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SOMMARIO

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The official text of this Legislative Decree in the Italian Language, was published in the Official Bulletin, Supplement No. 9 to No. 12 of 31 Decembre 1964.

Stamperia di Stato — Mogadiscio

LEGISLATIVE DECREE No. 1 of 1 June 1963.
Approval of the Text of the Criminal Procedure Code

THE PRESIDENT OF THE REPUBLIC

HAVING SEEN Article 62 of the Constitution;

HAVING SEEN Law No. 5 of 30 January 1962, delegating to the Government the power to issue the Criminal Procedure Code;

HAVING SEEN Laws No. 21 of 6 July 1962, and No. 4 of 29 January 1963, which provide for the extension of the time-limit laid down in the above law;

HAVING SEEN the final text of the Criminal Procedure Code prepared by the Commission referred to in Art. 2 of the Law delegating the power to issue the Code;

HAVING HEARD the Council of Ministers;

ON THE PROPOSAL of the Minister of Grace and Justice;

DECREES

Article 1

The attached text of the Criminal Procedure Code is hereby approved and shall enter into force three months after its publication in the Official Bulletin of the Republic.

Article 2

A copy of the Criminal Procedure Code published in the Official Bulletin shall be sent to each Regional Governor, each District Commissioner, and each Local Administration, to be posted in their respective offices for thirty consecutive days, so that all persons may take cognizance thereof.

Mogadiscio, 1 June 1963.

THE PRESIDENT OF THE REPUBLIC
ADEN ABDULLE OSMAN

The Prime Minister
ABDIRASHID ALI SHERMARKE

The Minister of Grace and Justice
AHMED GHELLE

CRIMINAL PROCEDURE CODE

BOOK ONE

GENERAL PROVISIONS

PART I

PRELIMINARY PROVISIONS

CHAPTER I

Courts and Parties

Section I

THE COURTS

Article 1

Criminal Jurisdiction

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

a) District Courts;

b) Regional Courts;

c) Courts of Appeal;

d) the Supreme Court.

Article 2

Jurisdiction and Composition of the Courts

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

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

Article 3

Definitions

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

a) the term «Law on the Organization of the Judiciary» shall mean the Organization of the Judiciary approved by Legislative Decree No. 3 of 12 June 1962;

b) the term «Court» shall mean any of the judicial organs enumerated in Article 1 of this Law or any section of such organs;

c) the term «higher Court» shall mean:

1) The Supreme Court with regard to the Courts of Appeal;

2) the Court of Appeal with regard to Regional Courts and to the District Courts which are located within the jurisdiction of the same Court of Appeal;

d) the term «lower Court» shall mean:

1) The Courts of Appeal with regard to the Supreme Court;

2) Regional Courts or District Courts with regard to the Court of Appeal within whose jurisdiction they are located;

e) the term «competent Court» shall mean the Court which has jurisdiction over the offence or the proceedings;

f) the term «President of the Court» shall mean the Judge who presides over the Court or over a section of the Court;

g) the term «Judge» shall mean a member of the Judiciary who exercises judicial functions in a Court;

h) the term «competent Judge» shall mean a Judge who exercises his functions in a competent Court.

Article 4

Subject Matter Jurisdiction

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

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

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

Article 5

Territorial Jurisdiction

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

In cases of:

a) a «continuing offence», or

b) a «permanent offence»,

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

2. When:

a) it is possible to determine the Court which has jurisdiction in accordance with paragraph 1 of this Article, or

b) the alleged offence was committed outside the territory of the Somali Republic,

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

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

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

Article 6

Joinder of Accused or Offences

1. There is joinder when:

a) more than one person is alleged to have taken part in the commission of the same offence, or

b) one person is charged with more than one offence.

2. The competent Court, within the meaning of Articles 7 and 8, may, upon request of the prosecution or the defence or on its own motion, order that the persons or offences be tried separately for reasons of convenience.

Article 7.

Effects of Joinder on Subject Matter Jurisdiction over the Offences

1. When there is joinder within the meaning of Article 6 and:

a) some of the offences come under the jurisdiction of the Assize Section of the Regional Court, while other offences come under the jurisdiction of the General Section of the Regional Court, or of the Criminal Section of the District Court, all the offences shall be tried by the Assize Section of the Regional Court;

b) some of the offences come under the jurisdiction of the General Section of the Regional Court, while other offences come under the jurisdiction of the Criminal Section of the District Court, all the offences shall be tried by the General Section of the Regional Court;

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

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

Article 8

Effect of Joinder on Territorial Jurisdiction

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

a) by the Court within whose jurisdiction the most serious offence was committed, or

b) when a number of offences of equal gravity were committed, by the Court in whose territory the largest number of the offences was committed.

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

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

Article 9

Conflicts of Jurisdiction

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

a) take cognizance, or

b) refuse to take cognizance

of the same offence.

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

Article 10

Disqualification of the Judge

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

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

b) he acted in the same proceedings as:
   i) a prosecutor,
   ii) a defence counsel,
   iii) a representative of any party,
   iv) a witness,
   v) an expert or technical consultant;

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

d) he has any personal interest in the proceedings;

e) he is married to, is an «ascendant» or «descendant» of, is a brother or sister of, married to an «ascendant» or «descendant» or married to a brother or sister of any person who is taking part in the proceedings in any of the following capacities:
   i) Judge,
   ii) prosecutor,
   iii) defence counsel,
   iv) a representative of any party,
   v) or any person who has any personal interest in the case;

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

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

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

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

Article 11

Transfer of Proceedings

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

a) the Supreme Court may transfer the proceedings, upon request of the Attorney General or of the accused:

i) from one Court of first instance to another Court of first instance having equal subject matter jurisdiction;

ii) from one Court of Appeal to another Court of Appeal;

b) the Court of Appeal may transfer the case, within the limits of its jurisdiction, upon request of the Office of the Attorney General or of the accused, from the Criminal Section of a District Court to the General Section of a Regional Court.

2. When a Judge of the competent Court:

a) is himself the defendant, or

b) is the injured party,

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

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

a) order that the trial be held in the competent Court without the participation of the Judge so affected, or

b) transfer the case to another lower Court having equal subject matter jurisdiction.

Section II

THE PARTIES

Article 12

The Office of the Attorney General

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

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

a) the Attorney General or one of his Deputies before the Supreme Court and the Military Penal Sections of the Courts of Appeal and Regional Courts;

b) the Attorney General or one of his Deputies or a Police Officer designated by the Attorney General before the Assize and General Sections of the Courts of Appeal and Regional Courts;

c) the Officer commanding the Police or the Finance Guards within whose jurisdiction the Court is situated or another Police Officer designated by him, in conformity with the functions attributed to the latter by law, before the Criminal Section of a District Court.

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

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

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

Article 13

The Accused

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

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

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

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

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

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

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

Article 14

The Injured Party

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

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

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

Article 15

The Defence

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

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

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

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

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

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

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

Article 16

Duties of the Defence Counsel towards the Accused

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

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

a) pay a sum of money not exceeding Sh. So. 5,000/- to the accused as compensation; and

b) pay a sum of money, not exceeding Sh. So. 2,000/-, to the State Treasury; or

c) be suspended from practising his profession for a period not exceeding one year.

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

CHAPTER II

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

Section I

INFORMATION, COMPLAINTS AND REPORTING OF OFFENCES

Article 17

Authorities to whom Complaints and Reports regarding Offences shall be made

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

Article 18

Reporting of certain of Classes of Offences

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

Article 19

Reports by Members of the Medical Profession

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

Article 20

Reports by the Public

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

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

Article 21

Complaints

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

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

a) expressly or tacitly renounced such right;

b) started civil proceedings for restitution or recovery of damages;

c) reached a settlement of the damage arising from the offence.

Article 22

Form of the Reports, Information and Complaints

1. Information, a report or complaint relating to the commission of an offence may be in written or oral form and:

a) if in written form, shall be signed by the person concerned;

b) if in oral form shall, by the authority receiving it, be:

i) recorded;

ii) read over to the person concerned, and

iii) signed by such person.

2. The provisions of the preceding paragraph shall be observed insofar as applicable to the withdrawal of the complaint or the refusal to accept the withdrawal of the complaint.

Section II

POLICE INVESTIGATIONS

Article 23

Definitions

1. For the purposes of this Code, unless the context indicates otherwise, the term «Police» shall include:

a) the Police Force;

b) the Finance Guards;

c) any other military or para-military Service and any civil organ of the State which is required by law to collect information about, and to enquire into, specified types of offences and to provide the proof necessary for the application of the penal law.

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

a) the term «Police Station» shall include a territorial or special unit of one of the Forces or Services referred to in paragraph 1 of this Article;

b) the term «Police Officer» shall mean every member of the Forces or Services referred to in paragraph 1 of this Article.

Article 24

Investigations

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

a) notify the Office of the Attorney General and the competent Court;

b) conduct, either personally or through his subordinates, such investigation of the alleged offence as he shall consider necessary.

2. The Police Officer who undertakes the investigation may:

a) examine any person whom he believes to be acquainted with any of the circumstances of the case and,

b) record, in accordance with the provisions of sub-paragraph b) of Article 22, any statement made by any person so examined.

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

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

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

a) arrest a person suspected of committing a crime, in accordance with Article 38;

b) undertake a search or seizure, in accordance with Article 58.

Article 25

Diary of Investigation

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

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

b) the action taken during the investigation;
c) the circumstances arising from the investigation;
d) the evidence obtained.

2. Any warrants or orders received from or any superior, a Court or the Office of the Attorney General, shall likewise be recorded.

Article 26

Closure of Investigation

1. Police investigation shall be brought to a conclusion without any unjustified delay.

2. The Police Officer in charge of a Police Station, as soon as the investigation has been concluded, shall prepare an accurate report containing:

a) the facts of the case, and any surrounding circumstances which may affect the criminal proceedings;
b) details of the evidence obtained;
c) personal details or any other information useful in identifying:
   i) the accused,
   ii) the injured party,
   iii) any person having information concerning the circumstances of the offence.

3. The report called for in the preceding paragraph shall be sent forthwith to the Office of the Attorney General together with:

a) the investigation diary;
b) the records relating to the investigation;
c) material objects seized in the course of the investigation.

Section III

ASSISTANCE IN THE SUPPRESSION OF OFFENCES

Article 27

Assistance from Members of the Public

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

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

PART II

METHODS OF SECURING THE APPEARANCE OF ACCUSED PERSONS IN COURT

CHAPTER I

Arrest

Section I

ARREST IN GENERAL

Article 28

Arrest

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

Article 29

Execution of Arrests

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

2. If the person to be arrested:

   a) forcibly resists the arrest;

   b) attempts to escape,

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

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

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

Article 30

Entry Into private Places for the Purpose of Arrest

1. Whoever is required to arrest a person on the grounds of:

   a) such person being caught in the act of committing an offence *(in flagrante delicto);*

b) a warrant of arrest;

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

i) there is an urgent necessity so to do, and

ii) there are grounds for belief that a search warrant cannot be obtained without affording the person to be arrested the opportunity to escape or the opportunity to destroy or interfere with items of evidence.

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

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

Article 31

Search of Arrested Persons

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

a) the person arrested;

b) the place in which such arrest was made;

c) any place which the person to be arrested entered while trying to evade arrest.

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

Article 32

Provisions relating to Arrest to be strictly Observed

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

a) the provisions of Section II and III of this Chapter were strictly followed in making the arrest, and

b) there has been any unjustifiable delay in bringing the arrested person before him.

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

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

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

Article 33

Reporting of Arrests

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

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

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

Section II

ARREST WITHOUT WARRANT

Article 34

Person who may arrest without a Warrant

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

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

Article 35

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

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

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

iv) knowingly causing epidemics, poisoning of water or foodstuff;

v) carnal violence, acts of lust committed with violence, unnatural offences committed with violence, abduction for purposes of lust;

vi) abortion without consent;

vii) murder, infanticide, death caused to a person with his own consent with aggravating circumstances, grievous or very grievous hurt, preterintentional homicide, affray with aggravating circumstances;

viii) insult with aggravating circumstances in respect of which proceedings are initiated by the State;

ix) reduction to slavery, dealing and trading in slaves, enforced subjection;

x) seizure of a person;

xi) theft in respect of which proceedings are initiated by the State, robbery, extortion, killing or injuring of animals belonging to another in respect of which proceedings are initiated by the State.

c) any other offence for which the law prescribes mandatory arrest of a person caught *in flagrante delicto.*

Article 36

Discretionary Arrest of Persons caught in Flagrante Delicto

A person may be arrested witout warrant when caught *in flagrante delicto* for an offence:

a) punishable with maximum imprisonment of more than one year or with a heavier penalty;

b) punishable with imprisonment and the offence relates to:

i) drunkenness,

ii) firearms, ammunition or explosives,

iii) games of chance,

iv) unjustified possession of valuables, animals, altered keys, or pick-locks,

v) harmful substances or narcotic drugs;

c) punishable with imprisonment where the offence is committed by:

i) a person released on bail,

ii) a recidivist under the terms of Article 61 of the Penal Code;

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

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

Article 37

Definition of «Flagrante Delicto»

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

a) is caught in the act of committing an offence;

b) is pursued, immediately after the commission of the offence, by:

i) a Police Officer, or

ii) an injured party, or

iii) any other person;

c) is caught, immediately after the commission of the offence, with objects or traces which clearly show that he committed the offence.

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

a) any permanent offence until such time as the permanence of the offence has ceased;

b) escape from lawful custody until such time as the fugitive has been arrested or surrenders.

