



**Kingdom of Cambodia**  
**Nation Religion King**  
ព្រះរាជាណាចក្រកម្ពុជា

# **Criminal Procedure Code of Kingdom of Cambodia**

**2007**

**Ministry of Justice**

## **Kingdom of Cambodia Nation Religion King**

Remarks of  
**His Excellency Ang Vong Vathana**  
Minister of Justice

This Criminal Procedure Code is the result of almost 10-year work of the Ministry of Justice which was prepared with assistance of French Cooperation. Since 1994, the Ministry of Justice has started reviewing criminal procedures to meet the needs of Cambodia for a clear and comprehensive criminal procedure code because criminal procedures are fundamental legal texts and are important instruments of the criminal court.

In the preparation of the code, it is necessary to compile the scattered texts so that they become unified and consistent which make it easy to understand. The Ministry of Justice adheres to the principles of the Law dated 8 March 1993 on Criminal Procedures which aim to ensure the institutional continuity in accordance with legal tradition of the Kingdom of Cambodia and to provide the investigating judges with major roles during investigation and evidence collection stages. This Code clearly provides the principles to ensure the effectiveness in pursuing the perpetrators, the prosecution and trial as well as the respect of freedom of individual in accordance with the principles provided in the Constitution of the Kingdom of Cambodia and international conventions to which the Kingdom of Cambodia is a party such as the 1948 Universal Declaration on Human Rights, the 1966 International Covenant on Civil and Political Rights.

This Criminal Procedure Code was adopted by the National Assembly with 83/83 votes on 7 June 2007 and adopted by the Senate with 51/51 votes on 24 July 2007. The adoption of the Code is an evidence of achievement of the legal framework building in line with the legal and judicial reform policy of the Kingdom of Cambodia under the supreme leadership of Samdech Prime Minister Hun Sen.

Now, almost every citizen in the Cambodian society understands that it is necessary for everybody to be aware of the rules of law in order to ensure the effectiveness of their enforcement because modern societies need awareness raising and dissemination of laws so as to maintain and ensure peace and safety for business operations nationally and internationally. When myself and colleagues of the Ministry of Justice representing the Royal Government defended the draft Criminal Procedure Code at the National Assembly at its 6th session of the 3rd legislature, there were numerous members of the National Assembly raised the importance and necessity of legal education and dissemination to ensure the effectiveness of enforcement and they requested the Ministry of Justice to provide broad education and dissemination of this Code to law enforcement officers and citizens.

It is true that regular publication of legal texts when they are approved is a stage which allows the building of a democratic system and a rule of law in accordance with the spirit of the Constitution of the Kingdom of Cambodia.

Seeing the necessity and importance of legal education and dissemination to ensure the effectiveness of law enforcement, raise the awareness of citizens and strengthen the rule of law, the Ministry of Justice which is the executing agency of the Royal Government in this area publishes this Criminal Procedure Code with support from French Cooperation for broad distribution to legal and court professionals and law enforcement officers.

The Ministry of Justice strongly believes that this Criminal Procedure Code will become an important instrument for legal training, education and dissemination which contributes to promoting access to legal information and access to justice in the Kingdom of Cambodia.

Phnom Penh, 06 August 2007

**Ang Vong Vathana**

# Criminal Procedure Code of The Kingdom of Cambodia

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# **BOOK ONE CRIMINAL AND CIVIL ACTIONS**

## **TITLE 1**

### **GENERAL PRINCIPLES**

#### **SINGLE CHAPTER**

#### **General Principles**

##### **Article 1. Purpose of this Code**

This Code of Criminal Procedure aims at defining the rules to be strictly followed and applied in order to clearly determine the existence of any criminal offense.

The provisions of this Code shall apply for criminal cases unless there are special rules set forth by separate laws.

##### **Article 2. Criminal and Civil Actions**

Criminal and civil actions are two separate kinds of legal actions.

The purpose of a criminal action is to examine the existence of an offense, to prove the guilt of an offender, and to punish the person according to the law.

The purpose of a civil action is to provide compensation to victims of an offense and to allow victims to receive sufficient damages corresponding to the injuries they suffered.

## **TITLE 2**

### **CRIMINAL ACTIONS**

#### **SINGLE CHAPTER**

#### **Criminal Actions**

##### **Article 3. Subject of Criminal Actions**

Criminal actions apply to all natural persons or legal entities regardless of race, nationality, color, sex, language, creed, religion, political tendency, national origin, social status, resources or other situations.

##### **Article 4. Criminal Actions brought by Prosecutor**

Criminal actions are brought by prosecutors for the general interest.

Prosecutors initiate criminal charges and request the application of the law before the investigating and trial jurisdictions.

##### **Article 5. Criminal Actions filed by Victims**

The victims of a felony or misdemeanor can file a complaint as plaintiffs of a civil action before the investigating judge. The complaint of plaintiffs in a civil action has the power to file suit

with an investigating judge assigned to a criminal action under conditions stipulated in Article 139 (Forwarding of a Complaint to Prosecutor) and Article 140 (Payment of Deposits) of this Code.

Criminal jurisdictions can also receive complaints from government officials or other public agents who are authorized to file complaints under separate laws.

#### **Article 6. Complaint by Victims**

Any person who claims to be a victim of an offence can file a complaint. An ordinary complaint has no effect to bring a criminal charge.

In case the prosecutor does not respond to the claim or keeps the file without processing, the victim may bring a petition to the Prosecutor General at the Court of Appeal in accordance with Article 41 (File without Processing) of this Code.

#### **Article 7. Extinction of Criminal Actions**

The reasons for dropping a charge in a criminal action are as follows:

1. The death of an accused person;
2. The expiration of the statute of limitations;
3. A general grant of amnesty;
4. Abrogation of the criminal law; or
5. The res judicata

When a criminal action is extinguished a criminal charge can no longer be pursued or must be terminated.

#### **Article 8. Other Causes of Extinction of Criminal Actions**

Where it is expressly provided for in separate laws, criminal actions may also be ceased by:

1. A settlement with the state;
2. The withdrawal of complaint in case where the complaint is a condition required for the criminal charges;
3. The payment of a lump sum or an agreed fine.

#### **Article 9. Imprescriptible Crimes**

A crime of genocide, a crime against humanity and war crime has no statute of limitations.

#### **Article 10. Statute of Limitations of a Crime**

Except as provided in Article 9 (Crimes without Statute of Limitations) of this code, the time limitation for bringing a criminal action is as follows:

- fifteen (15) years for a felony;
- five (5) years for misdemeanor; and
- one (1) year for a petty offense

#### **Article 11. Interruption of the Statute of Limitations**

The duration of the statute of limitations commences at the time the offense was committed. The statute of limitations is interrupted by an accusation or investigation. The end of an accusation or investigation can restart the new period of the statute of limitations pursuant to the provisions of Article 10 (statute of limitation of an offense) of this Code. The new time period applies to everyone involved in the case.

#### **Article 12.      Res Judicata**

In applying the principle of res judicata, any person who has been finally acquitted by a court order cannot be accused once again for the same causes of action, including the case where such action is subject to different legal qualification.

### **TITLE 3 CIVIL ACTIONS**

#### **SINGLE CHAPTER Civil Actions**

#### **Article 13.      Civil Action and Injury**

A civil action shall be brought by the victim of an offense.

In order to be compensated, the injury must be:

- A direct consequence of an offense;
- A complainant's personal damage;
- Occurred and current.

An injury can be a property or physical or emotional damage.

#### **Article 14.      Compensation for Injury**

An injury can be compensated by paying damages, by giving back to the victim the property that has been taken or by restoring the damaged or destroyed property to its original state.

The damages must be proportionate to the injury suffered.

#### **Article 15.      Plaintiff of Civil Action**

A civil action can be filed on behalf of a victim by his/her guardian if the victim is a minor or an adult under legal guardianship.

#### **Article 16.      Civil Action of a Victim's Successor**

In case of death of the victim, a civil action can be started or continued by his or her successor.

#### **Article 17.      Associations for Eliminating All Acts of Sexual Violence, Domestic Violence or Violence against Children**

Any association, which has made a valid declaration within three (3) years before the date of occurrence of an offense that a subject of its governing statutes is a struggle against sexual violence or domestic violence or violence against children, has a recognized right to be a plaintiff in a civil action for the following offenses:

- Intentional threat against life;
- Harassment against a person's integrity;
- Sexual harassment.

#### **Article 18. Associations for Eliminating All Acts of Kidnapping, Human Trafficking and Sexual Exploitation**

Any association, which has made a valid declaration within three (3) years before the date of an offense that a subject of its governing statutes is a struggle against kidnapping, trafficking of persons or sexual exploitation, has the recognized right to be a plaintiff in a civil action for an offense regulated by Law on the Suppression of Kidnapping, Human Trafficking and Sexual Exploitation.

#### **Article 19. Association for Eliminating All Acts of Racism and Discrimination**

Any association, which has made a valid declaration within three (3) years before the date of an offense that a subject of its governing statutes is a struggle against racial discrimination and supports the rights of victims of discrimination based on national origin, ethnicity, race, or religion, has the recognized right to be a plaintiff in a civil action for the following offenses if the offense has been committed based on national origin of a person or because a person is or was presumed to be true member of a particular national origin, ethnicity, race or religion:

- Discrimination,
- Intentional threat against life or personal integrity,
- Destruction and damage.

#### **Article 20. Acceptability of Civil Action of the Associations**

In cases as provided for in Article 17 (Associations for Eliminating All Acts of Sexual Violence, Domestic Violence or Violence Against Children), Article 19 (Association for Eliminating All Acts of Racism and Discrimination) of this Code, the association's complaint will be accepted only if there is evidence of agreement by the victim or his/her legal representative. In case of a threat to someone's life, the association's complaint will be accepted only if the association shows evidence of agreement by the victim's successor.

#### **Article 21. Defendant in Civil Action**

A civil action can be made against all persons who are liable to compensate for injury resulting from the offense:

- Perpetrators and co-perpetrators in an offense;
- Authors and accomplices to an offense;
- A civil responsible party.

#### **Article 22. Relation of Jurisdictions of Civil and Criminal Courts**

A civil action can be brought in conjunction with a criminal action before a criminal court.

A civil action can also be brought before the civil court. In this case, the civil action must be suspended until the final decision on the criminal action has been made.

**Article 23. Declaration Prior to Conviction**

A criminal court can compensate for injury only after it has looked at the elements characterizing the criminal offense and declared that the accused person is guilty.

**Article 24. Death of the Accused Person**

The civil party in a civil action can claim compensation for injury from the accused's successor if the accused person dies during the criminal proceedings. Even though the criminal action is ended, the criminal court still has the authority to decide a civil action against the successors of the deceased.

**Article 25. Renunciation and Abandonment of Victims' Rights**

A victim can renounce his/her right to sue for compensation or abandon his/ her complaint. The victim's waiver of the right to sue or abandonment of a lawsuit does not stop or suspend the criminal action except as provided in Point 2 of Article 8 (Other Causes of Extinction of Criminal Action) of this Code.

**Article 26. Statute of Limitations for Civil Action**

A civil action shall be expired in accordance with the rules provided for in Civil Code. However, a civil action cannot be brought before a criminal court after the statute of limitations of the criminal action has expired.

# **BOOK TWO AUTHORITIES ENTRUSTED WITH PROSECUTION, ENQUIRY AND INVESTIGATION**

## **TITLE 1 PROSECUTOR DEPARTMENT**

### **CHAPTER 1 General Provisions**

#### **Article 27. Roles of Prosecutor Department**

The Prosecutor Department brings charges of criminal offenses and issues conclusions for the court to enforce the laws. Prosecutor Department is responsible for the implementation of decisions on criminal offenses, and ensures that arrest warrants are disseminated.

In performing his/her duties, a prosecutor has the right to directly mobilize public forces.

A prosecutor must attend all criminal case hearings.

#### **Article 28. The Prosecutors**

The prosecutors include:

1. Prosecutor General, deputy prosecutor generals and prosecutors at the Supreme Court;
2. Prosecutor General, deputy prosecutor generals and prosecutors at the Court of Appeal;
3. Prosecutors and deputy prosecutors at the court of the first instance.

#### **Article 29. Hierarchy of Prosecutor Department**

The Minister of Justice may file a complaint to the Prosecutor General of the Court of Appeal or prosecutors of the court of the first instance for any offense that the minister has knowledge of, issue written injunction which is included in the case file for the Prosecutor General or prosecutor to bring charges or make any conclusion which the Minister considers appropriate. The Minister of Justice cannot issue any injunction to the prosecutor general or prosecutor to keep any criminal case without processing.

The Prosecutor General of the Court of Appeal has power over all prosecutors, who are under their territorial authority. The Prosecutor General may issue an injunction to bring charges or order to bring charges or make conclusions that he or she considers appropriate.

The Prosecutor has power over prosecutors who are under their territorial authority.

The Prosecutor may issue an injunction to prosecutors to bring charges or order to bring charges or make conclusions that he or she considers appropriate.

#### **Article 30. Oral Statements**

Every prosecutor must obey the injunctions of his/her higher-ranking persons according to the established hierarchy.

However, during the hearing, the prosecutor freely provides oral remarks according to his or her conscience. No disciplinary charge can be brought against a prosecutor on the basis of his or her remarks made during the hearing.

## **CHAPTER 2**

### **Functions of prosecutor General of the supreme court**

#### **Article 31. Representation of Prosecutor General of the Supreme Court**

Prosecutor General, deputy prosecutor generals and prosecutors at the Supreme Court represent prosecutor department at this court.

#### **Article 32. Roles of Prosecutor General at the Supreme Court**

The Prosecutor General at the Supreme Court takes part in the request for compliance of the law when there is any appeal, review and complaint to the Supreme Court.

## **CHAPTER 3**

### **The functions of prosecutor general at the court of appeal**

#### **Article 33. Representation of Prosecutor Department at the Court of Appeal**

Prosecutor General, deputy prosecutor general and prosecutors at the Court of Appeal represent the prosecutor department at this court.

#### **Article 34. Roles of Prosecutor General at the Court of Appeal**

Prosecutor General at the Court of Appeal controls the application of the law within the territorial authority of the Court of Appeal.

Prosecutor General can conduct inspections at Prosecutor Department under his/her territorial jurisdictions.

In case of a serious offense, Prosecutor General shall make a report to the Minister of Justice.

#### **Article 35. Powers of Prosecutor General at the Court of Appeal**

Prosecutor General at the Court of Appeal supervises and controls judicial police officers.

Prosecutor General at the Court of Appeal can invite the person in charge of a judicial police unit to discuss issues related to the functioning of the unit.

Prosecutor General at the Court of Appeal can assign any duties to be performed by judicial police officers or judicial police agents that he/she considers necessary for good management and functioning of the judicial police.

Prosecutor General at the Court of Appeal can inspect a judicial police unit at any time. Prosecutor General at the Court of Appeal can participate in interview, check the enforcement of police custody rules, especially to ensure compliance with the legal procedures and the custodial management.

The heads of judicial police units, judicial police officers or judicial police agents must respect the injunctions of the Prosecutor General.

## **CHAPTER 4**

### **FUNCTIONS OF PROSECUTORS AT THE COURT OF THE FIRST INSTANCE**

#### **SECTION 1**

#### **Prosecutor Department at the Court of the First Instance**

##### **Article 36. Representation of Prosecutor Department at the Court of the First Instance**

Prosecutors and deputy-prosecutors of the court of the first instance represent Prosecutor Department at the court.

##### **Article 37. Powers of the Prosecutors**

Prosecutors direct and coordinate the operations of judicial police officers and agents within their territorial jurisdictions. However, in the case of implementing rogatory commission, the judicial police officers shall be under the authorities of the investigating judge.

Prosecutors shall exercise all authorities designated in this Code and to the judicial police officers for investigations.

Prosecutors may visit the investigation site and give all useful instructions to the judicial police officers and agents. In special circumstances, a prosecutor may revoke the investigation rights from the judicial police officers and agents and arrange for their replacement.

Prosecutors can inspect judicial police units at any time. Prosecutors may participate in interview, check the enforcement of police custody rules, especially to ensure the compliance with the legal procedures and the custodial management.

##### **Article 38. Powers of Deputy Prosecutors**

Deputy prosecutors who are under the authority of prosecutors shall use all powers entrusted to the prosecutors to search and impose charge on offenses.

##### **Article 39. Territorial Competence of the Prosecutors;**

The competent prosecutors shall be:

1. The prosecutor in the location where the offense was committed.
2. The prosecutor in the place of the residence of the person who is suspected for committing an offense.
3. The prosecutor of the location in which the suspect for commission of a crime was arrested.

## **SECTION 2**

### **Implementation of Criminal Actions**

#### **Article 40. Choice of Prosecution**

Prosecutors shall consider complaint proceedings and denunciations that have been received directly by him/her or that have been submitted by judicial police officers.

Prosecutors can decide to either hold a file without processing or to bring criminal charges. Before making the decision, a prosecutor shall conduct preliminary investigations or order further investigations.

In case of a serious offense, the prosecutor shall make a report to the Prosecutor General of the Court of Appeal who shall submit that report further to the Minister of Justice.

#### **Article 41. File without Processing**

In the case that the complaint is kept without processing, the prosecutor shall notify the plaintiff about his/her decision within the shortest possible period and within a period of not more than two (2) months starting from the date of the registration of the complaint as provided in Article 50 (Registry of Complaints) of this Code.

Filing the case without processing shall be based on the grounds of law and facts. Filing the case without processing does not have the effect of res judicata.

The prosecutor may review his/her decision as long as the criminal actions have not been extinguished.

If the complainant is not satisfied with the prosecutor's decision to hold the file without processing, he/she may appeal to the Prosecutor General of the Court of Appeal.

The appeal shall be lodged within 2 (two) months, commencing from the date of receiving the notification of the decision to file without processing. The appeal shall be lodged as an ordinary complaint at the relevant prosecutor department. The file shall then be immediately submitted by the representative of the prosecutor department at the court of the first instance to the Prosecutor General of the Court of Appeal.

If the appeal is found to have proper reasons, the Prosecutor General of the Court of Appeal shall issue an injunction to the prosecutor at the court of the first instance to initiate charge. The injunction issued by the Prosecutor General shall be in writing. In contrary cases, the Prosecutor General of the Court of Appeal shall uphold the decision of the prosecutor of the court of the first instance. The Prosecutor General of the Court of Appeal shall inform the complainant about such decision.

#### **Article 42. Obligations to file Complaint of a Felony or Misdemeanor**

During the performance of their duties, all public authorities or officers who learn about a felony or misdemeanor shall immediately report this incident to the prosecutor or the judicial police officers by forwarding all information, minutes, records, and evidences relating to that offense.

There shall be no exception other than that involved professional confidentiality which is expressly stipulated in the law.

#### **Article 43. Prosecution**

Criminal prosecutions can be processed through:

- A commencement of investigation;
- A submission for direct hearing; or
- Through an order to appear immediately.

#### **Article 44. Commencement of Investigations**

In the case of a felony, the prosecutor shall conduct an investigation.

The investigation shall be commenced based on introductive requisition to be submitted to the investigating judge. The investigation may be conducted against identified or unidentified individual or individuals.

The introductive requisition includes:

- A summary of facts;
- An identification of offense;
- An indication of relevant provisions of the law and the suppression of the offense; and
- The name of the person subjected to investigation, if possible.

The introductive requisition shall include date and signature.

These formalities must be strictly complied with or otherwise the introductive requisition shall be null and void.

#### **Article 45. Making Charge for Misdemeanor**

In the case of a misdemeanor, the prosecutor may:

- Commence an investigation as provided in Article 44 (Commencement of Investigation) of this Code;
- Send the accused person to be heard directly before the court of the first instance by following the procedures as stipulated in Article 46 (Summons for Direct Hearing) of this Code; or
- Order the accused to immediately appear before the court of the first instance in accordance with Article 47 (Immediate Appearance) and Article 48 (Procedures for Immediate Appearance) of this Code.

#### **Article 46. Summons for Direct Hearing**

A summons for direct hearing is an order to the accused person to appear before the court of the first instance. A summons for direct hearing shall include:

- The identification of the accused;
- A summary of the fact;
- The type of the offense;
- The relevant provisions of the law and the suppression of offence.

This summons shall indicate the court, its location, and the date and time of the trial. This summons shall specify that the accused may have a lawyer to accompany him or her.

#### **Article 47. Immediate Appearance**

Prosecutors may order to bring the accused to appear before the court of the first instance immediately if all of the following requirements are satisfied:

- The offense is a flagrant delicto in accordance with the provisions of Article 86 (Definition of Flagrant Felony or Misdemeanor) and Article 88 (Considering As Flagrant Felony or Misdemeanor) of this Code;
- The offense carries a sentence of imprisonment for not less than one (1) year and not more than five (5) years;
- The accused is an adult;
- The case is qualified for hearing.

#### **Article 48. Procedures for Immediate Appearance**

When deciding to apply the procedures for immediate appearance, the prosecutor shall:

- Check the personal identification of the person brought to him/her;
- Inform the person about the charge and the type of the offense;
- Receive the statement of the person if he/she wants to make;
- Make record on the order to appear immediately.

The prosecutor shall inform the accused that he/she has the right to a lawyer that he/she chooses or a lawyer appointed in accordance with the Law on the Statute of Lawyers.

The selected or appointed lawyer shall be immediately informed. The lawyer may check the case file and communicate with the accused person.

Notation of these procedures shall be written in the margins of the record, otherwise such procedures shall be deemed invalid.

The court of the first instance shall receive the case file in accordance with the record on the order to appear immediately.

The accused shall be detained with security guards until he/she appears before the court in which the trial shall be conducted on the same day.

During the appearance, after confirming the identification of the accused and making summary report on the accusation, the court shall inform the accused that he/she may have time to prepare his or her defense.

If the accused requests for the delay or if the court finds that the case may not be able to try immediately, the trial shall be adjourned to a new date.

The court may order a pre-trial detention of the accused by issuing a judgment with reasons. In the judgment, the court shall refer to the conditions as provided in Article 205 (Reasons for Pre-trial Detention) of this Code. The court shall issue the detention warrant.

The judgment on the fact shall be announced within the period of not more than 2 (two) weeks starting from the date of the appearance before the court. The Pre-trial detention shall be legally terminated following the expiration of two (2) weeks period.

If the court that receives complaint through the procedures for ordering to appear immediately finds that the requirements of Article 47 (Immediate Appearance) of this Code were not satisfied or due to the fact that the complexity of the case file requires further profound investigation, the court shall refer the case file to the prosecutor for investigation. The accused must be brought to appear before the investigating judge on the same day, otherwise the accused shall be automatically released.

#### **Article 49. Summons for Direct Hearing for Petty Crime**

If case is a petty crime, the prosecutor shall issue a summons for the accused to appear before the court for direct hearing as set forth in Article 46 (Summons for Direct Hearing) of this Code.

#### **Article 50. Registry of Complaints**

Each court of the first instance shall create a prosecution registry for registering all complaints that are submitted directly to the prosecutor or submitted by the judicial police officers to prosecutors.

All complaints shall be registered with the following contents:

- The identification of the complainant;
- The date on which the prosecutor received the complaint;
- The source of the complaint—whether submitted directly to the prosecutor or submitted by the judicial police officer;
- The type of case that is reported by the complainant;
- The action taken - decision to file without processing or criminal charge.

The prosecutor's secretary, under the supervision of the prosecutor shall maintain the complaint registry. The registry may be inspected by all court authorities including the Prosecutor General of the Court of Appeal.

## **TITLE 2**

### **INVESTIGATING JUDGE**

#### **SINGLE CHAPTER**

#### **Investigating Judge**

#### **Article 51. Assignment of Investigating Judge by the Court President**

When an investigating judge may not perform his or her duty because of leave, illness or other reasons, another investigating judge of the same court shall be temporarily assigned by the court president to assume the investigation.

If there is no investigating judge at the court, the court president may temporarily assign any judge of the court to do the investigation.

The court president shall render an assignment order which cannot be appealed.

In addition to this, the provisions of Article 26 (Allocation of Case Files) of the Civil Procedure Code shall apply.

#### **Article 52. Allocation of Case Files by the Court President**

If there are several investigating judges in one court, the case files shall be allocated by the court president.

#### **Article 53. Revocation of Case File from the Investigating Judge**

The revocation of the case file from one investigating judge to another investigating judge may be requested through the court president for the sake of good administration of justice. This request may be made by an application with reasons from the prosecutor either through his/her own initiative or complaint from the parties.

The reasons for revocation of the case file from the investigating judge shall be based on the provisions of Article 556 (Causes of Challenge of Trial Judges) of this Code.

#### **Article 54. Mandatory Abstention**

The investigating judge shall not participate in the trial of a criminal offense that he or she conducted the investigation or otherwise, the trial shall be nullified.

The investigating judges shall exercise the powers as stipulated in this Code.

### **TITLE 3**

#### **THE INVESTIGATION CHAMBER**

##### **SINGLE CHAPTER**

#### **The Investigation Chamber**

#### **Article 55. Special Chamber of the Court of Appeal**

In the Court of Appeal there is one chamber which is called the investigation chamber. The Investigation chamber shall have the competence to adjudicate any appeal against the decision of the investigating judge.

Members of the investigation chamber shall not attend the trial of a criminal offense which he or she conducted the investigation or otherwise, the judgment shall be nullified.

### **TITLE 4**

#### **JUDICIAL POLICE**

##### **CHAPTER 1**

#### **GENERAL PROVISIONS**

#### **Article 56. Mission of the Judicial Police**

The judicial police act as an auxiliary of the judiciary's power.

The judicial police shall have the duty to watch felony, misdemeanor and petty crime, identify and arrest offenders and collect evidence.

#### **Article 57. Composition of the Judicial Police**

The judicial police include:

- Judicial police officers;
- Judicial police agents;
- Government officials and public agents who are authorized by separate law to monitor some offenses within their territorial authority.

#### **Article 58. Coordination of the Judicial Police's work**

Prosecutors shall direct and coordinate the activities of all judicial police officers and judicial police agents in their territorial authority.

Prosecutors shall have power over government officials and other public agents provided in Article 82 (Provide Qualification to Government Officials and other Public Agents) of this Code when they perform their functions as judicial police.

When enforcing rogatory commission, judicial police officers shall be under the authority of the investigating judge.

#### **Article 59. Control of the Judicial Police**

The judicial police shall be under supervision and control of the Prosecutor General of the Court of Appeal.

The Prosecutor General of the Court of Appeal shall be empowered to take disciplinary actions against judicial police.

## **CHAPTER 2 JUDICIAL POLICE OFFICERS**

### **SECTION 1 Qualification of the Judicial Police Officers**

#### **Article 60. Judicial Police Officers**

The persons who are qualified to be judicial police officers:

1. Police officers who hold the rank of at least second lieutenant and who have at least two years of work experience in the service of national police after obtaining a High Diploma of the Judicial Police;
2. Military Officers of the Royal Gendarmerie who have at least two years of work experience in the service of Royal Gendarmeries after obtaining a High Diploma of the Judicial Police;
3. Other persons who have the following ranks and functions:
  - A. Governors and deputy governors of provinces/municipalities, governors and deputy governors of District/Khan, and chiefs of commune/Sangkat;

- B. Director and deputy director of the Central Department of Judicial Police; director and deputy director of the Central Department of Security; and director and deputy director of the Central Department of Public Order of the National Police;
- C. Directors and deputy directors of department, chief and vice chief of offices, chief and vice chief of sections that are in charge of criminal affairs and that are under the authority of the Central Department of Judicial Police, the Central Department of Security and Central Department of Public Order;
- D. Director and deputy director of departments, chiefs and vice chiefs of offices, chiefs and vice-chiefs of sections of:
  - Department of Border Police for “cross-border crimes”;
  - Anti-Drug Department;
  - Department of Tourist Police;
  - Special Commissariat on Heritage Protection;
- E. Commissioners and deputy commissioners of provincial/municipal police;
- F. Chiefs and vice-chiefs of offices, chiefs and vice-chiefs of sections that are in charge of criminal affairs under the provincial and municipal police commissariat such as:
  - Office of Penal Police for Serious Crimes and Office of Penal Police for Minor Crimes;
  - Office of Anti-Human Trafficking and Juvenile Protection;
  - Office of Economic Police;
  - Office of Criminal Scientific and Technical Police;
  - Office of Anti-Drug;
  - Office of Anti-Terrorism; and
  - Office of Immigration.
- G. Inspectors and deputy inspectors, and chiefs and vice-chiefs of Criminal Sections of District/Khan Police Inspectorate;
- H. Chiefs and vice-chiefs of Traffic Police Offices, chiefs and vice-chiefs of Traffic Police Sections "for traffic offenses"; Chief and vice-chief of Office of Weapon and Explosive Control; and Chief and vice-chief of Sections of Office Weapon and Explosive Control "for weapon and explosive offense; Chiefs and vice-chiefs of Units, Chiefs and vice-chiefs of Office of Tourist Police, and Chiefs and vice-chiefs of Section of Tourist Police;
- I. Chief and vice-chiefs of Commune/Sangkat Administrative Police Post "for criminal offense";
- J. Commanders and deputy commanders of the Royal Gendarmeries in charge of criminal affairs;
- K. Commanders and deputy commanders of the Provincial/Municipal Royal Gendarmeries in charge of the criminal affairs;
- L. Commanders and deputy commanders of the district/Khan Royal Gendarmeries in charge of criminal affairs;
- M. Chiefs and vice-chiefs of offices, chiefs and vice-chiefs of Sections of the Royal Gendarmeries in charge of criminal affairs.
- N. Chief and vice-chiefs of other units in charge of investigating criminal offenses which will be established as necessary.

The Ministers who have supervising authority over different police and military officers of the Royal Gendarmeries mentioned in paragraphs 1, 2 and 3 of this Article shall appoint those police and military officers of the Royal Gendarmeries to perform their duties as the judicial police officers by a Joint Prakas with the Minister of Justice.

## **Article 61. High Diploma of Judicial Police**

The High Diploma of Judicial Police shall be delivered to those who have passed the professional examination which comprises the following basic examination subjects:

- A. Criminal law;
- B. Criminal procedure;
- C. Deontology as provided in the Code of Ethics of the United Nations.

This Diploma shall be co-signed by the Minister of Justice and all relevant Ministers and affixed their seals.

## **Article 62. Jury for Examination**

The jury for examination shall be headed by the Prosecutor General of the Supreme Court or by any prosecutor of the Supreme Court who has been assigned to undertake this work.

1. For the examination of police officers, the jury shall be composed of:
  - an investigating judge appointed by the President of the Supreme Court;
  - a prosecutor appointed by the Prosecutor General of the Supreme Court;
  - two representatives of the Ministry of Interior.
2. For military officers of the Royal Gendarmeries, the jury shall be composed of:
  - an investigating judge appointed by the President of the Supreme Court;
  - a prosecutor appointed by the Prosecutor General of the Supreme Court;
  - two representatives of the Ministry of National Defense.

Formalities for issuance of Diploma shall be determined by a Joint Prakas of the relevant Ministers.

## **Article 63. The Oath of Judicial Police Officers**

Each judicial police officer shall make an oath that he or she shall honestly perform his/her duties. The oath shall be made before the Court of Appeal. The swearing-in is not required again when he or she has a legal qualification as judicial police officer afterward. The procedure for making an oath shall be determined by Prakas of the Ministry of Justice.

## **SECTION 2 Misconducts Committed During the Performance of Duty**

### **Article 64. Disciplinary Procedure**

Any misconduct committed by judicial police officer during the performance of his or her duty, the prosecutor or investigating judge shall report it to the Prosecutor General of the Court of Appeal. Depending on each circumstance of misconducts, the Prosecutor General of the Court of Appeal shall notify the Minister of Interior or Minister of National Defense in order to initiate disciplinary procedure. The Prosecutor General of the Court of Appeal shall be informed of the aftermath of the disciplinary procedure.

### **Article 65. Disciplinary Sanctions**

Any disciplinary sanction imposed by the Minister of Interior or Minister of National Defense shall not be an obstacle of the criminal action, provided that the offense has been committed.

When a judicial police officer commits an offense during the performance of his or her duty, the investigating or trial jurisdictions in charge of the case shall transfer the case based on a decision of the Supreme Court to another investigation or trial jurisdiction to take action in order to ensure the good administration of justice and the Ministry concerned shall immediately be informed of that decision.

An application for revocation of power shall be made by a prosecutor.

#### **Article 66. Prohibition from acting as the Judicial Police Officers**

When the Prosecutor General at the Court of Appeal finds that the seriousness of the misconduct committed by a judicial police officer is incompatible with the performance of functions, the Prosecutor General is entitled to take the following measures:

1. To temporarily prohibit the judicial police officer concerned from performing his or her duty for the maximum period up to five years; or
2. To indefinitely permanently prohibit the judicial police officer concerned from performing his or her duty as judicial police officer.

Before making the above decision, the Prosecutor General shall convoke that judicial police officer and record his or her comments. That officer is entitled to have a lawyer or a counselor to assist through his own selection.

