accused or, if these are not known, other indications by which he can be identified with reasonable certainty;
 - d) the offence charged, together with a plain, concise statement of the acts constituting the offence, including the time and place of the commission of the offence, and the person against whom, or the thing in respect of which, the offence was committed;
 - e) the law, and the articles of the law, against which the offence is said to have been committed;
 - f) a statement of the aggravating circumstances, except for recidivism, and of circumstances which may warrant the application of security measures, with the indication of the articles of the law relating thereto;
 - g) the personal details of the injured party and of the person who appears to be acquainted with the circumstances of the offence;
 - h) the indication of whether the accused is held in custody;

- i) the signature of the authority who makes the charge, and the seal of the office.
2. When,
 - a) the accused is charged with more than one offence:
 - i) the charges shall be consecutively numbered;
 - ii) the provisions of sub-paragraphs d), e), f) and g) of the previous paragraph shall apply to each charge;
 - b) two or more persons are jointly charged:
 - i) the charge shall show the offence or offences with which each accused is charged;
 - ii) the provisions of sub-paragraphs c) d), e), f), g) and h) of the preceding paragraph shall apply in the case of each accused.

Article 72

Closing of the Case

1. Whenever a decision regarding the closing of a case, as provided for by sub-paragraph (b) (ii) of paragraph 1 of Article 70 has not been taken by the Attorney General himself, such decision shall be confirmed by the Attorney General. For such purpose the authority which took the decision of closing the case shall forward a copy of the decision to the Attorney General who may call for the whole file concerning the case.

2. The Attorney General may, whenever he does not think it fit to confirm such decision, cancel it and order that:

- a) proceedings be taken against the accused in accordance with the provisions of sub-paragraph a) of paragraph 1 of Article 70, or
- b) further investigation be made in accordance with the provisions of sub-paragraph (b) (i) of paragraph 1 of Article 70.

3. After confirmation by the Attorney General that a case shall be closed, in cases where confirmation is required, such decision to close the case shall be:

- a) sent to the competent Court which shall take the measures provided for in Article 76; and
- b) notified to the accused.

4. Apart from the cases provided for in paragraph 2 of this Article and where no cause for the extinction of the offence has occurred, the Attorney General may cancel the decision to close the case when fresh evidence has been received and such fresh

evidence, by itself or in conjunction with the previous evidence, makes it clear that an offence was committed and that it was the accused who committed it.

Article 73

Time-limits for the Commencement of criminal Proceedings

1. For the purposes of this Code, unless the context indicates otherwise, criminal proceedings shall be considered to have commenced against a person as soon as that person becomes an accused under the terms of paragraph 1 of Article 13.

2. Criminal proceedings:

- a) may be commenced at any time in cases in which the issue of a warrant of arrest is mandatory, in accordance with the provisions of paragraph 1 of Article 42;
- b) shall not be commenced in any other case, subject to the provisions of the following paragraph, after the expiry of the following time-limits from the date of offence:
 - i) 6 years, in the case of offences for which the maximum punishment is more than 5 years;
 - ii) 4 years, in the case of offences for which the maximum punishment is more than 3 years;
 - iii) 2 years, in the case of offences for which the maximum punishment is not more than 3 years;
 - iv) 6 months, in the case of offences punishable with fine only.

3. The time-limits prescribed in sub-paragraph b) of the preceding paragraph shall begin from:

- a) the day of the commission of the offence, in the case of offences described in Article 16 of the Penal Code as «Offences Committed»;
- b) the day on which the act or omission on the part of the offender has ceased in the case of attempted offences;
- c) from the day on which the offender ceased committing the offence in the case of permanent or continuing offences,

provided that, in the case of offences committed by public officers in the course of their duty, the time-limit shall begin from the day of the termination of their service in such capacity.

Article 74

Authorization to Prosecute

No prosecution may be undertaken without the prior authorization of the Minister of Grace and Justice against:

- a)
 - i) any member of the Judiciary, including assessors;
 - ii) the Magistrate of Accounts;
 - iii) a Regional Governor;
 - iv) a District Commissioner;
 - v) a Chairman of a Local Council,for offences committed in the exercise of their functions;
- b) any Police Officer, for offences committed in the course of duty and relating to the use of weapons or other means of physical coercion.

This provision shall apply to:

- i) the person performing the act;
- ii) the person ordering the act;
- iii) any person who, when lawfully requested, has given assistance in accordance with the provisions of Article 27.