Article 38

Arrest of Persons Suspected of having committed an Offence

A Police Officer may arrest a person without warrant:

a) in case of urgent necessity when there are grounds to believe that:

i) the person to be arrested has committed an offence for which the maximum punishment is imprisonment for more than 2 years or a heavier punishment;

ii) a warrant of arrest cannot be obtained in time;

iii) it s likely that the person to be arrested will not be found if he is not arrested immediately;

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

Article 39

Person Arrested without Warrant to be taken before a Judge

1. A person arrested without warrant shall be taken immediately, and in any case not later than 48 hours from the time of his arrest, before the competent Court or before the Court nearest to the place of arrest: provided that the time necessary to travel to the Court from the place of arrest shall not be included in the 48 hours.

2. A Police Officer taking an arrested person before a Judge shall, at the same time, prepare and submit to him a summary report showing:

a) the facts of the case and the reasons for the arrest;
b) details of the evidence obtained;
c) when possible, the personal details of:
   i) the arrested person,
   ii) the injured party,
   iii) any person having information concerning the circumstances of the offence.

3. Having examined the summary report, the Judge:

a) if the case falls within the provisions of paragraph 2 of Article 70, shall order that no proceedings shall be instituted against the person arrested, in accordance with the provisions of Article 77, and order the immediate release of the person arrested;

b) if:
   i) the offence committed is one for which a warrant of arrest cannot be issued in accordance with the provisions of Articles 42 and 43; or
   ii) the arrest was not carried out in conformity with the provisions of Articles 35, 36, 38 or 50;
   the Judge shall order the immediate release of the person arrested;

c) in other cases shall confirm the arrest and remand the arrested person to custody, in accordance with the provisions of Article 46, unless he releases him on bail in accordance with Articles 59 and 60.

4. If the arrest is not confirmed by the Judge within a period of 8 days from the day when it took place, the arrest shall be considered as rescinded and the arrested person shall be released.

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

a) explain to the person arrested the substance of the charge;

b) inform the arrested person that, at the present stage of the proceedings, he is not required to make any statement, but that any statement which he does make may be used as evidence against him;

c) record any statement made by the arrested person.

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

a) the arrested person wishes to make a statement, and

b) any such questions asked by the Judge are for the purpose of clarifying any statement so made by the arrested person.

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

a) the Office of the Attorney General, and

b) the competent Court, if the arrested person had not been brought before a Judge of such Court.

Section III

ARREST WITH WARRANT

Article 40

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

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

a) an offence has been committed;

b) the offence was committed by the accused person.

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

a) the competent Judge, up to the time of the commencement of the trial in a Court of first instance;

b) the President of the competent Court, at any other stage of the proceedings.

Article 41

Form of Warrant of Arrest

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

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

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

Article 42

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

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

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

2. A warrant of arrest shall be issued also:

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

Article 43

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

A warrant of arrest may be issued:

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

c) against a person who has received a summons to appear before a Court:

i) if there are grounds to believe that such person has left or is about to leave the territory of the State, or intends not to appear before the Court; or

ii) if such person has failed, without justifiable reason, to appear before the Court at the time and place specified in the summons or in any subsequent order.

Article 44

Execution of Warrant of Arrest

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

2. If the accused is:

a) a pregnant woman or woman nursing her own child;

b) a person in a very serious state of ill-health;

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

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

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

a) inform the person to be arrested of the substance of the warrant;

b) serve the warrant on the person to be arrested as soon as possible.

Article 45

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

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

a) a competent Judge, or

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

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

Section IV

CUSTODY BEFORE TRIAL

Article 46

Remand of Accused Person to Custody

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

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

Article 47

Duration of Custody before Trial

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

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

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

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

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

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

If:

a) the accused breaks any conditions imposed upon him, or

b) there are grounds to believe that the accused has left or is about to leave the territory of the State,

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

CHAPTER II

Summons to Appear before a Court

Article 48

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

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

a) an offence has been committed;

b) the accused committed the offence.

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

Article 49

Form of Summons

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

a) the name of the authority issuing it;

b) the date on which the summons is issued;

c) personal details of the accused, or any other indications by which he can be identified with reasonable certainty;

d) the essential facts constituting the offence for which the summons to appear has been issued;

e) the name of the Court before which the accused must appear, together with the time and place of appearance;

f) the signature of the authority issuing the summons and the seal of the Court.

Article 50

Obligation to furnish Information regarding Identification

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

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

a) refuses to provide full personal details of himself, together with his address;

b) provides details which the Police Officer requesting them has grounds to believe to be false.

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

Article 51

Service of Summons to appear

1. A summons to appear shall be served by:

a) a Police Officer;

b) a Court Officer;

c) any other person as the Court may direct.

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

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

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

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

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

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

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

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

CHAPTER III

MISCELLANEOUS MEASURES

Section I

SEARCH AND SEIZURE

Article 52

Search and Seizure

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

Article 53

Issue of Warrant of Search and Seizure

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

a) a competent Judge, up to the time of commencement of proceedings by a Court of first instance;

b) the President of the competent Court at any other stage of the proceedings.

Article 54

Form of Warrant of Search and Seizure

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

a) the name of the issuing authority;

b) the date on which the warrant is issued;

c) reasons for the issue of the warrant;

d) personal details of the person to be searched or wanted or, if these are not known, any nicknames or other indications by which he can be identified;

e) details and whereabouts of the place or object to be searched;

f) a description of the object to be seized and of any person with control over possession of such object;

g) the signature of the authority issuing the warrant, and the seal of the Court.

Article 55

Cases in which Warrants to Search or Seize may be issued

1. A search warrant may be issued:

a) when there are grounds to believe that:

i) an object pertinent to an offence may be found on some specified person, or on or in some specified place or object;

ii) on search of some specified place, a person to be arrested may be found therein;

iii) on search of some specified place, a person unlawfully detained may be found therein;

b) when it is necessary to search any specified person, place or thing, for the purpose of finding any material evidence which may have a bearing on the offence.

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

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

Article 56

Execution of Warrants of Search and of Seizure

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

a) there is some urgent necessity for its execution; or

b) the issuing authority has authorized its execution at any hour.

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

Article 57

Other Rules to be observed in Search and Seizure

1. The person making the search or seizure may:

a) use reasonable force to carry out the search or seizure if resistance or refusal to allow the search or seizure is offered;

b) search any person present in the place being searched, if there are grounds to believe that such person is concealing an object pertinent to the offence.

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

3. In carrying out the search of a person:

a) decency shall be fully observed, and

b) the search of a woman shall only be undertaken by a woman.

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

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

Article 58

Search and Seizure without Warrant — Confirmation by the Judge

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

a) material evidence may be destroyed or altered;

b) the wanted person may abscond.

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

a) the reasons necessitating, and

b) the results of

such search or seizure.

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

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

Section II

RELEASE ON BAIL

Article 59

Bail

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

Article 60

Grant of Bail

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

Article 61

Type and Amount of the Bond

1. A bond shall consist of an amount of money which the guarantor, in accordance with the directions of the Court granting the bail, shall:

a) deposit with the Court, or

b) guarantee to pay if any of the conditions of the bail are broken.

2. On granting bail, a Court shall determine:

a) the number and the financial position of the guarantors;

b) the amount of the bond;

c) whether the amount:

i) shall be deposited in Court, or

ii) shall be paid in cases of violation of the obligations relating to the bail.

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

Article 62

Release dependent upon Fulfilment of Conditions

1. A person shall only be released on bail provided the conditions laid down in regard to the bond have been fulfilled.

2. Where the warrant of arrest contains an order allowing bail, the person executing the warrant shall refrain from arresting the accused or shall release him and shall not bring him before a Court, in accordance with Article 45, provided the conditions relating to the bond are fulfilled in time.

Article 63

Revocation of Bail

1. The Court competent to grant bail, in accordance with the provisions of paragraph 1 of Article 60, may order the revocation of the bail and may issue a warrant of arrest against the accused if:

a) the accused breaks any of the conditions imposed upon him;

b) there are grounds to believe that the accused has left, or is about to leave, the territory of the State;

c) the amount of the bond:
   i) is not sufficient because of fraud, mistake or similar cause;
   ii) has subsequently become insufficient for any other reason.

d) any of the guarantors:
   i) applies, for any reasonable cause, to be released from the bond;
   ii) has died;
   iii) must leave, or there are grounds to believe he has left, the territory of the State.

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

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

Article 64

Forfeit of Bond Money

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

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

Section III

PROCEDURE FOR SAFEGUARDING PERSONAL LIBERTY

Article 65

Search for Persons unlawfully deprived of personal Liberty

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

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

Article 66

Habeas Corpus

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

Article 67

Order to produce a Person

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

Section IV

RECORD OF CONFESSIONS

Article 68

Rules to be observed by a Judge receiving a Confession

1. A Judge may receive a confession made to him at any time.

2. A Judge shall not receive a confession unless he is convinced, by examination of the person making it, that the confession is being made voluntarily.

3. The confession shall be:

a) recorded in writing in full by the Judge;

b) read over by the Judge to the person making the statement;

c) signed by:

i) the person making the confession,

ii) the Judge;

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

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

PART III

PRE-TRIAL PROCEDURE

CHAPTER I

Responsibilities of the Attorney General

Article 69

Duties of the Attorney General

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

Article 70

Responsibilities of the Attorney General before a Trial

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

a) if he is satisfied that the evidence collected provides a *prima facie* case that an offence has been committed and that it was committed by the accused, shall:

i) frame a charge in accordance with the provisions of Article 71;

ii) present such charge before the competent Court;

iii) request the Court to fix a date for the trial and to take any other necessary steps for purposes of tria, except in the cases laid down in the following paragraph;

b) if he is satisfied that the evidence collected does not provide a *prima facie* case that an offence has been committed and that it was the accused who committed it, may:

i) order further investigations to be made, if he considers that such investigations will bring more evidence to light, or

ii) otherwise proceed to close the case in accordance with the provisions of Article 72.

2. When it is evident that:

a) an offence was not committed;

b) the offence was not committed by the accused;

c) the author of the crime is not liable:

i) because, in accordance with the provisions of Article 50 of the Penal Code, he was by reason of infirmity in a state of mind such as to preclude capacity of understanding and of volition;

ii) because, in accordance with the provisions of Article 59 of the Penal Code, he had not, at the time of committing the crime, attained 14 years of age;

d) the offence has been extinguished:

i) by the death of the accused, under Article 143 of the Penal Code;

ii) by amnesty, in accordance with Article 144 of the Penal Code;

iii) when, in accordance with Article 145 of the Penal Code, in case of offences punishable on complaint of the injured party, the complaint has been withdrawn and the withdrawal has not been expressly rejected under the terms of Article 87 of the Penal Code, or the injured party has died;

iv) by the compounding of a contravention under the terms of Article 146 of the Penal Code;

e) proceedings cannot be instituted against the accused:

i) because, in accordance with the provisions of Article 81 of the Penal Code, the offence concerned is one that may only be punishable upon complaint of an injured party and no such complaint has been made;

ii) because, in accordance with paragraph 3 of Article 13 of this Code, he has, on the same facts, been finally convicted or acquitted, or orders for the case not to be proceeded with have been lawfully given;

iii) because, under the terms of paragraph 5 of Article 13 of this Code, the necessary authorization to prosecute was not granted or was denied;

iv) because, in accordance with the provisions of Article 73 of this Code, penal action could not be initiated because of the expiration of the time-limits laid down in the aforesaid article;

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

Article 71

Form of Charge

1. A charge shall be in duplicate and shall contain:

a) the name of the authority making the charge;

b) the date on which it is made;

c) the personal details of the accused or, if these are not known, other indications by which he can be identified with reasonable certainty;

d) the offence charged, together with a plain, concise statement of the acts constituting the offence, including the time and place of the commission of the offence, and the person against whom, or the thing in respect of which, the offence was committed;

e) the law, and the articles of the law, against which the offence is said to have been committed;

f) a statement of the aggravating circumstances, except for recidivism, and of circumstances which may warrant the application of security measures, with the indication of the articles of the law relating thereto;

g) the personal details of the injured party and of the person who appears to be acquainted with the circumstances of the offence;

h) the indication of whether the accused is held in custody;

i) the signature of the authority who makes the charge, and the seal of the office.

2. When,

a) the accused is charged with more than one offence:
   i) the charges shall be consecutively numbered;
   ii) the provisions of sub-paragraphs d), e), f) and g) of the previous paragraph shall apply to each charge;

b) two or more persons are jointly charged:
   i) the charge shall show the offence or offences with which each accused is charged;
   ii) the provisions of sub-paragraphs c) d), e), f), g) and h) of the preceding paragraph shall apply in the case of each accused.

Article 72

Closing of the Case

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

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

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

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

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

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

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

Article 73

Time-limits for the Commencement of criminal Proceedings

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

2. Criminal proceedings:

a) may be commenced at any time in cases in which the issue of a warrant of arrest is mandatory, in accordance with the provisions of paragraph 1 of Article 42;

b) shall not be commenced in any other case, subject to the provisions of the following paragraph, after the expiry of the following time-limits from the date of offence:

i) 6 years, in the case of offences for which the maximum punishment is more than 5 years;

ii) 4 years, in the case of offences for which the maximum punishment is more than 3 years;

iii) 2 years, in the case of offences for which the maximum punishment is not more than 3 years;

iv) 6 months, in thecase of offences punishable with fine only.

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

a) the day of the commission of the offence, in the case of offences described in Article 16 of the Penal Code as «Offences Committed»;

b) the day on which the act or omission on the part of the offender has ceased in the case of attempted offences;

c) from the day on which the offender ceased committing the offence in the case of permanent or continuing offences,

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

Article 74

Authorization to Prosecute

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

a) i) any member of the Judiciary, including assessors;
ii) the Magistrate of Accounts;
iii) a Regional Governor;
iv) a District Commissioner;
v) a Chairman of a Local Council,

for offences committed in the exercise of their functions;

b) any Police Officer, for offences committed in the course of duty and relating to the use of weapons or other means of physical coercion.