The decision to prohibit a judicial police officer shall explain the reasons. This decision on each case shall be notified to the Minister of Interior or Minister of National Defense.

This decision may be subjected to the appeal to the Minister of Justice who may reject the decision or reduce the duration of prohibition as decided by the Prosecutor General. The concerned ministry whose judicial police officer is prohibited by the Prosecutor General may make its submission to the Minister of Justice.

The judicial police officer who is prohibited by the Prosecutor General shall be entitled to make an appeal with explanation of reasons within the period of fifteen days from the date on which he/she received the notification of prohibition.

The Minister of Justice shall make decision on the above appeal within 1 (one) month from the date of receiving the appeal. The decision of the Minister of Justice cannot be appealed.

During the period of the appeal and waiting the decision of the appeal, the judicial police officer who is prohibited by the Prosecutor General cannot perform his/her duty as a judicial police officer. He/she may resume his/her duty as judicial police officer if the Minister of Justice rejects the decision of prohibition or reduces the duration of prohibition.

Any acts performed by the judicial police officer in the violation of the prohibition decided by the Prosecutor General at the Court of Appeal shall be null and void.

### **SECTION 3**

#### **Territorial Competence of the Judicial Police Officers**

#### **Article 67. Scope of Administrative Jurisdictions**

Each judicial police officer shall have jurisdictions within the territorial boundaries of the unit to which they are assigned.

In Phnom Penh, judicial police officers shall have the jurisdiction over the whole capital without consideration of the unit to which they are assigned.

All decisions to assign judicial police officers shall state the territorial jurisdiction of the unit to which they are assigned. These decisions must be notified to the Prosecutor General of the Court of Appeal.

#### **Article 68. Extension of Territorial Jurisdiction**

In the case of flagrant felony or misdemeanor as defined by Article 86 (Definition of Flagrant Felony or Misdemeanor) and Article 87 (Arrest in the case of Flagrant Felony or Misdemeanor) of this Code and under an urgent circumstance, the prosecutor may authorize judicial police officers to operate throughout the national territory. The authorization may be made orally, but it shall be mentioned in the investigation report.

Within the scope of investigation, when the investigating judge issues a rogatory commission under an urgent circumstance, the investigating judge may authorize judicial police officers to operate throughout the national territory.

When operating outside their territorial authority, judicial police officers shall request assistance from judicial police officers within the territorial jurisdictions.

The judge who authorizes the extension of territorial jurisdictions shall inform, by all means, the prosecutor within the territorial jurisdictions.

#### **Article 69. Consequences of the Non-Compliance of Territorial Jurisdiction Rules**

The territorial jurisdiction rules stipulated in the previous articles must be respected. The operations of judicial police officers shall be null and void if those rules are not respected.

#### **Article 70. Court Orders**

In performing their mission, judicial police officers shall receive or request for orders only from the court authority.

### **SECTION 4 Missions of Judicial Police Officers**

#### **Article 71. Record of Offense**

Judicial police officers shall receive complaints or denunciations. Judicial police officers shall make inquiry of all offenses.

Judicial police officers shall undertake investigation on flagrant crimes and conduct primary investigation under the conditions stipulated in Article 84 (Different Powers of Judicial Police Officers in the Investigation) to Article 110 (Powers to Make Appreciations by the Judges).

When an investigation has been initiated, judicial police officers shall enforce rogatory commission issued by the investigating judge under the conditions stated in Articles 173 (Rogatory Commission) to Article 184 (Records made by Judicial Police Officers).

## **Article 72.      Records**

Every complaint received by judicial police officers is required to be recorded. The record shall properly include the statement of the complainant. In case of necessity, judicial police officers can find an interpreter who must faithfully swear according to his/her belief or religion that she/he will translate the statement accurately. In any case, the interpreter cannot be chosen from among police or gendarmeries, who are in joint-operating forces.

The record of the complaint must mention the following:

- The names and rank of the judicial police officers;
- The unit of the judicial police officers;
- The date.

Each page must be signed by a judicial police officer and by the complainant.

Deletion, addition or reference must be certified by the signature of the judicial police officer and by complainant in the margin of the page.

Before signing or thumb-printing, the complainant must read the record once again. In case of necessity, the judicial police officer must read the content of the record aloud.

## **Article 73.              Complaint Registry**

All units of judicial police must have complaint registry. Whenever there is a complaint, a judicial police officer must record the followings in the registry:

- Identification of the complainant;
- The date of filing complaint;
- The name and rank of the judicial police officer who prepares the record of the complaint;
- The type of acts complained;
- The actions to be taken with the complaint, whether delivering to the prosecutor or commencing the investigation.

The complaint registry must be permanently held for submission to the court authority as needed.

## **Article 74.              Actions to be taken after Receipt of Complaints**

A judicial police officer who receives a complaint must start the investigation immediately or deliver the record on the receipt of the complaint to the prosecutor to take further action.

Before conducting investigation, the judicial police officer may seek instruction from the prosecutor.

When receiving a denunciation with clear reasons, the judicial police officer shall inform the prosecutor and seek advice.

## **Article 75. Abuse of Judicial Actions**

In any case, the judicial police officer cannot keep any criminal case without processing even though there has been a negotiation for settlement between the offender and the victim or there has been a withdrawal of the complaint.

A judicial police officer who intentionally keeps or hides record or exhibits from the court authority about their existence shall be considered to have committed an offense punishable pursuant to the provisions of the Criminal Code, in chapter relating to search for evidence.

## **CHAPTER 3 Judicial Police Agents**

### **Article 76. Qualifications for Judicial Police Agents**

The following shall be the qualifications for a judicial police agent:

1. Officer and deputy officer who is not qualified to be a judicial police officer;
2. Other national police agent;
3. Military officer of the Royal Gendarmeries who is not qualified to be a judicial police officer;
4. Other soldiers of the Royal Gendarmeries.

### **Article 77. The Oath of Judicial Police Agents**

Judicial police agents shall take an oath that they will perform their duty honestly. The oath shall be made before the court of the first instance. They shall not be required to take an oath again when they have the qualification as judicial police agents afterward. The formalities of the oath shall be determined by Prakas of the Minister of Justice.

### **Article 78. Missions of Judicial Police Agents**

Judicial police agents shall have the mission to:

1. Make an enquiry on offenses, including the petty crimes;
2. Assist judicial police officers in the performance of their duties.

When doing an enquiry into an offense, the judicial police agents are required to make a report. Their reports will be for information only.

In all cases, judicial police agents shall not perform duties reserved for the judicial police officers. Any performance in violation of such prohibition shall be considered null and void.

### **Article 79. Misconducts Committed during the Performance of Duties**

Any misconduct committed by a judicial police agent during the performance of his or her duty shall be reported to the Prosecutor General at the Court of Appeal by a prosecutor or an investigating judge. The Prosecutor General shall notify the Minister of Interior or Minister of National Defense to take disciplinary procedure on a case by case basis. The Prosecutor General shall be informed of the aftermath of the disciplinary procedure.

## **Article 80. Disciplinary Sanction**

Disciplinary sanction imposed by the Minister of Interior or the Minister of National Defense cannot be an obstacle to file a criminal action if an offense has been committed.

When a judicial police agent commits an offense during the performance of his or her duty, the Supreme Court may transfer power to other jurisdictions to take action for the good administration of the court.

The application to revoke the power shall be made by a prosecutor.

## **CHAPTER 4**

### **Determination of the Jurisdictions of National Police and Royal Gendarmeries**

## **Article 81. Determination of Jurisdictions**

In judicial police sector, the national police and the Royal Gendarmeries shall have jurisdictions as stated in Article 56 (Mission of Judicial Police) of this Code.

Furthermore, for military offenses, only the Royal Gendarmeries shall have the qualifications to act as judicial police.

Operations and cooperation between national police officers and Royal Gendarmerie officers while acting as judicial police shall be determined by a sub- decree.

Judicial police units which have jurisdictions nationally may be established by a Royal Decree.

## **CHAPTER 5**

### **Civil Servants and other Public Agents who Have Special Qualifications to Enquire into Certain Offenses**

## **Article 82. Qualifications of Certain Civil Servants and Public Agents**

All other civil servants and public agents who have been authorized by separate laws to do an enquiry into offenses shall be placed under the authority of a prosecutor while performing such duties. The formalities and procedures for providing qualifications shall be determined by a Joint Prakas of the Ministry of Justice and the concerned Ministry.

Those civil servants and public agents shall take an oath that they will perform their duties honestly. The oath shall be taken before the court of the first instance. The formalities for taking the oath shall be determined by Prakas of the Ministry of Justice.

When doing an enquiry into offenses, the civil servants and public agents are required to make reports. The reports shall have the value as normal information only.

All misconducts committed by the civil servants and public agents during the performance of their duties shall be reported to the Prosecutor General of the Court of Appeal by a prosecutor or an investigating judge. The Prosecutor General shall inform the Minister in charge of the civil servant or public agent to initiate disciplinary procedures. The Prosecutor General shall be informed of the

aftermath of disciplinary procedures. A disciplinary sanction shall not be an obstacle for a criminal action, if an offense has been committed.

## **BOOK THREE THE INVESTIGATIONS**

### **TITLE 1 GENERAL PROVISIONS**

#### **SINGLE CHAPTER General Provisions**

##### **Article 83. Confidentiality of Investigations**

The investigation must be confidential. All persons who participate in an investigation especially the prosecutors, lawyers, court clerks, police, Royal Gendarmeries, civil servants, experts, translators, medical physicians and other competent persons as mentioned in Article 95 (Technical or Scientific Examination) of this Code, must maintain professional confidentiality.

However, the respect of professional confidentiality cannot be an obstacle for an exercise of the right to self-defense.

Moreover, prosecutors may make a declaration in public if he or she thinks that the information disseminated in any case is false information.

A breach of confidentiality with regards to the investigation is an offense punishable according to the Criminal Law in force.

##### **Article 84. Different Investigation Authorities of Judicial Police Officers**

The power given to judicial police officers varies depending on the time for which the officer performs his/her duty under scope of investigation of *flagrant delicto* cases or under the scope of primary investigation.

### **TITLE 2 INVESTIGATION OF FLAGRANTE DELICTO CASES**

#### **CHAPTER 1 Flagrant Felony or misdemeanor**

##### **Article 85. Power of Judicial Police Officers in the Investigation of Flagrant Delicto Cases**

In the case of a flagrant felony or misdemeanor, judicial police officers shall follow the provisions of this Title.

##### **Article 86. Definition of Flagrant Felony or Misdemeanor**

Flagrant felonies or flagrant misdemeanors are:

- Offenses are being committed;
- Offenses that have just been committed.

Shall also be deemed as *flagrant* felonies or misdemeanors at the time right after the offense:

- A suspect is being chased red-handed by the public;
- A person who is found to have an object, or a scar, or other clear and consistent leads which can be concluded that the person has committed or participated in the act of committing an offense.

#### **Article 87. Arrest in the Flagrant Felony or Misdemeanor Cases**

In a flagrant felony or misdemeanor case, every person may arrest the offender and bring him or her to the nearest judicial police officer.

#### **Article 88. Considering as Flagrant Felony or Misdemeanor**

Shall be considered as flagrant felonies or misdemeanors, even outside the cases as stipulated in Article 86 (Definition of Flagrant Felonies or Misdemeanors), all felonies or misdemeanors which are committed at the place where the occupants of the place ask a prosecutor or judicial police officer or if no judicial police officer available at that place, judicial police agents to investigate. In the last case, the judicial police agent shall immediately inform to judicial police officer.

## **CHAPTER 2 Investigative Measures**

#### **Article 89. Preliminary Measures in Flagrant Felonies or Misdemeanors**

In the case of a flagrant felony or misdemeanor, judicial police officers shall report it immediately to the prosecutor.

Judicial police officers shall go to the site to examine the crime scene. Judicial police officers shall protect all leads of evidence that may disappear. Judicial police officers may order people not to leave the crime scene until their operations are completed.

If deemed necessary, the prosecutor shall go to the crime scene and direct the investigation.

In urgent case, in compliance with provisions in Article 68 (Extension of Territorial Jurisdiction) of this Code, a prosecutor may authorize any judicial police officer to operate in the territories of the entire country.

#### **Article 90. Investigative and Inquiry Records**

Judicial police officers shall make a record of their investigation and inquiry.

#### **Article 91. Searches**

Judicial police officers may conduct a search. In this case, the judicial police officer shall first obtain authorization from the prosecutor, even verbal authorization.

Judicial police officers shall conduct the search in front of the owner of the place or in front of two witnesses if there is no owner. The witnesses shall be appointed by the judicial police

officers. The witnesses shall not be members of police or a member of the Royal Gendarmeries who are under joint search operation forces.

Judicial police officers may not conduct searches before 6:00 a.m. or after 6:00 p.m., except:

- In the case as provided for in Article 86 (Definition of Flagrant Felony or Misdemeanor) of this Code;
- In the case as provided for in Article 88 (Considering As Flagrant Felony or Misdemeanor) of this Code;
- In the case when there is a call for help from inside the place;
- In the case the search is conducted at the time that is open to the public;
- In the case the search is conducted at a place where drugs are produced, kept, circulated, distributed or used.

Judicial police officers shall write a record of the search, which shall include:

- The authorization by the prosecutor by indicating the date and time of such authorization;
- The identification of the owner or of each witness.

Judicial police officers may not search the office of a lawyer. Only prosecutors or investigating judges may conduct a search at an office of a lawyer and only in the presence of the president of the Bar Association, or a delegate of the president of the Bar Association, or the concerned lawyer.

Judicial police officers may conduct a search of the building of a newspaper, news publishing enterprises or news broadcasting enterprises only in the presence of a prosecutor or an investigating judge who shall guarantee that the search shall not affect the freedom of the press and their professions nor unreasonably delay the broadcasting or publishing of the news.

## **Article 92. Affixation of Stamp on Exhibits**

Judicial police officers may confiscate exhibits. Judicial police officers shall seal on the exhibits.

After showing the confiscated objects to the occupant of the place or to two witnesses, the judicial police officers shall make a record on the confiscation including the inventory list of the confiscated objects. The confiscation record shall be signed or finger-printed by the occupant of the place or by the two witnesses.

## **Article 93. Interview Records**

Judicial police officers may order to appear or bring any person who is suspected of participating in commission of an offense to their units. The judicial police officers shall interview that suspect.

Each interview shall be recorded.

The record shall be an accurate account of the interviewed person's responses. If necessary, the judicial police officers may find an interpreter who shall swear according to his or her own religion or beliefs to speak the truth. The interpreter shall not be chosen from among the police or the Royal Gendarmeries or any persons who are involved in this case.

Each page of the record shall bear the signature or finger-print of the interviewed person.

Before signing or affixing the finger-print, the person shall re-read the record. If necessary, the judicial police officer shall read the record aloud. The judicial police officers may call for a translator. When the person refuses to sign or affix his or her finger-print the judicial police officer shall mention in the record.

#### **Article 94. Order to Appear –in Case of Flagrant Crime Investigation.**

Judicial police officers may invite any person, who can provide them with the relevant facts and listen to them.

The invited person shall turn up. In case of refusal, the judicial police officer shall inform the prosecutor who may order such person to appear. The order to appear shall include the identification of the relevant person, the date and the signature of the prosecutor and the order shall also be stamped. The order to appear allows the judicial police officers to use public forces to compel the person to appear. Paragraphs 2 to 5 of Article 93 (Interview Records) of this Code shall be applied.

#### **Article 95. Technical or Scientific Examination**

If a technical or scientific examination is urgently needed, judicial police officers may ask for help from any person who has the required skills. If the name of such individual is not yet registered in the list of experts according to Article 163 (National List of Experts) of this Code, such individual shall swear in accordance with his/her own beliefs or religion that he or she will assist the court honestly.

### **CHAPTER 3 Police Custody**

#### **Article 96. Police Custody**

In responding to the needs of an investigation, judicial police officers may detain any person who is suspected of involving in an offense. Judicial police officers may also detain any person who may provide them with relevant facts if the following conditions are met:

- The person who may be able to provide relevant facts but refuses to provide such information;
- Written authorization from the prosecutor for such detention.

Judicial police officers shall immediately report to the prosecutor and shall provide all relevant evidence required for such detention. The duration in police custody shall be 48 (forty eight) hours. The duration shall commence from the time when the detained person arrives at the police or Royal Gendarmeries Unit.

In the case of a felony, when there is a lead which shows that the detained person is guilty, the judicial police officers may extend the duration of the police custody if such a measure is necessary to conduct the investigation properly. Such an extension shall be submitted to the prosecutor who shall confirm the merits. The motive and written permission for an extension of the duration of the police custody shall be included into the case file. The extension of the duration of the police custody is a special action. Such an extension shall not be longer than 24 (twenty four) hours, excluding the time necessary for the transportation of the detained persons.

An extension of the duration of police custody is not permitted if the detained person is a minor.

In case of felony, a minor aged between 14 years old and less than 16 years old cannot be placed under police custody for more than 36 hours.

In case of misdemeanor, a minor aged between 14 years old and less than 16 years old cannot be placed under police custody for more than 24 hours.

In case of felony, a minor aged between 16 years old and less than 18 years old cannot be placed under police custody for more than 48 hours.

In case of misdemeanor, a minor aged between 16 years old and less than 18 years old cannot be placed under police custody for more than 36 hours.

A minor whose age is less than 14 years old cannot be placed under police custody.

#### **Article 97. Record of Police Custody**

When a person is detained in police custody, judicial police officers shall notify immediately to the detainee indicating the reasons for such a decision. Judicial police officers shall also inform the detainee about the rights provided in Article 98 (Assistance from a Lawyer during Police Custody) of this Code. If necessary, a judiciary police officer may call for an interpreter. The judicial police officer shall write a record of the police custody immediately. The record shall include the following information:

- The name and rank of the judicial police officer who ordered the detention;
- The identification of the detained person;
- The reasons for the detention;
- The starting date and time of the detention;
- The notification of the rights provided for in Article 98 (Assistance from a Lawyer during Police Custody) of this Code;
- Eventually the name of the interpreter.

This record shall be signed or finger-printed by the detainee after she/he has already read it or if the detainee is illiterate, the judicial police officer shall read this record for him or her. If the detainee refuses to sign or affix finger-print on the record, a judicial police officer shall mention it. The record shall be attached to the file.

#### **Article 98. Assistance of a Lawyer during Police Custody**

Where the period of 24 hours from the starting of the police custody has been lapsed, the detainee may request to talk with a lawyer or other person who is selected by him/her, provided that the selected person is not involved in the offense. This person shall be informed of the request for selection immediately and by all available means. On condition of guaranteeing confidentiality of the discussion, the selected person may enter into the custodial cell and talk with the detained person for 30 (thirty) minutes. Following the meeting, the selected person may make a written note to be attached to the file.

#### **Article 99. Assistance of Medical Physicians during Police Custody**

A prosecutor or judicial police officer may ask a medical physician to examine a detained person at any time. The medical physician shall verify whether the health condition of the detainee is suitable for detention.

If the medical physician finds that the arrested person's health condition is not suitable for detention, the judicial police officer shall immediately notify the prosecutor about it. The medical physician shall issue a health certificate which shall be attached to the file. The judicial police officer shall write down the name of the medical physicians, and the date and time of the examination in the record.

The prosecutor may personally visit the site to verify the condition of the detention.

#### **Article 100. Police Custody of a Minor**

When the detained person is a minor, the judicial police officer shall, by all means notify the parents, the legal representative or a person who is responsible for that minor.

#### **Article 101. Registry of Police Custody**

Each office of judicial police or Royal Gendarmeries, which is entitled to receive detained persons, shall maintain a Registry of Police Custody.

In any police custody, the following information shall be recorded into the Registry:

- The name and rank of the judicial police officer who decided the police custody;
- The identity of the detained person;
- The date and time of the commencement and the termination of the police custody;
- The name and position title of the judge who approves the continuation of the detention eventually;
- The name of the medical physician who examines the detained person eventually;
- The type of court decisions at the expiry of the police custody period.

The registry shall be made available to court authorities as necessary.

#### **Article 102. General Report of Police Custody**

A general report shall be made for every detention.

The general report shall mention the following information:

- The name and rank of the judicial police officer who decided the police custody;
- Identity of the detained person;
- Reason for the detention;
- The date and time of the commencement of the police custody;
- The procedures to notify the prosecutor;
- The procedures to notify in accordance with Article 100 (Police Custody of a Minor) of this Code;
- The name of the doctor who examined the detained person,
- Identities of persons who talked with the detained person in accordance with Article 98 (Assistance of a Lawyer during Police Custody) of this Code;
- The name and position title of the judge who approved the extension of the detention eventually;

- Duration of each interview and the duration of the breaks in between the interviews;
- Date and time of the of police custody;
- The Type of court decisions at the end of police custody;
- Operational conditions of the police custody and any incidences occurred thereto;

The General report of police custody shall be attached to the case file.

## **CHAPTER 4**

### **Handing Over of Arrested Person**

#### **Article 103. Handing Over of the arrested Person**

At the expiry of the period of police custody, the arrestee shall be:

- handed over to a prosecutor; or
- put in liberty

Such a decision shall be made by a prosecutor.

#### **Article 104. Duration of Handing-Over**

When arrested person is sent to the prosecutor, that person shall be brought immediately before the prosecutor.

If the arrested person cannot be brought before the prosecutor on the same day, due to special circumstances caused by transportation difficulties or distance of the transportation, an additional time may be provided by the prosecutor.

In all cases, the handing over of the arrested person shall be done as soon as possible.

The causes of the delay shall be written in the record which shall be submitted to the prosecutor by the judicial police officer.

## **CHAPTER 5**

### **Rules of Investigation on Flagrant Offenses**

#### **Article 105. Prohibition to non-Permitted Listening Primarily:**

Judicial police officers shall have no authority to allow the listening to or record any telephone conversations. Judicial Police Officers shall have no authority to allow the interception or record any correspondences by telecommunications, such as facsimiles or internet messages.

#### **Article 106. Duration of Investigation on Flagrant Delicto Cases**

The duration of an investigation on a flagrant delicto case cannot exceed seven (7) days from the date of the occurrence of an offense. The investigation shall be conducted continuously during that period. If the investigation does not finish within (7) seven days, the judicial police officers shall request instructions from a prosecutor.

### **Article 107. Submission of Police Record to a Prosecutor**

After completing the investigation, the judicial police officers shall send a record and all exhibits to the prosecutor.

When any person is sent to a prosecutor, the record and exhibits shall be sent together with the person.

### **Article 108. Contents of Police Records**

The records prepared by judicial police officers shall include:

- The names and ranks of the judicial police officers;
- The unit of such judicial police officers;
- The date.

Each page of the record shall be signed by the judicial police officers.

Any crossing, deletion or reference shall be approved with signature of a judicial police officer in the margin of the page.

The record of the interview or police custody shall indicate the identifications of relevant persons.

### **Article 109. Nullification of non-compliance of the Rules**

The rules and procedures provided for in the following Articles:

Article 90	Record on Investigation and Inquiry;
Article 91	Search;
Article 92	Affixation of Stamp on Exhibits;
Article 93	Interview Records;
Article 94	Order to Appear in Investigation of Flagrant Offense;
Article 95	Technical or Scientific Examination;
Article 96	Police Custody;
Article 97	Records of Police Custody;
Article 98	Assistance of a Lawyer during Police Custody;
Article 99	Assistance of a Medical Doctor during Police Custody;
Article 100	Police Custody of Minor;
Article 105	Prohibition to non-Permitted Listening Primarily;
Article 106	Duration of Investigation on Flagrant Delicto Case; and
Article 108	Contents of Police Records of this Code.

shall be strictly complied with or otherwise it shall be deemed as procedural null and void:

### **Article 110. The Power to Make Appreciation of the Judge**

In principle, the record has the value as information only. However, the record of the judicial police officer shall be considered as valid "original document" which means that it is considered to be reliable document unless there is contrary evidence. The contrary evidence may freely be submitted to the judge by all means permissible by laws.

The judge shall have freedom to make appreciation on records prepared by judicial police officers in the course of a primary investigation.

### **Title 3**

#### **PRIMARY INVESTIGATIONS**

#### **Single Chapter**

#### **Primary Investigations**

##### **Article 111. Commencement of Primary Investigations**

When learning about the act that can be an act of a felony, a misdemeanor or a petty offense, judicial police officers may conduct a primary investigation at their own discretion or at the request of a prosecutor.

##### **Article 112. Implementation Rules for Primary Investigations**

The provisions of Articles:

Article 90	Records of Investigation and Inquiry;
Article 95	Technical or Scientific Examinations;
Article 105	Prohibition to non-Permitted Listening Primarily;
Article 107	Submission of Police Records to Prosecutor;
Article 108	Contents of Police Records of this Code shall be applied in the conduct of primary investigations.

##### **Article 113. Search**

When the primary investigation involves a felony or misdemeanor, judicial police officers may conduct a search and seize relevant exhibits.

Judicial police officers shall seek an expressed and real consent from the owner of the premises. The consent shall be hand-written by the owner of the premises. If the owner is illiterate, the judicial police officer shall state clearly in the record that the owner of the premises is illiterate and approves the search.

Where the owner of the premises is absent or denies the search, the president of the court of the first instance who has territorial jurisdiction may issue authorized search order upon request from the prosecutor. The prosecutor shall personally direct the search. The search shall be conducted with the presence of the owner of the premises, or with the presence of two witnesses if the owner is absent. The witnesses shall be selected by the prosecutor. The witnesses cannot be judicial police or Royal Gendarmeries who are in the joint operating forces in the search. The search cannot be conducted before six (6) o'clock in the morning and after six (6) o'clock in the evening.

The provisions of Article 92 (Affixation of Stamp on Exhibits) of this Code shall apply to the seized objects.

##### **Article 114. Order to Appear –Primary Investigations**

Judicial police officers may subpoena and interview any person who is suspected of involving in an offense or who may provide relevant information on the matter.

The subpoenaed person must appear. In case of resistance, the judicial police officer shall notify the prosecutor who may issue an order to appear. The order to appear shall state the identity of the relevant person, the date shall be signed by the prosecutor with stamp.

The order to appear shall allow the judicial police officer to use public forces to compel such person to appear.

#### **Article 115. Record of Interviews –Primary Investigations**

Each interview must have a record.

The record shall be accurately produced from the statement of the relevant person. If necessary, the judicial police officer may call for an interpreter who must swear in accordance with his/her religion or beliefs to interpret the responses accurately. The interpreter cannot be selected from among the police, the Royal Gendarmeries, or any person who is involved in the case.

#### **Article 116. Police Custody of a Suspect**

In the case of primary investigations in relation to felony or misdemeanor, the provisions of Chapter 3 on Police Custody and Chapter 4 on Handing-over of Suspect of Title 2 on Investigation of Fragrant Delicto Case of this Book shall be applied.

#### **Article 117. Annulment of non-compliance**

In the course of a primary investigation, the rules and procedures stipulated in Articles:

Article 96	Police Custody;
Article 97	Record of Police Custody;
Article 100	Police Custody of Minor;
Article 105	Prohibition of non-Permitted Listening Primarily;
Article 107	Submission of Police Records to Prosecutor;
Article 113	Searches;
Article 114	Order to Appear –Primary Investigation of this Code shall be strictly followed

or otherwise the proceedings shall be deemed as null and void.

#### **Article 118. The Power to Make Appreciation of the Judge**

In principle, the record has the value as information only. However, the record of the judicial police officer shall be considered as valid "original document" which means that it is considered to be reliable document unless there is contrary evidence. The contrary evidence may freely be submitted to the judge by all means permissible by laws.

The judge shall have freedom to make appreciation on records prepared by judicial police officers in the course of a primary investigation.

### **TITLE 4**

#### **RETURN OF SEIZED ITEMS WITHIN INVESTIGATION FRAMEWORK**

##### **SINGLE CHAPTER**

#### **Return of Seized Items Within Investigation Framework**

**Article 119. Authority that has Competence to Order the Return of a Seized Item to the Owner**

The prosecutor shall have competence to order the return of an item seized during an investigation to its owner, provided that those items are not necessary for providing the facts and if there is no real dispute over the ownership over such item.

However, any item that is dangerous to persons or to property, such as weapons or explosives, or an item which is illegally held may not be returned. Such item shall be seized and deemed as property of the state or be destroyed.

In case a prosecutor refuses to return a seized item, a complainant may submit a claim to the Prosecutor General.

The prosecutor and the Prosecutor General have no competence to return when there is an accusation made under investigating jurisdiction or under the trial jurisdiction. The prosecutor and the Prosecutor General shall continue to have competence when an investigation is completed by a final non-suit order.

**Article 120. Return of a Seized Item to Owner**

If a court which received a complaint has made a final decision and failed to make a decision on the return of a seized item to the owner, the competent prosecutor or Prosecutor General shall decide, on case by case basis, at his discretion on the request to return the item to an owner when there is no real dispute over the ownership of such item.

## **BOOK 4 INVESTIGATIONS**

### **TITLE 1 Investigating Judge**

#### **CHAPTER 1 GENERAL PROVISIONS**

##### **Article 121. Confidentiality of Investigation**

The investigation is confidential.

All persons who participate in the investigation, especially, judges, lawyers, court clerks, police, Royal Gendarmeries, civil servants, experts, interpreters/translators, medical physicians and other competent persons mentioned in Article 95 (Technical or Scientific Examination) of this Code, must maintain professional confidentiality.

However, such professional confidentiality cannot be used as an obstacle to the right of self-defense.

Moreover, prosecutors may make a declaration in public if he or she thinks that the information disseminated in any case is false information.

A breach of confidentiality regarding an investigation is an offense punishable according to the Criminal Law in force.

##### **Article 122. Commencement of Investigation**

Investigation is mandatory for a felony; however it is optional for a misdemeanor.

##### **Article 123. Territorial Jurisdictions**

Competent judges are:

- an investigating judge at the place of an offense;
- an investigating judge at the place of residence or location of staying of a person suspected committing an offense;
- an investigating judge at the place where a suspected offender was arrested.

Where there is a conflict of jurisdiction between investigating judges of different courts of the first instances where a criminal case was filed that conflict shall be referred to the president of the investigation chamber for decision.

The conflicts of territorial jurisdictions between investigation chambers shall be settled by the president of the Supreme Court.

This decision shall be final and cannot be appealed.

##### **Article 124. Introductive Requisition**

In compliance with Article 44 (Commencement of Investigation) of this Code, an investigation is launched by an introductive requisition from the prosecutor.

As provided in the Article 44 (Commencement of Investigation), paragraph 2, an investigation can be conducted against one or more persons whose names are specified in the introductive requisition or against unnamed persons.

An investigating judge cannot perform any investigation without introductive requisition from the prosecutor.

When an investigating judge receives a complaint, by acting as plaintiff of civil complaint, the investigating judge shall follow the procedures as stated in Articles 139 (Transfer of Complaint to Prosecutor) and Article 140 (Payment of Deposits) of this Code.

When receiving a normal complaint, an investigating judge shall send it to the prosecutor.

#### **Article 125. Scope of the Complaint**

The investigating judge shall only receive a complaint based on the facts of an offense as stated in the introductive requisition from the prosecutor. The investigating judge shall investigate only those facts.

If a new fact which can be a criminal offence emerges during the investigation, the investigating judge shall inform the prosecutor of this fact. The prosecutor may request the investigating judge to investigate the new fact by making additional introductive requisition. If there is no additional introductive requisition, the investigating judge shall have no power to investigate the new fact.

However, if the new fact is an aggravating circumstance to the fact mentioned in the initial introductive requisition, the investigating judge does not need to ask for additional introductive requisition.

#### **Article 126. Placing under Supervision**

The investigating judge shall place under supervision of any persons specified in the introductive requisition.

The investigating judge shall have the power to place under supervision of any person clear and coherent indications that such person has been involved in an act of offense even though their names are not indicated in the introductive requisition.

The investigating judge may place such person under supervision as perpetrators, instigators or accomplices of an offense.

#### **Article 127. Investigation to Charge or Acquittal**

An investigating judge, in accordance with the law, shall perform all investigations that are useful to ascertaining the facts.

An investigating judge shall have the obligation to investigate for charging or acquitting.

#### **Article 128. Assistance of Court Clerks**

An investigating judge shall have one clerk. In any case, the clerk cannot perform the duties as the competences of the investigating judge.

#### **Article 129. Roles of Court Clerks**

The clerk must keep a record of the investigation. The court clerk shall make copies of each record to the possible extent. The copies shall be certified as true copies of the original records by the court clerks. The copies shall be kept as a reserved file.

All case files shall be numbered by the court clerk in a chronological order.

The reserved file and record must be kept in the court clerk's office, in the investigating judge's office, or in any room of the court with sufficient security conditions.

The lawyer or lawyer's secretary may be allowed by the investigating judge to copy the record at his/her own cost under the supervision of the court clerk.

#### **Article 130. Site Visit by Investigating Judges and Court Clerks**

An investigating judge may visit the site with court clerk within the jurisdiction of the court of the first instance to conduct an investigation that he or she believes to be useful, such as examining equipment, searching and seizing exhibits.