CHAPTER II

Responsibilities of the Courts

Article 75

Fixing Date of Trial and other related Measures

The competent Judge, as soon as he has received the charge and the request to fix a date for hearing the case in accordance with sub-paragraph a) of paragraph 1 of Article 70, shall:

- a) fix the date for the hearing of the trial;
- b) issue:
 - i) the order to bring the accused before the Court, in accordance with the provisions of Article 79, if the accused is in custody;
 - ii) the summons to appear before the Court, in accordance with the provisions of Articles 48 and 49, if the accused is not in custody,

- c) direct that the order to bring the accused before the Court or the summons to appear:
 - i) be notified to the accused, in accordance with the provisions of Articles 79 and 51, with a copy of the charge attached;
 - ii) be communicated to the Attorney General by means of a copy;
- d) appoint a defence Counsel for the accused in the cases coming within the provisions of sub-paragraph b) of paragraph 2 of Article 14 of the Law on the Organization of the Judiciary, when the accused has not appointed his own defence Counsel, and direct that the appointment be communicated to the accused and the said defence Counsel;
- e) issue summonses, in accordance with Article 80, to:
 - i) the injured party;
 - ii) the witnesses indicated by the parties.

Article 76

Procedures relating to the Closing of the Case indicated by the Parties

The competent Judge, on receiving notice of a decision to close the case, in accordance with the provisions of paragraph 3 of Article 72, shall:

- a) if the accused is in custody, order his immediate release;
- b) if the accused is subject to some provisional security measures, in accordance with the provisions of Article 78, immediately order the revocation of such measures;
- c) if the accused is on bail, order:
 - i) the cancellation of the conditions imposed by the bail under the provisions of paragraph 2 of Article 59;
 - ii) release the guarantors from their bonds and return to them any deposit made by them with the Court, in accordance with the provisions of sub-paragraph a) of paragraph 1 of Article 61;
- d) if the accused was released because of the expiration of the time-limits established for custody, order the cancellation of the conditions imposed in accordance with paragraph 4 of Article 47.

Article 77.

Order for the Termination of Proceedings and related Measures

1. In the cases indicated in paragraph 2 of Article 70, the competent Judge, on request of the Attorney General or of the accused or on his own motion, shall:

- a) order that the proceedings be terminated giving the reasons therefor;
- b) take the measures provided for in Article 76 and order, in the cases provided for in the Penal Code, the application of security measures;
- c) direct that such order and related measures be:
 - i) notified to the accused, and
 - ii) communicated to the Attorney General by means of a copy.

2. In the cases indicated in paragraph 2 of Article 70, the order to close the case shall be equivalent to a judgment for the purposes of paragraph 3 of Article 13, provided that, even if it has become irrevocable, the order to close the case because of the death of the accused, or of lack of a complaint, or because the authorization to prosecute has not been granted, shall be no bar to the institution of penal action on the same facts or against the same persons, if death was reported in error or if the complaint or the authorization to prosecute has subsequently been duly made or granted.

Article 78

Provisional Application of Security Measures

In the cases indicated in Article 166 of the Penal Code, provisional application of security measures or revocation of such measures may be ordered by:

- a) the competent Judge, up to the time of commencement of proceedings in a Court of first instance;
- b) the competent Court, at any other stage of the proceedings.

Article 79

Order to bring the Accused before the Court

1. An order to bring the accused before the Court shall consist of an order, directed to the authority holding the accused in custody, that the accused shall be brought before the competent Court at the time and place stated, in order that such accused may answer a specific charge.

Insofar as applicable, the provisions laid down in Article 49 shall apply to the form of such order.

2. The order to bring the accused before the Court shall be sent to the authority holding the accused in custody. Such authority, after having recorded the order in the appropriate register, shall notify the accused of the order in the manner provided for in paragraph 2 of Article 51, and shall return one of the duplicates of the order served on the accused to the authority which transmitted it.

Article 80

Service of Summons on the injured Party and on Witnesses

1. A summons shall be served by means of an order addressed:

- a) to the injured party;
- b) to witnesses:
 - i) acquainted with the circumstances of the case;
 - ii) whose opinion on questions which require particular knowledge of science or art is found necessary or opportune;
 - iii) in possession of anything which may be called upon to be produced as evidence,

directing them to appear before the competent Court at the time and place indicated.

2. A summons may be issued:

- a) on request of one of the parties in the case, or
- b) by the Court on its own motion, when the appearance of any of the witnesses mentioned in the preceding paragraph is considered to be necessary or useful by such Court.

3. A summons may be issued:

- a) by the competent Judge, up to the time of commencement of proceedings in the Court of first instance;
- b) by the President of the competent Court, at any other stage of the proceedings.