This provision shall apply to:

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

CHAPTER II

Responsibilities of the Courts

Article 75

Fixing Date of Trial and other related Measures

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

a) fix the date for the hearing of the trial;

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

c) direct that the order to bring the accused before the Court or the summons to appear:

i) be notified to the accused, in accordance with the provisions of Articles 79 and 51, with a copy of the charge attached;

ii) be communicated to the Attorney General by means of a copy;

d) appoint a defence Counsel for the accused in the cases coming within the provisions of sub-paragraph b) of paragraph 2 of Article 14 of the Law on the Organization of the Judiciary, when the accused has not appointed his own defence Counsel, and direct that the appointment be communicated to the accused and the said defence Counsel;

e) issue summonses, in accordance with Article 80, to:

i) the injured party;

ii) the witnesses indicated by the parties.

Article 76

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

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

a) if the accused is in custody, order his immediate release;

b) if the accused is subject to some provisional security measures, in accordance with the provisions of Article 78, immediately order the revocation of such measures;

c) if the accused is on bail, order:

i) the cancellation of the conditions imposed by the bail under the provisions of paragraph 2 of Article 59;

ii) release the guarantors from their bonds and return to them any deposit made by them with the Court, in accordance with the provisions of sub-paragraph a) of paragraph 1 of Article 61;

d) if the accused was released because of the expiration of the time-limits established for custody, order the cancellation of the conditions imposed in accordance with paragraph 4 of Article 47.

Article 77.

Order for the Termination of Proceedings and related Measures

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

a) order that the proceedings be terminated giving the reasons therefor;

b) take the measures provided for in Article 76 and order, in the cases provided for in the Penal Code, the application of security measures;

c) direct that such order and related measures be:

i) notified to the accused, and

ii) communicated to the Attorney General by means of a copy.

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

Article 78

Provisional Application of Security Measures

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

a) the competent Judge, up to the time of commencement of proceedings in a Court of first instance;

b) the competent Court, at any other stage of the proceedings.

Article 79

Order to bring the Accused before the Court

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

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

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

Article 80

Service of Summons on the injured Party and on Witnesses

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

a) to the injured party;

b) to witnesses:

i) acquainted with the circumstances of the case;

ii) whose opinion on questions which require particular knowledge of science or art is found necessary or opportune;

iii) in possession of anything which may be called upon to be produced as evidence,

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

2. A summons may be issued:

a) on request of one of the parties in the case, or

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

3. A summons may be issued:

a) by the competent Judge, up to the time of commencement of proceedings in the Court of first instance;

b) by the President of the competent Court, at any other stage of the proceedings.

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

a) the name of the authority issuing it;

b) the date on which it is made;

c) the personal details of the person summoned to appear, or, if these are not known, other indications by

which he can be identified with reasonable certainty;

d) personal details of the accused;

e) the reasons for which the appearance is ordered;

f) name of the Court before which the person shall appear, together with the time and place fixed;

g) the signature of the Judge issuing it and the seal of the Court.

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

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

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

PART IV

TRIAL PROCEDURE AND PENAL SANCTION

CHAPTER I

Trial Procedure

Section I

GENERAL PROVISIONS

Article 81

Signature of Records and Documents

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

a) his name, the name of his father and the name of his paternal grandfather, or

b) his first name and family name.

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

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

Article 82

Date of Records and Documents

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

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

in which such record or document was made.

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

Article 83

Presentation of Statements and Petitions

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

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

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

Section II

ACTS AND MEASURES OF A JUDICIAL NATURE

Article 84

Form

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

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

2. The acts referred to in the previous paragraph shall also be:

a) dated and

b) signed by the issuing authority, stating the reasons therefor.

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

Article 85

Correction of Errors

When in any measure there are omissions or errors which:

a) do not make the measure null and void, and

b) if corrected, do not substantially change the measure,

a correction may be made even by the issuing authority on its own motion, but, where possible, the matter shall be brought to the prior notice of any interested party.

Article 86

Procedures for Decision-Making

1. Unless the law provides otherwise:

a) the Court shall reach a decision in chambers without the intervention of the parties;

b) when a Court consists of more than one person:

i) deliberations shall be secret and findings shall be reached by majority vote;

ii) no member of the Court may abstain from voting;

iii) votes shall be taken by the President who shall vote last, voting beginning with the Judge lowest in grade or the Judge with the least seniority where more than one Judge is of the same grade. In Assize Courts, Assessors shall vote first, beginning with the youngest. In Military Penal Sections, the Assessor lowest in rank, or the assessor with the least seniority, where more than one assessor is of the same rank, shall vote first;

iv) no mention shall be made in the decision of the way in which any individual vote was cast and, if such mention is made, then the decision shall become null and void;

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

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

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

Article 87

Coercive Powers

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

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

Section III

TIME-LIMIT

Article 88

General Rules

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

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

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

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

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

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

Article 89

Time of Appearance

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

a) at least three days before the time to appear;

b) in every case, in such good time that, bearing in mind the circumstances, such person can reach the Court by the time fixed for the appearance.

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

Section IV

ACTS WHICH ARE NULL AND VOID

Article 90

General Rule

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

Article 91

Nullity of Proceedings in General

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

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

a) the constitution and composition of the Court;

b) the participation of the Attorney General in the proceedings;

c) the representation of the accused by Counsel in those cases where representation is mandatory.

Article 92

Quashing to be Ineffective in certain Cases

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

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

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

a) if, notwithstanding any irregularity, the consequences of such act equally affect all interested parties;

b) if an interested party has tacitly accepted the effect of the act.

Article 93

Effects of a Declaration of Nullity

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

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

Section V

RECORD OF PROCEEDINGS

Article 94

Record of Proceedings

1. A written record of all acts in a proceeding shall be prepared by the authority responsible for such proceeding.

2. Unless the law provides otherwise, the record shall contain:

a) the indication of the place, year, month, day and, if necessary, hour in which the act commenced and terminated;

b) the names of the persons present;

c) a description of the acts carried out and results obtained;

d) the statements taken from the persons present;

e) any other matters that the authority concerned deems proper to include;

f) the signature of the authority responsible for the proceedings.

Section VI

PENALTIES

Article 95

Failure to comply with Orders of a Judicial Authority

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

2. A warrant of arrest may be issued against any such person.

BOOK TWO

PROCEEDINGS OF FIRST INSTANCE

CHAPTER I

The Hearing

Article 96

Proceedings to be Public: Exceptions

Court proceedings shall be open to the public, but the Court may, in the interests of:

a) public decency;
b) public health;
c) public order;

order that the proceedings shall be closed to the public.

Article 97

Rules for the Attendance of the Public

1. Entry into, or stay in, a courtroom shall be prohibited to:
   a) any person who is known as:
      i) an idler;
      ii) a vagabond;
      iii) a person inclined to commit crimes against the person or against property;
   b) any person who is of unsound mind;
   c) drunkards;
   d) persons under the age of 14 years;
   e) any person who is dressed in an indecent manner.

2. The President of the Court may also:
   a) order in the interests of:
      i) good order,
      ii) morality; or
      iii) decency

      any person to be expelled from the courtroom whose presence he does not deem necessary;
   b) restrict entry into the courtroom to a limited number of persons.

3. No special places shall be reserved in the courtroom for any particular members of the public.

Article 98

Duties of Persons attending a Hearing

1. Any person who attends a hearing shall observe respect and silence.

2. All persons attending a hearing shall be forbidden to:

a) carry weapons or any other object capable of causing injury or harm or annoyance;

b) cause any disturbance;

c) behave:

i) in any way calculated to intimidate;

ii) in any way calculated to provoke;

iii) in any way contrary to the dignity of the proceedings;

d) cause any breach of the peace, or

e) express in any way one's feelings or opinions.

Article 99

Control of the Hearing

The President of the Court shall have the power to maintain order at the hearing. Anything which the President prescribes for the proper maintenance of order in the Court shall be obeyed forthwith.

Article 100

Accused in Custody

An accused who was held in custody before trial shall attend the hearings without restraint, unless restrictive measures are necessary to prevent escape or violence.

Article 101

Adjournment of Trial

1. A Court may order the adjournment of the opening or prosecution of a trial, where it considers it necessary or proper to do so due to the absence of witnesses or to other reasonable cause.

2. If the accused is in custody, the adjournment shall not exceed 7 days.

Article 102

Compliance with the Rules of this Chapter

The provisions of this Chapter shall be complied with, insofar as applicable, at every stage of the proceedings.

CHAPTER II

The Opening of the Trial

Section I

CHARGING THE ACCUSED

Article 103

The Opening of the Trial and the Charge against the Accused

1. The President of a Court:
   a) having noted the presence of the accused and of the Attorney General, and
   b) there having been appointed a defence Counsel for the accused when so required in accordance with the provisions of sub-paragraph (b) of paragraph 2 of Article 14 of the Law on the Organization of the Judiciary, when the accused, for whatever cause, has no defence Counsel,

shall read the charge to the accused.

2. When the charge has been read, the President of the Court shall:
   a) explain to the accused, in a clear and comprehensible manner, the substance of each count of the charge;
   b) inform the accused of the three answers which he may offer to each count in accordance with Article 104, briefly pointing out the meaning and consequences of each answer;

c) ask the accused whether, in respect of each count he wishes:

i) to raise any objection under the terms of Article 105;

ii) to plead guilty;

iii) to plead not guilty.

3. If there is more than one accused, the provisions of the preceding paragraph shall be observed separately with regard to each accused.

Article 104

The Plea of the Accused

1. An accused may, in respect ot each count:

a) raise any of the objections listed in Article 105;

b) plead guilty;

c) plead not guilty.

A refusal to plead shall be considered as a plea of not guilty.

2. Except when a plea of guilty is entered, defence Counsel may enter a plea on behalf of the accused.

Section II

OBJECTIONS TO THE CHARGE

Article 105

The Nature of the Objections

1. The accused, in accordance with the provisions of sub-paragraph a) of paragraph 1 of Article 104, may object to each count on the grounds that:

a) no proceedings can be brought against him, since:

i) one of the circumstances included in sub-paragraphs c), d (ii), d (iii) d (iv) and e) of paragraph 2 of Article 70, is present in his case;

ii) when, in the case of an offence that can be prosecuted only on the complaint of an injured party, the right to make a complaint cannot be exercised under the terms of paragraph 2 of Article 21;

b) the Court is not competent:

i) because it lacks jurisdiction over the subject-matter, in accordance with Articles 4 and 7;

ii) because it lacks territorial jurisdiction, in accordance with Articles 5 an 8.

c) another charge is pending, on the same set of facts, before another Court;

d) a member of the Bench is disqualified from taking part in the proceedings under the terms of Article 10;

e) the charge does not comply, in form or content, with the requirements of this Code.

2. Furthermore, the accused may raise any other objection and submit any other request or petition which he deems usefui for purposes of his defence.

Article 106

Decision of the Court concerning Objections

1. The Court shall decide, with respect to each objection:

a) after having made any enquiry which it shall deem necessary or desirable with respect to the nature of each objection, and

b) having heard the opinion of the Attorney General.

2. If an objection raised in accordance with paragraph 1 of Article 105 is upheld, the Court shall:

a) in the cases referred to in sub-paragraph (a) of paragraph 1 of Article 105:

i) order that the proceedings against the accused be terminated, giving the reasons for such decision;

ii) order the applicable consequential measures, as provided in Article 76, and ordering, in those cases provided for in the Penal Code, the application of security measures.

Such decision to terminate the proceedings shall have the effect of a judgment for the purpose of paragraph 3 of Article 13, and the provisions of paragraph 2 of Article 77 shall apply to such decision.

b) in the cases provided for in sub-paragraph b) of Article 105, order that the case be transferred to the competent Court;

c) in the case provided for in sub-paragraph c) of Article 105:

i) if the Court is satisfied that the other Court is competent, order that the case be transferred to the competent Court;

ii) if the Court is satisfied that it is competent, raise the question of council of jurisdiction in accordance with Article 9;

d) in the case provided for in sub-paragraph d) of Article 105, refer the matter to a higher Court so that it may proceed in accordance with paragraphs 2 and 3 of Article 11;

e) in the case provided for in sub-paragraph e) of Article 105, order the Attorney General to amend the charge, so that it complies with the law, and, if necessary, grant the Attorney General a brief period of time for this purpose.

3. In every other case, the Court shall take such action regarding the objection as it deems necessary and proper.

Article 107

Measures taken by the Court on its own Motion

1. In the cases provided for in Article 105, the Court may act also on its own motion in accordance with the provisions of Article 106, having heard the Attorney General and the accused.

2. When the death of an accused has been ascertained, the Court shall on its own motion order that proceedings be terminated. As far as applicable, the provisions of Article 77 shall be observed.

3. The provisions of this Article, insofar as applicable, shall be observed at all stages of the proceedings.

Section III

PLEA OF GUILTY

Article 108

Consequences of a Plea of Guilty

1. When an accused pleads guilty to a charge, in accordance with the provisions of sub-paragraph b) of paragraph 1 of Article 104, the Court may:

a) if the maximum punishment for an offence is imprisonment for less than 10 years or a lesser punishment:

i) immediately pronounce judgment of conviction in accordance with Chapter IV of this Book, on the basis of the plea of guilty;

ii) order the trial to proceed in accordance with Chapter III of this Book,if it has reason to believe that the plea of guilty does not correspond to the truth;

b) if the maximum punishment for an offence is imprisonment for 10 years or more or a more serious punishment, order the trial to ppropcpeed in accordance with Chapter III of this Book.

2. A plea of guilty may be withdrawn by an accused at any moment of the proceedings in a Court of first instance before judgment is given and a plea of not guilty entered instead.

In such case the provisions of Section IV of this Chapter shall be observed.

Section IV

PLEA OF NOT GUILTY

Article 109

Effects of a Plea of Not Guilty

1. When the accused pleads not guilty, in accordance with the provisions of sub-paragraph c) of paragraph 1 of Article 104, the Court shall proceed in accordance with the provisions of Chapter III of this Book.