The investigating judge shall inform the prosecutor of this visit. In this case, the prosecutor may accompany the investigating judge.

If it is required by the investigation, the investigating judge may visit the site with the court clerk within the territory of the whole nation, but the judge shall notify in advance the prosecutor of the court of the first instance in which the site locates.

The investigating judge shall make a report on his/her operations.

#### **Article 131. Rogatory Commission**

An investigating judge may request another judge, a judicial police officer or any unit of the judicial police to undertake certain activities through a rogatory commission under the conditions stated in Article 173 (Rogatory Commission) to Article 184 (Records Prepared by Judicial Police Officer) of this Code.

#### **Article 132. Request to Act by Prosecutor**

At any time during an investigation, the prosecutor can request the investigating judge to conduct an investigation that he or she believes to be useful.

If the investigating judge does not agree to follow the prosecutor's request, he or she shall write a rejection order within fifteen (15) days. This order shall state the factual reasons for the refusal and the prosecutor shall be immediately notified of this order.

If the investigating judge fails to do so within 15 days, the prosecutor can directly file a complaint through his or her request to the investigating chamber to make decision instead of the investigating judge.

### **Article 133. Request to act by the Accused Person**

At any time during an investigation, the accused person can request the investigating judge to interview him or her, to hear the statement of the plaintiff of a civil party or witness, to cross examination or go to the site. The request must be in writing with a statement of factual reasons.

If the investigating judge does not grant the request, that investigating judge shall write the rejection order within one (1) month after receiving the request. This order shall state the factual reasons and the prosecutor and the accused person shall immediately be notified of the order.

If the investigating judge does not decide within one (1) month, the accused person can directly file a complaint through his or her request to the investigation chamber to make decision instead of the investigating judge.

### **Article 134. Request to Act by Civil Party**

At any time during an investigation, a civil party can request the investigating judge to interview him/her, interview witnesses, interview the accused person, cross examination or go to the site. The request must be in writing with a statement of factual reasons.

If the investigating judge does not grant the request, that investigating judge must write a rejection order within one (1) month after receiving the request. The order shall state the factual reasons and the prosecutor and the civil party shall immediately be notified of the order.

If the investigating judge does not decide within one (1) month, the civil party can directly file a complaint through his or her request to the investigation chamber to make decision instead of the investigating judge.

### **Article 135. Delivery of Case File to Prosecutors**

At any time, the prosecutor can examine the case file of investigation or request to bring the case file for examination, but shall have the obligation to return the case file within twenty four (24) hours.

### **Article 136. Presence of Prosecutor during Investigation**

The prosecutor can be present at any investigation, especially in the interview of the accused, the confrontation, and taking statement.

### **Article 137. Engagement of Civil Party by way of Intervention**

When the commencement of an investigation, any person who claims to be victim of the offense may, at any time, act as plaintiff of a civil party to an investigating judge.

No specific form of petition shall be required for the engagement of civil party by way of intervention.

When a person acts as civil party through a proxy, the proxy shall be attached to the case file. When the proxy is made orally, the investigating judge shall make a record of it.

The investigating judge shall notify the prosecutor and the accused person about the engagement of civil party.

### **Article 138. Petition by Engagement of Civil Party**

A victim of a felony or misdemeanor can file a petition with the investigating judge by acting as plaintiff of a civil party. The petition may be lodged by a lawyer on behalf of a victim.

### **Article 139. Delivery of Petition to Prosecutor**

An investigating judge shall write his/her remarks on the petition of a civil party through an order. The investigating judge shall submit this petition to the prosecutor.

After seeing the petition by the civil party, the prosecutor shall file the investigating judge through an introductive requisition. This introductive requisition can be made against an unknown person, even though the civil party charges one or more persons.

The prosecutor may request the investigating judge not to conduct an investigation if the criminal action is extinguished or if that action is not a criminal offense.

In case an investigating judge decides not to conduct an investigation, that judge must write an order with the statement of factual reasons and notify the plaintiff of civil party immediately.

In case the investigating judge still decides to conduct an investigation, the investigating judge must write an order with a statement of factual reasons and notify the prosecutor immediately.

### **Article 140. Payment of Deposits**

Based on resources of the plaintiff/civil party and on the foreseen difficulty of the case, the investigating judge shall make an order setting out the amount of deposit that the plaintiff/civil party shall pay and the period of payment.

If the plaintiff/civil party is not able to pay the deposit, the investigating judge may exempt this deposit. The plaintiff/civil party shall be immediately notified of the order.

In case that the deposit is made, the plaintiff/civil party shall receive a receipt signed by the court president, prosecutor and the court clerk.

If the deposit has not been paid within the period set out by the investigating judge, the petition by the engagement of the civil party shall be declared inadmissible by the investigating judge. The investigating judge shall issue an order of which the civil party shall be notified immediately.

The deposit shall be returned to the depositor when the procedures are completed, except when the provisions of Article 141 (Abusive or Dilatory Petition) of this Code are implemented.

The deposited amount shall be kept in a special bank account or at a place with strict guarantee of security. This place shall be chosen with mutual consent of the court president and the prosecutor.

### **Article 141. Abusive or Dilatory Petitions**

When an investigation, commenced based on a petition from a civil party, is terminated by a non-suit order and if the investigating judge realizes that a procedure has been violated or delayed, he/she may decide to impose a civil fine on the civil party. The amount of fine shall not exceed the

amount of the deposit. The decision to impose fine shall be notified to the party concerned immediately.

#### **Article 142. Claim for Compensation**

When an investigation, commenced based on a petition by a civil party, is terminated by a final non-suit order, the persons named in the petition may claim for compensation from the complainant if the procedure was abusive or dilatory.

The claim for compensation shall be submitted to the court of the first instance where the case was investigated. The court may request to examine the case.

## **CHAPTER 2**

### **INVESTIGATION BY AN INVESTIGATING JUDGE**

#### **SECTION 1**

#### **Notification of placement under examination**

#### **Article 143. Notification of placement under examination**

When an accused person appears for the first time, the investigating judge shall check his/her identity, inform him/her of the act which has been charged and the type of offense as defined by law. The investigating judge shall tell the accused person that he/she is free whether to answer or not. The notation on the statement shall be written in the record on the first appearance.

If the accused person wants to answer, the investigating judge shall take the statement immediately.

The investigating judge shall inform the accused person of his/her rights to choose a lawyer or to have a lawyer appointed for him/her according to the Law on the Statute of Lawyers.

An accused minor shall have a lawyer all the time. If the accused minor does not choose a lawyer, a lawyer shall be appointed according to conditions of the Law on the Statute of Lawyers.

After the first appearance, the accused person who is on bail shall inform the investigating judge of his/her address. This accused person shall be informed that:

- he/she shall notify the investigating judge when he/she changes the address;
- all notifications made through the latest address given by the accused person shall be deemed to be made to the accused person.

The notice and information on changes of address shall be recorded in the report on the first appearance.

#### **Article 144. Assistance of Interpreter/Translator**

When it is necessary, the investigating judge shall call on an interpreter. The interpreter shall swear according to his/her religion or beliefs that he/she shall help the court and interpret the answers accurately. In any case, the interpreter cannot be selected from among judges, court clerks, police, Royal Gendarmeries, parties or witnesses.

## **SECTION 2**

### **Interview of an accused person**

#### **Article 145. The Presence of Lawyer During Interview**

When an accused person has a lawyer, the investigating judge shall invite the lawyer at least 5 (five) days before the interview takes place. During that period, the lawyer can examine the procedural case file.

An accused person can only be interviewed with the presence of his/her lawyer. However, if the lawyer was properly invited but does not show up on the set date and time, the investigating judge can interview the accused person without the presence of the lawyer. The absence of the lawyer shall be noted in writing in the minute of the accused person's interview.

In special cases, the investigating judge can interview the accused person without summoning the lawyer if the accused person expressly waives the presence of his/her lawyer. This waiver shall be written in a separate report other than the report on the interview of the accused person and shall be signed by the accused person.

In the case of emergency, the investigating judge can also interview the accused person without the presence of the lawyer. This emergency situation shall be caused by the deadly injury or caused by the fear of losing evidence leads. The type of the emergency shall be written as notation in the report.

The investigating judge can call on an interpreter as provided in Article 144 (Assistance of Interpreter/Translator) of this Code.

#### **Article 146. Questions Authorized by Investigating Judge**

When interviewing an accused person, the prosecutor and lawyer can also ask the questions as authorized by the investigating judge.

If the questions are not authorized, they shall be noted in the record.

#### **Article 147. Face-To-Face Interview**

The provisions of Article 145 (Presence of a Lawyer during Interview) and Article 146 (Questions Authorized by Investigating Judge) of this Code shall be applied with the face-to-face interview of an accused person.

#### **Article 148. Minimum Period of Interview**

If the period of 4 (four) months passed from the interview at the first appearance, an accused person has not been interviewed face to face or confronted, the investigating judge shall take the statement if there is a request from the accused person. If the investigating judge fails to summon the accused person within 1 (one) month after the request, the accused person may directly file a petition to the Investigation Chamber which shall take statement by itself. The record shall be sent to the investigating judge later.

#### **Article 149. Rights of the Accused to Defend**

The lawyer of an accused person who has been detained may freely communicate with his/her client in a prison or in a detention center. The conversation between the lawyer and the

accused person shall not be listened to or recorded by others. The lawyer may read documents of the dossier to his/her client. but the lawyer cannot give the copy of the dossier to his/her client.

### **SECTION 3**

#### **Interviewing of a Civil Party**

##### **Article 150. Interviewing of a Civil Party**

A civil party can be accompanied by a lawyer.

In this case, the investigating judge shall invite the lawyer of the civil party at least 5 (five) days before the interview. During that period, the lawyer may examine the procedural case file.

A civil party may be interviewed only in the presence of his/her lawyer. However, if the lawyer who has properly been invited does not appear on the set date and time, the investigating judge may interview the civil party without the presence of the lawyer. The absence of the lawyer shall be noted in writing in the interview record.

In special cases, the investigating judge can interview the civil party without summoning the lawyer if the civil party expressly waives the presence of his/her lawyer. This waiver shall be noted in a separate report other than the report on the civil party interview and shall be signed by the civil party.

In the case of emergency, the investigating judge can also interview the civil party without summoning the lawyer. An emergency situation shall be caused by a deadly injury or by the fear of losing evidence leads. The type of the emergency shall be noted in the record.

The investigating judge can request for an interpreter as provided in Article 144 (Assistance of Interpreter/Translator).

##### **Article 151. Questions Authorized by Investigating Judge**

During the interview, the prosecutor and the lawyer can raise questions authorized by the investigating judge. If the questions are not authorized, they shall be noted in the record.

##### **Article 152. Face-to-Face Interview or Confrontation**

The provisions of Article 150 (Interviewing of a Civil Party) and Article 151 (Questions authorized by Investigating Judge) of this Code shall be applied in the case of face-to-face interview of a civil party.

### **SECTION 4**

#### **Interviewing of Witnesses**

##### **Article 153. Interviewing of Witnesses**

The investigating judge can interview any person whose response may be useful to the revelation of the truth.

The investigating judge shall interview witnesses separately, without the presence of the accused person and civil party. The investigating judge can also arrange a confrontation between the accused person, civil party and witnesses.

Any person who has been subpoenaed by the investigating judge shall appear.

In the case of refusal to appear, the investigating judge can request the public forces to cause the witness to appear. The investigating judge shall issue an order to appear. This order shall include identity of the witness and shall be dated and signed by the investigating judge with stamp.

#### **Article 154. Oath of Witnesses**

Before the interview, each witness shall swear in accordance with their religion or beliefs that he/she only speaks the truth. The formality of the oath shall be defined in the annex of this Code.

#### **Article 155. Assistance of an Interpreter**

The investigating judge can request for an interpreter to interview the witness as provided in Article 144 (Assistance of Interpreter/Translator) of this Code.

#### **Article 156. Authorized Witness without Swearing**

The following witnesses are authorized to make a statement without swearing:

1. The father, mother and ascendants of the accused person;
2. The sons, daughters and all other descendants of the accused person;
3. The brothers and sisters of the accused person;
4. The brother-in-laws and sister-in-laws of the accused person;
5. The spouse of the accused person, even if they have been divorced;
6. Any child who is less than 14 years old.

#### **Article 157. Impossibility to interview Some Witnesses**

To respect rights to self-defense, the investigating judge cannot call as a witness any person to whom there is a lead of evidence to charge. In such case, the judge shall apply the procedures as provided in Article 143 (Notification of Placing under Examination) of this Code.

#### **Article 158. Visit the Resident of a Witness**

If the witness is sick or cannot travel, the investigating judge and the court clerk can go to his/her resident or to the place where the witness stays to take the statement.

### **SECTION 5 Search and Seizure of Exhibits**

#### **Article 159. Rules to be applied in Searching**

The investigating judge can conduct a search.

An investigating judge shall conduct a search in the presence of the occupant of a place or if there is no presence of the occupant, the search shall be conducted in the presence of two (2) witnesses to be selected by the judge. The witnesses cannot be police or Royal Gendarmeries which is under the joint operation forces of the search.

An investigating judge cannot begin a search before 6:00 A.M and after 6:00 P.M., except in the case of searching:

- At a place that is open to the public;
- At all places where drugs are produced, stored, trafficked, distributed or used.

The search of a lawyer's office shall only be conducted in the presence of the president of the Bar Association or his/her delegates.

The investigating judge shall prepare the search record to be signed by him/herself and the court clerk together with the occupant of the place or two (2) witnesses.

The record shall include the identification of the occupant of the place, or each witness. If the search is conducted in a lawyer's office, the record shall note the presence of the president of the Bar Association or his/her delegates.

#### **Article 160. Affixation of Stamp on Exhibits**

An investigating judge may seize exhibits. The investigating judge shall affix stamp on the exhibits.

After showing the seized exhibits to the occupant of the place or to the two (2) witnesses, the investigating judge shall make a record on the seizure, including an inventory list of the seized exhibits. The record of such seizure shall be signed by the investigating judge and court clerk together with the occupant of the place or two (2) witnesses. The record shall include the identification of the occupant of the place or of each witness.

#### **Article 161. Return of Seized Items to Owner by an Investigating Judge**

When a settlement warrant has not been issued, the investigating judge shall have the competence to return the seized items to the owner if there is no clear dispute over the ownership of the seized items. The investigating judge shall make a well motivated decision after receiving an opinion from the prosecutor. The decision shall be immediately notified to the complainant and his/her appointed lawyer, if any.

The items shall not be returned to the requesting person if this measure may create obstacles to ascertaining the truth.

Objects which cause danger to human-being or property, such as weapons, explosives, or items illegally possessed, shall not be returned to the owner. Such objects shall be confiscated as state property.

### **SECTION 6 Forensic Examination**

#### **Article 162. Necessity of Forensic Examination**

In case of technical problems, the investigating judge may order for a forensic examination by him/herself or at the request of a prosecutor, an accused person, or a civil party.

When the investigating judge refuses a request for a forensic examination, the investigating judge shall make a well motivated decision. The decision shall be made within 5 (five)

days if the request is from a prosecutor and within 1 (one) month if the request is from an accused person or from a civil party. The requesting person shall be immediately notified of the decision.

### **Article 163. National List of Experts**

A national list of experts shall be created. This list shall be prepared by the Minister of Justice. The procedures for registration or cancellation from the list shall be determined by a Prakas.

An expert who is registered on the national list of experts shall take an oath at the Court of Appeal in Phnom Penh according to his/her religion or beliefs that he/she will assist the court honestly and sincerely in order to seek justice. A registered expert is not required to take an oath again when he/she is appointed to conduct a forensic examination.

### **Article 164. Selection of Experts outside the National List**

Normally, the investigating judge shall select an expert who is registered in the national list of experts.

By an order which states special reasons, the investigating judge can appoint an expert who is not registered in the national list of experts. In such case, the expert shall swear according to his/her religion or beliefs that he/she will assist the court honestly and sincerely.

### **Article 165. Order to Assign an Expert**

An expert shall be appointed in accordance with the order of the investigating judge. The order shall confirm the assignment of the expert and the duration of the assignment.

The assignment shall deal with technical problems only.

If it is suitable, the investigating judge shall deliver some or all of the seized exhibits to the expert. The investigating judge shall make a record on the delivery of the seized exhibits. The expert may break the seal on the exhibits in order to conduct forensic examinations. If such examination causes the damage or ruins the seized exhibits, the expert shall inform the investigating judge and request permission from the investigating judge before starting his/her operations.

### **Article 166. Supervision of Expert's performance by an Investigating Judge**

An expert shall perform his/her assignment under the supervision of the investigating judge. The expert shall inform the investigating judge of the progress of his/her mission, including any difficulties that he/she is facing.

If the expert does not respect the deadlines set by the investigating judge, the investigating judge shall appoint a new expert to replace him/her. However, if it is required by the circumstances, the investigating judge, through an order may allow the extension of duration.

### **Article 167. Necessary Activities to Perform Missions by experts**

To perform his/her mission, an expert can interview any person except the accused person. All answers received by the expert shall have the value as normal information only. A person who gives statements to the expert does not need to take an oath.

The expert shall seek permission from the investigating judge, if he/she becomes aware that it is necessary to hear the testimony of an accused person. The accused person may request the expert to get his/her statement in the presence of his/her lawyer.

However, if the investigating judge appoints a medical physician or a psychologist to examine the accused person, this examination shall take place in the absence of the lawyer.

#### **Article 168. Report of Expert**

Upon completion of an expert's operation, the expert shall make a report which clearly describes his/her activities and gives conclusions. The expert shall attest that he/ she has performed all activities described in the report by him/herself. The report shall be dated and signed.

When the expert breaks the seal on the seized exhibits for examination, he/she shall describe this matter in the report.

An expert shall submit the report and return all exhibits that he/she received for examination to the investigating judge. If the seal on exhibits was broken, the investigating judge shall re-seal the exhibits. A report on the return of exhibits and eventual reseal shall be made.

If the forensic examination causes the damage or ruins the seized exhibits, the expert shall mention in his/her report on the permission granted by the investigating judge as mentioned in the third phrase, paragraph 3 of Article 165 (Order to Assign an Expert) of this Code.

If possible, the expert shall make a copy of the report and submit it to the investigating judge.

#### **Article 169. Assignment of Several Experts**

If it is required by circumstances, the investigating judge can appoint several experts.

In such case, if the experts have differing opinions, each expert shall write his/her own opinion or his/her disagreement.

#### **Article 170. Notification of the Expert Conclusions**

When the report of an expert has been completed, the investigating judge shall inform the prosecutor of that report.

The expert report shall be put in the investigation dossier.

The investigating judge shall call in the accused person and his/her lawyer and inform them about the conclusions of the expert.

The investigating judge shall call in the civil parties and their lawyers and inform them about the conclusions of the expert.

The investigating judge shall set a time limit for a prosecutor, an accused person or a civil party to request for additional forensic examination or cross-forensic examination. This time limit shall not be less than 10 (ten) days. During this time, the dossiers that include all reports by experts may be examined by the lawyer.

All statements of the additional forensic examination or cross-forensic examination shall be based on reasons and shall be made in writing.

If the investigating judge does not agree with the request to conduct additional forensic examination or cross forensic examination, he/she shall make the decision through an order which shall be based on reasons. The decision shall be made within 5 (five) days if the request was made by a prosecutor and within 1 (one) month if the request was made by an accused person or a civil party. The applicant shall be immediately notified of the order.

All applications to conduct additional forensic examination or cross-forensic examination that are submitted after the expiration of the time limit set by the investigating judge shall be put into the dossier.

If the investigating judge who receives an application to conduct forensic examination, additional forensic examination or cross-forensic examination fails to make a decision within the time stated in paragraph 2 of Article 162 (Necessity of Expert Examination) of this Code or in this Article, the applicant can file a petition directly with the Investigation Chamber, who shall make the decision instead of the investigating judge.

#### **Article 171. Costs of forensic examinations**

Costs of forensic examination shall be the burden of the applicant.

The cost of forensic examination, additional forensic examination or cross- forensic examination which was requested by an investigating judge, a prosecutor or a judicial police officer shall be the burden of the government.

### **SECTION 7**

#### **Listening to Telephone Conversation**

#### **Article 172. Listening to Telephone Conversation Ordered by an Investigating Judge**

When it is necessary to reveal the truth, an investigating judge can issue an order authorizing the listening to and recording telephone conversations. The investigating judge can also order the intercept and record of all telecommunications, such as messages through facsimile or Internet.

The investigating judge can request every qualified public institution or specialist civil servant to install technical instruments and make recordings. The investigating judge shall indicate in his/her order the type of communications that are authorized to be monitored and the duration of the mission.

The appointed public institutions or civil servants shall perform their duties according to the order of the investigating judge. During the mission, the appointed public institutions or civil servants shall report to the investigating judge on the progress of the mission, particularly concerning the eventual difficulties. When the mission is completed, the public institutions or civil servants shall transcribe all recorded voices into written transcripts. The transcriptions shall accurately reflect the substance of the recorded communication. The recorded voice shall be given to the investigating judge and sealed.

The investigating judge can have access to the place where the interception or recording is being carried out at any time. The investigating judge may not be prohibited from accessing the place for any reasons, even the place is a military location.

An investigating judge can authorize this assignment by way of a rogatory commission.

## **SECTION 8**

### **Rogatory Commissions**

#### **Article 173. Rogatory Commissions**

Through a rogatory commission, an investigating judge may delegate the power to any judge who works in the same court or in another court, the judicial police officers or the judicial police unit to perform the investigation work.

#### **Article 174. Content of Rogatory Commissions**

A rogatory commission shall specify the nature of work to be done. The work shall relate directly to the offense which has been charged. A rogatory commission cannot be general, it has to be specific.

The investigating judge shall set the time for carrying out the rogatory commission.

The rogatory commission shall be dated and signed by the investigating judge and shall also be sealed.

The investigating judge may withdraw a rogatory commission at any time.

#### **Article 175. Rogatory Commission Issued to Another Judge**

When a rogatory commission is issued to another judge, the assigned judge shall have all powers of the investigating judge.

#### **Article 176. Rogatory Commission Issued to a Judicial Police Officer**

When a rogatory commission is issued to a judicial police officer, that officer shall have the powers stated in Articles 178 (Report on Investigation and Inquiry) to 184 (Record of Judicial Police Officer) of this Code.

Concerning the enforcement of the rogatory commission, judicial police officers shall be under the supervision of the investigating judge and shall only report to this judge.

#### **Article 177. Execution of Rogatory Commission by a Judicial Police Officer**

A judicial police officer shall perform the duties specified in a rogatory commission in their territorial jurisdiction, except as otherwise provided in paragraphs 2 and 3 of Article 68 (Extension of Territorial Authority) of this Code.

#### **Article 178. Report on Investigation and Inquiry**

A judicial police officer shall make a report on his/her investigation and inquiry.

#### **Article 179. Rules for Interview by a Judicial Police Officer**

A judicial police officer can summon and interview witnesses.

Before answering any questions, each witness shall swear according to his/her religion or beliefs that they will speak only the truth, except for the witnesses listed in Article 156 (Authorized Witness without Swearing) who are exempted from taking an oath. To respect the rights to self-defense, the judicial police officer cannot interview as a witness any person with lead of guilt on that person. If the interview of any witness indicates the potential guilt of that witness, the judicial police officer shall stop the interview and shall report it to the investigating judge. A judicial police officer may call on an interpreter who shall swear according to his or her religion or beliefs that he/ she will assist the court by interpreting fairly and accurately.

A person who is called for questioning as a witness shall appear. In case of refusal, the judicial police officer shall report to the investigating judge, who can issue a warrant to the witness to appear in which the identification of the witness shall be specified. This warrant shall be dated, signed by the investigating judge and sealed. The warrant to the witness to appear shall authorize the judicial police officers to use public forces for compulsory appearance to the witness.

The provisions of paragraphs 2 to 5 of Article 93 (Record of Interview) of this Code shall be applied on the record of witness interview.

#### **Article 180. Interview that Cannot be Done by a Judicial Police Officer**

Judicial police officers cannot interview an accused person or listen to the statement of a civil party.

#### **Article 181. Search and Seizure Conducted by a Judicial Police Officer**

Judicial police officers can search and seize objects according to the provisions of Articles 91 (Search) and 92 (Affixation of Stamp on Exhibits) of this Code. However, authorization as stated in the second phrase of paragraph 1 of Article 91 (Search) of this Code shall be provided by the investigating judge.

#### **Article 182. Police Custody under Rogatory Commission**

The provisions of Articles 96 (Police Custody) to 102 (General Report of Police Custody) concerning police custody shall apply in the enforcement of a rogatory commission. However, powers given by these Articles to a prosecutor shall be applied by an investigating judge. For the implementation of Article 103 (Transportation of an Arrested Person) and Article 104 (Duration of Transportation) of this Code, when the period of police custody expires, the detained person shall be brought to appear before the investigating judge.

#### **Article 183. Listening to telephone conversation primarily under Rogatory Commission**

When a rogatory commission allows the listening or recording telephone conversations or monitoring and recording conversations through means of telecommunications such as facsimiles or internet messages, the judicial police officer shall apply the authorities provided to the investigating judge by the second phrase of the paragraph 1, and paragraph 2 of Article 172 (Listening to Telephone Conversations Ordered by an Investigating Judge) of this Code.

#### **Article 184. Records Prepared by Judicial Police Officers**

The record made by a judicial police officer in relation to the enforcement of a rogatory commission shall be under the provisions of Article 108 (Contents of Police Record) of this Code.

## **CHAPTER 3**

### **SAFETY MEASURES**

#### **SECTION 1**

#### **Warrants**

##### **Article 185. Warrant Issuance**

An investigating judge may issue order to appear, order to bring, arrest or detention warrants.

#### **SECTION 2**

#### **Order to appear**

##### **Article 186. Order to appear**

An investigating judge may issue order to appear.

Order to appear is an order to any person to appear before the investigating judge.

Order to appear can be issued against the accused person or any person with a lead of guilt.

##### **Article 187. Information Mentioned in the order to appear**

Order to appear shall mention the following information:

- The identity of the concerned person;
- The offense to be charged and legal texts that define and suppress such offense;
- The date, time and place to appear before the investigating judge;
- The name and position title of the judge who issued the warrant.

Order to appear shall be dated and signed by the investigating judge and sealed.

##### **Article 188. Notification of Order to appear**

The order to appear shall be delivered to the concerned person by a judicial police officer, a judicial police agent, or a bailiff.

The concerned person shall keep a copy of the order to appear and shall sign the original order to appear, which shall then be returned to the investigating judge.

The judicial police officer, judicial police agent or the bailiff shall notify the investigating judge of any difficulty in their mission.

#### **SECTION 3**

#### **Order to bring**

##### **Article 189. Order to bring Issued by an Investigating Judge**

An investigating judge shall be entitled to issue order to bring.

#### **Article 190. Order to bring**

Order to bring is an order to public forces to arrest and bring any person before the investigating judge.

Order to bring can be issued against the accused person or any person with a lead of guilt.

#### **Article 191. Information mentioned in the order to bring**

Order to bring shall mention the following information:

- The identity of the concerned individual;
- The offense to be charged and legal texts that define and suppress such offense;
- The name and position title of the judge who issued the order to bring.

Order to bring shall be dated and signed by the investigating judge and sealed.

#### **Article 192. Execution of Order to bring**

Order to bring shall be executed by judicial police officers.

In case of emergency, order to bring shall be disseminated by all means to police units or the Royal Gendarmeries. The original order to bring shall be delivered immediately to the judicial police officers who have the duty to execute it. The judicial police officers cannot enter into the residence of a concerned person before 6 (six) o'clock in the morning and after 6 (six) o'clock in the evening. The judicial police officers shall notify the investigating judge of any difficulty in performing their mission.

#### **Article 193. Presentation through an order to bring**

If, due to circumstances, the concerned person cannot be brought before the investigating judge after the arrest, that person shall be brought to the police unit or Royal Gendarmeries unit in a detention center or in prison. That person shall be presented to the investigating judge or to his/her replacement on the following day at the latest. If presentation cannot be made on the following day, the concerned person shall be put in liberty.

#### **Article 194. Inclusion of Pre-trial Duration**

When a person who has been arrested in the execution through the order to bring, is detained, this duration shall be included in the duration of the pre-trial detention if any.

### **SECTION 4 Arrest Warrants**

#### **Article 195. Arrest Warrants Issued by an Investigating Judge**

An investigating judge shall be entitled to issue an arrest warrant.

#### **Article 196. Arrest Warrants**

An arrest warrant may be issued against an accused person or any person with a lead of guilt.

An investigating judge will issue an arrest warrant only if:

- an offense to be charged is a felony or misdemeanor carrying a sentence of imprisonment;
- a concerned person has escaped and is at an unknown location or is staying outside the territory of the Kingdom of Cambodia.

The arrest warrant is an order:

- for public forces to search for an arrest and to bring the person to a prison or detention center;
- for the chief of a prison or a detention center to admit and detain that person.

#### **Article 197. Arrest Warrant and Opinion of a Prosecutor**

Before issuing an arrest warrant, the investigating judge shall receive the opinion of a prosecutor. The investigating judge shall issue the arrest warrant which specifies reasons after obtaining the opinion of a prosecutor.

The prosecutor shall guarantee the dissemination of the arrest warrant.

#### **Article 198. Information mentioned in an Arrest Warrant**

An arrest warrant shall mention the following information:

- The identity of the concerned person;
- The offense to be charged and legal texts that define and suppress such offense;
- The name and position title of the judge who issued the arrest warrant;

An arrest warrant shall be dated and signed by the investigating judge and sealed.

#### **Article 199. Execution of an Arrest Warrant**

An arrest warrant shall be executed by judicial police officers.

In case of emergency, the arrest warrant shall be disseminated by all means to police units or the Royal Gendarmeries units. The original arrest warrant shall be delivered immediately to the judicial police officers who have the duty to execute the warrant.

Judicial police officers cannot enter into the residence of the concerned person before 6 (six) o'clock in the morning and after 6 (six) o'clock in the evening. The judicial police officers shall notify the investigating judge of any difficulty in the performance of their mission.

#### **Article 200. Dissemination of Arrest Warrant Internationally**

In case of necessity, an arrest warrant can be internationally disseminated through the Ministry of Justice by using various effective mechanisms.

#### **Article 201. Presentation through an Arrest Warrant**

The chief of a prison or a detention center shall admit and detain the accused person who is the subject of an arrest warrant. The chief of the prison or the detention center shall keep the original or the certified copy of the arrest warrant.

A concerned person shall be brought before the investigating judge or his/her replacement immediately if it is still in the investigation phase.

If the presentation requires the transfer of the concerned person to another prison or to another detention center, this transfer shall be arranged by a prosecutor.

If the concerned person is not brought before the investigating judge or his/her replacement on the day following the arrest, the person shall be interviewed by the prosecutor at the place of the arrest. The prosecutor shall make a record of interview and send it to the investigating judge.

#### **Article 202. Inclusion of Pre-trial Detention Duration**

When a person who has been arrested in the execution through an arrest warrant, is detained, this duration shall be included in the duration of the pre-trial detention if any.

### **SECTION 5 Pre-trial Detention**

#### **Article 203. Principle of Pre-trial Detention**

In principle, an accused shall have freedom. In special cases, the accused person can be temporarily detained under the conditions stated in this Section.

#### **Article 204. Cases of Pre-trial Detention**

Pre-trial detention can be applied only in the case of felony or misdemeanor charges in which the law sets the punishment of imprisonment for 1 (one) year or more.

#### **Article 205. Reasons for Pre-trial Detention**

Pre-trial detention may be imposed when the detention is necessary to:

1. stop the offense or prevent the offense from happening again;
2. prevent any interferences on witnesses or victims or prevent any collusion between the accused person and the accomplice;
3. maintain evidence or material leads;
4. ensure the accused is kept for the court to decide according to its procedures;
5. protect the security of the accused;
6. maintain public order to avoid any chaos caused by the offense.

#### **Article 206. Remark of an Accused Person and Statement of Reasons of the Order**

When an investigating judge makes decision of the pre-trial detention by his/her own initiative or by the introductive requisition of a prosecutor, he/she shall notify the accused person and shall take statements of the accused person. If the accused person has a lawyer with him/her, the lawyer shall present his/her means of defense.

The investigating judge shall make decision of the pre-trial detention of an accused person by issuing a warrant which states reasons. In the warrant, the investigating judge shall refer to the provisions of Article 205 (Reasons for the Pre-trial Detention) of this Code. The prosecutor and the accused shall be immediately notified about a warrant of pre-trial detention.

The investigating judge shall issue a detention warrant in accordance with the conditions stated in Article 220 (Definition of Detention Warrants), Article 221 (Information Mentioned in Detention Warrants), and Article 222 (Execution of Detention Warrants) of this Code.

#### **Article 207. Order to Refuse Pre-trial Detention**

When an investigating judge, who receives an introductive charge from a prosecutor requesting pre-trial detention of an accused person, refuses the request, he/she shall issue an order to refuse pre-trial detention within 5 (five) days without mentioning any reason. The applicant shall be notified of the order immediately.