4. A summons shall be issued in duplicate and contain:

- a) the name of the authority issuing it;
- b) the date on which it is made;
- c) the personal details of the person summoned to appear, or, if these are not known, other indications by

which he can be identified with reasonable certainty;

- d) personal details of the accused;
- e) the reasons for which the appearance is ordered;
- f) name of the Court before which the person shall appear, together with the time and place fixed;
- g) the signature of the Judge issuing it and the seal of the Court.

5. The same provisions for the service of summons laid down in Article 51 or, if the person summoned is in custody, the provisions laid down in paragraph 2 of Article 79 shall apply.

6. In urgent cases, the person mentioned in paragraph 1 of this Article may be summoned to appear by other means, including a verbal order from a Police Officer.

7. If a person fails to appear before the Court at the time and place fixed in the summons or by other means, the Court may order the Police to bring such person before the Court.

PART IV

TRIAL PROCEDURE AND PENAL SANCTION

CHAPTER I

Trial Procedure

Section I

GENERAL PROVISIONS

Article 81

Signature of Records and Documents

1. Whenever any record or document is required to be signed, it shall be sufficient for such purpose, unless any law provides to the contrary, for the signatory to place, at the bottom of the record or document, in his own handwriting:

- a) his name, the name of his father and the name of his paternal grandfather, or
- b) his first name and family name.

2. If the person who is required to sign is illiterate, then the authority before whom the written document is produced or the oral statement made shall, having ascertained the identity of the person, have such person's fingerprints taken with indelible ink in lieu of signature.

3. If a person who is required to sign or to provide his fingerprints is unable, because of physical impediment, to do one or the other, such fact shall be noted on the record, document or statement by the person receiving or recording the same.

Article 82

Date of Records and Documents

Whenever the law requires that the date of any record or document shall be recorded, there shall be shown:

- a) the day,
- b) the month,
- c) the year, and
- d) the place,

in which such record or document was made.

The indication of the hour is not necessary unless it is expressly prescribed.

Article 83

Presentation of Statements and Petitions

At any stage of the proceedings any party has the right to present:

- a) to the Court,
- b) to the Judge,
- c) to the Attorney General,

statements and petitions, by depositing them in their respective offices, and being bound to communicate them to any other party, unless the law provides otherwise.

Section II

ACTS AND MEASURES OF A JUDICIAL NATURE

Article 84

Form

1. Unless they are in writing, the following shall be null and void:

- a) judgments;
- b) any other act which brings the proceedings to an end or which may be subject to appeal;
- c) any measure which concerns personal liberty, and warrants of any kind,

4. The time-limit to make statements, deposit documents or perform any other act in a Court office shall be deemed to have expired at the time when, according to regulations, the office is closed to the public.

5. Where the expiry of a time-limit results in the forfeiture of a right, such time-limit shall not be extended except in the cases and in the manner provided by law.

Article 89

Time of Appearance

Unless the law provides otherwise, when a person is required to appear before a Court in answer to a summons or other order, such person shall be so notified:

- a) at least three days before the time to appear;
- b) in every case, in such good time that, bearing in mind the circumstances, such person can reach the Court by the time fixed for the appearance.

Where the above provisions are not complied with and the person does not appear, a new summons or order shall be issued.

Section IV

ACTS WHICH ARE NULL AND VOID

Article 90

General Rule

No act shall be declared null and void unless such declaration is expressly provided for by law.

Article 91

Nullity of Proceedings in General

The observance of the provisions relating to a), b) and c) below is mandatory and failure to observe any of them shall render the proceedings null and void; the declaration of such nullity

3. If a person who is required to sign or to provide his fingerprints is unable, because of physical impediment, to do one or the other, such fact shall be noted on the record, document or statement by the person receiving or recording the same.

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- a) judgments;
- b) any other act which brings the proceedings to an end or which may be subject to appeal;
- c) any measure which concerns personal liberty, and warrants of any kind,

2. The acts referred to in the previous paragraph shall also be:
- a) dated and
 - b) signed by the issuing authority, stating the reasons therefor.

If these requirements are not complied with, the acts shall be null and void.

Article 85

Correction of Errors

When in any measure there are omissions or errors which:

- a) do not make the measure null and void, and
 - b) if corrected, do not substantially change the measure,
- a correction may be made even by the issuing authority on its own motion, but, where possible, the matter shall be brought to the prior notice of any interested party.