2. With the consent of the Court, a plea of not guilty may be withdrawn by an accused at any stage of the proceedings in a Court of first instance before judgment is given and a plea of guilty entered instead.

In such case, the provisions of Section III of this Chapter shall be observed.

Section V

THE BURDEN OF PROOF
ALTERATION OR WITHDRAWAL OF THE CHARGE

Article 110

Burden of Proof

In the cases provided for in:

a) sub-paragraph a) (ii) of paragraph 1 of Article 108;
b) sub-paragraph b) of paragraph 1 of Article 108;
c) paragraph 1 of Article 109;

the Attorney General shall have the burden of proof of establishing that:

i) a crime was committed,
ii) the accused committed it.

Article 111

Alteration of the Charge

1. With the consent of the Court, the Attorney General may alter the charge, in whole or in part, at any stage in the proceedings before a Court of first instance before his final summation.

2. In case of an alteration in the charge, the provisions of Article 103, insofar as applicable, shall be observed.

3. If an alteration to the charge takes place after the process of taking evidence at the trial has begun, the Attorney General and the accused may:

a) re-examine, in the light of such alteration, any witness already examined;
b) produce fresh evidence with regard to the alteration.

In every case of alteration of the charge, the accused shall, whenever he so requests, be given reasonable time in which to prepare his defence.

Article 112

Withdrawal of the Charge

1. With the consent of the Court, the Attorney General may withdraw the charge, in whole or in part, at any moment of the proceedings in the Court of first instance before judgment is given.

2. In the cases provided for in the previous paragraph, the Court shall order, giving the reasons therefor, that the proceedings be terminated for the offence in respect of which the charge has been withdrawn, and shall order any measures that may be required by Article 76.

3. An order that proceedings shall be terminated, given in accordance with this Article, shall be equivalent to a judgment for the purposes of paragraph 3 of Article 13.

CHAPTER III

Evidence and Summation

Article 113

Applicable Provisions

Except as otherwise provided in this Chapter, the presentation and hearing of evidence shall be governed by the provisions of Book III of this Code.

Article 114

Action of the Attorney General

In the cases provided for in Article 110, the Attorney General shall initiate the hearing of evidence, stating briefly:

a) the nature and details of the offence charged;
b) the evidence against the accused.

The Court shall then hear the case for the prosecution.

Article 115

Order that Proceedings be Terminated for Lack of Evidence

1. When the case for the prosecution is concluded, the Court, if it considers that the evidence adduced, even if such evidence is uncontested, is insufficient to prove the guilt of the accused, shall, either at the request of the accused or on its own motion and having beforehand asked the Attorney General whether he intends to withdraw the charge in accordance with Article 112:

a) order, giving the reasons therefor, that the proceedings against the accused be terminated with respect to the offence for which guilt has not been proved, and

b) order any measures that may be required by Article 76.

2. An orderthat proceedings be terminated, given in accordance with this Article, shall be equivalent to a judgment for the purposes of paragraph 3 of Article 13.

Article 116

Action of the Defence

1. Except in such cases as provided for in Article 115, the President of the Court shall inform the accused that he may:

a) produce evidence in his defence;

b) make a statement:

i) on oath;

ii) not on oath;

in answer to the charge.

2. After the provisions of the previous paragraph have been complied with, the accused may take up his defence briefly stating:

a) the general lines of his defence;

b) the nature of the evidence he proposes to produce in his defence.

The Court shall hear and examine the evidence for the defence.

3. If there is more than one accused, the Court shall establish the order in which each accused shall proceed with his defence.

Article 117

Rebuttal of Evidence

1. If the accused produces evidence that the Attorney General could not have been reasonably expected to foresee, the Court may allow the Attorney General to produce evidence in rebuttal.

2. In such case as provided for in the preceding paragraph, the accused may, after such evidence in rebuttal has been produced by the Attorney General, produce further evidence in his own defence.

Article 118

Evidence ordered by the Court on its own Motion

A Court may order, on its own motion, that evidence be produced which it considers proper and useful in order to ascertain the truth.

Article 119

Summations and Closure of the Hearing

1. After all the evidence has been produced:

   a) the Attorney General shall sum up his case, making such comments and observations as the considers necessary and expressing his opinion on matters of fact and of law, which in his view the Court should accept;

   b) after the summation by the Attorney General, the defence shall sum up its case. If the accused is represented by more than one defence Counsel, each such Counsel shall confine his summation to particular arguments, objections or requests which have not been raised by other Counsels for the defence.

2. If there is more than one accused, the Court shall determine the order in which they shall address the Court.

3. Without the Court's consent, no further statement shall be allowed. Should he so request, the accused shall always be allowed to have the last word.

4. If the Attorney General, the accused or defence Counsel should abuse the right to address the Court, by introducing unnecessarily long specches, irrelevancies or in any other way, and two successive warnings about this remain unheeded, the Président of the Court shall withdraw the right to continue such address from any person so abusing such right.

5. The hearing shall be considered closed when the summations to the Court are finished.

CHAPTER IV

The Judgment

Article 120

Deliberation of the Court and Pronouncement of the Judgment

1. The members of the Court who have participated in the hearing shall deliberate, in accordance with the provisions of paragraph 1 of Article 86:

a) immediately, or

b) as soon as possible

after the closing of the hearing.

2. In its deliberations, the Court shall decide:

a) preliminary questions;

b) questions of fact and of law regarding the charge, and

c) if necessary, questions regarding the application of the punishment and security measures.

3. The President of the Court, or another member of the Bench, shall, immediately after the deliberation, read the part of the judgment relating to the question of guilt and the sentence, if any:

a) in open Court,

b) in the presence:

i) of the accused, and

ii) of the Attorney General.

If the accused is acquitted or sentenced to fine only, the presence of only his Counsel or a representative may be considered sufficient.

4. The reading of the part of the judgment referred to in paragraph 3 shall be equivalent to the notification of the judgment to all the parties present or represented.

Article 121

Form of Judgment

1. A judgment shall be prepared by a President of a Court in full and shall contain:

a) a preamble in the name of the Somali people and the name of the Court pronouncing the judgment;

b) personal details of the accused or anything else which may identify him;

c) a statement of the facts and circumstances which form the subject of the charge;

d) a concise statement of the factual and legal grounds on which the judgment is based;

e) reference to the articles of law on which the judgment is based;

f) the acquittal or conviction of the accused in respect of each offence charged;

g) the punishment imposed in respect of each offence of which the accused has been found guilty together with any security measures which may be ordered;

h) the date and the signature of the President of the Court and other members of the Bench.

2. A judgment shall be null and void:

a) if no grounds are given, or if they are contradictory;

b) if the part of the judgment relating to the question of guilt and the sentence, if any, is lacking or incomplete in any of its essential elements.

Article 122

Acquittal of the Accused

When a Court finds an accused not guilty of the charge brought against him, it shall:

a) pronounce judgment of acquittal; and

b) order any measures that may be required by Article 76.

Article 123

Conviction of the Accused

1. When a Court finds an accused guilty of the charge brought against him, the President of the Court shall:

a) state in open Court, in the form laid down in paragraph 3 of Article 120, that the accused has been found guilty, and

b) ask the Attorney General whether the accused has any previous convictions recorded against him.

2. If there are previous convictions recorded against the accused, the Attorney General shall prove such convictions and the accused may contest them.

3. The Court shall then:

a) pronounce sentence, except in the cases provided for in Article 126;

b) order the application of security measures in the cases provided for in the Penal Code;

c) decide whether to grant any of the benefits provided for in Articles 125 and 127;

d) make any other order that may be required.

4. The President of the Court shall:

a) read the sentence in the form laid down in paragraph 3 of Article 120, and

b) inform the convicted person of his right to appeal against the judgment.

Article 124

Relationship between the Judgment and the Charge

1. A Court may find an accused, on the same set of facts, guilty of an offence different from that contained in the original charge, and award a corresponding punishment, even though such punishment may be greater than that applicable to the offence originally charged, and apply security measures, provided that it has jurisdiction with respect to the offence of which the accused has been found guilty. Otherwise, the Court shall proceed in accordance with the provisions of sub-paragraph c) (i) of paragraph 2 of Article 106.

2. When it is found, during the course of the trial, that the offence of which the accused may be found guilty is different from the offence charged, if:

a) the offence of which the accused is charged consists of a number of acts or omissions; and

b) one or more of such acts or omissions constitute a lesser offence or only an attempt to commit the offence charged, and

c) only such lesser offence or attempt is proved,

the Court may find the accused guilty of the lesser offence or of the attempt, even if these were not included in the charge.

3. Except for the case provided for in the preceding paragraph, when it is evident that the offence of which the accused is to be found guilty is different from the offence charged, the Court:

a) if the offence falls within its jurisdiction shall:

i) order the Attorney General to amend the charge; or

ii) order a fresh hearing to the extent necessary to prevent prejudice to the rights of the accused, allowing such accused, whenever he so requests, reasonable time to prepare his defence;

b) otherwise, shall pproceed as provided for in sub-paragraph c) (i) of paragraph 2 of Article 106.

Article 125

Fine in Place of Imprisonment

1. When a Court convicts a person for a crime committed *with culpa* and imposes a sentence of imprisonment for not more than one year, whether with or without fine, it may order, in accordance with the provisions of paragraphs 3 and 4 of Article 109 of the Penal Code, and bearing in mind the circumstances provided for in Article 110 of the Penal Code, that the imprisonment be converted into the corresponding fine, in accordance with the rate of conversion laid down in Article 112 of the Penal Code.

2. The benefit provided for in the preceding paragraph shall only be exercised if it is so requested by the convicted person before the Court decides on the punishment in accordance with paragraph 3 of Article 123.

3. The benefit of conversion shall be automatically revoked if the convicted peprson, within the time-limit set by the Court:

a) fails to pay the fine;

b) fails to fulfil the civil liabilities to an injured person arising from the offence.

Article 126

Judicial Pardon

1. If for offences committed by persons:

a) of less than 18 years of age, or

b) of over 70 years of age,

the law provides a maximum punishment of not more than 3 years, either with or without fine, or a less serious punishment, the Court may, in accordance with the provisions of Article 147 of the Penal Code:

i) after finding the convicted person guilty, inflict no punishment, and

ii) declare that the offence shall be extinguished by the grant of a judicial pardon,

when, having regard to the circumstances laid down in Article 110 of the Penal Code, it considers that such person will not commit any further offences.

2. A judicial pardon cannot be given more than once.

Article 127

Suspended Sentence

1. In passing sentence:

a) to a term of imprisonment not exceeding 6 months, or

b) to a fine which, with or without imprisonment, and on the basis of the conversion rate provided for in Article 112 of the Penal Code, would be equivalent to a term of imprisonment not exceeding 6 months,

against an accused who is not a recidivist, a Court may order, in accordance with Article 150 of the Penal Code, that the execution of such sentence be suspended for a period of 5 years, when, having regard to the provisions of Article 110 of the Penal Code, it considers that such person will not commit another offence.

2. A suspended sentence shall be revoked automatically if the convicted person:

a) within 5 years of the conviction commits:

i) a crime, or

ii) a contravention of the same kind as that for which he was convicted, or

b) fails to fulfil within the time-limit fixed by the Court any of the civil liabilities towards the injured person arising from the offence.

3. The punishment shall be extinguished if, within the period referred to in the preceding paragraph, no cause for revocation of the suspended sentence arises.

Article 128

Rules common to Judicial Pardon and Suspended Sentence

When a judicial pardon has been granted in accordance with Article 126, or suspended sentence has been approved in accordance with Article 127, the Court may order that the convicted person:

a) take up some fixed employment;

b) undergo any necessary medical or psychiatric treatment;

c) refrain from frequenting certain places and consorting with certain persons;

d) possess or carry no firearms or other dangerous weapon.

CHAPTER V

Procedure for Crimes committed during Trial

Article 129

Cases in which the Court shall Proceed immediately

1. When, during a hearing, a person commits an offence in respect of which proceedings are initiated by the State and for which the law provides a punishment of imprisonment, or a more serious penalty, the President of the Court shall:

a) cause a statement of the offence to be recorded,

b) order the immediate arrest of the offender.

2. If:

a) the punishment provided by law for the offence committed during the hearing is not in excess of the jurisdiction of the Court, and

b) such Court is the Penal Section of the District Court or a Section of a Regional Court,

the Attorney General shall immediately frame a charge and produce it to the Court. The Court, having suspended the trial in progress, or immediately after pronouncing judgment in that trial, shall begin the hearing of the new offence.

Otherwise, the Attorney General shall immediately proceed in accordance with the provisions of sub-paragraph a) of paragraph 1 of Article 70.

CHAPTER VI

Decision of the Request of an injured Party

Article 130

Admissibility of a Claim by the injured Party

1. When the accused person has been found guilty in accordance with Article 123, the Court, if the injured party has applied to it for civil damages against the accused in accordance with paragraphs 2 and 3 of Article 14, shall decide upon such claim, unless it declares the claim to be inadmissible in accordance with the following paragraph.

2. A claim for civil damages from an injured party shall be declared inadmissible if:

a) the claim:

i) was not made in accordance with the requirement of paragraph 3 of Article 14;

ii) was made by a person not legally entitled to do so in accordance with civil law;

iii) was made against someone incapable of being sued in a civil proceeding;

b) the injured party:

i) has started proceedings in a Civil Court for the recovery of damages deriving from the offence;

ii) has effected a settlement with the accused with respect to the damages;

c) the amount of damages claimed is in excess of the maximum amount which may be awarded by the civil section of the Court in which the case is being tried;

d) the application cannot be expeditiously heard due to the necessity of hearing a substantial amount of fresh evidence, or for any other reason.

In such cases the Court shall declare the claim for damages to be inadmissible and shall advise the injured party that the claim may be brought in a Civil Court.