If the investigating judge fails to decide within 5 (five) days, the prosecutor can submit petition to the Investigation Chamber which will decide instead of the investigating judge.

#### **Article 208. Duration of Pre-trial Detention in a Felony Case**

For an adult accused of a felony, the pre-trial detention shall not exceed 6 (six) months. However, when this time period ends, the investigating judge can extend the pre-trial detention for another 6 (six) months each time, by a clear and well-motivated warrant.

The investigating judge can only decide to extend the pre-trial detention twice.

#### **Article 209. Duration of the Pre-trial Detention in a Misdemeanor Case**

For an adult accused of a misdemeanor, the pre-trial detention shall not exceed 4 (four) months. However, when this period of time ends, the investigating judge can extend the pre-trial detention only one time not longer than 2 (two) months by a clear and well-motivated warrant.

The duration of the above pre-trial detention shall not exceed half of the minimum sentence set by a law.

#### **Article 210. Duration of the Pre-trial Detention in the case of Crime Against Humanity**

In the case of charges for crime against humanity, genocidal crime or war crime, the pre-trial detention shall not exceed 1 (one) year for each of these offenses. However, when this period ends, the investigating judge can extend pre-trial detention for 1 (one) year each time by a clear and well-motivated warrant.

The investigating judge can only order the extension of the pre-trial detention twice.

#### **Article 211. Extension of the Pre-trial Detention**

If an investigating judge decides to extend the pre-trial detention, the investigating judge shall notify the accused person and take his/her remarks. When the accused has a lawyer with him/her, the lawyer shall present means of defense his/her client.

The investigating judge shall extend the pre-trial detention by issuing a well-motivated warrant. In the warrant, the investigating judge shall refer to the provisions of Article 205 (Reasons for the Pre-trial Detention) of this Code. The accused person shall be notified of the warrant immediately.

#### **Article 212. Decision in Relation to a Minor under Fourteen (14) Years Old**

A minor under 14 (fourteen) years old cannot be put under pre-trial detention. The investigating judge may decide to return the minor to his/her parents, guardians or if there are no guardians, the minor shall be handed over to a Temporary Education and Care Center pending the court's decision.

#### **Article 213. Duration of the Pre-trial Detention for Felonies Committed by a Minor from 14 (fourteen) to under 18 (eighteen) Years Old**

For a minor whose age is from 14 (fourteen) years to under 18 (eighteen) years and is charged with a felony, the duration of the pre-trial detention shall be as follows:

1. the pre-trial detention cannot exceed 4 (four) months if the minor is under 16 (sixteen) years old;
2. the pre-trial detention cannot exceed 6 (six) months if the minor is aged from 16 (sixteen) years old to under 18 (eighteen) years old.

#### **Article 214. Duration of Pre-trial Detention for Misdemeanors Committed by a Minor from 14 (fourteen) to under 18 (eighteen) Years Old**

For a minor whose age is from 14 (fourteen) years to less than 18 (eighteen) years and is charged with misdemeanor, the duration of the pre-trial detention shall be as follows:

1. the pre-trial detention cannot exceed 2 (two) months if the minor is under (sixteen) 16 years old;
2. the pre-trial detention cannot exceed 4 (four) months if the minor is from 16 (sixteen) years old to less than 18 (eighteen) years old.

The duration of the pre-trial detention in the above points 1 and 2 shall not exceed half of the minimum sentence set by the law for a minor.

#### **Article 215. Release on Bail of an Accused Person by an Investigating Judge**

An investigating judge can order the release of an accused person on bail at any time.

If an investigating judge intends to release an accused person on bail, the investigating judge shall inform the prosecutor for opinion and shall forward the dossier to the prosecutor for examination. The prosecutor shall provide his/her opinion within the shortest period of time. The investigating judge shall decide within a maximum period of 5 (five) days after forwarding the dossier to the prosecutor.

In an urgent case, the investigating judge can order the release of an accused person immediately, without waiting for the prosecutor's opinion. The investigating judge shall indicate the reasons for such urgency in his/her order.

#### **Article 216. Release on Bail of an Accused Person upon a Request of a Prosecutor**

A prosecutor can request the release of an accused person at any time. The investigating judge shall decide within the period of 5 (five) days.

If the investigating judge does not decide within 5 (five) days, the prosecutor can submit a petition to the Investigation Chamber which shall decide instead of the investigating judge.

An order to refuse the release on bail of the accused person shall state reasons.

#### **Article 217. Release on Bail upon Request of an Accused Person**

An accused person can request for release on bail at any time. The investigating judge shall immediately send the request to the prosecutor for opinion and shall forward the dossier to the prosecutor for examination. The prosecutor shall provide opinion within the shortest period of time. The investigating judge shall make a decision within the maximum period of 5 (five) days after forwarding the dossier to the prosecutor.

The accused person can re-submit a request for release on bail to the investigating judge or to the Investigation Chamber within 1 (one) month after there is a decision refusing the previous request. The investigating judge or the Investigation Chamber shall decide the re-request within 5 (five) days from the date of receiving the re-request.

The warrant refusing the release on bail shall state the reasons.

If the investigating judge does not decide within 5 (five) days, the accused person can submit a petition directly to the Investigation Chamber which shall decide instead of the investigating judge.

#### **Article 218. Notification of Release Warrant**

The prosecutor and the chief of prison or detention center shall be notified immediately of the release warrant. The provisions of Article 276 (Release of an Accused Person) of this Code shall be applied.

The prosecutor and the accused person shall be notified immediately of a warrant refusing the release on bail.

If an investigating judge decides to release an accused person on bail, the judge can place the accused person under the control of the court as provided in Article 223 (Obligations of Judicial Control) to Article 230 (Escape of an Accused Person from Obligations of Judicial Control) of this Code.

### **SECTION 6 Detention Warrants**

#### **Article 219. A Detention Warrant Issued by an Investigating Judge**

An investigation judge can issue a detention warrant.

#### **Article 220. Definition of a Detention Warrant**

A detention warrant is an order to the chief of a prison or a detention center to admit and detain an accused person.

An investigating judge can issue a detention warrant only if the accused person is the subject of pre-trial detention order.

### **Article 221. Information Mentioned in a Detention Warrant**

A detention warrant shall mention the following information:

- the identity of the accused person;
- the type of offense to be charged and legal texts that define and suppress the offense;
- name and position title of the judge who issued the detention warrant;

A detention warrant shall be dated and signed by the investigating judge and sealed.

### **Article 222. Execution of Detention Warrants**

The chief of a prison or a detention center shall admit and detain the accused person under a detention warrant until there is a notification of release. The chief of prison or detention center shall keep the original detention warrant or a certified copy of the warrant.

## **SECTION 7 Judicial Control**

### **Article 223. Obligations of the Judicial Control**

An investigating judge can place an accused person under the judicial control at any time if the accused person was sentenced to imprisonment.

The judicial control shall have the effect to order the accused person who has been released on bail to respect one or more of the following obligations:

1. cannot go outside the territorial boundaries determined by the investigating judge;
2. cannot change residence without the permission of the investigating judge;
3. cannot go to certain places determined by the investigating judge;
4. shall show up on fixed dates and times at the police or Gendarmeries unit assigned by the investigating judge;
5. shall respond to a summon from any person assigned by the investigating judge;
6. shall provide all identification documents to the court clerk's office;
7. shall not drive motor vehicles;
8. shall not receive or meet certain people identified by the investigating judge;
9. shall deposit bail in an amount and for a duration determined by the investigating judge based on the wealth of the accused person;
10. shall not hold or possess any weapon and shall turn in all weapons to a court clerk's office;
11. shall turn up for medical examination and/or eventually be placed under treatment in hospital;
12. shall not do certain specified professional activities.

In the implementation of point 12 above, the investigating judge cannot prohibit the performance of an election mandate or union activities.

### **Article 224. Non-Application of Judicial Control on a Minor under 14 (Fourteen) Years**

A Minor whose age is less than 14 (fourteen) years old cannot be put under judicial control.

## **Article 225. Receipt of Documents**

In the cases described in points 6, 9 and 10 of Article 223 (Obligations of Judicial Control), an accused person shall receive a receipt for the delivery of identification document, bail or weapons. The receipt of identification document shall be signed by the court clerk.

A receipt of bail or weapons shall be jointly signed by the court president, the prosecutor and the court clerk.

Bail shall be deposited in a special bank account or kept at a place where there is strict guarantee of security. This place shall be chosen with the agreement of the court president and the prosecutor.

Weapons shall be kept at the above-mentioned place.

## **Article 226 Order to Place under Judicial Control**

On his/her own initiative or by a general introductive requisition from the prosecutor, an investigating judge can issue an order to put an accused person under the judicial control. The investigating judge shall specify the obligations to be performed by the accused person in the order.

The prosecutor and the accused person shall be notified of an order to place under the judicial control at the shortest period of time.

If an investigating judge who receives an introductive requisition from the prosecutor requesting to place an accused person under the judicial control does not approve the request, he/she shall issue an order of rejection of that request within 5 (five) days.

The prosecutor shall be notified of the rejection within the shortest period of time.

If the investigating judge does not decide within 5 (five) days, the prosecutor can submit petition to the Investigation Chamber which will make the decision instead of the investigating judge.

## **Article 227. Modification of Judicial Control by an Investigating Judge**

An investigating judge can modify the contents of the obligations, delete or add new obligations at any time.

An investigating judge also can terminate the judicial control.

The prosecutor and the accused person shall be notified of the investigating judge's decisions at the shortest period of time.

## **Article 228. Request by a Prosecutor to Modify Judicial Control**

A prosecutor can request to drop or modify judicial control at any time. The investigating judge shall decide on the request within 5 (five) days. The prosecutor shall be notified of the decision within the shortest period of time.

If the investigating judge does not decide within that period, the prosecutor can file a petition to the Investigation Chamber which will make the decision instead of the investigating judge.

A warrant that decides not to follow the request of the prosecutor shall state the reasons.

#### **Article 229. Request by an Accused Person to Modify Judicial Control**

An accused person can request to drop or modify the judicial control at any time. The investigating judge shall immediately send that request to the prosecutor for an opinion and shall forward the dossier to the prosecutor for examination. The investigating judge shall decide no later than 5 (five) days from the date the dossier was forwarded to the prosecutor. The prosecutor and the accused person shall be notified of the decision at the shortest period of time.

When a request to drop or modify the judicial control is resubmitted before the investigating judge or the Investigation Chamber decides on the previous request, the period of 5 (five) days shall start from the date on which the decision was made on the previous request. A warrant that decides not to follow the request shall state the reasons.

If the investigating judge does not decide within 5 (five) days, the accused person can file a petition to the Investigation Chamber which will make the decision instead of the investigation judge.

#### **Article 230. Escape by an Accused Person from the Obligations of the Judicial Control**

If an accused person intentionally escapes from the obligations of the judicial control, an investigating judge can decide to temporarily detain the accused person regardless of the prescribed term of imprisonment and the accused person has been temporarily detained for the maximum period of time as stated in Articles 208 (Duration of the Pre-trial Detention in the case of Felony) to Article 210 (Duration of Pre-trial Detention in the Case of Crime against Humanity), Article 213 (Duration of Pre-trial Detention in the Case of Felony Committed by Minor from 14 (fourteen) years to under 18 (eighteen) Years), and Article 214 (Duration of the Pre-trial Detention in the Case of Misdemeanor Committed by Minor from 14 (fourteen) years to under 18 (eighteen) Years) of this Code.

When the investigating judge decides to temporarily detain an accused person based on the above reason, he/she shall notify the accused person and shall receive his or her remarks. If a lawyer accompanies the accused person, the lawyer shall present means to defense his/her client.

The investigating judge shall decide to detain an accused person through an order which states reasons. The order shall be notified immediately to the prosecutor and the accused person.

A decision on pre-trial detention through this Article cannot be longer than 4 (four) months for an adult and 2 (two) months for a minor.

## **CHAPTER 4 Summons and Notices**

### **SECTION 1 GENERAL PROVISIONS**

#### **Article 231. Common Period of Time**

All periods of time stipulated in this Book to complete any activity or procedure shall be ended on the last day at 24 (twenty four) o'clock. The time period which normally ends on Saturday, Sunday or public holiday shall be extended to the following first working day.

Where the signature of a person is required on a document, the signature may be replaced by a thumb-print when the person does not know how to sign.

#### **Article 232. Method of Summons**

An accused person who stays outside custody, civil party and witnesses shall be summoned by postal or administrative means, or via a police or Royal Gendarmeries unit.

A summon of an accused person shall be sent to his/her latest declared address as stated in Article 143 (Notification of Placement under Examination) of this Code.

In the case of necessity, the summon may be made by any means.

#### **Article 233. Summons of an Accused Person who is under detention**

An accused person who is under detention shall be summoned through the chief of prison or detention center.

#### **Article 234 Summons of a Lawyer**

A lawyer shall be summoned by postal or administrative means.

In the case of necessity, the summon may be made by any means.

#### **Article 235. Inscription of Summons in a Case File**

The method of summon and its date shall be recorded in the case file by the court clerk.

#### **Article 236. Notification of a Warrant to a Lawyer**

When an accused person is notified of a warrant, the investigating judge shall also notify his/her lawyer, if the accused person has a lawyer.

When a civil party is notified of a warrant, the investigating judge shall also notify his/her lawyer, if the civil party has a lawyer.

#### **Article 237. Notification of a Warrant to a Prosecutor**

A prosecutor may be verbally notified of a warrant issued by an investigating judge.

A court clerk shall register the date of notification on the margin of the warrant page. The prosecutor shall sign the court clerk's notation on the warrant.

The prosecutor shall inform the Prosecutor General, according to the formalities as determined by the Prosecutor General, of a warrant issued by the investigating judge.

#### **Article 238. Notification of a Warrant to an Accused Person**

A warrant issued by an investigating judge shall be notified to an accused person who is under detention through the following ways:

- orally, or
- through the chief of a prison or a detention center.

A warrant issued by an investigating judge shall be notified to the accused person who stays outside custody, to a civil party and to a lawyer through the following formalities

- orally;
- by administrative procedures, or
- by a police or Gendarmeries unit.

When notification is given orally, the court clerk shall mention of the notification on the margin of the warrant page. The accused person, the civil party shall sign the court clerk's notation in the page margin.

In other cases, the notification shall be made by giving a copy of the warrant to the recipient with his/her acknowledgement of receipt.

### **Article 239. Delivery of Summons or other Warrants**

All civil servants, administrative authorities, police or Royal Gendarmeries who are requested to deliver summons or other warrants by the investigating judge, shall execute this request.

Individuals, institutions or authorities that are designated by the investigating judge shall deliver the summons or other warrants to the persons concerned with his/her acknowledgement of receipt. The summons or warrant with acknowledgement of receipt shall be returned to the investigating judge within the shortest period of time.

## **SECTION 2 Particular Rules**

### **Article 240. Information to be Obligatorily Mentioned in Records of an Investigating Judge**

All records of an investigating judge shall mention the following information:

- The name of the investigating judge;
- The name of the court clerk;
- The number and date of the case file;
- The date of the introductive requisition;
- The type of the offense described in the introductive requisition;
- The dates of making records.

The investigating judge and the court clerk shall sign every page of the records.

There shall be no empty spaces or lines in the records. Deletions, crossings, or references shall be confirmed by the signature of the investigating judge and the court clerk in the margin of the page.

### **Article 241. Signing the First Appearance Record**

Each page of the first appearance record, as stated in Article 143 (Notification of Placement under Examination) of this Code shall be signed by the investigating judge, the court clerk and the concerned person on the margin of the page.

If the accused person makes any statement, this statement shall be accurately recorded in writing in the records.

#### **Article 242. Rules for Writing Records**

Every questioning, interview or confrontation shall be recorded.

The records shall accurately state the questions, answers and spontaneous statements.

Each page of the record on interviewing the accused person shall be signed by the accused person and eventually by the translator.

Each page of the record on interviewing the civil party shall be signed by the civil party and eventually by the translator.

Each page of the record on interviewing the witness shall be signed by the witness and eventually by a translator.

Each page of the record on confrontation interview shall be signed by every confronting person and eventually by the translator.

Before signing the record, the accused person, the civil party and the witness shall read through the record again. If any person cannot read, the court clerk shall read the record aloud. The translator shall translate it. If any person refuses to sign the record, the investigating judge shall note down the refusal in the record.

#### **Article 243. Information to be Obligatorily mentioned in a Warrant of an Investigating Judge**

All warrants issued by an investigating judge shall mention the following information:

- The name of the investigating judge;
- The name of the court clerk;
- The number and date of the case file;
- The date of the introductive requisition;
- The type of offense stated in the introductive requisition;
- The identification, date of birth, place of birth, and address of the accused person if the guilt is declared;
- The number and date of the warrant.

The investigating judge and the court clerk shall sign every page of a warrant.

There should be no empty spaces or lines in a warrant. Deletions, crossings and references shall be confirmed by the signatures of the investigating judge and the court clerk in the margin of the page.

#### **Article 244. Order of Discovery**

When an investigating judge sends any letter of the case file to a prosecutor for examination, the investigating judge shall issue a warrant sent for letter.

When an investigating judge sends the case file to a prosecutor for examination, the investigating judge shall issue an order of discovery.

The provisions of Article 243 (Information to be obligatorily mentioned in a Warrant of an Investigating Judge) of this Code shall be applied to the order of discovery.

#### **Article 245. Request by a Lawyer**

Every time the provisions of this Code allow the accused person to make a request to the investigating judge, such request may be made by his/her lawyer.

Every time the provisions of this Code allow a civil party to make a request to an investigating judge, such request may be made by his/her lawyer.

All requests to return any item seized from person(s) outside the investigation may be made by lawyer(s).

### **CHAPTER 5 Termination of Investigations**

#### **Article 246. Introductive Requisition from Prosecutor**

If an investigating judge realizes that the investigation shall be terminated, he/ she shall notify the prosecutor, accused persons, civil parties and lawyers.

2 (two) days later, the investigating judge shall send the dossier to the prosecutor for examination.

If the prosecutor realizes that further investigation is needed, he/she shall apply Article 132 (Request by a Prosecutor to Act) of this Code.

Within 15 (fifteen) days, if an accused person is detained and within 1 (one) month if the accused person is not detained, the prosecutor shall return the dossier to the investigating judge with the introductive requisition attached. This time period shall be counted from the date when the prosecutor received the dossier.

If the prosecutor agrees with the investigating judge that the investigation shall be terminated, the prosecutor shall issue a written **introductive requisition** which states reasons. The prosecutor can request the investigating judge to send the accused person to appear in the court for trial or to issue a non-suit order.

#### **Article 247. Settlement Warrant**

An investigating judge shall close the investigation by a settlement warrant. This warrant can be a warrant to forward the case for trial or a non-suit order.

The investigating judge decides to send the accused person to appear before the court for hearing, if he/she finds that the offense is a felony, a misdemeanor or a petty offense. The warrant shall describe the acts being charged and the type of the offense according to the law.

The investigating judge shall issue a non-suit order in the following circumstances:

1. The act committed was not a felony, misdemeanor or petty offense;
2. The perpetrators who committed acts are still not known.
3. There is not enough evidence to charge the accused person.

All settlement warrants shall always bear reasons. The investigating judge shall not be under the obligation to respect the introductive requisition of the prosecutor. A warrant can be the warrant to refer the dossier for trial for some acts and the non-suit order for other acts.

The prosecutor, the accused person and the civil party shall be informed of a settlement warrant within the shortest period of time.

#### **Article 248. Return of the Seized Items to the Owner**

In a settlement warrant, the investigating judge shall decide to return the seized items to the owner. The provisions in paragraph 2 of Article 119 (Competent Authority to Order the Return of Items to their Owner) of this Code shall be applied.

#### **Article 249. Decision of Settlement Warrant in Relation to the Pre-trial Detention and Judicial Control**

A settlement warrant shall terminate the pre-trial detention. In this case, the provisions of Article 276 (Release of an Accused Person who has been detained) shall be applied.

However, under separate decisions of a settlement warrant, the investigating judge can keep the accused person under pre-trial detention until the time he/she appears in the court. In this warrant, the investigating judge shall refer to the conditions of Article 205 (Reasons for Pre-trial Detention) of this Code.

The decision to keep the accused person under pre-trial detention shall cease to have effect after 4 (four) months. If the accused person does not appear in the court within 4 (four) months, the accused person shall be automatically allowed to stay outside custody.

A settlement warrant shall terminate the judicial control.

If the investigating judge has required the accused person to pay bail, to deliver documents on identification, or weapons, which were not involved in the offence; the court clerk shall return the bail, document on identification or weapons to the accused person with an acknowledgement receipt to be signed by the accused person.

However, under separate decisions of a settlement warrant, the investigating judge can keep the accused person under the judicial control until such time as he/she appears in the court.

#### **Article 250. Referral of the Dossier for Hearing**

If an investigating judge decides to issue a committal for trial, the investigating judge shall send the dossier immediately to the court president to set the schedule for the trial.

#### **Article 251. Reinvestigation on New Charge**

After a non-suit order from the investigating judge or the Investigation Chamber has become final, if there is new evidence, the investigation may be reopened upon the initiative of a prosecutor.

## **CHAPTER 6**

### **Invalidation of Investigations**

#### **Article 252. Mandatory Rules**

The rules and procedures stated in the following Articles regarding general provisions of investigation procedures are mandatory, otherwise, the procedures shall be null and void.

- Article 122 (Commencement of Investigation);
- Article 123 (Territorial Jurisdiction);
- Paragraph 3 of Article 124 (Introductory Requisition),
- Paragraphs 1 and 2 of Article 125 (Scope of Complaints), and
- Article 128 (Assistance of a Court Clerk) of this Code

Proceedings shall also be null and void when there is a violation of any important rules or procedures stated in this Code or any provisions of regulations concerning criminal procedure, which affects the interests of the parties as a result of the violation. The important rules and procedures are those which aim to guarantee the respect of the right to self-defense.

#### **Article 253. Petition to the Investigation Chamber**

Only the Investigation Chamber shall have the authority to examine the nullification documents of the procedures.

If an investigating judge finds that any document of a procedure is null and void, the investigating judge shall file a petition to the Investigation Chamber by issuing an order which states reasons. The investigating judge shall also inform the prosecutor, the accused person and civil party.

If a prosecutor finds that any document of procedure is null and void, the prosecutor shall file a petition which states reasons to the Investigation Chamber and shall inform the investigating judge.

If an accused person or a civil party finds that any document of a procedure is null and void, he/she shall file a petition which states reason to the Investigation Chamber and shall inform the investigating judge. The petition can be made by the lawyer of the accused person or civil party.

The petition provided in this Article shall be registered at the court clerk's office of the Investigation Chamber. The court clerk shall request the investigating judge to provide the dossier of the procedures to him/her.

The warrant that can be appealed cannot be the subject of the nullification petition.

#### **Article 254. Renunciation by any Party in a Nullification Petition**

When a breach of an essential rule or procedure affects any party's interests, that party can renunciate the nullification and regularize the procedures. The renunciation shall be examined by an investigating judge in the record. If the party has a lawyer, the investigating judge shall call the lawyer at least 5 (five) days before the date of taking the record. During this time, the lawyer can examine the dossier of procedures.

#### **Article 255. Continuation of Investigation when a Request is Submitted to the Investigation Chamber**

If the Investigation Chamber receives a request for nullification, the investigating judge can continue his/her investigation, unless it is decided otherwise by the president of the Investigation Chamber. This decision cannot be appealed.

#### **Article 256. Recovery of Nullification by Settlement Warrant**

A settlement warrant which becomes final shall clear out the previous voided procedures, if any. No previous voided procedures can be raised before the trial court.

## **TITLE 2 Investigating Chamber**

### **CHAPTER 1 GENERAL PROVISIONS**

#### **Article 257. Registry of Appeals and Petitions**

A registry of appeals and petitions shall be established at an office of the court clerk of the Investigation Chamber. After receiving a petition, the court clerk of the Investigation Chamber shall immediately notify the investigating judge.

When an Investigation Chamber is petitioned directly through a request, the court clerk of the Investigation Chamber shall request the clerk of the investigating judge to deliver the dossier of the procedures or reserve dossier to him /her.

#### **Article 258. Notification of a Hearing Date**

The president of the Investigation Chamber shall check and verify whether the dossier is ready for hearing and, if so, shall set the date for the hearing. The president of the Investigation Chamber shall verbally inform the Prosecutor General of the Court of Appeal of the hearing date. The Prosecutor General shall inform the parties and lawyers of the hearing date.

Notification to the accused person who is under detention shall be made as followed:

- orally; or
- through the chief of prison or detention center.

Notification to the accused persons who stay outside custody, the civil parties and the lawyers shall be made as followed:

- orally;
- through administrative means or
- through a police or Gendarmeries unit

When the notification is made orally, the court clerk shall mention the date of the notification in the margin of the warrant. The accused person, the civil party or the lawyer shall sign the warrant.

In other cases, the notification shall be made through the delivery of copy of warrant with acknowledgement of receipt.

## **Article 259. Access to Dossiers and Briefs**

The Prosecutor General of the Court of Appeal and lawyers may examine a dossier until the time of trial.

The Prosecutor General of the Court of Appeal shall provide a written introductive requisition to the court clerk at least 1 (one) day before the trial.

The parties and lawyers may submit their briefs to the court clerk.

The written introductive requisition and the brief shall be granted a visa with date by the court clerk and shall be included in the dossier immediately.

The parties and their lawyers shall be permitted to submit briefs until the beginning of the trial.

## **Article 260. Conduct of a Confrontation**

A confrontation shall take place in a discussion room.

After the president of the Investigation Chamber has made his/her report, the Prosecutor General of the Court of Appeal and lawyers of the parties shall make their summary remarks.

The Investigation Chamber may order the parties and the accused person who is under detention to appear in person and to present evidence.

When the confrontation is finished, the Investigation Chamber shall discuss the matter to make decision without the presence of the Prosecutor General of the Court of Appeal, the parties and the lawyers.

The judgment shall be announced at the closed-door hearing on the same day or at the later trial. The judgment shall state reasons and contain elements essential for the examination by the Supreme Court. The judgment shall be signed by the president of the Investigation Chamber.

The Prosecutor General of the Court of Appeal shall be orally informed of the judgment within the shortest period of time. The court clerk shall write a notation of the date of notification on the page margin of the judgment. The Prosecutor General of the Court of Appeal shall sign and certify that he/she has received such notification.

The parties and the lawyers shall be also notified of the judgment as provided in Article 238 (Notifying an Accused Person of a Warrant) of this Code.

## **Article 261. Examination of Regularity of the Procedure**

When receiving any complaint, the Investigation Chamber shall examine the regularity of the procedures and the good conduct of the proceedings.

If a reason for annulling is found, the Investigation Chamber may discretionarily nullify the whole or parts of such proceedings. The Investigation Chamber shall act in compliance with Article 280 (Effect of Annulment) of this Code.

## **Article 262. Undertaking Further Investigation**

The Investigation Chamber may order a further investigation as it deems useful.

To undertake this further investigation, the Investigation Chamber shall appoint one of its own members or an investigating judge who is authorized by the Investigation Chamber.

The judge who is obligated to conduct further investigation shall exercise the power of an investigating judge within the scope of power determined by the Investigation Chamber.

When the investigation is completed, the dossier of the procedures shall be filed with the office of the court clerk of the Investigation Chamber. The president of the Investigation Chamber shall set a date for the new hearing. In such case, the provisions of Article 259 (Access to Dossiers and Briefs) of this Code shall be applied.

### **Article 263. Extension of Placement under Control for Other Connected Offenses**

The Investigation Chamber itself or through the introductive requisition from the Prosecutor General of the Court of Appeal may order an extension of placement under control against an offense connected with the offense as indicated by the investigating judge when such offence emerges from the dossier of the procedures.

Connected offenses are:

- offenses committed at the same time by a group of people;
- offenses committed by different individuals following an agreement among themselves, even though the crime was committed at a different time or place; or
- when stolen or fraudulent goods or goods obtained through the act of committing an offense were hidden by other persons.

### **Article 264. Extension of Place under Control to Other Persons**

The Investigation Chamber may issue an order to charge another person who was not designated by the investigating judge, except where the provisions of Article 12 (Res Judicata) of this Code shall be applied.

### **Article 265. Restart of an Investigation on New Charges**

Where there is a new charge after a warrant or a non-suit order comes into effect, the investigation may be restarted with the initiative of the prosecutor.

## **CHAPTER 2**

### **Appeal against Warrant of Investigating Judges**

#### **Article 266. Appeal by the Prosecutor General of the Court of Appeal and a Prosecutor against a Warrant of an Investigating Judge**

The Prosecutor General of the Court of Appeal or a prosecutor may appeal against all warrants issued by investigating judges.

#### **Article 267. Appeal by an Accused Person against Warrant of Investigating Judge**

An accused person may appeal against the following warrants:

- A warrant refusing an application for investigation as stated in paragraph 2 of Article 133 (Request by an Accused Person to Act);
- A warrant refusing the return of seized items to the owner as stated in Article 161 (Return of Items Seized to the Owner by an Investigating Judge) and Article 248 (Return of Seized Items to the Owner);
- A warrant refusing application for forensic examination as stated in paragraph 2 of Article 162 (Necessity of Forensic Examination);
- A warrant refusing the application for additional forensic examination or cross-forensic examination as stated in paragraph 7 of Article 170 (Notification of Expert Conclusion); and
- A warrant on pre-trial detention or judicial control as provided in Section 5 (Pre-trial Detention) and Section 7 (Judicial Control) of Chapter 3 (Safety Measure) of Title 1 of this Book and of Article 249 (Contents of Settlement Warrant in Relation to Pre-trial Detention and Judicial Control) of this Code.

#### **Article 268. Appeal by a Civil Party against Warrants of an Investigating Judge**

A civil party may appeal against the following warrants:

- A warrant refusing an application for investigation as stated in paragraph 2 of Article 134 (Request by a Civil Party to Act);
- A warrant not to investigate as stated in paragraph 4 of Article 139 (Forwarding Petition to Prosecutor);
- A warrant determining the amount of deposit as stated in paragraph 1 of Article 140 (Payment of Deposits);
- A warrant refusing the petition of a civil party's engagement as stated in paragraph 4 of Article 140 (Payment of Deposits) of this Code;
- A warrant punishing a civil party as stated in Article 141 (Abusive and Dilatory Petition);
- A warrant not to return the seized items to the owner as stated in Article 161 (Return of Items Seized by an Investigating Judge) and Article 248 (Return of Seized Items to their Owner);
- A warrant refusing an application for forensic examination as stated in paragraph 2 of Article 162 (Necessity of Forensic Examination);
- A warrant refusing an application for additional forensic examinations or cross-forensic examinations as stated in paragraph 7 of Article 170 (Notification of Expert's Conclusion) A settlement warrant as stated in Article 247 (Settlement Warrant) of this Code.

#### **Article 269. Appeal against a Warrant Refusing the Return of the Seized Items to their Owner**

Any person outside the investigation proceeding, who has applied for the return of seized items to him/her according to Article 161 (Return of the Seized Items by an Investigating Judge to their Owner) of this Code, may appeal against the warrant of an investigating judge which refuses the application.

#### **Article 270. Duration of Appeal**

An appeal of a Prosecutor General of the Court of Appeal shall be filed within the maximum of 1 (one) month from the date the warrant was declared.

An appeal of a prosecutor shall be filed within 5 (five) days from the date of the notification of the warrant.

An appeal of an accused person, a civil party or any person mentioned in Article 269 (Appeal against Warrant Refusing the Return of the Seized Items to their Owner) of this Code shall be filed within five days from the date of the notification of the warrant.

If the notification was made by delivery of a copy of the warrant with acknowledgement of receipt, the time period for appealing is counted from the date of such receipt.

#### **Article 271. Competence of the Investigating Chamber**

An appeal shall be sent to the Investigation Chamber of the Court of Appeal.

#### **Article 272. Formality for Filing an Appeal**

An appeal may be made by filing a petition with a clerk of the court of the first instance. The appeal shall be registered in the registry of appeals of the court.

An appeal can be filed by the lawyer of an accused person, a civil party or any person designated in Article 269 (Appeal against a Warrant Refusing the Return of the Seized Items to their Owner) of this Code.

Appeals of an accused person who is under detention shall be made by filing a petition with the chief of a prison or a detention center. The chief of prison or detention center shall immediately forward a copy of the appeal letter to the clerk of the court of the first instance. The letter shall be registered in the registry of appeals.

#### **Article 273. Referral of a Dossier to the Investigating Chamber**

When receiving an appeal, the clerk of the court of the first instance shall inform the investigating judge immediately.

The court clerk of the investigating judge shall prepare the dossier and submit it to the Investigation Chamber with a copy of the appeal letter attached. The copy shall be made by the clerk of the court of the first instance after he or she has seen the statement entered in the appeal registry.

This case file shall be forwarded to the office of court clerk of the Investigation Chamber within five (5) days upon receiving the appeal application except under an insurmountable circumstance.