Article 86

Procedures for Decision-Making

1. Unless the law provides otherwise:
 - a) the Court shall reach a decision in chambers without the intervention of the parties;
 - b) when a Court consists of more than one person:
 - i) deliberations shall be secret and findings shall be reached by majority vote;
 - ii) no member of the Court may abstain from voting;
 - iii) votes shall be taken by the President who shall vote last, voting beginning with the Judge lowest in grade or the Judge with the least seniority where more than one Judge is of the same grade. In Assize Courts, Assessors shall vote first, beginning with the youngest. In Military Penal Sections, the Assessor lowest in rank, or the assessor with the least seniority, where more than one assessor is of the same rank, shall vote first;
 - iv) no mention shall be made in the decision of the way in which any individual vote was cast and, if such mention is made, then the decision shall become null and void;

- v) if, in the Assize Section of the Court of Appeal, any difference of opinion arises over a decision on matters reserved to the Judges, in accordance with Article 12 of the Law on the Organization of the Judiciary, the President shall have the casting vote.

2. Unless the law provides otherwise, when a decision is not reserved to a specific section of a Court, the following Sections shall be competent:

- a) the Criminal Section, in a District Court;
- b) the General Section, in a Regional Court or Court of Appeal.

Article 87

Coercive Powers

A Court, a Judge, and the Office of the Attorney General may:

- a) call for the intervention of the Police, and
- b) order anything necessary to be done to ensure the safe and proper conduct of proceedings.

Section III

TIME-LIMIT

Article 88

General Rules

1. The time-limits of proceedings before the Court shall be expressed in terms of:

- a) hours;
- b) days;
- c) months, or
- d) years.

2. Any time-limit not fixed in terms of hours, which expires on a public holiday, shall be extended automatically to the next working day.

3. In calculating the time-limits, the hour or the day from which such time-limits have begun to run shall not be included; the last hour or day shall be included in the time-limit, unless the law provides otherwise.

4. The time-limit to make statements, deposit documents or perform any other act in a Court office shall be deemed to have expired at the time when, according to regulations, the office is closed to the public.

5. Where the expiry of a time-limit results in the forfeiture of a right, such time-limit shall not be extended except in the cases and in the manner provided by law.

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Unless the law provides otherwise, when a person is required to appear before a Court in answer to a summons or other order, such person shall be so notified:

- a) at least three days before the time to appear;
- b) in every case, in such good time that, bearing in mind the circumstances, such person can reach the Court by the time fixed for the appearance.

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No act shall be declared null and void unless such declaration is expressly provided for by law.

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Nullity of Proceedings in General

The observance of the provisions relating to a), b) and c) below is mandatory and failure to observe any of them shall render the proceedings null and void; the declaration of such nullity

may also be made by the Court on its own motion at any stage of the proceedings:

- a) the constitution and composition of the Court;
- b) the participation of the Attorney General in the proceedings;
- c) the representation of the accused by Counsel in those cases where representation is mandatory.

Article 92

Quashing to be Ineffective in certain Cases

1. An act which can only be declared null and void at the request of a party shall be deemed valid, unless such request is made by the party concerned within the time-limits and in the manner prescribed by law.

2. An act which can be declared null and void also by the Court on its own motion shall be deemed valid, if the Court has not so declared at any stage of the proceedings either on the request of the interested party or on its own motion.

3. Furthermore, an act which can be declared null and void shall be deemed valid:

- a) if, notwithstanding any irregularity, the consequences of such act equally affect all interested parties;
- b) if an interested party has tacitly accepted the effect of the act.

Article 93

Effects of a Declaration of Nullity

1. When any act is declared null and void, all subsequent consequential acts shall be rendered null and void.

2. A Court which declares any act null and void shall order that the act declared null and void shall be performed again or otherwise rectified where it is necessary and possible.

Section V

RECORD OF PROCEEDINGS

Article 94

Record of Proceedings

1. A written record of all acts in a proceeding shall be prepared by the authority responsible for such proceeding.
2. Unless the law provides otherwise, the record shall contain:
 - a) the indication of the place, year, month, day and, if necessary, hour in which the act commenced and terminated;
 - b) the names of the persons present;
 - c) a description of the acts carried out and results obtained;
 - d) the statements taken from the persons present;
 - e) any other matters that the authority concerned deems proper to include;
 - f) the signature of the authority responsible for the proceedings.

Section VI

PENALTIES

Article 95

Failure to comply with Orders of a Judicial Authority

1. Any person who fails to comply with an order given by a Court, by a President of a Court or by a Judge, in accordance with the provisions of this Code, shall be punished, unless the act involved constitutes a more serious offence, with imprisonment for contravention up to 3 months or a fine for contravention up to Sh. So. 3,000/-.
2. A warrant of arrest may be issued against any such person.