Article 131

Court Decisions regarding Claims for Damages

1. The Court, having considered the evidence of the injured party and the accused concerning the claim for damages, shall then proceed to deliver judgment in the matter.

2. Except as otherwise provided in this Code, the provisions of civil law, including those pertaining to execution, shall be observed in this matter insofar as applicable.

CHAPTER VII

Final Provisions

Article 132

Record of Hearings

1. The President of a Court shall arrange for the preparation of a complete record of every hearing, if possible by means of a stenographer. Such record shall contain:

a) the place, the year, the month, the day in which the hearing has taken place, and the time of the opening and closing of the hearing; reference to any suspension of the hearing and the time at which it was resumed;

b) the names of the members of the Court;

c) personal details of the accused, and any other information that may identify him; personal details of the injured party; the name of the representative of the Attorney General and the names of all other representatives and Counsel;

d) personal details of witnesses and interpreters, and a reference to their taking the oath;

e) orders and decisions of the Court and the grounds thereof;

f) objections, requests and applications made by the parties;

g) a description of exhibits laid before the Court;

h) a record of statements made by the accused;

i) a record of statements made by witnesses;

j) a record of anything else which may be specially prescribed by law, or anything which the President of the Court, on application by one of the parties or on his own motion, orders to be included.

2. The record of the hearing, unless the President of the Court makes it personally, shall be made by a Court Registrar, or by a Police Officer so ordered by the President of the Court. If the record was taken down in shorthand, it shall be transposed by the stenographer who recorded it not later than the day following the compilation of the stenographic record.

3. Unless the President of the Court orders that testimony be recorded verbatim, it shall be recorded in narrative form and be divided into:

a) examination;

b) cross-examination;

c) re-examination,

showing the beginning and the end of each of these three parts.

4. Except as otherwise provided by law, the recording of the evidence shall take place in the presence of the accused.

5. After a witness's evidence has been so recorded, the record shall be read, in the presence of the accused, to the person who gave the evidence, and, if necessary, it shall be corrected.

6. After a witness's evidence has been recorded, the President of the Court may order the inclusion in the record of any remarks which he deems necessary, concerning the behaviour of the witness while he was giving evidence and concerning the correction made in accordance with the preceding paragraph.

Article 133

Court Case File

In every proceeding, the Registrar shall complete a Court case file containing the original of the following records arranged in chronological order:

a) every warrant, order, judgment or any other measure issued with respect to the accused, other parties, guarantors and witnesses;

b) the charge and any amendments made to it;

c) the record of the hearings;

d) the record of all adjournments, showing the duration and the reasons thereof;

e) a note that the accused was informed of his right to appeal;

f) a record of the Court's decision regarding any claim for damages made by the injured party;

g) any statement of intention to appeal and the grounds thereof.

Article 134

Copies of the Judgment and of the Court Case File

1. On the application of the accused, a copy of the judgment shall be given to him without delay and free of cost.

2. A complete copy of the Court case file shall be given to the accused upon payment of the costs and fees fixed by decree of the Minister of Grace and Justice, provided that the trial or the higher Court may order that a complete copy of the Court case file be given to the accused without payment if the Court considers that such may be necessary for an appeal.

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BOOK THREE

EVIDENCE

PART I

RELEVANCY OF FACTS

CHAPTER I

Relevancy of Facts in General

Article 135

Facts in Issue and Relevant Facts

1. Evidence may be given in any criminal proceedings of the existence or non-existence:

a) of every fact in issue, and

b) of such other facts as are declared by law to be relevant,

and of no others.

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

a) the term «fact in issue» shall mean any fact from which, either by itself or in connection with other facts, the existence or non-existence, nature or extent of any fact asserted or denied, necessarily follows;

b) the term «relevant fact» shall include every fact which may be proved in the trial.

Article 136

Relevancy of Facts forming Part of the same Event

Facts which, though not in issue, are so connected with a fact in issue as to form part of the same event, are relevant, whether they occurred at the same time and place or at different times and places.

Article 137

Facts which are the Occasion, Cause or Effect of Facts in Issue

Facts which:

a) are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or
b) constitute the state of things under which they happened, or
c) afforded an opportunity for their occurrence or transaction,

are relevant.

Article 138

Motive, Preparation and previous and subsequent Conduct

Any fact is relevant which:

a) shows or constitutes a motive or preparation for any fact in issue or relevant fact;
b) is the conduct, previous or subsequent, other than a statement, of any person who is the accused in any proceedings, if such conduct influences or is influenced by any fact in issue or relevant fact; or
c) any statement made to or in the presence or hearing of the person whose conduct is made relevant by this Article, if such statement has affected the conduct in question.

Article 139

Facts necessary to explain or introduce Relevant Facts

Facts which:

a) are necessary to explain or introduce a fact in issue or a relevant fact;
b) support or rebut an inference suggested by a fact in issue or relevant fact;
c) establish the identity of any thing or person whose identity is relevant;
d) fix the time or place at which any fact in issue or relevant fact happened, or
e) show the relation of parties by whom any such fact was made;

are relevant insofar as they are necessary for that purpose.

Article 140

Things said or done by Conspirator in Reference to common Design

Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring for the purpose of:

a) proving the existence of the conspiracy, or

b) showing that any such person was a party to it.

CHAPTER II

Facts relevant in certain Circumstances only

Article 141

When Facts not otherwise relevant become relevant

Facts not otherwise relevant are relevant:

a) if they are inconsistent with any fact in issue or relevant fact, or

b) if, by themselves or in connection with other facts, they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Article 142

Facts showing Existence of State of Mind or Body

When the existence of a state of mind or body or of bodily feeling is a fact in issue or a relevant fact, the facts which in relation to the matter in question show in a given person the existence of:

a) any state of mind, such as intention, knowledge, good faith, negligence, rashness, good-will or ill-will;

b) a state of body or bodily feeling,

shall be considered relevant.

Article 143

Facts bearing on Question whether Act was Accidental or Intentional

When there is a question whether:

a) an act was accidental or intentional, or

b) done with a particular knowledge or intention,

the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Article 144

Statement forming Part of a longer Statement of Transaction

When any statement of which evidence is given forms part of:

a) a longer statement;

b) a conversation;

c) an isolated document;

d) a document contained in a book, or

e) a series of letters or papers,

evidence shall be given of so much, and no more, of the statement, conversation, document, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and the circumstances under which it was made.

Article 145

Previous Judgment

For purposes of paragraph 3 of Article 13, the existence of any previous judgment which by law prevents any Court from holding a trial, is a relevant fact when the question is whether such Court ought to hold such trial.

Article 146

Consideration of proved Confession of Co-accused

When,

a) more persons are jointly tried for the same offence, and

b) a confession,

i) made by one of such persons and

ii) implicating himself and some of the other co-accused

is proved,

the Court may take into consideration the confession, as against the person making it and any other co-accused implicated by it.

CHAPTER III

Statements by the Accused

Section I

ADMISSIONS

Article 147

Definition of Admission

An admission is an oral or written statement which suggests any inference as to any fact in issue or relevant fact, and which is made by any person who is the accused in any criminal proceeding.

Article 148

Relevancy of Admissions

Admissions are relevant and may be proved as against the person who makes them, but they may not be proved by or on behalf of the person who makes them.

Section II

CONFESSIONS

Article 149

Definition of Confession

A confession is a written or oral statement by a person charged with an offence stating or suggesting the inference that he committed that offence.

Article 150

Confession caused by Inducement, Threat or Promise

A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by inducement, threat or promise.

Article 151

Cases in which Confession is not admissible in Evidence

1. No confession made by any person shall be proved as against such person, unless the confession is made before a Judge, as provided in Article 68.

2. However, when any fact is alleged to have been discovered in consequence of information received from a person accused of any offence, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

CHAPTER IV

Statement in Public Documents

Article 152

Relevancy of Entry in Public Record

An entry in any public or other official book, register or record, stating a fact in issue or a relevant fact, and made by a public servant, or by a person entrusted with a public service in the discharge of his official duty, is itself a relevant fact.

Article 153

Statements as to Facts of a Public Nature

When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it made:

a) in any law, or

b) in any statement, publication or notification made in accordance with or under any law,

is a relevant fact.

Article 154

Relevancy of Statements in Charts and Maps

Statements of facts in issue or relevant facts made in:

a) maps or plans made under the authority of the State, or

b) published maps or charts generally offered for public sale

are themselves relevant facts as to matters usually represented or stated in such maps, charts or plans.

CHAPTER V

Statements by Persons who cannot be called as Witnesses

Article 155

Cases in which Statements by Persons who cannot be called as Witnesses are Relevant

Statements, written or oral, of relevant facts made by a person who is dead, who cannot be found, who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:

a) when the statement is made by a person as to:

i) the cause of his death,

ii) any of the circumstances of the event which resulted in his death,

in cases in which the cause of that person's death comes into question;

b) when the statement was made by such person in the ordinary course of business, and when in particular it consists of:

i) any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty;

ii) an acknowledgement written or signed by him of the receipt of money, goods, securities or property of any kind;

iii) a document used in commerce written or signed by him; or

iv) the date of the letter or other document usually dated, written or signed by him;

c) when the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to criminal prosecution or to a suit for damages.

Article 156

Relevancy of certain Evidence in subsequent Proceedings

1. Evidence given by a witness in a judicial proceeding or before a person authorized by law to take it is relevant, subject to paragraph 2 of this Article, for the purpose of proving the truth of the facts which it states in:

a) a subsequent judicial proceeding, or

b) a later stage of the same judicial proceeding.

2. Evidence referred to in paragraph 1 of this Article shall be relevant only:

a) when:

i) the witness is dead,

ii) the witness cannot be found,

iii) the witness is incapable of giving evidence,

iv) the witness is kept out of the way by the other party, or

v) the presence of the witness cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable, and

b) if:

i) the proceeding is against the same person or persons,

ii) the party, other than the party calling the witness, had the right and opportunity to cross-examine, and

iii) the questions in issue were substantially the same in the first as in the second proceedings.

CHAPTER VI

Opinions of Experts

Article 157

Opinions of Experts

1. When the Court has to form an opinion:

a) upon a point of foreign law;

b) upon a point of science or art,

the opinions upon that point of persons specially skilled in such subjects are relevant facts.

2. Facts not otherwise relevant are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Article 158

Opinions as to Handwriting

When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Article 159

Opinions as to Usages

When the Court has to form an opinion as to:

a) the usages and traditions practised in a given area or by an ethnical group or by a group of persons, or

b) the meaning of words or terms used in particular areas or by an ethnical group or by a group of persons,

the opinions of persons having special knowledge of them are relevant facts.

Article 160

Grounds of Opinions

Whenever the opinion of any person is relevant, the grounds on which such opinion is based are also relevant.

Article 161

Form of Expert Opinion

1. When a Court considers it necessary or proper for the opinion of an expert to be provided about a particular matter, the Court shall, either at the request of the Attorney General or of the accused or of its own accord, provide for the appointment of an expert choosing him, if possible, from among persons designated by agreement between the parties.

2. The appearance of any expert to give evidence, when so called upon, is mandatory and any expenses connected therewith shall be paid from State funds.

3. The Court shall inform the expert of his duties and shall put its questions to him during the hearing in chambers in the presence of such parties that wish to be there. When on account of the nature or difficulty of the investigation the expert is unable to give his opinion immediately, the Court shall fix a time-limit in which the opinion may be submitted in a written report, provided that such time-limit may be extended on justifiable grounds.

4. The opinion of the expert shall be heard by the Court and, if it is given verbally, it shall be reduced to writing. If the expert opinion is given in written form, it shall be attached to the record of the proceedings and a copy shall be given to each of the parties concerned.

5. An expert may be called to give evidence as a witness at the request of one of the parties or by the Court on its own motion.

6. The appointment of an expert to give evidence shall in no way prejudice the right of any party to obtain, at its own expense, evidence from other technical experts.

7. When the services of a psychiatrist are called for, the Court must ask the psychiatrist whether the accused is a person dangerous to society, whenever this is so prescribed by law for taking any proper security measures.

CHAPTER VII

Relevancy of the Character of the Accused

Article 162.

Character of the Accused

1. In criminal proceedings:

   a) the fact that the person accused is of a good character is relevant; and

   b) the fact that the accused person has a bad character is irrelevant, unless:

      i) evidence has been given that he has a good character, in which case it becomes relevant;

      ii) the bad character of any person is itself a fact in issue, in which case it is always relevant.

2. A previous conviction is relevant as evidence of bad character.

PART II

PRODUCTION AND EFFECT OF EVIDENCE

CHAPTER I

The Burden of Proof

Article 163

Burden on Prosecution

In criminal proceedings, the prosecution shall prove beyond reasonable doubt:

a) that the alleged offence was in fact committed· and

b) that the accused committed it.

Article 164

Burden of Proof as to Particular Fact

Unless any law provides otherwise, the burden of proof as to any particular fact lies on that party who wishes the Court to believe in its existence.

Article 165

Burden of proving that Case of Accused comes within Exceptions

When a person is accused of any offence, the burden of proving the existence of extenuating circumstances or of circumstances excluding punishment is upon the accused.

CHAPTER II

Facts which need not be Proved

Article 166

Facts Judicially Noticed

No fact of which the Court will take judicial notice need be proved.

Article 167

Facts of which Court shall take Judicial Notice

The Court shall take judicial notice of the following facts:

a) all laws and regulations in force or formerly in force in the Somali Republic or in any part of the territory of the Somali Republic prior to its constitution as a State and also the procedure followed for preparing such laws and regulations;

b) the seals of the State and any other seals which any person is authorized to use by law or may have been authorized to use in the different parts of the State prior to its constitution;

c) the accession to office, names, titles, functions and signature of the persons filling for the time being any public office in the Somali Republic, if the fact of their appointment to such office is notified in the Official Bulletin or any similar publication in use in any part of the territory of the Somali Republic at any time;

d) the existence, title and national flag of every State recognized by the Government of the Somali Republic;

e) the divisions of time, official holidays and the territory of the State.