#### **Article 274. Back up Case File**

When a back up dossier is established in accordance with Article 129 (Functions of a Court Clerk) of this Code, the investigating judge shall keep the original documents of dossier. A back up dossier shall be sent to the Investigation Chamber.

#### **Article 275 Continuation of Investigation in Case of Appeal**

In case there is an appeal against any warrant other than a settlement warrant, the investigating judge can continue his/her investigation unless there is a decision made otherwise to the contrary by the president of the Investigation Chamber.

This decision cannot be appealed.

#### **Article 276. Release of a Detainee**

When an investigating judge decides to release an accused person who is under pre-trial detention, the accused person shall be kept in a prison until the expiration of appealing period by a prosecutor, except when the prosecutor agrees to release the accused person immediately. The written decision of the prosecutor shall be attached with the dossier of the procedures.

The same procedure shall be applied in case of non-suit order, when the order has the effect of releasing an accused person who is under detention.

Where an order to release on bail or non-suit order is appealed by the prosecutor, the detainee shall continue to be kept in prison until the Investigation Chamber has decided on the appeal.

#### **Article 277. Appeal against a Non-Suit Order**

Where a non-suit order is appealed, the Investigation Chamber shall decide in accordance with paragraph 3 of Article 281 (Consequences of Annulment) of this Code.

### **CHAPTER 3 Pre-trial Detention**

#### **Article 278. Warrant on Pre-trial Detention**

In the case of pre-trial detention, a judgment of the Investigation Chamber shall be issued within 15 (fifteen) days of receipt of the dossier by the office of the court clerk of the Investigation Chamber. At the expiration of this period, the accused person shall be released on bail except when verifications have been ordered or when there are unforeseeable or insurmountable circumstances causing obstacle to the pronouncement of the judgment within this period.

When the Investigation Chamber orders a pre-trial detention, the Chamber shall have reasons in its judgment by referring the provisions of Article 205 (Reasons for Pre-trial Detention) of this Code. The president of the Investigation Chamber shall issue a detention warrant.

The dossier shall be immediately returned to the investigating judge following the enforcement of the judgment.

### **CHAPTER 4 Nullification**

#### **Article 279. Unacceptability of Petition for Nullification**

The Investigation Chamber may declare unacceptable any petitions for nullification based on the following grounds:

- the petition is not based on factual reasons;
- the petition is related to a warrant that can be appealed;
- the petition has no obvious merits.

The decision of the Investigation Chamber cannot be appealed.

When the petition is declared unacceptable, the dossier shall immediately be returned to the investigating judge.

#### **Article 280. Effect of Nullification**

When receiving a petition for nullification of any acts or documents of the procedures, the Investigation Chamber shall decide whether to nullify the acts or other documents, if the Chamber agrees with the petition.

The acts or documents which have been nullified shall be taken out of the dossier and shall be filed at the office of the court clerk of the Investigation Chamber.

#### **Article 281. Consequences of Nullification**

After nullification, the Investigation Chamber may:

- return the dossier to the investigating judge;
- revoke competence from one investigating judge and send dossier to another investigating judge; or
- continue the investigation of the case by itself.

#### **Article 282. Power to Continue the Investigation by the Investigation Chamber**

When the Investigation Chamber decides to continue the investigation of the case by itself, the Investigation Chamber shall assign one of its own members who shall have the power of an investigating judge, except the powers defined in Chapter 5 on Closing the Investigation of Title 1 on Investigating Judge of this Book.

When an investigation appears to be completed, the dossier of procedures shall be filed at the office of the court clerk of the Investigation Chamber. The president of the Investigation Chamber shall set the date for trial. The provisions of Article 259 (Access to Case Files and Briefs) of this Code shall be applied.

The Investigation Chamber shall end the investigation by a settlement warrant. The provisions of Articles 247 (Settlement Warrant) to Article 250 (Referral of the Dossier for Hearing) on Settlement Warrant of an investigation judge of this Code shall be applied with settlement warrants of the Investigation Chamber. In case that the Investigation Chamber decides to release an accused person who is under detention, that decision shall be immediately effective. In this case, the provisions of Article 276 (Release of Detainee) of this Code shall not be applied.

### **CHAPTER 5**

#### **Personal Power of the President of the Investigating Chamber**

##### **Article 283. Power of the President of the Investigation Chamber**

The president of the Investigation Chamber shall be in charge of the well functioning of the Department of the Investigating Judges. The president of the Investigation Chamber shall check primarily on the conditions for implementing the provisions concerning pre-trial detention, court warrants, and rogatory commission and forensic examinations.

The president of the Investigation Chamber shall ensure that there is no unreasonable delay in the implementation of procedures.

The president of the Investigation Chamber may inspect the investigation department.

#### **Article 284. List of the Dossiers**

At the end of each quarter every investigating judge shall prepare a list of dossiers with notation of the last act of investigation which has been completed.

#### **Article 285. Inspection of the Investigation Department**

All inspections by the president of the Investigation Chamber in the Investigation Department shall be reported to the president of the Court of Appeal.

#### **Article 286. Request to Close the Dossiers**

At the expiration of 1 (one) year period after a charge was made, the accused person may request the investigating judge to close the investigation. The investigating judge shall decide within 1 (one) month after receiving the request. If the investigating judge does not decide within that period, the accused person may bring a petition to the president of the Investigation Chamber, who shall issue an injunction to the investigating judge to decide.

At the expiration of 1 (one) year after filing a complaint in a civil case, the civil party may request the investigating judge to close the investigation. The investigating judge shall make the decision within 1 (one) month of receiving the request. If the investigating judge does not decide within that period, the civil party may file a petition with the president of the Investigation Chamber who shall issue an injunction to the investigating judge to decide.

The power vested to an accused person and a civil party by this Article may be exercised by their lawyers.

## **BOOK 5 JUDGMENTS**

### **TITLE 1**

### **Judgment of Court of the First Instance**

#### **CHAPTER 1**

#### **JURISDICTION AND FILING COMPLAINTS**

##### **SECTION 1**

##### **GENERAL PROVISIONS**

###### **Article 287. Territorial Organization of Courts**

In each province and municipality there shall be a court of the first instance, which has territorial jurisdiction over the entire territory of the province or municipality. This court is called the Court of the First Instance.

###### **Article 288. Incompatibility with other Functions of a Judge**

The functions of a judge and a prosecutor or a deputy prosecutor shall be absolutely incompatible with each other.

Any judge who has perform function as a prosecutor, a deputy prosecutor or an investigating judge of a case cannot participate the trial of that case, otherwise the judgment shall be deemed as null and void.

##### **SECTION 2**

##### **Subject-Matter Jurisdiction and Territorial Jurisdiction**

###### **Article 289. Jurisdiction of the Court of the First Instance**

The court of the first instance shall rule on felonies, misdemeanors and petty offenses. The court of the first instance shall sit en banc with 3 (three) judges to rule on a felony as well as misdemeanors and petty offenses connected.

The court of the first instance shall rule on the misdemeanors and petty offenses by a single judge.

###### **Article 290. Conflict of Jurisdictions of the Court of the First Instance**

A court which has territorial jurisdiction is:

- the court located in the area where the crime occurred;
- the court located in the area where the accused person resides; or
- the court located in the area where the accused person was arrested.

In case two or several courts under the same jurisdiction of the Court of Appeal were filed with the same case, the president of the Court of Appeal shall assign the case to a court to be in charge of the dossier.

The conflict of jurisdictions between several courts of the same degree shall be settled by the president of the higher court.

The decision shall not be opened for appeal.

The jurisdiction of a court over an accused person shall be extended to the co-principals, instigators and accomplices.

If the court which receives the complaint finds that it does not have territorial jurisdiction, the court shall declare by judgment that it has no territorial jurisdiction and shall order referring the dossier to a prosecutor so that the prosecutor delivers the dossier to the court that has territorial jurisdiction. Eventually, the court shall decide to continue detaining or placing under judicial control the accused person.

### **SECTION 3**

#### **Filing complaints with a Court**

##### **Article 291. Methods of Filing**

In a criminal case, the court of the first instance shall receive the complaint through:

- Referral order of the investigating judge or the referral judgment of the Investigation Chamber;
- Order for direct hearing of the prosecutor; or
- Record on immediate appearance submitted by the prosecutor.

Any person who is brought before the court through any of the above mentioned procedures is known as an accused person.

Victim of an offence can complaint as a civil party before the court if he/she has not done so before the investigating judge.

In compliance with a law, civil responsible persons are those who shall be liable for compensation for damages caused to the victim of an offense.

##### **Article 292. Setting the Date for Trial**

Except for the procedure for immediate appearance, the date of the trial shall be set by the president of the court.

In a case where the court receives the complaint submitted directly through the referral order of the investigating judge or through the referral order of the Investigation Chamber to refer the dossier for trial, the president of the court shall set the date of trial by considering the time limits provided in Article 457 (Time Limits to be followed between Summon, Order for Direct Hearing and Citation) and Article 466 (Time Limits to be followed between Summons and Citation) of this Code.

The prosecutor shall be verbally informed of the trial date.

### **Article 293. Common Time Limits**

All time limits provided for in this Code to perform any act or implement any proceeding shall expire at 12 o'clock midnight on the last day. Normally, if the last day occurs on a Saturday, Sunday or public holiday, the time limit shall be extended to the first next working day.

In cases where the signature of an individual on a document is required, the signature may be substituted by a finger-print if the individual does not know how to sign.

### **Article 294. Summons of Parties to a Hearing by Referral Order or Referral judgment**

In case that the court receives a complaint through a referral order of an investigating judge or through a referral judgment of the Investigation Chamber, the prosecutor shall summon the following persons to attend the hearing:

- an accused person;
- a civil party;
- a victim

When the victim have not yet been named as a civil party before the investigating judge;

- witnesses;
- experts;
- translators;
- a civilly responsible person as identified by an accused person or a civil party.

The summons to attend the hearing shall be made according to the provisions as provided for in Title 2, Book 7 of this Code. A copy of the investigating judge's referral order or the Investigation Chamber's referral judgment shall be attached to the summons when they are delivered to the accused person.

### **Article 295. Summons of a Party by an Order for Direct Hearing**

When the court receives a dossier by an order for direct hearing, the prosecutor shall summon the following persons to attend the hearing:

- the victims;
- witnesses;
- translators;
- a civilly responsible person as identified by an accused person or a civil party.

The summons to attend the hearing shall be made according to the provisions as provided for in Title 1, Book 7 of this Code.

### **Article 296. Summons of Parties in the Case of Immediate Appearance**

In a case under the procedure for immediate appearance, the prosecutor shall summon the following persons to attend the hearing:

- victims;
- witnesses;

- translators;
- a civilly responsible person as identified by an accused person or a civil party.

The summons to attend the hearing shall be made according to the provisions as provided for in Title 1, Book 7 of this Code. However, in the case of emergency, the prosecutor may summon the victims, witnesses, translators, and civilly responsible person by any means, including verbal summons.

#### **Article 297. Summons of Witness**

A charging witness who has not yet been questioned by confronting the accused person shall be summoned to attend the hearing.

#### **Article 298. Summons of a Witness by an Accused Person and a Civil Party**

An accused person and civil party who pay the cost of witnesses may bring in witnesses who are not summoned by the prosecutor. The summons shall be made according to the procedures stated in Title 3, Book 7 of this Code.

#### **Article 299. Consolidation of Procedures**

When the court receives several procedures of many connected facts, it may order to consolidate all procedures.

## **CHAPTER 2 APPEARANCE OF THE PARTIES**

### **SECTION 1 Appearance of the Accused Person**

#### **Article 300. Appearance of an Accused Person**

An accused person shall appear during hearing of the court directly.

The accused person may be assisted by a lawyer chosen by him/herself. The accused may also request to have a lawyer appointed for him/her in accordance with the Law on Statute of Lawyers.

#### **Article 301. Assistance of Lawyers**

The assistance of a lawyer is compulsory in the following cases:

- Felony;
- The accused person is a minor. If the accused person has not selected a lawyer, the lawyer shall be appointed upon the initiative of the court president in accordance with the Law on Statute of Lawyers.

#### **Article 302. Free Appearance of an Accused Person**

In case of order for direct hearing, the accused person shall appear by him/herself during the hearing.

### **Article 303. Appearance with Escort of an Accused Person**

In case of procedures for immediate appearance, the accused person shall be escorted by security guards until he/she appears before the court.

The court may decide to put the accused person under pre-trial detention according to Article 48 (Procedures for Immediate Appearance) of this Code.

A judgment on the merits shall be announced not later than 2 (two) weeks starting from the date the accused person appeared in the court.

A pre-trial detention shall be legally terminated at the expiration of the two-week period.

### **Article 304. Procedures for Immediate Appearance**

When deciding to apply the procedures for immediate appearance, the prosecutor shall:

- check the identification of the person who has been referred to him/her;
- inform that person of the facts to which he/she was charged and the type of offense;
- receive the statements from that person, if he/she wishes to make;
- prepare a record on the order of immediate appearance.

The prosecutor shall inform the accused person that he/she is entitled to get assistance of a lawyer of his/her own choice or a lawyer who is appointed in accordance with the Law on Statute of Lawyers.

The selected or appointed lawyer shall be informed immediately. The lawyer may have access to the dossier and communicate with the accused person.

The information on the proceeding shall be written down in the record, otherwise, the procedures shall be deemed as null and void.

The court of the first instance shall be filed with the record on the order of immediate appearance.

The accused person shall be escorted by security guard until he/she appears before the court, which shall take place on the same day.

At the time of the appearance, and after checking the identification of the accused person and brief report on the facts which was charged, the court shall inform the accused person that he/she is entitled to a period of time for preparing the defense.

If the accused person requests for delay or if the court finds that the case is not ready for adjudicating, it shall adjourn the hearing to other date.

The court may order the accused person be put under pre-trial detention by judgment which states reasons. In the judgment, the court shall refer to the conditions stipulated in Article 205 (Reasons for Pre-trial Detention) of this Code. The court shall render a detention warrant.

A judgment on merits shall be announced not later than 2 (two) weeks starting from the date the accused person appeared in the court. The pre-trial detention shall be legally terminated at the expiration of the two-week period.

If the court, which was filed through the procedures for immediate appearance, finds that the conditions stated in Article 47 (Immediate Appearance) of this Code are not fulfilled or that the complexity of the case requires more profound investigations, the court may refer the dossier to the prosecutor in order to commence investigation. The accused person shall be brought to appear before an investigating judge on the same day, otherwise the accused person shall be automatically released.

#### **Article 305. Appearance of an Accused Person by Referral Order or Referral Judgment**

In a case where the court is filed by a referral order of the investigating judge or referral judgment of the Investigation Chamber, the accused person shall remain free to present him/herself unless the investigating judge or the Investigation Chamber decides to put him/her under pre-trial detention.

The prosecutor shall take necessary measures to have public forces bring an accused person who is under detention to the trial.

According to Article 249 (Decision of Settlement Warrant Concerning Pre-trial Detention or Judicial Control) of this Code, the decision to keep the accused person under pre-trial detention shall expire after 4 (four) months. If the accused person has not been brought before the court during this time, he/she shall be automatically put in liberty.

A judgment on the merits shall be made within a reasonable time period.

An accused person who appears during trial as an accused person shall remain detained until the judgment on the merits is rendered, except when the court orders the release.

#### **Article 306. Automatic Release of an Accused Person who is under detention**

At any time, the court may order an accused person who is under detention be put in liberty or continuation of the detention according to Article 205 (Reasons for Pre-trial Detention) of this Code.

The court may decide after hearing the accused person, the lawyer and the prosecutor.

#### **Article 307. Application for Release of an Accused Person who is under Detention**

An accused person who is under detention can make verbal request to the court to release him/her during the trial or by a written letter submitted to the court clerk.

An application for release from detention can be made verbally by a lawyer of the accused person who is under detention during the trial or by a written letter submitted to the court clerk.

If the request for release is made verbally, the court clerk shall note it in the trial record. If the request is made in writing, the court clerk shall note the date of receiving the letter and shall send it immediately to the court president.

The court shall decide after hearing the accused person, the lawyer and the prosecutor. The court shall decide within the shortest period of time, and not later than 10 (ten) days after receiving a verbal or written request.

**Article 308. Continuation of Detention until after the Expiration of the Period of an Appeal by a Prosecutor**

If the court orders the release, an accused person who has been detained, shall be remained in a prison until the expiration of the period of appeal by the prosecutor, except when the judge agrees to release the accused person under detention immediately. The written agreement or disagreement of the prosecutor shall be put in the dossier of procedures.

If there is an appeal by the prosecutor against the order to release an accused person under detention, the accused person shall be remained in a prison until the Court of Appeal decides the appeal.

**Article 309. Accused Person who cannot appear before the Court**

If due to health reasons or serious reasons prevent the accused person from appearing before the court, the chairman of hearing may order the questioning of the accused person at his/her place of residence.

The court shall decide the date of the questioning.

The questioning shall be conducted by the in the presence of the prosecutor, the court clerk, and the lawyer of the accused person, unless the accused person expressly waived the presence of his/her lawyer.

That questioning shall be recorded.

**Article 310. Order to bring Issued by the Court**

In a misdemeanor or felony case, if the accused person fails to appear before the court, the court may issue an order to postpone the case and issue order to bring. The court shall set the date for the new trial.

- Order to bring shall include the following:
- The identification of the accused person;
- The offense(s) charged and the legal texts that determine and suppress the offense;
- The name and the status of the judge who issued the order.

The order to bring shall be dated and signed by the chairman of hearing and sealed.

The provisions of Article 192 (Execution of the order to bring) shall be applied.

The accused person shall be brought to a police unit or the Royal Gendarmeries unit, the detention center or prison until the accused person appears in the court. The accused person may request the prosecutor to hear his/her statement. The prosecutor shall make a report on this hearing.

**SECTION 2**  
**The Appearance of Civil Party**

**Article 311. Engagement As a Civil Party During Trial**

During the trial, engagement as a civil party shall be through an ordinary declaration before the court clerk. The declaration shall be mentioned in the record of the hearing.

A civil party engagement shall not be accepted after the prosecutor made introductive requisition on the merits of the case.

A victim who has already been engaged as a civil party during the investigation needs not to fill the proceeding again before the court.

**Article 312. Incompatibility between the status as a Civil Party and the Status as a Witness**

A civil party cannot be interviewed as a witness.

**Article 313. Assistance and Representation of a Civil Party**

A civil party may be accompanied by a lawyer who is selected by him/herself. A civil party may also be represented by a lawyer, his/her spouse, or by a direct consanguinity. A representative who is not a lawyer shall have written power of attorney.

**SECTION 3**  
**The Appearance of Civilly Responsible Person**

**Article 314. Appearance of Civilly Responsible Person**

A civilly responsible person may be accompanied by a lawyer. The civilly responsible person may also be represented by a lawyer, by his/her spouse, or by a relative of a direct consanguinity. A representative who is not a lawyer shall have written power of attorney.

**SECTION 4**  
**The Appearance of Witnesses**

**Article 315. Appearance of Witnesses**

Witnesses shall appear before the court in accordance with the summons. The court may use public forces in order to make the witnesses to appear.

**CHAPTER 3**  
**CONFRONTATIONS**

**SECTION 1:**  
**Publicity of Confrontations and conduct of Hearings**

**Article 316. Publicity of Confrontations and Confidentiality of Confrontations**

Confrontations shall be conducted in public hearings.

However, if the court finds that publicity poses danger to public order or customs, the court, based on a decision with reasons, may order the whole or part of the confrontations be conducted

confidentially. The court shall decide by a judgment different from a judgment on the merits or by a special arrangement of the judgment on the merits.

The decision of the court to conduct the confidential confrontations cannot be appealed.

#### **Article 317. Announcement of a Judgment**

In all cases, judgments shall be announced at the public hearing.

#### **Article 318. Policing the Hearing**

The chairman of hearing shall lead the confrontations. The chief shall guarantee the free exercise of the rights to defense. However, the chief may expel from confrontation what intends to uselessly delay the hearing and not conducive to ascertaining the truth.

The chairman of hearing shall ensure the maintenance of good order during the trial.

The chairman of hearing can prohibit some or all minors from entering the hearing room.

The chairman of hearing can order the dismissal of any person who causes disorder of debates.

In the performance of her/his duties, the chairman of hearing can use public forces.

#### **Article 319. Access to dossiers**

Before the hearing, the lawyers can examine the dossiers in the court clerk's office under the supervision of the court clerk.

The lawyer or the secretary of the lawyer may be authorized by the court to copy documents in the dossier at their own cost and under the supervision of the court clerk.

#### **Article 320. Offense Committed during the Hearing**

If an offense happens during the hearing, the chairman of hearing shall make a record of that offense.

The chairman of hearing may order the arrest and immediately bring the offenders before the prosecutor who shall decide on further actions.

If the offense is a petty offense or misdemeanor, the court may try the offender immediately if requested by the prosecutor and agreed by the offender.

## **SECTION 2 The Rules of Evidence**

#### **Article 321. Evaluation of Evidence by the court**

Unless otherwise required by a law, any evidence in criminal cases is freely admissible. The court shall have a free choice to determine the value of the evidence submitted to the court on the ground of its true belief.

The decision of the court shall be based only on the evidence which it has in the file or which has been presented at the hearing.

A confession shall be submitted to the court for consideration in the same manner as other evidence. Answers given under the physical or mental duress shall have no evidentiary value.

Communications between the accused person and his/her lawyers is not admissible as evidence.

### **SECTION 3**

## **Conduct of Confrontations**

### **Article 322. Rules Concerning Parties who are Present in the Hearing**

The court clerk shall call the names of the accused person, civil parties, civil responsible persons, victims, witnesses and experts and verify the identifications of those persons.

If a civil party is represented by his/her spouse or by direct consanguinity, the court clerk shall verify the identification of those representatives and the validity of the power of attorney. The civil responsible person shall follow the same processes. If it is necessary, the court clerk shall ask for opinion of the hearing president.

Each party shall sit at their designated places in the court room.

Accused persons are not allowed to communicate with each other.

Experts and witnesses shall stay in the waiting room prepared for them and from which they cannot see or hear anything in the court room.

While in the waiting room during the hearing, the witnesses are not allowed to communicate with each other.

### **Article 323. Protest against the Regularity of the Summons**

Any protest against the regularity of the order for direct hearing, record of immediate appearance or summon to appear at the hearing shall be raised before questioning the accused person on the merits, otherwise the protest shall be inadmissible.

### **Article 324. Hearing of a Witness who has not been Summoned**

During the confrontation, each party can request the court to hear answers as a witness any person who is present in the court room but was not properly summoned. Listening to the answers of this witness shall be approved by chairman of hearing. The court clerk shall record the identification of the witness and instruct them to stay in the waiting room.

### **Article 325. Interview of an Accused Person**

The chairman of hearing shall inform the accused person of the acts that he/she is accused of and shall conduct the interview of the accused person. The chairman of hearing shall ask any questions which he/she believes that they are conducive to ascertaining the truth. The chairman of hearing has a duty to ask the accused person any questions leading either to charge or to discharge the accused person.

After the chairman of hearing questions the accused person, the prosecutor, the lawyers and all the parties shall be allowed to question the accused person. All questions shall be asked with the permission of the chairman of hearing. Except for questions asked by prosecutors and lawyers, all questions shall be asked through the chairman of hearing. In case of objection to a question, the chairman of hearing shall decide discretionarily if the question can be asked or not.

#### **Article 326. Interviewing of Parties**

The chairman of hearing shall listen to the statements of civil parties, civil responsible persons, victims, witnesses and experts according to the order in which he/she believes that they are useful. The chairman of hearing can listen to the statements of judicial police officers or the judicial police agents who conducted investigations as witnesses.

Prosecutor, lawyers and parties may be allowed to ask questions. Each question to be asked shall be allowed by the chairman of hearing. Except for questions to be asked by prosecutors and lawyers, other questions shall be asked through the chairman of hearing. In case of objection to a question, the chairman of hearing shall decide discretionarily if the question can be asked or not.

#### **Article 327. Objection to Interviewing a Witness**

The prosecutor, lawyers and all parties can raise objection to the listening to a witness if they finds that it is not conducive to ascertaining the truth. In case of objection, the chairman of hearing shall decide discretionarily whether to listen to the witness.

#### **Article 328. The Oath of Witness**

The chairman of hearing shall question each witness to see whether he/she is a direct consanguinity or alliance of the accused person, a civil party, or a civil responsible person or serviceman of those people.

Before answering the questions, each witness shall swear according to their religion or believe that he/she shall only speak the truth.

After being questioned, each witness shall be kept on call as the court needs. The court may allow the witness to withdraw if his/her presence is no longer needed.

The provisions of Article 156 (Witness without Swearing) of this Code shall also be applied.

#### **Article 329. Denunciators**

The denunciator who has been rewarded for his/her denunciation may also be listened to by the court for information.

#### **Article 330. Assistance and Oath of a Translator**

If necessary, the chairman of hearing can seek a translator. The translator shall swear according to his/her belief or religion that he/she will assist the court and translate the answers honestly. In no circumstances, can the translator be chosen from amongst judges, court clerks, police, gendarmeries, parties or witnesses.

The provisions of Article 156 (Witness without Swearing) of this Code shall also be applied.

### **Article 331. Deaf and Mute Person**

When questioning a deaf and mute person, the court clerk shall write down the questions and ask the person being questioned to read the questions and answer them in writing. If the person is illiterate, the chairman of hearing shall call on a translator for him/her under the conditions stated in Article 330 (Assistance and Swearing of a Translator) of this Code.

The chairman of hearing may call on any person who used to communicate with the deaf and mute person to do translation. That person shall swear according to his/her religion and believes that he/she shall assist the court and translate the answers honestly.

### **Article 332. Presentation of Exhibits**

The chairman of hearing may ask any person to provide exhibits.

### **Article 333. Search for Truth in the Absence of an Accused Person**

Even if an accused person is absent, the court shall seek the truth, listen to the answers of the other parties and witnesses, and examine the exhibits.

### **Article 334. Submission of Conclusions until the End of Confrontations**

Until the confrontation is closed, the accused person, the civil party, and civil responsible person can make written conclusions and submit all documents that they think useful to ascertain the truth.

The written conclusions shall be prepared by chairman of hearing and the court clerk and shall be attached to the dossier.

### **Article 335. Right to Speak of the Parties after the Confrontations**

After the confrontation, the chairman of hearing shall allow the following people to speak in the sequent of order:

- civil party, civil responsible person, and the accused person to make brief statements;
- the lawyers of the civil party to present the pleading arguments;
- the prosecutor to issue introductive requisition
- the lawyer of a civil responsible person, the lawyer of the accused person to make the pleading arguments.

Civil party and the prosecutor can make rebuttal statements. However, the accused person and his lawyer shall be always the ones who speak last.

The fulfillment of the formalities shall be recorded in the hearing record and in the judgment.

### **Article 336. Oral Request from Prosecutor**

The prosecutor shall make an oral request that he/she finds it useful for justice.

### **Article 337. Deliberation of the Court**

The judges shall deliberate in a camera room to reach their verdict. No complaint can be re-submitted to the court. No further arguments can be raised.

The prosecutor and the court clerk are not allowed to participate in these deliberations.

### **Article 338. Site Visit by the Court**

The court can go anywhere within the national territory in the interest of ascertaining the truth.

The court shall always be accompanied by a prosecutor and a court clerk. The accused person, civil party, civil responsible person, and their lawyers may also accompany the court if requested to do so.

These operations shall be recorded.

### **Article 339. Additional Information Ordered by the Court**

If it believes that a new research is needed, the court can issue an order through the judgment for additional investigations.

The people who have authorities to make additional investigations are:

- the chairman of hearing;
- one of the judges on the trial council when the court sits en banc;
- Other judges of the court of the first instance.

A judgment for additional investigations shall assign a judge to perform this duty. Under the same conditions of the investigating judge, this judge may:

- visit anywhere within the territorial jurisdiction of the court or the national territory;
- interview witnesses;
- conduct search;
- seize the exhibits;
- issue orders for forensic examination.

In order to carry out additional investigations, the judge can issue an order for rogatory commission.

### **Article 340. Adjournment of Hearing**

If the debate is not completed during the hearing, the court can continue it at the next hearing at a set date.

### **Article 341. Writing Hearing Record**

At the hearing, the court clerk shall write down the hearing record for the purpose of giving a record for the Court of Appeal to examine the legality of the proceedings and to understand the confrontation.

The court clerk shall carefully describe the functioning of the hearing and shall accurately record the questions asked and answers of the accused person, the civil party, civil responsible person, the witnesses and the experts.

The hearing record shall be signed by the court clerk and visa granted after verification by the chairman of hearing within 10 (ten) days after the announcement of the judgment.

Any court clerk who handles a hearing record carelessly shall be disciplined.

## **SECTION 4**

### **Variances**

#### **Article 342. Competence of Court with Respect to Variances**

The court which receives criminal cases shall have competence to make decisions on all variances raised by parties unless a law states otherwise.

The competent court shall make decisions on variances such as the annulment of the submitted procedure, except when the court conducts trial based on the committal for trial of the investigating judge or referral judgment of the Investigation Chamber.

#### **Article 343. Interlocutory Question and Putting Off of Judgment**

The court shall put off the decision if a party raises an interlocutory question that the examination of such question is under the exclusive jurisdiction of another court.

An interlocutory question is admissible, provided that it is made for the sake of withdrawing the element charging the accused person from the characteristic of an offense.

In a civil case, an issue regarding ownership, obvious right on immovable property and status of a person is under the exclusive jurisdiction of the civil court.

#### **Article 344. Presentation of Variances**

A variance shall be raised before the stage of defending on the merits or otherwise it is inadmissible.

#### **Article 345. Admission of Interlocutory Question**

The court may declare that inadmissibility of an interlocutory question is only done through a well-motive judgment. If a variance is dismissed, the confrontation shall continue.

If an interlocutory question is raised and admitted by the court, the court shall put off judgment and set the period for the concerned party to file a lawsuit with the competent court.

At the expiration of this period, if the concerned party presents evidence that it has filed a lawsuit with the competent court, the court shall set another period to issue judgment on the matter. The court which has been filed the lawsuit shall be informed of the period by the prosecutor.

If there is no decision make within the period set by the court, the criminal case shall continue if there is a delay it is a mistake caused by the negligence of the involved parties.

#### **Article 346. Hearing of Variances**

The court shall issue a decision on a variance by a judgment different from a judgment on the merits.

But the court may also include a statement of facts on the merits and issue one judgment which includes the variances and the merits.

## **CHAPTER 4**

### **DECISIONS**

#### **SECTION 1**

### **Announcement of Judgment**

#### **Article 347. Announcement of Judgment**

The judgment shall be decided at a hearing where there is confrontation or in the next hearing. In the latter case, the chairman of hearing shall inform the present parties of the date of announcement of the judgment.

#### **Article 348. Scope of Limitation of Complaint to the Court on Facts**

The court can only decide on any acts stated in the referral judgment, committal for trial, summon for direct hearing, or the record on an immediate appearance.

In case the court, which sits en banc, finds that the fact mentioned in the complaint constitutes a misdemeanor or petty offense, the court shall remain having the competence to adjudicate.

In case the court, which sits by a single judge, finds that the mentioned in the complaint constitutes a felony, the court shall return the dossier to the prosecutor to commence investigation.

#### **Article 349. Scope of Complaint to the Court against Persons**

The court may hold a trial of the person who is sent to appear before the court as an accused person only.

If another person, who is subpoenaed before the court as a witness is accused of a perpetrator or conspirator, this person may be tried only after he/she is charged as provided in Article 43 (Making Charge) of this Code.

#### **Article 350. Declaration of Guilt**

The court shall examine whether:

- the crime is a felony, a misdemeanor or petty offense
- the accused person committed the crime according to the accusation.

If found guilty, the court shall sentence the accused person in accordance with the law.

If the court has found that the act is not a crime or found that the accused person is not guilty, the accused person shall be freed from the charge.

### **Article 351. Absence of an Accused Person**

Beyond reasonable doubts shall be the benefits of the accused.

In case that the accused person is absent, the court shall declare the guilt if it correctly finds that the accused person had actually committed the offense which has been charged.

### **Article 352. Termination of Judicial Control**

The judicial control shall be terminated when the judgment is issued.

### **Article 353. Detention Warrant and Arrest Warrant Issued by the Court**

If the court declares the punishment to at least 1 (one) year imprisonment without suspension, the court by a special decision with reasons, may issue during the hearing:

- a detention warrant against the accused person who is present;
- an arrest warrant against the accused person who is absent.

These detention warrants and arrest warrants shall be effective immediately.

These warrants shall mention the following:

- the identification of the guilty person;
- the nature of punishment and the legal texts which are the basis for the punishment;
- the full name and position title of the judge who has issued the warrant.

These warrants shall be dated, signed by this judge and sealed.

The guilty person who is arrested by the execution of arrest warrant shall be presented within the shortest period of time in front of a prosecutor at the place where he/she has been arrested and the person concerned shall then be informed of the warrant and detained.