Article 168

Facts of which Court may take Judicial Notice

The Court may, at the request of either party or on its own motion, take judicial notice of any relevant fact, if it is reasonably satisfied that the fact in question is generally known or can be easily ascertained.

Article 169

Use of Reference Material in taking Judicial Notice

1. In all cases where the Court must or may take judicial notice of any fact, the Court may resort to appropriate books or documents of reference for assistance.

2. In the cases referred to in Article 168, the Court may refuse to take judicial notice of any fact, unless and until the party concerned produces in time any book or document as the Court for the purpose may consider necessary.

CHAPTER III

Presumptions

Article 170

Presumptions as to Genuineness or Correctness

1. Unless there is evidence to the contrary, the Court shall presume:

a) that a document is genuine and properly executed if issued by:

i) any organ of the State or any organ existing in the different parts of the territory of the State prior to its constitution;

ii) a person exercising public functions in the State or in different parts of the territory of the State prior to its constitution;

iii) an organ of a foreign country or a person exercising public functions therein if authenticated in accordance with the law of that country;

b) that every officer by whom any such document purports to be issued, signed or certified, held, when he issued, signed or certified it, the official position which he claims in such document.

2. For the purposes of this Article a document shall mean any written communication.

Article 171

Court may presume the Existence of certain Facts

The Court may presume, in relation to the particular circumstances of the case, the existence of any fact which it thinks likely to have happened, when:

a) the common course of natural events;

b) the common course of human nature and conduct; or

c) the common course of public and private business,

reasonably lead to such inference.

CHAPTER IV

Production of material Objects and other Matters

Article 172

Material Objects and other Matters which can be produced in Court

1. There may be produced before the Court:

a) material objects which were the means or the subject of an offence;

b) records of confessions taken in accordance with Article 68;

c) any other thing material to the offence, which the Court may allow to be produced.

2. Any party may make use of things produced in Court:
   a) by examining witnesses about such things;
   b) by referring to such things when making any statement before, or request to, the Court.

CHAPTER V

Evidence which may not or need not be given

Article 173

One Spouse as Witness against the other

No person who is married or has been married may give evidence as against the other spouse, in regard to anything that has taken place during the existence of such marriage, even though the marriage has been dissolved for any reason, except:

a) with the express consent of the spouse; or
b) in relation to any offence alleged to have been committed by the spouse against
   i) the person giving the evidence;
   ii) the ascendant or descendant of either of the spouses.

Article 174

State Secrets

1. Evidence may not be given:
   a) of any political or military secret of the State; or
   b) of any other matter which, if disclosed, might prejudice:
      i) the security of the State;
      ii) the political interests, either internal or external, of the State.

2. If the accused has asked for evidence to be given in regard to some facts falling within the category indicated in the preceding paragraph, the Court, having considered in chambers the nature of such evidence and having heard the opinion of the Attorney General may, whenever it considers that failure to admit such evidence would gravely prejudice the defence, order that the proceedings be terminated and take any other measures provided for in Article 76.

Such order to terminate the proceedings shall have the same effect as a judgment for the purpose of paragraph 3 of Article 13.

Article 175

Judges as Witnesses

1. No Judge shall, except upon the special order of the Supreme Court, be compelled to answer any questions as to:

a) his own conduct in the exercise of his judicial functions; or

b) anything which came to his knowledge by reason of his office.

2. The provisions of the preceding paragraph shall also apply to Assessors.

Article 176

Information as to Commission of Offences

A Court shall not:

a) compel the Attorney General or a Police Officer to reveal the name of any person who has given them information;

b) receive from the Attorney General or a Police Officer information obtained from persons whose names such officers do not deem it proper to reveal.

Article 177

Professional Secrets

1. No legal practitioner shall at any time be permitted, unless with the express consent of his client, to disclose:

a) any matter which was communicated to him in confidence; or

b) any matter which came to his knowledge in the course of his duties as a legal practitioner.

2. The provisions of the preceding paragraph shall also apply to clerks, interpreters and other employees of legal practitioners.

Article 178

Evidence Null and Void

Failure to observe any of the provisions of this Chapter shall render the evidence null and void, and the Court may so determine also on its own motion at any stage of the proceedings.

PART III

EXAMINATION OF WITNESSES

CHAPTER I

General Provisions

Article 179

Examination of Witnesses

Except as otherwise provided by law, a witness shall be examined:

a) orally in open Court,

b) in the presence of the accused,

c) under oath or affirmation.

Article 180

Persons who may Testify

1. All persons shall be competent to testify, unless the Court considers that any person is prevented from understanding the questions put to him or from giving rational answers to them because of:

a) tender years,

b) extreme old age,

c) disease, whether of body or mind.

2. The duty to testify shall be mandatory.

Article 181

Oath and Affirmation

Except as provided for in paragraph 4 of Article 182, every witness, before giving evidence, shall:

a) take an oath in accordance with his religion; or

b) make an affirmation, which shall be equivalent for all purposes to an oath, if:

i) he does not profess any religion, or

ii) the taking of an oath is forbidden by the religion professed by the person concerned.

Article 182

Administration of Oath or Affirmation

1. An oath or affirmation shall be made before the presiding Judge.

2. The oath shall be made in the following terms: «I swear in the name of God to tell the truth, the whole truth and nothing but the truth».

3. An affirmation shall be made in the following terms: «I solemnly declare that I will tell the truth, the whole truth and nothing but the truth».

4. Any person who has not reached the age of fourteen years at the time of taking an oath or making an affirmation shal be permitted to take an oath or make an affirmation, provided that the presiding Judge shall clearly warn him of the duty to tell the truth, the whole truth and nothing but the truth.

Article 183

Deaf and Dumb Witnesses

1. In order to question, examine or administer an oath or affirmation to a person who is deaf or dumb or deaf and dumb, the following procedure shall be followed:

a) deaf persons shall be given the oath or affirmation and questions in writing; they shall take the oath or make the affirmation, and reply to the questions orally;

b) dumb persons shall be questioned orally and persons shall reply in writing; the oath or affirmation shall be read to them by the presiding Judge, and then given to them in writing and they shall sign it;

c) deaf and dumb persons shall be given questions in writing and shall reply in writing; the oath or affirmation shall be given in writing and they shall sign it.

2. If a deaf, dumb or deaf and dumb person does not know how to read or write, the Judge shall appoint one or more interpreters, preferably chosen from among persons who are accustomed to communicate with such person.

Article 184

Proof of Facts by oral Evidence

1. Oral evidence shall, in all cases, be direct, that is to say:

a) if it refers to a fact which could be seen, it shall be the evidence of a witness who says he saw it;

b) if it refers to a fact which could be heard, it shall be the evidence of a witness who says he heard it;

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

d) if it refers to an opinion or to the grounds on which that opinion is held, it shall be the evidence of the person who holds that opinion on those grounds.

2. If the oral evidence refers to the existence or condition of any material thing, the Court may, if it thinks fit, require the production of such material thing or its inspection.

3. Notwithstanding anything contained in this Article, opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author:

a) is dead,

b) cannot be found,

c) has become incapable of giving evidence, or

d) cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable in the circumstances.

Article 185

Examination of the Accused

Except as otherwise provided by law, the provisions regard- in the examination of witnesses shall apply, in so far as applicable, to the questioning, examination and taking of the oath or making an affirmation of or by the accused.

Article 186

Cases in which Evidence may be taken in a Place other than the Court

1. Except as otherwise provided by law, if:

   a) the President of the Republic,
   b) the President of the National Assembly,
   c) the Prime Minister,

are required to be called as a witness, the presiding Judge shall go to the place agreed upon with such witness in order to receive his evidence.

2. The presiding Judge shall hear the evidence referred to in the preceding paragraph without the presence of the public. The Attorney General and the accused or his Counsel shall have the right to be present and they must be informed of the date, time and place when such evidence will be heard.

3. The provision of the preceding paragraph shall also apply in the cases in which a witness is unable to appear due to reasons of serious ill-health.

4. International conventions and custom shall apply in cases in which diplomats of a foreign State accredited to the Somali Republic and representatives of International Organizations who have diplomatic status are called as witnesses.

CHAPTER II

Examination of Witnesses

Section I

GENERAL PROVISIONS

Article 187

Definitions

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

a) the term «examination-in-chief» shall mean the examination of a witness by the party that calls him;

b) the term «cross-examination» shall mean the examination of a witness by the party other than the party which calls him;

c) the term «re-examination» shall mean the examination of a witness by the party who called him subsequent to the cross-examination;

d) the term «leading question» shall mean any question put to a witness in such a way as to suggest a reply that the party putting the question wishes or expects to receive.

Article 188

Order of Examination

1. A witness shall first be examined-in-chief; then, if the other party so desires, the witness may be cross-examined; then, if the party calling the witness so desires, the witness may be re-examined.

2. The examination-in-chief and the cross-examination shall relate to relevant facts but the cross-examination need not be confined to the facts which the witness testified to in his examination-in-chief.

3. The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is introduced, with the permission of the Court, in re-examination, the other party may further cross-examine upon that matter.

Article 189

Refreshing Memory

1. A witness may, while under examination and with the permission of the Court, refresh his memory regarding matters about which he is being examined, by referring to:

a) any writing made by himself:

i) at the time of occurrence of the event concerning which he is questioned;

ii) so soon after the occurrence of the event that the Court considers likely that the transaction was at that time fresh in his memory;

b) any such writing made by another person and read by the witness within the time aforesaid, if, when the witness read it, he knew it to be correct;

c) professional treatises, if the witness is an expert or a technical consultant.

2. Whenever a witness is permitted to refresh his memory by referring to any document or writing, he may, with the permission of the Court, refer to a copy of such document or writing if the non-production of the original is satisfactorily accounted for.

3. A witness may also testify to facts mentioned in any such document or writing as is mentioned in this Article, even though he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

4. Any document or writing referred to under the provisions of this Article shall be produced before the Court and shall be shown to the other party, if such party so desires.

Article 190

Production of Documents

A witness summoned to produce a document or writing shall, if it is in his possession or power, produce it before the Court, notwithstanding any objection there may be to its production or admissibility. The validity of any such objection shall be decided by the Court, and for this purpose the Court may:

a) inspect such document in chambers;

b) take other evidence to enable the Court to determine its admissibility;

c) order the translation of the document, and in such case may order the translator to keep the contents secret.

Section II

EXAMINATION OF A WITNESS BY THE PARTY CALLING HIM

Article 191

Prohibition on leading Questions

1. Leading questions shall not be asked in an examination-in-chief or in a re-examination except with the permission of the Court.

2. The Court may permit leading questions in examination-in-chief and re-examination only as to matters which are introductory or undisputed or which have, in its opinion, been already sufficiently proved.

Article 192

Examination of a hostile or unwilling Witness

The Court, when it is satisfied that a witness is hostile to, or is unwilling to answer the questions of, the party which called him, may at its discretion permit the party which called the witness to put any questions to the witness which might be put in cross-examination by the other party, in accordance with the provisions of the following Section.

Section III

EXAMINATION OF A WITNESS BY THE OTHER PARTY

Article 193

Admissibility of leading Questions

Leading questions may be asked in cross-examination.

Article 194

Cross-Examination on a written Statement

A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, without such writing being shown to him or being proved.

But if it is intended to contradict him by the writing, his attention shall, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Article 195

Questions lawful in Cross-Examination

1. When a witness is cross-examined, he may be asked any question which tends:

a) to test his veracity,

b) to discover who he is and what is his position in life,

c) to shake his credit,

although the answer to such question might tend directly or indirectly to expose him to penal proceedings or to civil action for damages.

2. If any such question as asked in accordance with the preceding paragraph relates to a matter relevant to the proceedings, or if the Court orders the witness to answer in accordance with the provisions of the following paragraph, the provisions of Article 200 shall apply.

3. If any such question relates to a matter not relevant to the proceedings and tends only to affect the credit of the witness, the Court shall decide whether or not the witness shall be compelled to answer it. In exercising its discretion, the Court shall have regard to the following considerations:

a) such questions are proper if they are of such nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies;

b) such questions are improper if:

i) the imputation which they convey relates to matters so remote in time or of such a character that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies;

ii) there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence.

The Court may, if it deems fit, warn the witness that he is not obliged to answer a question.

4. No such question as is referred to in the preceding paragraph ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which is conveyed is well-founded.

5. A Court:

a) may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed,

b) shall forbid any questions or inquiries which appear to it to be intended solely to insult or to annoy or which, though proper in themselves, appear to the Court needlessly offensive in form.

Article 196

Evidence to contradict Answers to Questions testing Veracity

1. No evidence shall be given to contradict any answer given by a witness to questions put to him with the sole intention of shaking his credit, exceptp:

a) if the Court permits, or

b) if:

i) the questions refer to any previous convictions of the witness for any offence, or

ii) the questions tend to impeach his impartiality.

2. In the cases referred to in sub-paragraphs a) and b) of the preceding paragraph evidence to contradict him may be given.

Article 197

Impeaching the Credit of a Witness

The credit of a witness may be impeached by the party other than the party calling him or, with the consent of the Court, by the party who has called him:

a) by the evidence of persons who testify that they from their personal knowledge of the witness believe him to be unworthy of credit;

b) by proof that the witness, in order to give his evidence:

i) has caused or induced another person to give, or offer to give, to him or to a third person any bribe or other corrupt inducement, or

ii) has accepted the offer of such bribe or other corrupt inducement;

c) by proof of former statements, inconsistent with any part of his evidence which is liable to be contradicted;

d) when a man is prosecuted for:

i) a crime or attempted crime of sexual violence, or

ii) a crime or attempted crime against modesty or sexual honour;

on a woman over 16 years of age, evidence may be given to show that the woman was of generally immoral character.

Section IV

EXAMINATION OF WITNESS BY COURT

Article 198

Discretion and Powers of the Court

1. The Court may, in order to discover or obtain proper proof of relevant facts:

a) ask any questions it pleases, in any form, at any time,except for the matters provided for in Articles 173, 174, 175, 176, 177, 188 and 200, of any witness or of the parties about any fact relevant or irrelevant;

b) order the production, or inspection, of documents, things or places, and the taking of any measures which it deems fit and proper to discover or obtain proper proof.

CORRIGENDUM

Article 199. Accomplices

The persons who have participated in an offence may be witnesses in the proceedings.

However, the Court shall not convict an accused person on the basis of the testimony of an accomplice unless such testimony is corroborated by other evidence.

Section V

CORROBORATION

Article 199

Accomplices

An accomplice shall be a competent witness against an accused, provided that a Court shall not convict an accused person, unless there is some other evidence or circumstances corroborating in material particulars the evidence of the accomplice.

Article 200

Questions tending to corroborate Evidence of Relevant Fact

When it is necessary or desirable to corroborate the evidence of any witness and that witness gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near the time or place at which such relevant fact occurred, if the Court is of the opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact concerning which he testifies.

Article 201

Former Statement of Witness as Corroboration

In order to corroborate the evidence of a witness, any former statement relating to the same fact made by such witness:

a) at or about the time when the fact took place, or
b) before any authority legally competent to investigate the fact,

may be proved.

Section VI

EVALUATION OF EVIDENCE AND DECISIONS ON ADMISSIBILITY OF EVIDENCE

Article 202

Court to decide on Weight of Evidence

The Court shall determine the weight to be given to the evidence admitted.

Article 203

Admissibility of Evidence

1. The Court may only allow evidence to be given concerning facts which are allowed by law to be proved in the trial.

2. If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Court may, at its discretion, either permit evidence of the first fact to be given before the second is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Article 204

Improper Admission or Rejection of Evidence

The improper admission or rejection of evidence shall not of itself be grounds for a new trial or the reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that:

a) independently of the evidence objected to and admitted, there was sufficient other evidence to justify the decision, or

b) if the rejected evidence had been received, it ought not to have varied the decision.

Section VII

GENERAL PROVISIONS

Article 205

Incriminating Answers

1. A witness is obliged to answer questions put to him by a party on any relevant matter and to questions which the Court has ordered him to answer, even if such answer might expose him to criminal proceedings or, directly or indirectly, to a civil action for damages.

2. No answer, which a witness shall be compelled to give in accordance with the preceding paragraph, shall subject him to arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

Article 206

Rules relating to Cross-Examination of an Accused

An accused:

a) shall not be cross-examined on an unsworn statement taken in accordance with subparagraph b) (ii) of paragraph 1 of Article 116;

b) shall be cross- examined on a sworn statement taken in accordance with subparagraph b) (i) of paragraph 1 of Article 116, for the sole purpose of testing the veracity of the statement.

Article 207

Interpreters

1. The Court shall appoint an interpreter, selecting him, if possible, from among persons jointly agreed by the parties:

a) when a document written in a foreign language has to be translated;

b) when the person wishing or required to make a statement or give evidence does not know the language used by the Court;

c) in any other case when it is deemed necessary or desirable by the Court.

2. The performance of the duties of interpreter shall be mandatory and the cost therefor shall be borne by the State Treasury.

3. Before commencing the performance of his duties the interpreter shall take an oath or make a solemn affirmation, as provided in Article 182, that he shall carry out his task for the purpose only of contributing to the ascertainment of the truth.

4. Where the translation of a written document requires work of a lengthy duration, the Court may establish the time-limit by which the interpreter must submit the written translation, and may extend such time-limit where there are reasonable grounds to do so.

5. The provision of Article 161 shall be observed, insofar as applicable.

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BOOK FOUR

APPEALS AND EXECUTION

PART I

APPEALS

CHAPTER I

General Provisions

Article 208

General Rules

1. The law shall prescribe the cases in which judicial measures are subject to appeal and shall prescribe the means by which such appeal shall be made.

2. The right of appeal shall be restricted to such party or parties on whom it is expressly conferred by law.

3. Only a party having interest in an appeal shall have the right of appeal.

4. In every case:

a) the accused shall not appeal against a count of the judgment for which he has been found guilty when he has already pleated guilty to such count in accordance with the provisions of this Code;

b) a party shall not appeal against an order that proceedings be terminated when such order has been granted in conformity with, or is a consequence of, any request of such party in accordance with the provisions of this Code;

c) the Attorney General shall not appeal against an order that proceedings be terminated when the Attorney General, having been consulted beforehand in accordance with the provisions of this Code, did not object to such order.

5. Appeals shall be governed by the provisions of the Law on the Organization of the Judiciary, except as otherwise provided in this Code.

Article 209

Appeal by Accused

1. An accused may appeal in person or through a special representative.

2. In cases where a sentence of death has been passed, the Counsel who defended the accused in the trial may appeal without any special mandate to do so and even against the wishes of the convicted person.

3. Parents of minor children and the legal representatives of wards, even though they are not entitled to notification of judgment, may appeal on behalf of such children or wards.

4. Except in the cases referred to in paragraph 2 of this Article, the accused may cancel an appeal made by another person on his behalf by giving notice to the Court that he does not wish such appeal to be made.

If the accused is a minor or is incompetent, the parents or legal representative shall give consent for such notice to be valid.

5. If an accused person and other persons permitted to do so under the provisions of this Article have each lodged an appeal, and one of the appeals is invalid, it will be validated by the validity of the other, and this shall also apply to the grounds for the appeal. If there is any conflict between the appeals, the appeal lodged by the accused shall prevail.

Article 210

Appeals by the Attorney General

1. An appeal may be lodged by the Office of the Attorney General or by the person who has represented the Attorney General in the proceedings, in accordance with paragraph 2 of Article 12.

2. If the Attorney General or his Deputies, as well as his representative in the relevant proceedings, have lodged an appeal and one of the appeals is invalid, it will be validated by the validity of the other; and this shall also apply to the grounds for the appeal. If there is any conflict between the appeals, the appeal lodged by the Attorney General or his Deputies shall prevail.

Article 211

Appeal by the other Parties

Other parties may lodge an appeal personally or through a special representative.

Article 212

Form of Appeal

An appeal shall be lodged by means of a notice, which may be verbal and which shall indicate:

a) the judicial act or judgment against which the appeal is lodged;

b) the date of such act or judgment;

c) the judicial authority that has issued it;

d) the proceedings to which the appeal refers.

Article 213

Receipt of the Notice of Appeal

1. A notice of appeal shall be lodged with the Registrar of the Court from whose act or judgment the appeal is being taken. The notice may also be filed by registered letter or telegram to such Registrar and shall be presented at a post or telegraph office within the time-limit fixed in Article 214.

2. If the person who is concerned in the appeal is under detention, the notice of appeal shall be sent or given to the authority detaining such person and that authority shall immediately transmit such notice to the Registrar of the Court from whose act or judgment the appeal is being taken.

3. The Registrar shall attach the notice of appeal to the record of the trial, after having recorded thereon the date on which the appeal was received and after having signed it.

Article 214

Time-limit for Notice of Appeal

1. The time-limit for the lodging of a notice of appeal shall be:

a) 30 days, if the appeal is against judgment, starting from the day on which judgment was pronounced;

b) 15 days, if the appeal is aginst any other judicial act starting from the date on which:

i) such act was done, in respect of the parties present;

ii) the parties who were not present were notified.

2. The Supreme Court and the Court of Appeal may, by decision in chambers, extend the time-limit for lodging an appeal against an act or judgment of a lower Court, when it is ascertained that the accused was unable to comply with such time-limit for reasons beyond his control. Insofar as applicable, the provisions laid down in paragraphs 2 and 3 of Article 223 shall apply.

Article 215

Notification of Appeal by the Attorney General

1. A notice of appeal by the Attorney General shall be notified to the accused within 30 days of its being lodged with the Registrar who has received it; otherwise such notice shall be null and void.

2. Notice of such appeal shall be made in accordance with paragraph 5 of Article 80, provided that, if it is not possible to make the notification in accordance with paragraphs 2, 3 and 4 of Article 51, the notice of appeal shall be deemed to have been made by depositing one of the originals, for transmission to the accused, with the Registrar of the Court from whose act or judgment the appeal is made.

Article 216

Grounds of Appeal

1. The grounds of appeal shall be established by law.

2. Grounds of appeal shall be specific; if not, the appeal shall not be admissible. The grounds of appeal may be included in

the notice of appeal; otherwise the grounds of appeal shall be presented in writing and signed by the person lodging the appeal or by the special representative or defence Counsel, within the time-limits laid down in Article 214.

The parties may submit memoranda explaining further the grounds of appeal even after the expiration of the said time-limit.

3. Insofar as applicable, the provisions of Article 213 and of paragraph 2 of Article 214 shall be observed.

Article 217

Application of the Appeal to more than one Person

1. When two or more persons, having been accused of participation in the same offence, have been tried together, a notice of appeal made by one of the accused and the grounds of such appeal, unless the appeal and the grounds apply exclusively to one person, shall also apply to the other or others.

2. When there is a joinder of proceedings for different offences, a notice of appeal by one accused shall only apply to all the other accused if the grounds of appeal relate to procedural violations and do not apply exclusively to the accused who is appealing.

3. If the appeal is inadmissible or if it has been withdrawn in accordance with Article 221, the inadmissibility or withdrawal shall also apply to the appeal as concerns the other accused referred to in the preceding paragraph.

Article 218

Appeal operate as Stay of Proceedings

1. Except as otherwise provided by law, during the period preceding the expiration of the time-limit to appeal and during the appeal proceedings, the execution of any act or judgment shall be suspended.

2. However:

a) any measures relating to the liberty of the person shall immediately be enforceable;

b) whenever an accused is on bail, the Court which pronounced sentence of conviction or the Court to which the appeal shall be taken shall revoke such bail if the amount of the bond or other guarantee is considered insufficient in relation to the punishment imposed.

Article 219

Appeal against Orders and Decisions made before and during the Trial

Except as otherwise provided by law:

a) orders and decisions made before trial may be appealed against only if they dispose of the proceeding;

b) any orders and decisions made during the trial are subject to appeal only together with appeal from the judgment or an order to terminate proceedings, provided that the intention of appealing was notified to the Court immediately after such orders or decisions were made.

Article 220

Appeal with regard to Civil Damages

1. An appeal in a criminal proceeding by an injured party, or by an accused, against the judgment in regard to civil damages given in accordance with Article 131, shall only be admissible in such a proceeding when an appeal has been lodged by the accused or by the Attorney General against sentence of conviction or acquittal.

2. An appeal against a judgment with regard to civil damages shall be governed by the provisions of civil law, insofar as applicable, where:

a) no appeal against conviction or acquittal has been lodged by the accused or by the Attorney General;

b) such appeal is either inadmissible or has been withdrawn, in accordance with Article 221, by the parties that lodged the appeal.

3. When an appeal is not allowed in a criminal proceeding, the time-limit for the appeal in a civil Court with regard to a judgment concerning civil damages shall run:

a) from the day on which the judgment becomes final and irrevocable in cases coming within the provisions of sub-paragraph a) of the preceding paragraph;

b) either from the day on which the inadmissibility of the appeal was declared or from the day on which such appeal was withdrawn in cases coming within the provisions of sub-paragraph b) of the preceding paragraph.

4. A judgment with regard to civil damages shall be considered automatically revoked if, as a result of the appeal, the accused is acquitted or an order that the proceedings be terminated is issued, provided that the civil action may be started in a civil Court when such action is not precluded by the nature or contents of the decision of the criminal Court.

Article 221

Withdrawal of Appeal

1. A party may withdraw an appeal. Withdrawal of the appeal shall be made by notifying the Registrar of the Court from whose act or judgment the appeal is made, or by notifying the Registrar of the Court to which the appeal has been taken. An appeal may also be withdrawn during the appellate hearing and shall be put on record.

2. If the appeal has been lodged by the Attorney General or one of his Deputies, it shall not be withdrawn without the prior authorization of the Attorney General.

Article 222

Transmission of Documents connected with Appeal

After the prescribed time-limits have expired, the Registrar of the Court from whose act or judgment the appeal is being taken, shall without delay send to the Registrar of the Court to which the appeal must be taken copies of the Court case file and of the decision appealed against and the notice of appeal together with the grounds for such appeal, documents and any other relevant memoranda.

Article 223

Inadmissibility of Appeal

1. When:

   a) an appeal has been lodged:

      i) by a person who did not possess the right to appeal or who did not have an interest in such appeal;

      ii) against an order or decision not subject to appeal;

b) the notice of grounds of appeal have not been presented in the prescribed form, time or place;

c) the notifications without which an appeal is null and void have not been made;

d) the appeal has been withdrawn;

e) the law expressly provides for the inadmissibility of the appeal;

the Court to which appeal has been taken shall deliberate in chambers, after having granted to the party that lodged the appeal, when it considers it necessary, a reasonable time to present in writing his reasons, petitions and defences. If it finds the appeal inadmissible, it shall so declare and shall order execution of the act or judgment appealed against.

2. A decision that an appeal is inadmissible shall be notified to all interested parties and to the Attorney General. An appeal against such decision may be filed before the Supreme Court.

3. Such notification shall be made in the manner provided for in paragraph 2 of Article 215.

Article 224

Cognizance by the Court of the Notice of Appeal

1. An appeal gives to the Court which hears such appeal the power to take cognizance only of those parts of the contested act or judgment on which the appeal is based, except for matters provided for in Article 107.