If a judgment is issued by default, the guilty person who wishes to appeal against this judgment shall appear before the court that has issued the judgment within the shortest period of time. The guilty person may apply for bail. The court shall make a decision in accordance with Article 307 (Application for Release of an Accused Person who is under detention) of this Code.

### **Article 354. Return of Seized Items**

The competence court shall decide on the return of seized items.

### **Article 355. Judgment on Civil Remedy**

In the same judgment of the criminal case, the court shall decide the civil remedy. The court shall judge the acceptability of the civil party and shall make decision on lawsuit of the civil party against the accused person and the civil responsible person. When the court has not decided on civil remedy, it may put it off to a later hearing and may decide on the tentative payment.

Persons who are punished in the same offense shall be jointly responsible for remedy.

### **Article 356. Absence of a Civil Party at a Hearing**

If a civil party who requested compensation before the trial was held but he/ she was absent during the hearing, and if the accused person was declared guilty by the court, the court shall make a decision to order compensation according to the contents of the dossier.

### **Article 357. Writing of Judgment: The Ground and Enacting Term of Judgment**

Every judgment shall have two parts:

- the ground means the arguments of facts and laws which lead the court to make decision;
- the enacting term means decision of the court.

The facts shall be clear and beyond a reasonable doubt. The court shall examine all charges and arguments raised during the hearing.

In the ground judgment, the court shall respond to written conclusions of the parties.

In the enacting term judgment, the court shall note the offense committed by an accused person which is not permissible by an applicable legal texts and any civil remedy.

### **Article 358. Information Mentioned in Judgment**

A judgment shall be signed by the chairman of hearing and the court clerk.  
The judgment shall mention the following:

- the date of the hearing (s);
- the date of the issuance of the judgment;
- the full name and position title of the judge who conducted the trial;
- the full name and position title of the prosecutor's representative;
- the full name and position title of the court clerk;
- the full name, place of residence, birth date, birth place, and occupation of the accused person, the civil party, and civil responsible person;
- the names of the lawyers.

After being signed by the chairman of hearing and the court clerk the original judgment shall be kept at the office of the court clerk not later than 8 (eight) days after the declaration of the judgment. The office of court clerk shall permanently maintain the original judgment. In the case of appeal, the court clerk can deliver a copy of the judgment.

### **Article 359. Announcement of Judgment in Public Hearing**

All judgments shall be issued and announced during a public hearing. The enacting term of judgment shall be read aloud by the chairman of hearing.

## **SECTION 2 Nature of Judgments**

### **Article 360. Non-default Judgment**

If an accused person appears at the trial, a judgment shall be a non-default judgment. The accused person need not be notified of the non-default judgment. An appeal may be filed against the non-default judgment.

A judgment is still non-default even if the accused person leaves the court room.

A judgment shall become non-default when the accused person was questioned under the conditions provided in Article 309 (Accused Person who cannot Appear before the Court) of this Code.

#### **Article 361. Judgment Deemed to be Non-default**

If an accused person does not appear for trial but he/she had the knowledge that a committal for direct hearing or a summons was issued, the judgment shall be deemed as non-default.

The accused person shall be notified of the non-default judgment. An appeal can be filed against the judgment.

When an accused person was absent with an excuse accepted by the court, the court may adjourn the case to the next hearing.

#### **Article 362. Default Judgment**

If an accused person does not appear at the hearing and there is no proof that he/she had the knowledge of the committal for trial or the summons, the judgment shall be issued in the absence of the accused person.

The accused person shall be notified of the default judgment. An appeal may be filed against this judgment.

#### **Article 363. Judgment Issued in the presence of a Civil Party**

If a civil party appears during the trial or has legitimate representative, the judgment shall be non-default in the presence of the civil party. The non-default judgment in the presence of the civil party shall not be notified to him/her. An appeal may be filed against such judgment.

If a civil party or his/her legitimate representative was not present during the hearing, the judgment shall be issued in the absence of the civil party. The civil party shall be notified of this default judgment. An appeal may be filed against such judgment.

#### **Article 364. Judgment Issued in the presence of a Civil Responsible Person**

If a person who was summoned as a civil responsible person appears at a hearing or is legitimately represented, the judgment shall be a non-default judgment in the presence of the civil responsible person. The civil responsible person shall not be notified of the non-default judgment. An appeal may be filed against this judgment.

If a person who was summoned as a civil responsible person does not appear at a hearing or is not legitimately represented, the judgment shall be issued in the absence of the civil responsible person. The civil responsible person shall be notified of the default judgment. An appeal may be filed against such judgment.

## **SECTION 3**

### **Opposition Against a Default judgment**

#### **Article 365. Opposition Against a Default Judgment**

The guilty person can file an opposition against a judgment declared in his/her absence.

#### **Article 366. Formality and Admissibility of an Opposition**

An opposition shall be filed by writing:

- at the office of the court clerk of the court where the judgment was declared;
- in the presence of a prosecutor, police or gendarmeries unit or a chief of a prison or a detention center.

The guilty person may be represented by a lawyer. The lawyer shall have the power of attorney authorizing him/her to file an opposition. However, a guilty person, who is a minor, may be represented by parents or guardians. In this case, the representative does not need to have the power of attorney.

When receiving an opposition application, the prosecutor, police or gendarmeries unit, or chief of prison or detention center shall refer the application immediately to the court clerk of the court where the judgment was declared.

When the opposition applicant does not know how to sign, he/she shall be fingerprinted.

#### **Article 367. Registry of Oppositions**

The court clerk shall keep a registry of oppositions. The parties and lawyers may have free access to this registry.

#### **Article 368. Period for Filing an Opposition**

An opposition shall be filed within 15 (fifteen) days starting from:

- the date the notice of the default judgment was given if the judgment was given by hand delivery to the guilty person, or
- the date the guilty person actually learned about the judgment if the judgment was not given to the guilty person by hand delivery.

#### **Article 369. Opposition Limited to Civil Decisions**

An opposition may be limited to a decision on the civil part of the judgment.

#### **Article 370. Effect of an Opposition**

When an opposition is filed against the whole judgment, the judgment shall become invalid. The execution of the judgment shall be suspended.

However, a warrant of arrest shall remain valid. The court shall remain to have the authority to make decision to put the accused person in liberty.

When an opposition is made against the civil part of the decision, only this part of the decision shall be invalid. The execution of the civil decision shall be suspended.

#### **Article 371. Judgment on an Opposition**

The dossier shall be tried again in the same court.

All parties are summoned on the initiative of the prosecutor.

After having examined the admissibility of the opposition, the court shall make the decision on the merits again.

If the opposition applicant who has been properly summoned but fails to appear during the hearing, the court shall declare that the opposition is null and void. The judgment against which an opposition was filed shall not be modified. The judgment shall become completely effective to all parties. The person who submits the opposition may appeal against the judgment under the provisions of Article 382 (Period for an Appeal by Guilty person, Civil Party, Civil Responsible Person) of this Code.

#### **Article 372. Opposition made by a Civil Party or a Civil Responsible Person**

A civil party may also oppose the judgment decided in his/her absence. The opposition shall be limited only to the civil part of the judgment.

The opposition shall be filed within 15 (fifteen) days starting from:

- the date the notice of the default judgment was delivered provided that the judgment was given to the civil party by hand delivery, or
- the date the civil party actually learned about the judgment if the judgment was not delivered to the civil party by hand delivery.

The opposition shall be filed in writing to the office of the court clerk of the court where the judgment was declared.

The civil party may be represented by the lawyer, spouse, or a direct consanguinity. The representative shall have the power of attorney authorizing him/her to file an opposition.

The provisions of this Article shall also be applied to any person who has been declared by the court as a civil responsible person.

## **TITLE 2**

### **APPEALS AGAINST JUDGMENTS**

#### **CHAPTER 1**

#### **Jurisdiction of the criminal chamber of the Court of Appeal**

#### **Article 373. Jurisdiction of the Criminal Chamber of the Court of Appeal**

The Criminal Chamber of the Court of Appeal shall have the jurisdiction to decide on an appeal against the decision of the court of the first instance within its scope of jurisdiction for criminal cases.

### **Article 374. Abstention of Some Judges**

Any judge who has performed the acts of charging or investigating, or trying at the court of the first instance cannot participate in the trial at the Court of Appeal as a presiding judge or judge for the same case.

## **CHAPTER 2**

### **Admissibility of appeals**

### **Article 375. Persons Entitled to File an Appeal**

The appeal can be filed:

- by a prosecutor of the court of the first instance and the Prosecutor General of the Court of Appeal;
- by the guilty person;
- by the civil party for a civil interest;
- by the civil responsible person for a civil interest.

### **Article 376. Formality of Appeals by Prosecutor, Accused Person, Civil Party and Civil Responsible Person**

The appeal of a prosecutor, a guilty person, a civil party and a civil responsible person shall be filed to the office of the court clerk of the court where the judgment was declared.

The guilty person may be represented by a lawyer. The lawyer shall have a written power of attorney to file an appeal. However, a guilty minor may be represented by his/her parents or guardian. In such case, the representative shall not need to have the power of attorney.

A civil party can be represented by a lawyer, spouse or direct consanguinity. The representative shall have written power of attorney to make an appeal.

A civil responsible person may be represented by a lawyer, spouse or direct consanguinity. The representative shall have written power of attorney to make an appeal.

The court clerk shall register an appeal in the special registry of the court. The appeal documents shall be signed by the court clerk and the appellant or the appellant's representative. The power of attorney shall be attached to the appeal documents.

### **Article 377. Declaration of Appeal by Guilty person who is under Detention**

The guilty person who is under detention may express his/her will to appeal in the presence of the chief of a prison or a detention center. The guilty person shall fill an application for appeal which shall be dated and signed.

The appeal application shall be registered by the chief of the prison or the detention center in the special register. The guilty person shall sign the page margin of the register.

The chief of the prison or the detention center shall send the appeal application within the shortest period of time to the court clerk who shall note the appeal application in the appeal register of the court.

**Article 378. Illiterate Appellants**

If an appellant does not know how to sign, he/she shall be fingerprinted.

**Article 379. Formality of Appeal by a Prosecutor General**

The appeal of a Prosecutor General shall be filed at the office of the court clerk of the Court of Appeal.

The court clerk shall register the appeal documents in the special register which is kept at the office of the court clerk of the Court of Appeal. The appeal application shall be signed by the court clerk and by the Prosecutor General.

**Article 380. Access to Appeal Register**

The appeal register of the court of the first instance and the Court of Appeal may be accessed freely by the parties and their lawyers.

**Article 381. Time Period for Appeal by Prosecutor and Prosecutor General**

Any appeal by the prosecutor shall be filed within 1 (one) month.

Any appeal by the Prosecutor General shall be filed within 3 (three) months.

The time period for an appeal shall start from the date in which the judgment was declared.

**Article 382. Time Period for an Appeal by Guilty person, Civil Party and Civil Responsible Person**

Any appeal of a guilty person, a civil party, or a civil responsible person shall be filed within 1 (one) month.

If the judgment is non-default, the period for appealing shall start from the time the judgment was declared.

If the judgment is deemed non-default, the period for appealing shall start from the time the notice of the judgment was delivered regardless of means of delivery.

**Article 383. Additional Period for Appeal: Incidental Appeal**

In case of an appeal filed by any party within the time period provided above, all other parties shall have additional 7 (seven) days to file an incidental appeal. The additional time shall start from the expiration of the normal period.

**Article 384. Time Period for Appeal by Prosecutor and Guilty person in Case of Detention**

In case of detention, an appeal shall be filed by prosecutor within 48 (forty eight) hours and by the guilty person within 5 (five) days. This time period shall start from the date the court made a decision on detention.

**Article 385. Appeal against Interlocutory Judgment**

If the court issues an interlocutory judgment, an appeal may be filed immediately if the judgment terminates the procedures. In a contrary case, an interlocutory judgment can be submitted to the Court of Appeal for examination provided that it made together with the judgment on the merits.

### **CHAPTER 3**

## **Procedures before The Court of Appeal**

### **Article 386. Referring the Dossiers to the Court of Appeal**

If an appeal is filed, the court clerk of the court of the first instance shall prepare the dossier for referring to the Court of Appeal.

The court clerk shall send the dossier to the office of the court clerk of the Court of Appeal within the shortest period of time and shall include the following:

- the dossier of procedures;
- a certified copy of each appeal application;
- a certified copy of the judgment.

In case there is an appeal against the court's decision on the detention of the accused person, the dossier shall be referred within 10 (ten) days, starting from the date of filing of the appeal, unless there are circumstances that cannot be overcome which shall be noted in the referral letter.

### **Article 387. Setting the Date for Hearing and Duration of Trial**

When the dossier reaches the Court of Appeal, the president of the Criminal Chamber shall verify the correctness of the appealing procedures and set the date for hearing.

The Court of Appeal shall decide within a reasonable period of time. If an appeal is filed against a judgment of the court of the first instance with regards to the detention of the accused person, the Court of Appeal shall decide within the shortest period of time and within a maximum period of 15 (fifteen) days starting from the date of receiving the dossier.

### **Article 388. Notice and Summons to Hearing**

The president of the Criminal Chamber shall notify the Prosecutor General of the Court of Appeal of the hearing date.

The Prosecutor General shall summon the accused person, the civil parties and civil responsible persons as provided for in Title 2 (Summon of an Accused Person to a Hearing) and Title 3 (Summon of any Persons other than Accused Person to a Hearing) of Book 7 on Summon for Direct Hearing, Summons, and Notice of this Code.

### **Article 389. Transfer of Accused Person who is under Detention**

An accused person who is under detention shall be transferred immediately by an order of the Prosecutor General to a prison or a detention center which locates nearest to the office of the Court of Appeal.

### **Article 390. Appeal Report**

The president of the Criminal Chamber shall appoint a reporting judge. The reporting judge may be the president or an accompanying judge.

The subject of the report shall describe the procedures of the case and expose the judgment submitted to the Court of Appeal. The report shall be prepared in writing and shall be attached to the dossier. The report shall be sufficiently detailed so that the court receives complete information on the case.

#### **Article 391. Access to a Dossier and Submission of Briefs**

The Prosecutor General and lawyers may have access to the case file until the hearing is held.

The lawyers and parties may submit their briefs to the court clerk. These briefs shall be granted a visa by the court clerk and dated and shall be attached to the dossier immediately.

#### **Article 392. Publicity of Confrontations and Confidentiality of Confrontations**

The confrontation shall be conducted in a public hearing.

However, if the court finds that publicity causes danger to the public orders or customs, the court through a well motivated decision, may order the confrontation be conducted wholly or partly confidential. The court shall make its decision in a judgment different from that on the merits or by a special decision of the judgment on merits.

The court decision to conduct confidential confrontation may not be appealed.

#### **Article 393. Interview of an Accused Person**

After having read the report, the president shall interview the accused person.

The Prosecutor General, lawyers and parties shall be authorized to raise questions against the accused person. All questions raised shall be authorized by the president of the hearing. Questions other than those of the Prosecution Department's representative and the lawyers shall be raised through the president of the hearing. In case of objection, the president shall discretionarily decide whether the questions can be raised or not.

#### **Article 394. Interview of Civil Parties, Civil Responsible Persons, Experts, Witnesses**

After having questioned the accused person, the president shall interview the civil parties and the civil responsible person in the sequent order if he/she finds it useful.

Witnesses and experts shall be interviewed only if the court orders to do so.

#### **Article 395. Sequent Order of Speech**

The Prosecutor General and lawyers will make their statements in the sequent order of calling.

In all cases, the accused person shall be the last person to make statements. The lawyer of the accused person shall be allowed to make complementary brief statements.

### **Article 396. Extension of Rules Applied by the Court of the First Instance to the Court of Appeal**

In addition, the rules that apply to the court of the first instance shall also be applied to the Court of Appeal.

## **CHAPTER 4 Effects of Appeals**

### **Article 397. Devolution Effect of Appeals**

A dossier shall be referred to the Court of Appeal within the scope determined by the appeal and according to the status of the appellant.

### **Article 398. Effect of Appeal on the Execution of Judgment**

During an appeal, enforcement of a judgment shall be suspended.

However, an accused person who is under detention and appeared before the court of the first instance shall be kept in a prison during the period of the prosecutor's appeal. In case an appeal is filed against the criminal part of the judgment, the accused person shall be kept in a prison until the Court of Appeal makes its decision. If the court of the first instance decided to release the accused person or sentence the accused person to imprisonment for a period less than or equal to the pre-trial detention period, the prosecutor may agree to release the accused person before the expiration of the period for appealing.

The period for appealing by the Prosecutor General shall not be an obstacle for the enforcement of the sentence.

### **Article 399. Effect of Appeal only from Accused Person**

When the Court of Appeal receives an appeal only from the accused person, it cannot increase the punishment against the accused person. The court can modify the judgment only in favor of the accused person. The Court of Appeal cannot add a secondary sentence to the principal sentence.

The Court of Appeal can replace the type of the offense determined by the court of the first instance by another type of the offense but cannot increase the sentence imposed on the accused person.

If the court of the first instance forgot to declare any secondary sentence that is absolutely mandatory to be imposed, the Court of Appeal shall void the judgment and decide the new sentence again.

When receiving an appeal from the accused person only, the Court of Appeal cannot increase the amount of money for compensation of damages to the civil party.

### **Article 400. Effect of an Appeal by a Prosecutor and a Prosecutor General**

An appeal by a prosecutor and a Prosecutor General leads to a review of the criminal part of the decision made by the court of the first instance.

Eventually, the Court of Appeal may overrule a judgment to release the accused person or aggravate the sentence that was declared by the court of the first instance. The Court of Appeal may always decide to release the accused person if it finds that the guilt of the person cannot be demonstrated.

The Court of Appeal can impose a secondary sentence that is absolutely mandatory when the court of the first instance forgot to declare.

#### **Article 401. Re-qualifications of Juridical by the Court of Appeal**

The Court of Appeal may modify the qualifications of juridical determined by the court of the first instance, but it shall not add any new element that was not submitted to the court of the first instance for decision.

#### **Article 402. Effects of Appeal by Civil Parties or Civil Responsible Person**

The appeal of a civil party and a civil responsible person may be made on civil interests only.

A civil party may not file a new petition before the Court of Appeal which was not submitted to the court.

#### **Article 403. Form and Signature on Judgment**

The rules governing the form and signature of the judgment of the court of the first instance shall apply to the judgment of the Court of Appeal.

#### **Article 404. Inadmissible Appeal**

If the Court of Appeal finds that the appeal is filed after the expiration of the period or it was not filed under improper conditions, the Court of Appeal shall decide that the appeal is not admissible.

#### **Article 405. Overrule of Judgment**

If the Court of Appeal finds that there is no guilt against the accused person or the act is not an offense, the Court of Appeal shall overrule the judgment and put the accused in liberty.

#### **Article 406. Right to Evocation of the Court of Appeal**

If the Court of Appeal finds that the judgment of the court of the first instance involves nullification, the Court of Appeal may decide on the merits again like the court of the first instance.

#### **Article 407. Detention Warrant or Arrest Warrant Issued by the Court of Appeal**

If the Court of Appeal sentences to imprisonment for at least 1 (one) year without suspension, and if it is required by security measures, the Court of Appeal, through a special decision with reasons, may issue during the hearing:

- a detention warrant of the accused person who is present;
- an arrest warrant of the accused person who is not present;

The detention and arrest warrants shall have the effect of immediate execution.

The warrants shall mention the following information:

- the identification of the guilty person;
- the type of punishment and the legal texts that are the basis of the punishment;
- the full name and position title of the judge who issued the warrant.

These warrants shall be dated and signed by the judge and sealed.

Within the shortest period of time, the guilty person who was arrested through the execution of the arrest warrant shall be brought to the Prosecutor General at the place where the arrest was made and inform the guilty person of the warrant and then detain him/her.

If a default judgment is declared, the guilty person who decides to oppose shall appear within the shortest period of time before the Court of Appeal that announced the judgment. The detainee may apply to stay outside custody. In this case, the Court of Appeal shall decide based on Article 307 (Application for Release of an Accused Person who is under Detention) of this Code.

#### **Article 408. Nature of Judgments**

A judgment declared by the Court of Appeal shall be a non-default judgment, deemed to be a non-default judgment or default judgment depending on distinction applicable to judgment issued by the court of the first instance.

### **CHAPTER 5**

## **Opposition To Default Judgment**

#### **Article 409. Opposition To Default Judgment**

A detainee may oppose to default judgment.

#### **Article 410. Formality for Opposition Complaint**

An opposition may be filed by:

- a written complaint submitted to the office of the court clerk of the court of Appeal which issued the judgment; or
- a written complaint in the presence of the Prosecutor General, police or gendarmeries unit, or the chief of a prison or a detention center.

The detainee may be represented by a lawyer. The lawyer shall have the power of attorney to appeal. However, a detainee who is a minor may be represented by his/her parents or guardians. In this case the representative does not need to have the power of attorney.

When receiving an opposition complaint, the Prosecutor General, police and gendarmeries unit, or the chief of a prison or a detention center shall immediately deliver it to the court clerk of the Court of Appeal which issued the judgment.

If the opposition applicant does not know how to sign, he/she shall affix fingerprint.

#### **Article 411. Register of Oppositions**

The court clerk of the Court of Appeal shall keep the register of oppositions. The parties and lawyers shall have free access to it.

#### **Article 412. Period for Opposition**

An opposition shall be filed within 15 (fifteen) days starting from:

- the day of notification of the default judgment when the judgment is delivered to the guilt person by hand delivery;
- the day that the guilt person actually learned about the judgment when the judgment was not delivered to the guilt person by hand delivery.

#### **Article 413. Opposition limited to only the Civil Part of a Judgment**

An opposition may be filed against only the civil part of the judgment.

#### **Article 414. Opposition against the Criminal part or Civil Part of Judgment**

If an opposition is filed against the entire judgment, the judgment shall be deemed as non-binding. The enforcement of the judgment shall be suspended. However the arrest warrant shall remain effective. The Court of Appeal shall have the competence to decide on the release.

If an opposition is filed against the civil part of the decision, the decision on this part shall be deemed as non-binding and its enforcement shall be suspended.

#### **Article 415. Judgment Issued Based on Opposition**

The case shall be tried before the same Court of Appeal.

The parties shall be summoned on the initiative of the Prosecutor General.

After deciding on the admissibility of the opposition, the court shall re-decide on the merits.

If the opposition complainant who was properly summoned but does not appear during the hearing, the court shall declare that opposition is null and void. The judgment against which an opposition has been filed cannot be modified. The judgment shall be effective over all parties. However, the guilt person may appeal to the Supreme Court.

#### **Article 416. Opposition filed by a Civil Party or a Civil Responsible Person: Period, Formality, Representation)**

A civil party may also file an opposition against a judgment of his/her absence. Such opposition shall be filed only against the decision on the civil part of the judgment.

The opposition shall be filed within 15 (fifteen) days starting from:

- the day of notification of the default judgment when the judgment is delivered to the civil party by hand delivery;
- the day when the civil party actually learned about the judgment, if the judgment was not delivered to the civil party by hand delivery.

An opposition shall be filed in writing to the court clerk's office of the Court of Appeal that issued the judgment.

A civil party may be represented by a lawyer, spouse, or direct consanguinity. The representative shall have the power of attorney to oppose.

The provisions of this Article shall be applied to any persons declared by the Court of Appeal to be civil responsible.

## **BOOK 6 SUPREME COURT**

### **TITLE 1**

### **APPEAL**

#### **SINGLE CHAPTER**

#### **Appeal**

##### **Article 417. Decisions which can be Appealed**

A judgment of the Investigation Chamber, including extradition issues and a judgment which is finally issued by the Criminal Chamber of the Court of Appeal, may be appealed.

However, appeal cannot be filed against the judgment of the Investigation Chamber which orders the referral of the accused person to the trial.

##### **Article 418. Persons who May File the Appeal**

An appeal to the Supreme Court can be filed by:

- the Prosecutor General of the Supreme Court;
- the Prosecutor General of the Court of Appeal;
- an accused or a guilt person;
- a person wanted for extradition;
- a civil party;
- a civil responsible person.

The appeal shall be examined by the Criminal Chamber of the Supreme Court.

##### **Article 419. Grounds for Appeal**

The Supreme Court may overrule the decisions of the Court of Appeal for the following cases:

- illegal composition of the court;
- non-jurisdiction of the court;
- abuse of power;
- violation of a law or misapplication of a law;
- violation or failure to comply with mandatory procedural requirements;
- failure to decide on a request made by a prosecutor or a party if the request was well written;
- False determination of facts;
- Lack of reasoning;
- Contradiction between the ground and the enacting term

## **Article 420. Period for Appeal to the Supreme Court**

An appeal to the Supreme Court shall be filed within the following period:

- 1 (one) month for a judgment of the Criminal Chamber of the Court of Appeal;
- 15 (fifteen) days for a judgment of the Investigation Chamber of the Court of Appeal;
- 5 (five) days for the opinion of the Investigation Chamber on an extradition issue.

If a judgment being appealed is a non-default judgment, the period shall be started from the date when the judgment was declared.

If a judgment being appealed against is the judgment considered to be non-default, the period shall be started from the date of notification.

For the default judgment, the period shall be started from the date of expiration of the period for opposition.

## **Article 421. Appeal against an Interlocutory Judgment**

If a Court of Appeal rendered an interlocutory judgment, the appeal shall be immediately admitted if the judgment terminates the procedures. In the contrary case, the interlocutory judgment can only be submitted to the Supreme Court for examination together with the judgment on the merits.

## **Article 422. Formality of Appeal Declaration**

An appeal shall be filed by an application at the office of the court clerk of the Court of Appeal which issues a decision. This application shall be registered in a special register kept at the court clerk's office of this court.

The accused person, guilt person, and person who is subject to extradition procedures, may be represented by a lawyer. The lawyer shall have a written power of attorney for appeal. However, an accused person or a guilt person who is a minor may be represented by his/her parents or guardian. In this case the representative does not need to have a written power of attorney.

A civil party may be represented by a lawyer, a spouse, or direct consanguinity. The representative shall have a written power of attorney for appeal.

A civil responsible person may be represented by a lawyer, a spouse, or direct consanguinity. The representative shall have a written power of attorney authorizing him/her to file an appeal.

## **Article 423. Signature on an Appeal**

The appeal shall be signed by a court clerk and an appellant or a representative. If the appellant does not how to sign, he/she or the representative shall affix fingerprint. The power of attorney shall be attached with the appeal application.

If there is no court clerk's signature or date, an appeal application shall remain acceptable if no forgery is found. The court clerk shall be fined 5000 (five thousand) Riel. This fine shall be declared by the Supreme Court in its judgment.

#### **Article 424. Referral of Dossier to the Supreme Court**

The court clerk of the Court of Appeal shall prepare the dossier and deliver it to the Supreme Court within the shortest period of time.

#### **Article 425. Registration of Dossier at the Supreme Court**

When a dossier arrives at the Supreme Court, the court clerk shall register it.

#### **Article 426. Appointment of Lawyers**

A party may appoint a lawyer after the dossier has been registered during the period of not later than 1 (one) day before the hearing. The party shall deliver the name of his/her lawyer in writing to the court clerk of the Supreme Court.

#### **Article 427. Period for Submission of a Brief**

The court clerk of the Supreme Court shall notify the party of the registration of the dossier.

Within 10 (ten) days after notification, the court clerk shall inform the appellant that he/she shall have 20 (twenty) days to submit a legal brief which describes legal means to the Criminal Chamber of the Supreme Court. If the appellant has appointed a lawyer and submitted the lawyer's name to the court clerk, the notification shall also be delivered to the lawyer.

If a brief is submitted by the appellant, the court clerk shall notify other parties and their lawyers to response to the brief from the appellant within 20 (twenty) days too.

#### **Article 428. Access to a Dossier**

A dossier shall be available and accessible to the lawyers for copying at their own cost at any time.

#### **Article 429. Extension of Period for Submission of Brief**

If a 20 (twenty) day period is not enough, a party may request the president of the Criminal Chamber for extension. The extension shall not exceed 10 (ten) days.

#### **Article 430. Designation of a Reporting Judge**

At the expiration of a brief submission period, the president shall nominate one reporting judge and refer the dossier with attached briefs to the reporting judge.

#### **Article 431. Report Writing**

A written report shall include:

- Procedures and facts;
- Legal issues raised by parties;
- Resolutions proposed by the reporting judge.

The report shall be included in the dossier.

### **Article 432. Referral of a Dossier to the Prosecutor General and Written Conclusions**

The dossier with attached briefs together with the written report shall be delivered to the Prosecutor General of the Supreme Court.

The Prosecutor General of the Supreme Court shall prepare a written conclusion which shall be included in the dossier.

The dossier shall be returned to the president of the Criminal Chamber.

### **Article 433. Notification of Hearing Date to Parties**

The president of the Criminal Chamber shall set a date for a hearing and shall verbally notify the Prosecutor General of the trial date. The Prosecutor General shall notify the relevant parties and their lawyers of the hearing date.

The notification to the accused person who is under detention, the detainee, or to person requested for extradition shall be conducted as follows:

- verbally; or
- through the chief of a prison or a detention center

The notification to a guilt person, an accused person who stays outside custody, a civil party, a civil responsible person and a lawyer shall be conducted as follows:

- verbally;
- through administrative means; or
- through a police or gendarmeries unit.

When the notification is made verbally, the court clerk shall mention the date of the notification in the dossier. The guilt person, the accused person, the civil party, the civil responsible person or lawyer shall affix their signature.

In the other cases, notification shall be made with acknowledgment receipt for record.

### **Article 434. Publicity of Confrontations**

The confrontations shall be conducted during a public hearing.

The parties shall not be questioned by the Criminal Chamber of the Supreme Court except when they are ordered to appear by the president.

The reporting judge shall prepare report. The Prosecutor General shall prepare his/her conclusions for prosecution. The lawyer shall prepare his/her pleading remarks.

After the confrontations, the Criminal Chamber shall be retreated to deliberate its decision and prepare judgment. The judgment may be declared on the same day or at a later hearing to be set by the court.

In all cases, the Supreme Court may not make a decision on any issue without confrontations during a hearing.

All parties may submit a brief or a new brief until the closing of the confrontations.

#### **Article 435. Suspending Effect of the Appeal**

During the period of appealing, the enforcement of the judgment of the Court of Appeal shall be suspended.

An appeal shall have the suspending effect. The execution of the decision which is being appealed shall be suspended pending the decision of the Supreme Court.

However, the imprisonment shall not be suspended in case that the accused person appeared before the Court of Appeal as detainee.

An arrest warrant shall remain effective.

A pre-trial detention shall continue.

A detainee who is subject to an extradition procedure shall remain under detention.

In case that a decision on acquitting is made, the accused person shall be put in liberty.

#### **Article 436. Decision on a Juridical Question**

The Supreme Court shall make a decision on the questions of law which were raised by an appellant and were described in the briefs.

#### **Article 437. Waiver of an Appeal**

An accused, a guilt person, a person who is subject to extradition procedures, a civil party and a civil responsible person may waive his/her appeal. This waiver shall be examined and recorded by the president of the Criminal Chamber of the Supreme Court.

#### **Article 438. Period for Decision Making**

The Supreme Court shall make its decision not later than 6 (six) months from the time of receiving the dossier, except under insurmountable circumstances.

#### **Article 439. Categories of Decisions of the Supreme Court**

The Criminal Chamber of the Supreme Court may:

- reject the appeal in whole or in part;
- overrule a judgment of the Court of Appeal in whole or in part.

If the appeal is rejected, the contested decision shall have res judicata.

The appellant shall not be allowed to file a new appeal against the same judgment.

When the Supreme Court overrules the contested decision, the Supreme Court shall refer the dossier and the parties to another Court of Appeal or to the same Court of Appeal but the composition shall be different from the previous one.

#### **Article 440. Overrule without Referring the Dossier**

When the act being charged is not an offense, the Supreme Court shall overrule the judgment of the Court of Appeal without referring the dossier.

#### **Article 441 Overrule with Referring the Dossier**

When the Supreme Court finds that the act being charged is an offense different from that contains in the contested decision, but this offense has the same terms of sentence, the Supreme Court, without overruling, may modify the juristic of the new facts by maintaining the sentence which has been declared and civil part of the decision.

When the Supreme Court finds that the act being charged is an offense different from that contains in the contested decision and this offense has different sentence the Supreme Court shall overrule the judgment of the Court of Appeal and refer the dossier to a competent tribunal for adjudication.

#### **Article 442. Judgment of Plenary Session**

If a court which receives a referred dossier fails to follow the first judgment of the Supreme Court and if the same means are applied as basis for filing the second appeal, the Supreme Court which holds plenary session for adjudication shall make decision on fact and law by issuing a final judgment.

### **TITLE 2**

#### **MOTIONS FOR REVIEW OF PROCEEDING**

##### **SINGLE CHAPTER**

#### **Motion for Review of Proceeding**

#### **Article 443. Motion for Review**

A motion for review is a way of contesting against a definitive and final order and judgment which has res judicata.

The plenary session of the Supreme Court shall have competence over motion for review.

#### **Article 444. Motion for Review of Criminal Case**

A motion for review may be filed in any criminal case regardless of the jurisdiction of the court and of sentences which have been pronounced.

#### **Article 445. Review of Proceeding**

A motion for review may be filed in the following cases:

1. If, after sentencing for a crime involving the human murder, there is a reliable lead which allows an assumption that a victim is still alive.
2. Where two accused persons have been sentenced for the same crime and the two sentences are not consistent with each other;
3. Where any witness was sentenced for giving false testimony against the accused person.

4. Where new facts, documents, or other new evidence is discovered which leads to reasonable doubt of the guilt of a convicted person.

#### **Article 446. Persons Entitled to File a Motion for Review**

The right to file a motion for review of a case shall rest with:

1. The Minister of Justice;
2. A convicted person or his/her legal representative if the convicted person is incapacitated;
3. The spouse, parents, children, or, generally, any person who has a material or psychological interest in the cancellation of the sentence if the convicted person has died or disappeared.

Before filing of an action with the Supreme Court, the Minister of Justice may request a Prosecutor General who has territorial jurisdiction to conduct further investigation.

#### **Article 447. Registration of Motion for Review and Access to a Dossier**

The motion for review shall be registered by the court clerk of the Supreme Court.

A person who applies for review or his/her lawyer may examine the dossier of the motion at the office of the court clerk of the Supreme Court. The lawyer may copy such dossier.

If the motion for review is made by the Minister of Justice, the dossier may be examined by the convicted person and his/her lawyer. If the convicted person has disappeared, the dossier may be examined by his/her spouse, parents, or children.

#### **Article 448. Procedures of Review: Period of Time**

The court clerk shall inform the petitioner that he/she has 30 (thirty) days to complete his/her motion. In exceptional cases, this period of time may be extended by the President of the Supreme Court.

At the expiration of this period of time, the President of the Supreme Court shall designate a reporting judge. After the report has been prepared, the dossier shall be referred to the Prosecutor General of the Supreme Court. The Prosecutor General, thereafter, shall prepare a written conclusion within 30 (thirty) days.

#### **Article 449. Decision to Suspend the Enforcement of Sentence**

The Criminal Chamber of the Supreme Court which received the motion for review may suspend the enforcement of the sentence if there are clear reasons.

#### **Article 450. Referral of Motion for Review to the Supreme Court**

If the Criminal Chamber decides that a motion for review is acceptable, the Chamber shall refer the dossier to the Supreme Court to hold a plenary hearing to decide on the law and the fact by issuing a final judgment.

#### **Article 451. Notification of the Hearing Date and Publicity of the Confrontation**

The President of the Supreme Court shall determine the date for hearing and verbally notify the Prosecutor General of the hearing date. The Prosecutor General shall notify the petitioner and his/her lawyer of the hearing date in accordance with Article 433 (Notification of Hearing Date to Parties) of this Code. If the motion for review was made by the Minister of Justice, the Prosecutor General shall notify the convicted person or his/her family of the hearing date.

The confrontation shall be conducted in public hearing.

The court shall listen to the report of the reporting judge and then to the lawyer of the petitioner. If the motion for review was made by the Minister of Justice, the court shall listen to the lawyer of the convicted person or his/her family. If it is found useful, the court shall listen to the convicted person.

The court shall listen to the conclusion of the Prosecutor General. The lawyer of the petitioner may then argue in rebuttal.

#### **Article 452. Additional Investigations**

If the Supreme Court finds that the case is ready for hearing, the Supreme Court shall decide on the motion for review by a conclusive and final judgment.

In other cases, the Supreme Court shall order a further investigation. The Supreme Court shall appoint one of its staff members to perform this act. The appointed judge shall have the same power as an investigating judge, except for pre-trial detention and judicial control.

When the investigation is completed, the petitioner and lawyer shall be notified of the investigation.

The President shall set the date for a hearing as provided in Article 451 (Notification of Hearing Date and Publicity of the Confrontation) of this Code.

#### **Article 453. Justifications for Judgment.**

A judgment shall have justification. This judgment shall be declared at the public hearing.

#### **Article 454. Decision to Suspend the Enforcement of Sentence**

After the receipt of a motion for review, the Supreme Court which holds plenary hearing may order the suspension of the sentence at any time. The Supreme Court shall make decision through a judgment with justification.

#### **Article 455. Consequence of Pardon and Amnesty on Motion for Review**

A pardon and amnesty shall not be an obstacle to a motion for review.

## **BOOK 7 SUMMONS FOR DIRECT HEARING, SUMMONS AND NOTIFICATIONS**

### **TITLE 1**

#### **SUMMONS FOR DIRECT HEARING**

##### **SINGLE CHAPTER**

#### **Summons for direct Hearing**

##### **Article 456. Summons for Direct Hearing: Formality**

As provided in Article 46 (Summons for Direct Hearing) of this Code, a summons for direct hearing is an order given to the accused person to appear in the court of the first instance that has jurisdiction to decide a criminal offense.

The original summons in which the date, place of birth, and residence of the accused person is written, shall be dated and signed by a prosecutor.

##### **Article 457. Time Period to be Followed between Summons for Direct Hearing and Prescription for Appearance**

The time period to be followed between delivery of summons for direct hearing and the date to appear before the court shall be as follows:

- 15 (fifteen) days if the accused person resides in the territory of the court of the first instance's office;
- 20 (twenty) days if the accused person resides in another location within the national territory;
- 2 (two) months if the accused person resides in a neighboring state of the Kingdom of Cambodia;
- 3 (three) months if the accused person resides in another location.

##### **Article 458. Delivery of Summons for Direct Hearing by Prosecutor**

The summons for direct hearing may be delivered to the accused person by the prosecutor by hand delivery.

In this case, the prosecutor shall deliver a copy of the summons for direct hearing to the accused person. The prosecutor shall write down the date and place of delivery on the original summons. The accused person shall sign the original summons.

##### **Article 459. Delivery of Summons for Direct Hearing by Bailiff**

The summons for direct hearing may also be delivered by bailiff.

The bailiff shall take all measures to deliver the summons for direct hearing to the accused person by hand delivery.

#### **Article 460. Delivery of a Copied Summons by a Bailiff to Accused Person**

If a bailiff meets an accused person at his/her residence or at any other location, the bailiff shall deliver a copy of the summons to the accused person. The bailiff shall write down on the original summons that "a copy of the summons has been delivered by hand delivery to the accused person." The bailiff shall write down the date and place of delivery. The accused signs the original summons. The original summons shall be immediately returned to the prosecutor.

#### **Article 461. Delivery of a Copied Summons by Bailiff in the Absence of an Accused Person**

If the accused person is not present at his/her residence, the bailiff shall deliver copy of the summons to any adult who is present at the residence.

The bailiff shall write down on the original summons that a copy of the summons has been delivered to a person who was present at the residence. The bailiff shall write down the identification of such person and the date of delivery. The person who received copy of the summons shall sign the original summons. The original summons shall be immediately returned to the prosecutor.

The person who received the summons shall promise that he/she will deliver the summons to the accused person within the shortest period of time.

#### **Article 462. Delivery of Copied Summons by Bailiff to Commune/Sangkat Chief**

The bailiff shall deliver copy of the summons to the chief or deputy chief of commune/Sangkat in the following cases:

- the accused refused to receive the summons for direct hearing;
- no one was present at the residence of the accused;
- no one who was present at the residence of the accused agrees to receive the summons.

The bailiff shall write down on the original summons the identification and title of the person who received a copy of the summons and the date of delivery. The person who received the copy of the summons shall sign the original summons. The original summons shall be immediately returned to the prosecutor.

The person who received the summons shall promise that he/she will deliver the summons to the accused person within the shortest period of time.

#### **Article 463. Other Ways of Delivering Summons for Direct Hearing**

Summons for direct hearing may be delivered by:

- court clerk;
- administrative means;
- chief of prison or detention center if the accused is being detained for another offense;
- police or gendarmeries unit;

The court clerk, administrative authority, prison authority, police or gendarmeries officer who has been requested by prosecutor to deliver the summons for direct hearing shall follow the prosecutor's instructions.

The acts as provided for in Article 460 (Delivery of Copied Summons by Bailiff to Accused Person) to Article 462 (Delivery of Copied Summons by Bailiff to Commune/Sangkat Chief) of this Code shall be performed.

#### **Article 464. Accused Person who has no Residence or Known Residence**

If the accused has no residence or known residence or is living outside the national territory, prosecutor may still issue a charge against such person by way of summons for direct hearing. In this case, the date of issuing the summons shall be deemed as the date of delivering the summons.

## **TITLE 2**

### **SUMMONS ORDERING AN ACCUSED PERSON TO APPEAR AT A HEARING**

#### **CHAPTER 1**

#### **Summons to the Accused to Appear**

#### **Article 465. Formality of Summons to Appear**

As provided in Article 294 (Summons of Parties to a Hearing by Referral Order or Referral judgment) of this Code, in the case of referral order of the investigating judge or referral judgment of the Investigation Chamber, the prosecutor shall summon the accused to appear at the hearing.

The contents of a summons ordering an accused person to appear at a hearing shall include:

- the identification of the accused;
- the date and place of birth of the accused;
- the residential address of the accused;
- the referral order or referral judgment;
- the court that receives the case for hearing;
- the location, date, and time of hearing;
- the date and signature of the prosecutor.

The summons shall indicate that the accused may be accompanied by a lawyer.

#### **Article 466. Time Period to be followed between Summons and Order to Appear**

The time period between the delivery of the summons and the date to appear before the court shall be set as follows:

- 15 (fifteen) days if the accused resides in the territory of the court of the first instance;
- 20 (twenty) days if the accused resides in another location in the national territory
- 2 (two) months, if the accused resides in a neighboring state of the Kingdom of Cambodia;
- 3 (three) months, if the accused resides in another location.

However, in the case that the accused is being detained, there is no required time period between the delivery of the summons and the date to appear before the court.

#### **Article 467. Hand-Delivery of Summons by Prosecutor**

A summons may be hand-delivered to the accused by the prosecutor.

In this case, the prosecutor shall deliver a copy of the summons to the accused. The prosecutor shall write down on the original summons the date and place of delivery. The accused signs the original summons.

#### **Article 468. Hand-Delivery of Summons by Bailiff**

A summons may also be delivered by a bailiff.

The bailiff shall use all means to hand-deliver the summons to the accused.

#### **Article 469. Delivery of Copied Summons by Bailiff to the Accused**

If the bailiff meets the accused at his/her residence or other place, the bailiff gives a copy of summons to the accused.

The bailiff shall write down on the original summons that a copy of the summons has been hand-delivered to the accused. The bailiff shall write down the date and the place where the summons was given to the accused. The accused signs the original summons. The original summons shall be immediately returned to the prosecutor.

#### **Article 470. Delivery of Copied Summons by Bailiff in the Absence of the Accused**

If the accused is not at his/her residence, the bailiff shall deliver a copy of the summons to any adult who is present at the residence.

The bailiff shall write down on the original summons that a copy of the summons has been delivered to a person who was present at the residence. The bailiff shall write down the identification of this person and the date to which the summons was delivered. The person who received the summons shall sign the original summons. That original summons shall be immediately returned to the prosecutor.

The person who received the summons shall promise that he/she will deliver the summons to the accused within the shortest period of time.

#### **Article 471. Delivery of Copied Summons by Bailiff to Commune/Sangkat Chief**

The bailiff shall deliver the copied summons to the commune/Sangkat chief or deputy chief in the following cases:

- the accused refused to receive the summons;
- no one was present at the residence of the accused;
- no one who was present at the residence of the accused agrees to receive the summons.

The bailiff shall write down on original summons the identification and title of the person who received the copied summons and the date of delivery. The person who received the summons shall sign the original summons. The original summons shall be immediately returned to the prosecutor.

The person who received the summons shall promise that he/she will deliver the summons to the accused within the shortest period of time.

#### **Article 472. Other Way of Delivery of Summons**

A summons may be delivered by:

- court clerk;
- administrative means;
- chief of prison or detention center if the accused is being detained for another offense;
- police or gendarmeries unit.

The court clerk, administrative authority, prison authority police or gendarmeries officer who was requested to deliver the summons by the prosecutor shall follow the instructions of the prosecutor.

These acts shall be performed in accordance with Article 469 (Delivery of Copied Summons by Bailiff to the Accused) to Article 471 (Delivery of Copied Summons by Bailiff to the Commune/Sangkat Chief) of this Code.

#### **Article 473. Accused Person who has no Residence or Known Residence**

If the accused has no residence or if the accused resides outside of the national territory, the prosecutor may still summon him/her to appear at a hearing. In this case, the date of issuing the summons shall be considered as the date of delivering the summons.

#### **Article 474. Documents Attached to Copied Summons**

In all cases, a copy of an order or a judgment referring the dossier to the court for trial shall be attached to the copy of the summons.

### **TITLE 3**

#### **SUMMONS ORDERING PERSONS OTHER THAN THE ACCUSED TO APPEAR**

##### **SINGLE CHAPTER**

#### **Summons Ordering Persons Other Than the Accused to Appear**

#### **Article 475. Summons to a Civil Party**

A summons to a civil party to appear shall include:

- identify of the civil party;
- residence of the civil party;
- name of the accused and the offense charged;
- court that will try the case;
- place, date and time of the trial;
- date and signature of the prosecutor.

The summons shall state that the concerned individuals are summoned as civil parties.

#### **Article 476. Summons to Victims**

A summon shall call a victim to appear at a hearing when the victim is not engaged as a civil party before the investigating judge. The summons shall include the following:

- the identification of the victim;
- the residence of the victim;
- the name of the accused and the offense charged;
- the court that will try the case;
- the place, date and time of the trial;
- the date and signature of the prosecutor.

The summons shall state that the concerned individuals are summoned as victims.

#### **Article 477. Summons to Witness**

A summons to witnesses to appear at a hearing shall include the following:

- the identifications of the witnesses;
- the residence of the witnesses;
- the name of the accused;
- the court that will try the case;
- the place, date and time of the trial;
- the date and signature of the prosecutor.

The summons shall state that:

- the concerned individuals are summoned as the witnesses;
- Failure to appear before the court, refusal to give a statement as a witness or provision of false testimony shall be punished according to a law.

#### **Article 478. Summons to Experts**

A summons to experts to appear at a hearing shall include the following:

- the identification of the experts;
- the residence of the experts;
- the name of the accused;
- the court that will try the case;
- the place, date and time of the trial;
- the date and signature of the prosecutor.

The summons shall state that the concerned individuals are summoned as an expert.

#### **Article 479. Summons to Translators**

A summons to translators to appear at a hearing shall include the following:

- the identification of the translators;
- the residence of the translators;
- the name of the accused;

- the court that will try the case;
- the place, date and time of the trial;
- the date and signature of the prosecutor.

The summons shall state that the concerned individual is summoned as a translator.

#### **Article 480. Summons to Civil Responsible Person**

A summons to a civil responsible person to appear at a hearing shall include the following:

- the identification of the civil responsible person;
- the residence of the civil responsible person;
- the name of the accused;
- the court that will try the case;
- the place, date and time of the trial;
- the date and signature of the prosecutor.

The summons shall state that the concerned individual is summoned as a civil responsible person.

#### **Article 481. Joint Provisions**

A summons to a civil party, a victim, a witness, an expert, a translator, and a civil responsible person to appear before the court shall be subjected to the provisions of Article 467 (Hand-Delivery of Summons by Prosecutor) to Article 472 (Other Ways of Delivering Summons) of this Code.

### **TITLE 4**

#### **NOTIFICATION OF COURT DECISIONS**

##### **SINGLE CHAPTER**

#### **Notification of Court Decisions**

#### **Article 482. Subject Matter of Notification**

A notification is a letter which notifies a decision of the court based on legal requirements to inform the relevant parties so that they are notified of the decision.

The notification shall be made through the initiative of a prosecutor, the Prosecutor General or a party.

#### **Article 483. Information to be Mentioned in the Notification**

A notification shall include the following information:

- the type and reference of the decision to be notified;
- the identification and residence of the parties to be notified of such decision;
- the date and signature of the person delivering the notification.

The notification shall state the possible appeal against the decision being notified.

A copy of the decision to be notified shall be attached with the notification of the court decision.

**Article 484. Notification issued by a Prosecutor**

A notification to involved parties can be issued by a prosecutor.

In this case, the prosecutor shall give a copy of the court's decision to the involved parties.

The prosecutor shall write down on the original decision the date and place of delivering the copy of the decision. The involved parties shall sign the original decision.

**Article 485. Notification by a Bailiff**

A notification also may be made by bailiff.

The bailiff shall use all means to notify the involved parties of the court's decision.

**Article 486. Delivery of Copy of the Decision to Involved Parties by Bailiff**

If a bailiff meets an involved party at his/her residence or other place, the bailiff shall deliver a copy of the decision to him/her.

The bailiff shall write down on the original decision that a copy has been hand-delivered to the involved party. The bailiff shall write down the date and place where the copy of decision was delivered. The involved individual shall sign the original decision. The original decision shall be immediately returned to the prosecutor.

**Article 487. In the Absence of an Involved Party**

If an involved party is not at home, the bailiff shall give a copy of the decision to any adult person who is present at the residence.

The bailiff shall write down on the original decision that a copy of the decision has been hand-delivered to the person present at the residence. The bailiff shall write down the identification of the person, the date to which the copy of the decision was delivered. The person who received the copy shall sign the original decision. The original decision shall be immediately returned to the prosecutor.

A person who received the copy of the decision shall promise that he/she shall deliver it to the involved party within the shortest period of time.

**Article 488. Delivery of Copy of Decision to Commune/Sangkat Chief**

The bailiff may deliver a copy of the decision to the commune/Sangkat chief or deputy chief in the following cases:

- the involved party refuses to receive the decision;
- no one was present at the residence of the involved party;
- no one at the residence of the involved party agreed to receive the decision.

The bailiff shall write down on the original decision the identification and title of the person who received the copy of the decision and the date of delivery. The person who received the copy shall sign the original decision. The original decision shall be immediately returned to the prosecutor.

A person who received the copy of the decision shall promise that he/she shall deliver it to the involved party within the shortest period of time.

#### **Article 489. Other Ways of Delivering Decisions**

The notification may also be delivered by:

- court clerk;
- administrative means;
- chief of prison or detention center if the accused has been detained for other offense;
- police or gendarmeries unit.

The court clerk, administrative authority, prison authority or a police or gendarmeries officer who are requested by the prosecutor to deliver the notification of the court decision shall follow the instructions of the prosecutor.

The acts shall be applied in accordance with the provisions of Article 486 (Delivery of a Copy of the Decision to an involved party by a bailiff) to Article 488 (Delivery of Copy of the Decision to Commune/ Sangkat Chief) of this Code.

#### **Article 490. Party that has no Residence or Known Residence**

If an involved party has no residence or if the involved party resides outside the national territory, the decision of the court may also be notified him/her. In this case the date of issuing the decision shall be deemed as the date of delivering the notification.

## **TITLE 5 JOINT PROVISIONS**

### **SINGLE CHAPTER Joint Provisions**

#### **Article 491. Consequences of Non-Compliance with Time Period**

If the time period specified in the provisions of Article 457 (Time Period to be Followed between Delivery of Summons for Direct Hearing and Order for Appearance) and Article 466 (Time Period to be Followed between Delivery of Summon and Order for Appearance) of this Code has not been complied with, the following shall be applied:

If the accused failed to appear, the court shall examine the annulment of the summons for direct hearing or order for appearance. The court shall order that a new summons for direct hearing or order for appearance be issued except when the criminal action is extinguished;

If the accused appeared during the hearing, the court may examine the case if the accused expressly agrees with the immediate trial. If the accused does not agree with the immediate trial, the court shall order postponement of the case to a later hearing.

#### **Article 492. Annulment of a Summons for Direct Hearing and a Summons**

The annulment of a summons for direct hearing may be declared if it only affects the interests of the accused.

Annulment of the summons to appear at a hearing which was delivered to the accused, or the civil party, or the civil responsible person may be declared if it only affects the interests of the involved parties.

**Article 493. Information to be Mentioned in Summons for Direct Hearing or Summons**

When a summons for direct hearing or a summons to appear is delivered by bailiff, court clerk, through administrative means, by the chief of prison or detention center, or through a police or gendarmeries unit, the summons shall mention the following information:

- the identity and title of the person who delivered the summons;
- the signature of the person who delivered the summons.

**Article 494. Information to be stated on an Envelope**

In case as provided for in Article 461 (Delivery of a Copy of Summons by Bailiff in the Absence of the Accused), Article 462 (Delivery of a Copy of Summons by Bailiff to Commune/Sangkat Chief), Article 470 (Delivery of a Copy of Summons in the Absence of the Accused), and Article 471 (Delivery of a Copy of Summons by Bailiff to Commune/Sangkat Chief) of this Code, a copy of the summons to be delivered shall be put in a sealed envelope with the following information:

- The name and address of the addressee on the front of the envelope;
- The seal of a person who is delivering the summons shall appear on the back of the envelope.

These provisions shall be applied with the notification of the court decision.

**Article 495. Signature and Finger Print**

In every case which requires the signature of any person, or receiver on any document, such signature shall be substituted by the finger print if the person cannot sign.

## **BOOK 8 EXECUTION PROCEDURES**

### **TITLE 1 GENERAL PROVISIONS**

#### **SINGLE CHAPTER General Provisions**

##### **Article 496. Enforcement of Sentence and Civil Penalty**

The enforcement of a sentence and physical punishment shall be made at the initiative of a prosecutor's department.

The enforcement of a civil penalty shall be made at the initiative of a civil party.

##### **Article 497. Final Decision**

The prosecutor's department may implement the sentence when a court decision becomes final.

The period of appeal of the Prosecutor General shall not be an obstacle of enforcement of the sentence.

##### **Article 498. Collection of Fines and Procedural Taxes**

A collection of fines and procedural taxes shall be done by treasury agents under the supervision of a prosecutor's department. The fine and fees that have been collected shall be paid to the national budget.

All final sentences shall bear the value as an order to pay fine and procedural fees.

##### **Article 499. Request for Public Forces**

The prosecutor and Prosecutor General shall request public forces to enforce the sentences.

##### **Article 500. Difficulties in the Enforcement of Sentences**

Difficulties in the enforcement of sentence shall be submitted to the court of the first instance or higher courts which make decision on the sentences for solution.

The court shall receive complaints submitted by a prosecutor's department or involved parties. The court shall make decision at a public hearing after listening to the prosecutor, involved party, and eventually the lawyer of the party.

This enforcement of the sentence may be suspended by the court.

### **Article 501. Request for Combining Penalties**

A request for combining penalties shall be raised before the court which has made the last decision.

The court shall receive the complaint from the prosecutor's department or involved party. The court shall make decision at a public hearing after listening to the prosecutor, the involved parties, and eventually the lawyer of the parties.

## **TITLE 2**

### **EXECUTION OF PRE-TRIAL DETENTION AND PUNISHMENT DEPRIVING LIBERTY**

#### **CHAPTER 1**

#### **Rules governing Detention**

### **Article 502. Calculation of the Duration of Imprisonment**

1 (One) day imprisonment sentence shall be 24 hours.

1 (One) month imprisonment sentence shall be 30 days.

The imprisonment sentence of more than 1 (one) month shall be counted from serial number of the days in month 1 to the serial number of days of another month.

A convicted person who has completed his/her punishment shall be released in between 6 am to 6 pm.

### **Article 503. Inclusion of the Duration of Pre-trial Detention**

The duration of a pre-trial detention shall be wholly included in the sentence which has been declared or eventually the total duration of sentence to be imposed after combining all sentences.

### **Article 504. Organization of Prison**

The organization and internal management of prisons and detention centers shall be determined by a Prakas of the ministry in charge of prison management.

The Prakas shall also specify the requirements on dividing convicted persons in a prison and a detention center, on procedures for execution of sentences depriving freedom and on procedures for detention.

### **Article 505. Registry of Guilt persons**

All prisons and detention centers shall have a register in which a detainee's identity, date of detention, and date of release shall be recorded. The register shall be inspected frequently by a prosecutor's department. Visa shall be granted by the prosecutor's department on each page.

All agents of the prison and detention center administrations shall submit this register to a judge upon his/her request and shall show judicial police officers who perform their duties through a delegation of power by the court authority.

#### **Article 506. Detention Letter**

No agent of prison or detention center administration may receive and detain any person without a letter from the court authority.

Any agent of prison administration who receives and detains any person without a detention letter issued by the court authority shall be guilty of illegal confinement.

#### **Article 507. Illegal Detention**

Any judge who has received a complaint regarding illegal detention shall make an immediate examination.

#### **Article 508. Presentation of Detainee upon Request**

All prison administration agents shall present the detainee to the judge upon his/her request and to judicial police officers who perform their duties through a delegation of power by the court.

#### **Article 509. Inspection of Prisons**

The Prosecutor General of the Court of Appeal, the Prosecutor, the President of the Investigation Chamber and the Investigating Judge shall inspect prisons regularly.

#### **Article 510. Conversations of a Detainee with his/her Lawyer**

A detainee is entitled to have confidential conversations with his/her lawyer.

#### **Article 511. Notification to Prosecutor in case of Serious Incidents**

All serious incidents happened in a prison or a detention center shall be informed immediately to a prosecutor.

In case a prisoner escapes from prison or a detention center, the prosecutor shall issue an arrest warrant and shall take urgent measures to execute the arrest warrant in accordance with the provisions in Article 196 (Arrest Warrant) and subsequent articles of this Code.

### **CHAPTER 2 Conditional Release**

#### **Article 512. Conditions In relation to Conduct**

All convicted persons, who have received one or more sentences to imprisonment, may be released with conditions provided that he/she has shown good attitude during his/her imprisonment and are qualified to be able to reintegrate into society.

#### **Article 513. Conditions in relation to the Duration of Sentence which has been Served**

Conditional release may be granted to a convicted person who has served prison sentence:

- Half of his/her sentence if the duration of the sentence is less than or equal to 1 (one) year;

- Two-thirds of the sentence in other cases.

A convicted person who was sentenced to a life imprisonment may receive conditional release if the person has served the sentence for at least 20 (twenty) years.

#### **Article 514. Competent Authority to Grant Conditional Release**

The conditional release shall be granted by the president of the court of the first instance, where the detention is located. The president of the court shall make this decision after obtaining the opinions from the national commission which shall hold a meeting at the Ministry of Justice.

The national commission is composed of:

- 2 (two) members nominated by Minister of Justice - one of whom shall serve as the chairperson;
- The prison chief or his/her representative, who shall be a member.

#### **Article 515. Opinion of the National Commission**

After an application for conditional release is received, the president of the court of the first instance shall deliver to the national commission as the followings:

- the application;
- a sentencing order or judgment;
- eventually a judgment if the convicted person had been subject to several kinds of penalties;
- a bulletin number 1 of the criminal record;
- prosecutor's opinion;
- other essential documents

The national commission shall issue its opinion within the shortest period of time. This opinion shall be in writing, shall state reasons and shall be submitted immediately to the president of the court of the first instance.

#### **Article 516. Decisions in relation to Conditional Release**

The president of the court of the first instance shall not involve in the national commission's opinion.

The president of the court shall make decision through an order which state reasons.

The decision of the president of the court can be appealed to the president of the Court of Appeal within 5 (five) days. The appeal may only be filed by the Prosecutor General of the Court of Appeal or a prosecutor of the concerned court.

When the president of the court of the first instance has issued a conditional release, this decision shall not take effect within 5 (five) days as provided in paragraph 3 of this Article. If there is an objection, this decision shall not take effect until the decision of the president of the Court of Appeal is made.

The president of the Court of Appeal shall make a decision through an order which states reasons and this decision shall not be subject to appeal.

#### **Article 517. Procedures of Enforcement and Conditions of Conditional Release**

A decision granting conditional release shall determine the implementation procedures and conditions of releasing the convicted prisoners.

This decision shall determine probation period, which shall not exceed the remaining sentencing term.

#### **Article 518. Withdrawal of Decision**

In the case there is new sentence punishment or in the case of violating the requirements determined in the decision, the president of the court of the first instance can withdraw his/her decision.

#### **Article 519. Arrest of a Convicted Person who has been Released**

In an urgent case, the prosecutor of the concerned court may issue an order to re-arrest the convicted person who has been released. The prosecutor shall immediately notify the president of the court of the first instance.

#### **Article 520. Revocation of Conditional Release**

In the case of revocation of the conditional release, the convicted person shall serve the remaining sentencing term.

The remaining sentencing term shall be counted from the date in which the convicted person has received the decision on conditional release.

If the convicted person is arrested by executing Article 519 (Arrest of a Convicted Person who has been Released) of this Code, the detention duration, until the decision on revocation of conditional release is made shall include the remaining sentencing term.

#### **Article 521. Consequence of Non-Revocation**

If the conditional release is not revoked during the probation period, the release shall become effective at the expiration of the probation period as determined by Article 517 (Procedures for Enforcement and Conditions of Conditional Release) of this Code.

In that case the sentence shall be considered served from the date of conditional release.

#### **Article 522. Prakas of the Minister of Justice**

The procedures of monitoring, supervising and integrating a convicted person who has been released on conditions shall be determined by a Prakas of the Ministry of Justice. This Prakas may request public or private institutions to pay attention to integrate the convicted person in the society.

**TITLE 3**  
**PHYSICAL PUNISHMENT**

**CHAPTER 1**  
**Physical punishment**

**Article 523. Implementation of Physical Imprisonment**

Physical imprisonment shall be imposed against a person who has been found guilty by the criminal court, and has not paid:

- fines;
- procedural taxes;
- compensation and any damages payable to the civil party.

**Article 524. Lawful Execution**

Physical imprisonment shall be lawfully executed. Physical imprisonment shall not need to be declared by the court.

**Article 525. Physical Imprisonment for reason not Paying Fines or Procedural Fees**

If the convicted person does not pay fines or procedural taxes, the treasury department shall inform the prosecutor of the court of the first instance.

The prosecutor shall set the ultimate period for a convicted person to make payment and notify him/her that if he/she does not pay, he/she will be subject to physical imprisonment. This period shall not be less than 10 (ten) days.

The notification shall be made through:

- verbal; or
- administrative means; or
- police and gendarmeries unit

There shall be a written record on the notification. This record shall be signed by the convicted person. If the convicted person does not sign, he/she shall affix finger-print.

**Article 526. Imprisonment and Detention Order**

At the expiration of the due date, if the convicted person has not made payment, the prosecutor shall issue imprisonment and detention order. The prosecutor may hold his/her decision for humanitarian reasons, such as health conditions of the convicted person.

The imprisonment and detention order shall include:

- an identification of the convicted person;
- the type and reference of the punishment;
- reference of notification order as provided in Article 525 (Physical Imprisonment for reason not Paying Fines or Procedural Taxes) of this Code;

- Amount which has not been paid;
- Duration of physical imprisonment

The order shall be signed by the prosecutor and sealed.

The prosecutor requests the public forces to arrest and detain the convicted person.

### **Article 527. Objection to Imprisonment and Detention Order**

At the time of arrest, detention or any moment afterward, if the convicted person raises objection against the decision of the prosecutor, the convicted person shall be brought to the president of the court.

The president of the court shall examine the legality of the imprisonment and detention order. If there is any violation of a law, the president shall revoke such order.

The president of the court shall make a decision through an order which states reasons.

The decision of the president of the court of the first instance may be appealed to the President of the Court of Appeal within two (2) days. Such appeal may be made by the Prosecutor General, the prosecutor of the court of the first instance or by the convicted person.

When the president of the court of the first instance revokes the imprisonment and detention order, this decision shall not be effective for execution for 2 (two) days as provided for in paragraph 4 of this Article. If there is an appeal, this decision shall not be effective for execution until there is an order from the president of the Court of Appeal.

The president of Court of Appeal shall make a decision through a judgment which states reasons and shall not be subject to appeal.

### **Article 528. Release**

In case of revocation of imprisonment and detention order the convicted person shall be put in liberty.

### **Article 529. The Same Conditions as Imprisonment**

The physical imprisonment shall have the same conditions as imprisonment sentence.

### **Article 530. Duration of Physical Imprisonment**

The duration of physical imprisonment shall be determined as follows:

- 10 (ten) days if the unpaid amount does not exceed 250,000 (two hundred and fifty thousand) Riels;
- 20 (twenty) days if the amount is from 250,001 ( two hundred fifty thousand and one) Riels to 500, 000 (five hundred thousand) Riels;
- One month if the amount is from 500,001 (five hundred thousand and one) Riels to 1,000,000 (one million) Riels;
- 2 (two) months if the amount is from 1,000,001 (one million and one) Riels to 2,500,000 (two million and five hundred thousand) Riels;
- 3 (three) months if the amount is from 2,500,001 (two million five hundred thousand and one) Riels to 5,000,000 (five million) Riels;

- 6 (six) months if the amount is from 5,000,001 (five million and one) Riels to 10,000,000 (ten million) Riels;
- One (1) year if the amount is from 10,000,001 (ten million and one) Riels to 20,500,000 (twenty million and five hundred thousand) Riels;
- 18 (eighteen) months if the amount is from 20,500,001 (twenty million and five hundred thousand and one) Riels to 50,000,000 (fifty million) Riels;
- 2 (two) years if the amount exceeds 50,000,000 (fifty million) Riels.

If the physical imprisonment ensures the payment of several debts, the duration of the imprisonment shall be determined by the amount of the total punishment.

### **Article 531. Free from Physical Imprisonment**

A physical imprisonment cannot be imposed on a convicted person who is a minor at the time of committing an offense, on women aged from 65 (sixty five) years or more and on men aged of from 70 (seventy) years or more.

A physical imprisonment cannot be imposed on both husband and wife together even if the imprisonment is made to collect different monetary penalties.

### **Article 532. Liability to the Obligations**

Even though the convicted person has served the physical imprisonment, he/ she shall remain liable to the unpaid amount. However, the convicted person cannot be physically imprisoned for the same debt again.

### **Article 533. Physical Imprisonment Requested by a Civil Party**

If a civil party does not receive compensations and damages from the convicted person or from the civil responsible person, the civil party may request the prosecutor to impose a physical imprisonment measure.

A physical imprisonment for compensations and damages can only be enforced on the convicted person.

The civil party shall provide evidence that he/she has used all means of enforcement provided in the law such as seizing personal or real properties. The prosecutor may request the civil party to prepare a new procedure to claim these compensations and damages.

If the convicted person does not pay, the physical imprisonment shall be imposed under conditions stated in Article 523 (Physical Imprisonment for reason Not Paying Fines or Procedural Taxes) to Article 532 (Liability to Obligations) of this Code. In case there is a competition between the fines, procedural taxes and compensation and damages, then the payment of compensation and damages shall be a priority.

## **TITLE 4 QUALIFICATION AND REHABILITATION**

### **CHAPTER 1 Judicial Qualification**

#### **Article 534. Court that has Competence to Restore Qualifications**

The restoration of judicial qualifications may be granted or not granted by the Criminal Chamber of the Court of Appeal where sentences are declared by the court in the territorial jurisdiction of such Court of Appeal.

#### **Article 535. Duration Conditions in relation to the Application for Restoration of Qualification**

The application for the restoration of qualifications may be submitted to the Criminal Chamber for examination only after the lapse of the following duration:

- Five (5) years for a felony;
- Three (3) years for a misdemeanor;
- One (1) year for a petty offence.

This duration shall start:

- From the date the sentence was served.
- From the implementation of a physical imprisonment as provided in paragraph 2 of Article 536 (Provision of Necessary Evidences) of this Code.

#### **Article 536. Provision of Necessary Evidences**

The convicted person shall provide evidence which proves that he/she has paid a fine, procedural taxes, and compensation and damages. If a civil party has waived the claim for compensation and damages, the convicted person shall prove this waiving except when the civil party cannot be found.

If the convicted person has been placed under a physical imprisonment; the failure to pay fine, procedural taxes or compensation and damages is not an obstacle for the restoration of his/her qualifications if a convicted person provides evidence that he/she under insolvent situation

If a claimant is punished for bankruptcy, he/she shall provide evidence to prove that he/she has already settled the debts of the bankruptcy. If the creditor has abandoned the debts, the convicted person shall prove the abandonment.

#### **Article 537. Form of Application for Restoration of Qualifications**

The convicted person shall apply for the restoration of qualification to the prosecutor that has territorial competence. The convicted person shall state the type of punishment that he/she suffered and the place where he/she has been living since he/she has been put in liberty.

#### **Article 538. Referral of a Dossier by Prosecutor to Prosecutor General**

The prosecutor shall order an investigation on the morality of the convicted person at the places where he/she has been living since he/she has been put in liberty.

The prosecutor may ask for:

- A copy of the sentencing decision;
- The notification of the date of the sentence has been served;
- Bulletin number 1 of the criminal records;

The prosecutor shall submit the dossier, which includes his/her opinion with reasons to the Prosecutor General of the Court of Appeal.

#### **Article 539. Proceedings before the Court of Appeal**

The Prosecutor General shall file action to the Criminal Chamber of the Court of Appeal.

The Prosecutor General shall inform the date of the hearing to the complainant and the lawyer.

The court shall make decision at the public hearing after listening to the convicted person, lawyer and the Prosecutor General.

#### **Article 540. Rejection of Application for Restoration of Qualifications**

In case the court rejects the application, the applicant shall not be entitled to submit a new application before ending 2 (two) years period.

However, if the first application was rejected by the court based on the reason not complying with the duration stated in Article 535 (Duration Conditions in relation to Application for Restoration of Qualifications) of this Code, a new application may be made at the expiration of this period.

## **CHAPTER 2**

### **Lawful Restoration of Qualifications**

#### **Article 541. Lawful Restoration of Qualifications**

Lawful restoration of qualification shall be provided under the following circumstances:

- At the end of five (5) years period counted from the date of sentence was served or at the expiration of statute of limitations if the person was sentenced by court to imprisonment for not more than 5 (five) years or to imposing fine.
- At the end of a 10 (ten) year period counted from the date of sentence was served or at the expiration of the statute of limitations if the person was sentenced to imprisonment for more than 5 (five) years.

## **TITLE 5**

### **CRIMINAL RECORD**

#### **SINGLE CHAPTER**

### **Criminal Record**

#### **Article 542. Management of Sentence Label of the Criminal Record**

A criminal record is managed by a unit under the Ministry of Justice. For persons who were born in Cambodia, the criminal record shall have a label which indicates:

- all non default, considered to be non default, and default sentences which were declared by Cambodian criminal courts;

- punishments declared by foreign courts and based on the implementation of international agreement, and are notified to Cambodian authorities;
- sentence reduction and amnesty measures granted by the King of the Kingdom of Cambodia;
- decisions of conditional release;
- physical imprisonment decisions;
- orders or judgments declaring bankruptcy;
- decision of judicial restoration of qualifications;
- Decisions on expulsion of foreigners.

If the convicted person has served the punishment of imprisonment or physical imprisonment, the date of the sentence or imprisonment execution shall be recorded in the criminal records.

If the convicted person paid fines and procedural taxes, the date of payment shall be recorded in the criminal records.

If the convicted person has been lawfully rehabilitated, this information shall be recorded in the criminal records.

The following information shall be removed from the criminal records:

- the default judgment if this judgment is considered as null and void after an opposition;
- the sentence which was revoked by the general amnesty;
- the sentence based on a mistake of identification;
- the sentence which is considered as null and void after motion for review was filed.

#### **Article 543. Information Related to Identification**

The criminal records shall also have a label concerning:

- A person who was born abroad;
- A person whose identification cannot be verified or is doubtful.

In the second case, a special notation shall be recorded in the criminal records that the identification cannot be verified or is doubtful.

#### **Article 544. Information of Criminal Records**

Under the control of the court president, the court clerk shall send to the criminal records unit the label of each decision to be recorded in the criminal record.

The chief of prison shall inform the criminal record unit of the date of sentence was served or physical imprisonment execution.

The treasury unit shall inform the criminal record unit of the payment of fines and procedural taxes.

The criminal record unit shall be responsible for gathering information about the sentence reduction and amnesty measures granted by the King and the decision on expulsion of foreigners.

#### **Article 545. Information of Criminal Record Regarding Legal Entities**

The criminal record unit shall register in the label the information of all types of sentences made by a criminal court against legal entities.

#### **Article 546. Issuance of Bulletins**

The criminal record unit may issue bulletins of criminal records. The Bulletins shall make abstraction of all or part of information described in the criminal records of a specific person.

#### **Article 547. Bulletin No.1**

Bulletin No.1 of the criminal record shall include all descriptions recorded in the criminal records of a specific person.

Bulletin No.1 can only be issued to the court authorities.

#### **Article 548. Bulletin No.2**

The Bulletin No.2 shall contain all descriptions recorded in Bulletin No. 1, except:

- punishments revoked by judicial or lawful rehabilitation;
- punishments suspended without withdrawal.
- judgments or decisions which declare bankruptcy, in case of rehabilitation.

Bulletin No.2 shall be issued to:

- Court authorities;
- Military authorities that receive applications for military service;
- Commercial registrars.

Bulletin No.2 may also be issued to a provincial/municipal governor and a state entity when:

- the provincial/municipal governor and state entity receives applications for the state employment;
- the provincial/municipal governor and state entity receives applications for public work or public bidding;
- the provincial/municipal governor and state entity receives applications to open establishments which require authorization;
- for disciplinary procedures.

#### **Article 549. Bulletin No.3**

Bulletin No.3 contains only imprisonment punishments without suspension which were declared against any person for felony or misdemeanor.

However, the punishment which has been rehabilitated shall not be recorded in Bulletin No.3.

Bulletin No.3 shall be issued to the concerned persons. Bulletin No.3, in any case, shall not be issued to a third person.

#### **Article 550. Functioning of the Criminal Record Unit: Prakas**

A Prakas of the Ministry of Justice shall determine necessary measures for the functioning of the criminal record unit. The Prakas determines, for instance, conditions under which labels are prepared, reviewed and provided by court clerks as well as conditions under which bulletins are prepared, reviewed and issued.

#### **Article 551. Correction of Criminal Record**

If any person is punished with a mistake of identification, the prosecutor's department shall immediately request for correction of the criminal records.

#### **Article 552. Effects of Rehabilitation**

The rehabilitation removes all criminal sentences. However, the sentences shall remain in a criminal record with the notation of "Rehabilitated".

### **TITLE 6 COURT FEES**

#### **SINGLE CHAPTER Court Fees**

#### **Article 553. Court Fees**

The court fees shall be the responsibility of the state.

The list of court fees, rates of the court fees and the method of payments shall be determined by a Prakas.

#### **Article 554. Procedural Taxes**

Each convicted person shall pay all procedural taxes to the state. The amount of the procedural taxes is variable depending on cases.

The amount of the procedural taxes shall be determined by a Prakas.



## **BOOK 9 SEPARATE PROCEDURES**

### **TITLE 1**

#### **PROVISIONS CONCERNING PERSONS**

### **CHAPTER 1**

#### **JUDGES**

### **SECTION 1**

#### **Abstention**

##### **Article 555. Legitimate Justification for Abstention**

A judge who has legitimate justification for not participating in an investigation or a trial of a specific case is entitled to request for replacement. The request shall be submitted to the president of the court he/she belongs to. If it is legitimate, the president of the court shall arrange for the replacement. The decision of the president of the court may not be subject to appeal.

### **SECTION 2**

#### **Challenge Against a Trial Judge**

##### **Article 556. Reasons for Challenging Against a Trial Judge**

A challenge may be admissible only when it concerns with trial judge. .

- All judges may be challenged for the following reasons:
- if the judge or his/her current or former spouse is one of the parties;
- if the judge is linked with one of the parties by parental link up to sixth degree or by alliance up to third degree or has been linked by alliance up to third degree;
- if the judge is a guardian of one of the parties;
- if the judge in charge of the case had or is having a litigation with a party at the court;
- if the judge was a witness or was an expert in the case;
- if the judge is or was a representative or assistant to one of the parties; or
- if the judge has participated in making a decision on the case as an arbitrator, or participated in making a decision at the court of the first instance which has been appealed, or the trial of an appeal which has been appealed or has given legal opinion in the case.

##### **Article 557. Challenge against Trial Judge**

A party who wishes to challenge against a judge shall file a challenge when he/she is aware of the reasons for challenging, otherwise it shall not be admissible.

In no case, a challenge against a judge cannot be filed after the closure of the confrontation.

##### **Article 558. Receiver of a Challenge against a Trial Judge**

The party shall file the challenge to:

- The president of the Court of Appeal when the challenge is against the president or a judge of the court of the first instance;
- The president of the Supreme Court when the challenge is against a judge of the Supreme Court, the president or a judge of the Court of Appeal.

The challenge shall clearly state the reasons for challenging, and shall be accompanied by supporting evidence, otherwise, the challenge shall not be admissible.

#### **Article 559. Notice of a Challenge against a Trial Judge**

A challenge shall be notified to the judge against whom it is filed. This judge shall withdraw him/herself from the investigation or trial of the case.

In an urgent case, the challenged judge shall be replaced by another judge to be appointed by the president of the court to which he/she belongs.

#### **Article 560. Report of the Challenged Judge**

Within 8 (eight) days of the notification of the challenge, the relevant judge shall respond in a report that he/she accepts or refuses the challenge. The report shall be submitted to the president of the Court of Appeal or president of the Supreme Court, as the case may be, to decide on the challenge.

If the judge agrees with the challenge, he/she shall be immediately replaced by another judge.

If the judge disagrees with the challenge, then the decision shall be based on the merits for the challenge.

#### **Article 561. Examination of a Challenge against a Trial Judge**

The challenge shall be reviewed without listening to the parties or the relevant judge.

If the challenge is approved, a replacement of the judgment shall be made.

In the contrary case, the applicant of the challenge may be fined up to 200,000 (two hundred thousand) Riels, not counting any damages that may be payable to the challenged judge.

#### **Article 562. Decision on a Challenge against a Trial Judge**

The authority stated in Article 558 (Receiver of a Challenge) of this Code shall make decision by an order which is not subject to appeal. The relevant judge and the applicant of challenge shall be notified of the order by the court clerk.

#### **Article 563. Acts to be Performed before Notification of the Challenge**

The performance of any activities by a challenged judge prior to the notification of a challenge may not be subject to review.

#### **Article 564. Challenge against Several Judges**

If the applicant wishes to challenge several trial judges who sit en banc, he/ she may only file one challenge. The applicant may file additional challenge if new reasons for challenge appear later.

#### **Article 565. Challenge against the President of the Supreme Court**

If the challenge is made against the president of the Supreme Court, the president of the Supreme Court shall decide based on his/her own conscience whether or not to withdraw from the trial.

## **CHAPTER 2 EXTRADITION**

### **SECTION 1 EXTRADITION REQUESTED BY A FOREIGN STATE**

#### **SUB-SECTION 1 Extradition**

#### **Article 566. Extradition of Foreign Resident in the Territory**

The Kingdom of Cambodia may agree to deliver to a foreign state a foreign resident who is residing in the territory of Cambodia who is:

- subject to a judicial charge in this state; or
- sentenced to imprisonment by the court of this state.

#### **Article 567. International Conventions and Treaties**

The extradition of a foreign resident who is arrested in the territory of the Kingdom of Cambodia shall be governed by provisions of international conventions and treaties ratified by the Kingdom of Cambodia. In case that there is no international convention or treaty ratified by the Kingdom of Cambodia, the provisions of this Chapter shall apply, unless otherwise provided in a separate law.

#### **Article 568. Definition: Requesting State and Wanted Person**

In this section, it is called:

- “Requesting State” shall mean a foreign state which requests extradition of a foreign resident;
- “Wanted Person” is a foreign resident who is residing in the Kingdom of Cambodia and who is the subject of an extradition request.

## **SUB-SECTION 2**

### **Conditions of Extradition**

#### **Article 569. Conditions of Extradition in relation to Acts**

An extradition may be made only if the acts charged against the wanted person is also an offense under both the laws of the requesting state and the law of Kingdom of Cambodia, even though:

- The act of offense is determined differently; or
- The name of the offense, use of terminology, or definition or determination of characteristics of offense is different; or
- Elements of crime under the laws of the requesting State are different from those under the laws of the Kingdom of Cambodia, provided that the whole set of elements of the acts presented by the requesting state is considered as an offense under the provisions of laws in force in Cambodia.

#### **Article 570. Attempt of Offense and Conspiracy**

If the act charged under laws of the requesting state is considered as an attempt of committing an offense, the extradition is possible only if the attempt of committing such offense can be prosecuted under the laws of the Kingdom of Cambodia.

The provisions of this Article shall also apply to accomplices.

#### **Article 571. Conditions in relation to Imprisonment Sentence**

An extradition shall be possible only if the act charged against the wanted person carries the maximum imprisonment sentence of at least 2 (two) years according to the law of the requesting state.

However, the extradition shall also be possible if the wanted person was sentenced by the court of the requesting state to imprisonment of at least 6 (six) months and this sentence has come into effect regardless of the length of the sentence as defined by laws.

#### **Article 572. Conditions in relation to the Place of Committing an Offense**

When the act charged against any wanted person was committed in the territory of the requesting state, extradition shall also be possible even the wanted person is not the citizen of the requesting state.

When the act charged against the wanted person was committed outside the territory of the requesting state, extradition shall be possible if the wanted person is the citizen of the requesting state.

#### **Article 573. Political Acts**

An extradition shall not be possible if the act charged is political.

However, political offense shall not be considered for any violence which caused danger to life, physical integrity or individual freedom.

#### **Article 574. Offense that was Committed in the Territory and was Completely Tried**

An extradition shall not be possible if the act charged was committed in Cambodia's territory and was completely tried in Cambodia.

#### **Article 575. Extinction of Criminal Actions**

An extradition shall not be possible if the criminal action is extinguished under the law of the requesting State.

If an act charged was committed in Cambodia, an extradition shall not be possible if the criminal action is extinguished under the laws of Cambodia.

#### **Article 576. Several Extradition Requests against the Same Person**

When there is more than one foreign state requesting an extradition of the same person, and if the extradition is possible, the following circumstances shall be considered:

- The obligations under relevant treaties;
- The seriousness of the offense;
- The time and place where the offense was committed;
- The date and the order of the receipt of requests;
- The nationality, domicile, residence of the wanted person and the victim;
- The possibility of the requesting state in returning the wanted person.

#### **Article 577. Conditions of Extradition in relation to the Request**

An extradition shall be possible only if the requesting state promises not to make any other charge other than that specified in the extradition request and when such offense was committed before the arrest of the wanted person.

However, the charge may be made if there is an approval from the Kingdom of Cambodia.

In this case, the requesting state shall make an additional request to the Cambodian authorities.

#### **Article 578. Suspension of an Extradition**

If the wanted person was charged by the court in the Kingdom of Cambodia, the extradition shall be postponed while the prosecution is underway or the extradition shall also be suspended when the sentence is made but it is not served.

However, the Kingdom of Cambodia may temporarily agree with the transfer of the wanted person to the requesting state for trial in that state. The requesting state shall promise to return the concerned person to the Cambodian authorities after the completion of the trial procedures.

### **SUB-SECTION 3**

## **Extradition Procedures**

#### **Article 579. Certification of an Extradition Request**

All extradition requests shall be submitted to Royal Government of Cambodia through diplomatic channels. Each request shall be supported by a certification of evidence.

The certification of evidence shall include:

- Sufficient documents to identify the wanted person;
- Report on the facts to be charged against the wanted person;
- Legal texts applicable to such acts and possible sentence;
- A copy of the sentence decision, if any.

All documents shall be officially signed, sealed and put in a closed envelope, and if they are not in Khmer, English or French version, the certified translation into one of the three languages shall be attached.

#### **Article 580. Referral of an Extradition Request**

The Minister to Foreign Affairs of Cambodia shall refer an extradition request and certification of evidence to the Minister of Justice. The Minister of Justice shall examine the regularities of the request and then refer the request to the Prosecutor General of the Court of Appeal in Phnom Penh.

#### **Article 581. Request for Pre-trial Arrest**

The requesting state may request for the pre-trial arrest of the wanted person.

In case of emergency, the request for pre-trial arrest may be made prior to the extradition request provided in Article 579 (Certification of Extradition Request) of this Code.

The pre-trial arrest, which aims to prevent the wanted person from escaping, does not require the compliance of any other separate proceeding.

The person who is the subject of pre-trial arrest procedures shall be released automatically if the Royal Government of Cambodia does not receive the documents specified in Article 579 (Certification of Extradition Request) within 2 (two) months from the date of arrest.

#### **Article 582. Arrest and Detention Warrant against Wanted Person**

The Prosecutor General of the Court of Appeal in Phnom Penh may order the arrest and detention against the wanted person.

The warrant shall mention the following information:

- the identity of the wanted person;
- a reference to the request for pre-trial arrest made by the foreign state;
- the full name and title of the judge who issued such order.
- The order shall be dated and signed by the Prosecutor General and sealed.

The order of arrest and detention shall be enforceable within the entire territory of the Kingdom of Cambodia.

**Article 583. Presentation of the Wanted Person to a Competent Prosecutor or Prosecutor General**

In case of the arrest, the wanted person shall be brought within the shortest period of time before the territorial competent prosecutor who shall notify such person of the arrest and detention order and interview him/her.

The wanted person shall be transferred for detention in a prison in Phnom Penh. This person may request the Prosecutor General of the court of Appeal in Phnom Penh to hear his/her statement.

**Article 584. Filing the Case with the Investigation Chamber**

The Prosecutor General shall prepare the dossier for filing with the Investigation Chamber of the Court of Appeal in Phnom Penh.

**Article 585. Proceeding before the Investigation Chamber**

The wanted person shall appear before the Investigation Chamber. He/she may be accompanied by a lawyer of his/her choice or by a lawyer appointed pursuant to the Law on the Statute of Lawyers.

The confrontation shall be conducted in a closed door room. The Investigation Chamber may call on an interpreter, if necessary.

After hearing the statement of the wanted person, the conclusion of the request by the Prosecutor General, and the conclusion of the defense lawyer, the Investigation Chamber shall give opinions in a form of a judgment which state reasons on the extradition request.

**Article 586. Opinion of the Investigation Chamber**

The Investigation Chamber may issue an opinion opposing the extradition request if it finds that the legal requirements for extradition have not been met.

**Article 587. Application for Release On Bail of a Wanted Person**

A wanted person may request for release on bail.

The request shall be in writing.

The request shall be submitted to the Investigation Chamber which will make its decision after hearing the wanted person's statement, the conclusion of the Prosecutor General, and the statement of the defense lawyer.

**Article 588. Acceptance of Extradition**

If the wanted person agreed to be extradited pursuant to the request of the requesting state, the Investigation Chamber shall include such agreement in its judgment after receiving complete information about the consequences of the agreement for extradition.

## **Article 589. Effects of the Opinion of the Investigation Chamber**

When it becomes final, the judgment of the Investigation Chamber shall be informed immediately to the Minister of Justice.

If the Investigation Chamber made an opposing opinion, the extradition shall not be made by the Cambodian Government. The wanted person shall be released immediately unless such person is the subject of detention for another case.

If the Investigation Chamber made an agreeing opinion, the Minister of Justice may refer the case to the Royal Government to issue a sub-decree ordering the extradition of the wanted person.

If the extradition is ordered, the wanted person shall be delivered to the requesting state. The expenses of extradition shall be borne by the requesting state. The security and protection of the wanted person during the period in which he/she is outside Cambodia shall be the responsibility of the requesting State.

If the requesting state fails to start procedures for repatriation within 30 (thirty) days after the notification of the sub-decree ordering such extradition, the wanted person shall be put in liberty.

## **SECTION 2**

### **Extradition Requested by the Kingdom of Cambodia to a Foreign State**

#### **Article 590. Competence of the Investigation Chamber**

The Investigation Chamber of the Court of Appeal in Phnom Penh is the sole body which has competence to examine the regularity of extradition request to be made by the Cambodian government.

The extradited person shall have 15 (fifteen) days from the date in which he/ she arrived in Cambodia to request for annulment of the extradition.

The request shall be made in writing.

#### **Article 591. Procedures before the Investigation Chamber**

The Investigation Chamber shall make a decision after hearing the statement of the person to be extradited, the conclusion of the Prosecutor General and the conclusion of the defense lawyer.

#### **Article 592. Sustaining Effect of Annulment to Extradition Request**

The request to annul an extradition shall not postpone the charge procedure being made against the person to be extradited.

#### **Article 593. Effect of Extradition Annulment**

If the extradition is voided by a final decision of the Investigation Chamber, the on-going charge procedure shall be terminated. The person to be extradited shall be put in liberty and shall have the freedom to leave Cambodia.

However, at the expiration of the 30 (thirty) day period starting from the date of release, the person to be extradited may be re-arrested in Cambodia and become the subject of the re-charge procedure for the acts leading to such extradition.

#### **Article 594. Consent of a State that has Delivered the Foreign National to the Kingdom of Cambodia**

If the Kingdom of Cambodia receives an extradition of a foreign national and later receives a request for extradition from another foreign state, the Kingdom of Cambodia may agree with this request after obtaining agreement from the state which has delivered this national to the Royal Government of Cambodia.

However, the above consent is not necessary if this foreign national has freely left Cambodia within the 30 (thirty) day period.

### **CHAPTER 3 Transit**

#### **Article 595. Transit Request**

Transit of a person who is subject to an extradition procedure through Cambodian territory may be allowed, if the extradition is not in connection with a political offense. An application for the transit shall be done through diplomatic channels. The application form shall include necessary supporting documents.

### **CHAPTER 4 Particular Provisions Concerning the Enforcement of Certain Sentences**

#### **Article 596. Particular Provisions Concerning the Enforcement of Certain Sentences**

For the dispute concerning the enforcement of the sentence as provided in the Criminal Code, the court shall receive a complaint from a prosecutor through a simple request. The prosecutor shall inform the concerned parties of the hearing date.

### **CHAPTER 5 Legal Entities**

#### **Article 597. Competence with Regards to Legal Entities**

The prosecution, investigation and trial of offenses committed by legal entities shall be the competence of:

- Prosecutor, investigating judge, court of the first instance of the place of where the offense was committed;
- Prosecutor, investigating judge and court of the first instance of the place where the legal entity is located.

#### **Article 598. Representation of Legal Entities before the Court**

A charge shall be made against a legal entity through the legal representative at the time of charging. The legal representative shall represent the legal entity in the performance of all acts of procedures.

When the legal representative is not available, the prosecutor may request the president of the court of the first instance to assign a proxy to represent the legal entity.

When a criminal charge was made for the same facts or connected facts against both the legal entity and its legal representative, the legal representative may request the president of the court of the first instance to appoint an agent to represent the legal entity.

The request shall be made in writing.

#### **Article 599. Identification of Representative of Legal Entity**

The person responsible for representing a legal entity shall present his/her identification to the court where the case is filed. The presentation of identification shall also be made with the replacement of the legal representative during the course of proceedings.

#### **Article 600. Coercive Measure against the Legal Entity**

As a representative of a legal entity, the representative may not be subject to any coercive measure other than those applicable to the witnesses.

#### **Article 601. Placement of Legal Entity Under Judicial Control**

An investigation judge may place a legal entity under judicial control. This judge may declare the following obligations:

1. Payment of security in a determined amount, duration of payment and relevant formalities;
2. Cannot carry out some professional activities;
3. be under judicial control for the period up to 6 (six) months.

The decision to place a legal entity under judicial control causes an appointment of a judicial proxy and the mission of such proxy shall be clearly stated by the investigating judge.

#### **Article 602. Summons and Notification to Legal Entity**

Summons and decisions stipulated in this Code shall be referred and notified to a legal entity, through a legal representative of the legal entity under the same conditions with natural person.

## **TITLE 2**

### **LOSS OF DOCUMENTS, INTERPRETATION AND MODIFICATION OF DECISIONS**

#### **CHAPTER 1**

#### **The Loss of Documents**

#### **Article 603. Provisions to be Applied with the Loss of Documents**

The provisions of this Title shall be applied when there is destruction, concealment or loss of the following documents:

- The original copy of court decisions; or
- Any procedural documents.

#### **Article 604. Copies which Substitute Original Documents**

If there is a certified copy of the court decision made by a court clerk or another authority, the copy shall be considered as the original decision of the court. Any person who holds a certified copy of court decision shall deliver it to the court clerk at the request of the president of a court. A newly certified copy of the court decision shall be delivered to this person by the court clerk.

If there is no certified copy of court decision, another decision shall be made based on photocopied documents, the record of the hearing, and other existing documents in the dossier.

#### **Article 605. Reproduction of Procedural Documents**

The procedural documents shall be reproduced based on the photocopied documents kept by the police or gendarmeries units, parties, experts, the court clerks, or other persons.

### **CHAPTER 2**

## **Interpretation and Modification of Court Decisions**

#### **Article 606. Competence of a Court which Renders a Decision**

Difficulties in the interpretation of a court decision shall be referred to the court which made such decision for review.

This court shall also be competent to correct a true material mistake appearing in its decision. The court shall receive a request from a prosecutor on his/her own initiative or through a petition of a party. The prosecutor shall notify the relevant parties of the date of hearing. In all cases, the prosecutor shall provide his/her opinion during the hearing.

## **BOOK 10 TRANSITIONAL PROVISIONS**

### **SINGLE CHAPTER Transitional Provisions**

#### **Article 607. Conditions to Qualify Judicial Police Officers for National Police Officers and Royal Gendarmeries Officers**

National police officers who hold a certificate from a Training Course on Judicial Police Officer before this Code comes into effect shall automatically obtain a High Diploma of a Judicial Police Officer and shall be appointed as a judicial police officer by an inter-ministerial Prakas of the Ministry of Interior and Ministry of Justice.

The Royal Gendarmeries officers who hold a certificate from a Training Course on Judicial Police Officer before this Code comes into effect shall automatically obtain a High Diploma of a Judicial Police Officer and shall be appointed as a judicial police officer by an inter-ministerial Prakas of the Ministry of National Defense and Ministry of Justice.

After this Code enters into force, to obtain a status of a judicial police officer, a person shall fulfill the conditions stated in Article 60 (Judicial Police Officers) of this Code.

#### **Article 608. Applications During the Time of Pre-trial Detention**

The period for pre-trial detention for an ongoing case shall remain the same as the period provided in the previous law, except for the crimes against humanity, genocide or war crimes.

#### **Article 609. Application During the Time of Recourse and Opposition**

All decisions rendered before the entry into force of this Code shall be subject to a recourse and opposition period set forth in the previous law.

#### **Article 610. Application During the Time of Rules on Statute of Limitation of Criminal Actions and of Sentence**

The statute of limitation for a criminal action and of sentence of offenses committed before the entry into force of this Code shall be subject to the provisions of previous law.

## **BOOK 11 FINAL PROVISIONS**

### **SINGLE CHAPTER Final Provisions**

#### **Article 611. Abrogation of the Previous Laws**

The following provisions shall be abrogated:

- All provisions governing criminal procedures before 1992;
- The provisions of criminal procedures of the provisions on the court systems, criminal law and criminal procedures for the implementation in Cambodia during the transitional period dated 10 September 1992;
- The Law on Criminal Procedure promulgated by Decree No. 21 dated 08 March 1993;
- Royal Kram No.0899/09 dated 26 August 1999 promulgated the Law on Duration of Pre-trial Detention;
- Law on Amendment of Article 36, 38, 90, and 91 of the Law on Criminal Procedure promulgated by Royal Kram No. 0102/005 dated 10 January 2002.

The procedural provisions of the Law on the Organization and Activities of the Courts of the State of Cambodia, promulgated by Kret No. 06 dated 08 February 1993 shall not be applicable to criminal cases.

#### **Article 612. Immediate Enforcement of the Criminal Procedure Code**

This Code shall be applicable immediately to all criminal proceedings which are conducted after the entry into force of this Code.

The Immediate application of provisions of this Code shall have no effect on the validity of the procedures which have been completed according to the old laws.

## **Annex**

### **Procedures for Oath Taking**

An oath taking shall be led by a court clerk and shall be conducted in front of holy objects at each court.

Before taking an oath, the oath taker shall light incense sticks and candles to dedicate to the spirit of the holy spirits and objects to which he/she shall swear. Then the court clerk shall read the forewords loudly and clearly to the oath taker and read the swearing words and the oath taker shall repeat after the court clerk.

When the oath taking is completed, the court clerk shall prepare record of the oath taking to confirm that it is conducted properly and all the swearing words shall also be written down in the record.

### **Forewords**

We would like to invite all kinds of holy spirits and objects such as the spirits of Preah Ang Dan Keu, Krapom Chouk, Preah Ang Swetachat, Preah Ang Chek, Preah Ang Cham, Neak Ta Kleang Moeung, Neak Ta Kraham Kor, Lok Ta Dambong Dek, Lok Ta Dambong Kranhong, Lok Yeay Tep, Preah Ang Vihear Sour, Preah Ang Preah Chivor Wat Baray, Preah Ang Wat Phnom Kleng to come to preside over this oath taking ceremony because these parties have been in conflict and they rely on the witnesses who have known, seen, and heard and still remember the facts and the law requires the witnesses to testify to reflect the facts.

Those who fail to testify in accordance with what they have known, seen, heard and remembered, we beg the holy spirits and objects to destroy him/her and he/she is miserly killed by bullets, electrocution, lightning, tiger attack, snake bite and his/her future lives will face with separation from parents, brothers or sisters, children and become extremely poor for five hundred live-cycles.

Those who honestly, accurately and impartially testify regardless of relatives and refrain from conspiring because of fear, hatred, interests and bribes, we wish the spirits to grant him/her with the longevity, good health, richness, well respected and love and in the future lives, he/she will enjoy good lives and prosperity.

### **Swearing Words**

I will speak only the truth, nothing but the truth in accordance with what I have known, seen, heard and remembered.

If I do not speak the truth for any reason, I beg the holy spirits and objects to destroy me and be miserably killed, but when I speak the truth, I wish the spirits to let me live in prosperity with lots of friends and relatives forever.