2. Within such limits and if the appeal has been lodged by:

a) the Attorney General:

i) and the appeal is against the sentence, the Court may, within the limits of the jurisdiction of the Court of first instance, declare the offence to be different from the offence charged, even if such new offence is more serious, or it may change or increase the punishment, revoke any benefit granted, and apply, when necessary, any security measures or any other provisions imposed or allowed by law;

ii) and the appeal is against an acquittal, the Court may hand down a conviction, applying together with the punishment any of the other measures referred to in the preceding sub-paragraph;

b) the accused alone, the Court may not inflict a punishment more serious either in form or in length, nor revoke any benefits granted. The Court may, however, within the limits indicated in sub-paragraph a) (i) of this paragraph, declare the offence to be different from the offence appealed against even if such new offence is more serious, provided the new offence remains within the jurisdiction of the Court of first instance.

Article 225

Hearing of the Appeal

1. Except as otherwise provided by law, only appeals against judgments and orders made in the course of the trial that proceedings be terminated shall be heard in public.

2. For appeals against any other act or decision, the competent Court shall come to its decision in chambers, after having granted to the interested parties a reasonable time to present in writing their reasons, petitions, objections and grounds of defence.

3. When a Court makes its decision regarding an appeal against a judgment concerning civil damages, the provisions of Articles 130 and 131 shall be observed, insofar as applicable.

Article 226

Renouncing the Right to be Present at the Appeal Hearing

1. The accused and the injured party, subject to the consent of the Court competent to hear the appeal, may renounce the right to participate in the hearing.

2. The failure of the accused or the injured party to appear shall not prevent the hearing of the appeal when:

a) there is no reasonable justification for the failure to appear, and

b) the Court does not deem it necessary for the party to appear,

provided, however, that the provisions relating to the defence of the accused in the cases referred to in sub-paragraph b) of paragraph 2 of Article 14 of the Law on the Organization of the Judiciary are observed.

CHAPTER II

Appeals

Section I

GENERAL PROVISIONS

Article 227

Matters against which Appeal can be taken and Grounds for Appeal

1. In addition to cases covered by special provisions, an appeal may be lodged against judgments and other measures of a Court of first instance as laid down in the following paragraph.

2. Except as otherwise provided for in Chapter 1 of this part, the following may appeal:

a) against conviction or against acquittal:
   i) the accused, where he is convicted or granted judicial pardon or when security measures are applied to him;
   ii) the Attorney General in case of acquittal or conviction;

b) against an order that the proceedings be terminated:
   i) the accused, when security measures have been ordered against him;
   ii) the Attorney General;

c) against measures concerning personal liberty:
   i) the accused;
   ii) the Attorney General;

d) against a judgment in respect of civil damages;
   i) the accused;
   ii) the injured party;

e) against the penalties inflicted under the provisions of paragraph 2 of Article 16, a Counsel who has been so convicted.

3. An appeal shall be allowed on grounds of fact or of law.

Article 228

Courts which may hear Appeals

1. A Court of Appeal shall be competent to hear appeals.

   a) The General Appellate Section of the Court of Appeal shall have jurisdiction over:

      i) decisions referred to in Article 223;

      ii) judgments given by the Criminal Section of a District Court and by the General Section of a Regional Court and any order by such Sections given at a trial that the proceedings be terminated;

      iii) an order that the case shall not proceed given in the pretrial proceedings in any Court;

      matters laid down in sub-paragraphs c) and e) of paragraph 2 of Article 227.

   b) The Assize Section of the Court of Appeal shall have jurisdiction over appeals with regard to judgments given by the Assize Section of a Regional Court and any order given by such Assize Section at a trial that the proceedings be terminated.

   c) The Military Penal Appellate Section shall have jurisdiction over appeals with regard to judgments given by a Military Penal Section of a Regional Court and any order given by such Military Penal Section of a Regional Court at a trial that the proceedings be terminated.

Article 229

Decisions of the Court of Appeal

1. The Court of Appeal shall:

   a) if the appeal is lodged against the decisions specified in sub-paragraphs a) (ii), b) and c) of Article 228, decide on the merits of the appeal, after conducting a hearing in accordance with the provisions of Section 2 of this Chapter, provided that, if the Court of Appeal declares itself incompetent to hear the appeal or declares the judgment of the Court of first instance to be null and void, then the Court of Appeal shall order that the case be referred to the Court competent to hear it;

b) if the appeal is lodged against the decisions specified in subparagraph a) (iii) of Article 228, affirm or reverse, deliberating in chambers, in accordance with paragraph 2 of Article 225, the decision appealed against. The Court of Appeal shall order, if the decision has been reversed, that the case be referred back to the competent Court;

c) in all other cases, decide on the merits of the appeal, deliberating in chambers in accordance with paragraph 2 of Article 225, and shall either affirm or modify the decision appealed against.

2. Decisions of the Court of Appeal shall be made public:

a) by reading the dispositive part of the decision in open Court, in the cases provided for in sub-paragraph a) of the preceding paragraph;

b) by depositing its decision with the Registrar of the Court in all other cases.

3. A copy of the decision of the Court of Appeal shall be sent by the Court Registrar to the Court against whose act or judgment the appeal was taken. The decision of the Court shall also be notified by the Registrar of the Court to the parties concerned, in the manner provided for in paragraph 2 of Article 215, and shall also be communicated to the Attorney General, if they were not present when the decision was announced.

Section II

HEARING OF THE APPEAL

Article 230

Procedure of Court of First Instance to apply to Court of Appeal. Preliminaries to Hearing of Appeal

1. Insofar as applicable, the provisions relating to the hearing of a case in a Court of first instance shall be followed in the hearing of an appeal.

2. When an appeal has to be heard, the President of a Court of Appeal shall:

a) fix the date of the hearing;

b) order the appearance:

i) of the accused who appeals, and

ii) of an accused who has not appealed, if the appeal has been made by the Attorney General or is made with regard to one of the cases provided for in Article 217;

c) appoint Counsel for the accused in the cases provided for in sub-paragraph b) of paragraph 2 of Article 14 of the Law on the Organization of the Judiciary, when the accused is without Counsel. The Court shall arrange to inform the accused and his Counsel of such appointment;

d) order that the injured party be summoned to appear before the Court, if the injured party or the accused has appealed against the judgment concerning civil damages;

e) order that the Attorney General be duly notified.

3. The date of the hearing shall be notified to the accused and brought to the notice of this Counsel and of the Attorney General at least 15 days before the hearing.

4. Insofar as applicable, the provisions of paragraph 5 of Article 80 and of Article 89 shall be observed.

Article 231

Hearing of the Appeal

1. After the opening of the hearing of the appeal, first the appellant shall explain the grounds for his appeal, then the other party shall be given the opportunity to reply. Both parties may make comments and observations, raising objections and presenting requests and petitions which they deem pertinent, and expressing their views on the points of fact and law, which in their opinion the Courts should accept. The right to reply shall be exercised only with the consent of the Court. If an appeal has been made in the same case by both the accused and the Attorney General, the appeal of the accused shall be heard last.

Insofar as applicable, the provisions of Article 119 shall apply.

2. If the appeal is against a conviction or an acquittal and the Court does not consider itself able to reach a decision upon the available evidence, the Court may, even on its own motion, order:

a) the re-hearing before it, in whole or in part, of the trial;

b) the examination of witnesses heard in the trial of first instance, who may testify even with respect to matters not previously considered;

c) the taking of new evidence;

d) the re-hearing of expert witnesses.

3. If the appeal is against an order that the proceedings be terminated and the Court of Appeal considers that there are valid grounds for the appeal, the Court of Appeal shall set aside the impugned order and shall either try the case itself, in accordance with the provisions of Book Two of this Code, or remand the case for trial to the Court which passed the impugned order.

CHAPTER III

Appeals to the Supreme Court

Article 232

Matters against which Appeal may be made to the Supreme Court

1. In addition to cases established by special provision, and subject to the provisions of Chapter 1 of this Part, an appeal may be lodged with the Supreme Court:

a) by the parties specified in paragraph 2 of Article 227 against any acts and decisions referred to therein when handed down by a Court of second instance;

b) by the accused or by the Attorney General against any other decision handed down in an appellate proceedings, or against any other decision concerning which appeal to the Court of Appeal is not permissible.

2. An appeal shall be admissible only on the following questions of law:

a) lack of jurisdiction or incompetence of the lower Court;

b) violation or erroneous application of legal provisions;

c) nullity of the judgment or the proceedings;

d) omission, insufficiency or contradiction in the grounds on which the judgment is based, relating to a material point raised by either party or by the Court on its own motion.

Article 233

Decision by the Supreme Court

1. The Supreme Court, depending on the particular case, shall decide in one of the following ways:

a) if the appeal is against a judgment, it shall, after a hearing in open Court, in accordance with Article 234:

i) reject the appeal and make any necessary corrections in any errors of law in the grounds given and errors in the provisions of law referred to in the judgment, provided that such errors did not influence the dispositive part of the judgment;

ii) set aside the judgment appealed against and remand the case to the competent Court;

iii) set aside the judgment appealed against without remanding the case to any other Court in those cases in which a sentence of conviction could not have been passed or in which no criminal proceedings could have been started or continued;

iv) set aside in whole or in part the judgment appealed against; where no additional evidence is required, decide on the merits and, where additional evidence is required, remand the case to the Court that pronounced the judgment appealed against;

b) if an appeal is against an order issued during the trial that the proceedings be terminated, the Court shall, after a hearing in open Court, in accordance with Article 234:

i) reject the appeal;

ii) set aside the order appealed against, and, insofar as applicable, observe the provisions of the preceding sub-paragraph;

c) in every other case, it shall proceed in the manner laid down in the preceding sub-paragraph, reaching its decision in chambers, in accordance with paragraph 2 of Article 225.

2. Judgments of the Supreme Court shall be drawn up in writing by the President of the Court or by another member of the Bench.

3. The provisions of paragraphs 2 and 3 of Article 229 shall apply, insofar as applicable.

Article 234

Hearing of the Appeal in Open Court

When the appeal is to be heard in open Court, the provisions of Article 230 and of paragraph 1 of Article 231 shall be observed, insofar as applicable.

Article 235

Appeal against Decisions given by a Court re-hearing a case remanded by the Supreme Court

1. The Court to which a case has been remanded for re-hearing shall comply with the findings of the Supreme Court with respect to all questions decided by it.

2. When a Court re-hears a case remanded to it by the Supreme Court, an appeal may be lodged against the new judgment only with respect to those parts which have not already been decided by the Supreme Court. But an appeal may also be lodged when the Court which re-hears the case fails to comply with the provisions of the preceding paragraph.

Article 236

No Appeal to lie against Decision of the Supreme Court

No appeal shall lie against any decision of the Supreme Court with regard to criminal matters.

CHAPTER IV

Revision

Article 237

Cases Subject to Revision

When a conviction has become final, and even when the punishment has been served or has become extinct, revision may be allowed in favour of the convicted person at any time with regard to those cases coming within the provisions of Article 238.

Article 238

Instances in which a Case is subject to Revision

1. Revision may be sought:

a) if after the conviction new facts or new evidence have occurred or been discovered, which either separately or in connection with facts or evidence already considered at the trial, clearly establish that the offence was not committed or that it was not the accused who committed it;

b) if it is shown that the conviction was the result of some false act or document or the result of another act which the law considers an offence, provided that a final conviction has been pronounced as a result of such false acts or document or such other offence;

c) if the findings on which the conviction is based are incompatible with those of another final penal conviction.

2. Every petition for re-trial shall be based on facts or evidence which, if established, demonstrate that:

a) an offence was not committed, or that, if it was committed, it was not the accused who committed it, or

b) there was no evidence whatsoever that an offence was committed or that, if it was committed, it was not the accused who committed it.

Otherwise the petition shall not be admissible.

Article 239

Persons who may seek Revision and Petition for Revision

1. Revision may be sought by:
   a) the convicted person;
   b) the Attorney General;
   c) the «descendants», «ascendants», or the spouse of the convicted person if the convicted person has died.

2. A petition for revision may be submitted in person or through a special representative and shall be presented, together with supporting documentation, to the Registrar of the Supreme Court.

Article 240

Preliminary Proceedings

1. The President of the Supreme Court, having received the petition and relevant documents, shall convene the Court in chambers, and decide as a preliminary matter whether the application for revision is admissible.

2. If the requisites for filing a petition are lacking or if the petition appears obviously unfounded, the Court shall declare the petition inadmissible. If the Court does consider the application to be admissible, it shall proceed in accordance with Article 241.

Article 241

Hearing in Open Court

1. If the Supreme Court allows the petition, the proceedings shall take place in open Court, in the manner provided in Article 234.

2. The Supreme Court:
   a) if it finds that the facts and evidence show that the petition is well-founded, shall set aside the conviction;
   b) if it finds that further investigations are necessary, shall provisionally set aside the conviction and refer the case to the competent Court which shall try the case in the normal way;
   c) in any other case, shall reject the petition.

Article 242

Procedure when Conviction is set aside

The Supreme Court, when it sets aside a conviction without remanding to a lower Court, or a Court to which a case has been remanded, when either Court gives judgment of acquittal, shall also order the restitution of the fines or damages paid as a consequence of the conviction.

Article 243

Damages

1. A convicted person who has been acquitted as a result of a revision proceedings may submit an application to the Supreme Court for the payment of damages by the State.

2. The Supreme Court shall decide in chambers on whether damages should be granted and on the amount. The Court shall take into account the material and moral damages suffered by the convicted person as a consequence of the judgment set aside.

3. The State may recover costs, within the limits of the law, from any person who with criminal intent caused the wrongful conviction.

Article 244

Appeal against Judgment in a Remanded Proceedings

1. The Attorney General may appeal against a judgment of acquittal given by a Court to which a case has been remanded.

2. There shall be no appeal against a judgment of conviction by the Court referred to in paragraph 1.

3. In all cases, a petition for another revision proceedings may be made if the application is based on different facts and evidence.

PART II

EXECUTION

CHAPTER I

General Provisions

Article 245

Territorial Enforcement of Sentences and other Measures passed by Courts

Any sentence or other measures passed by a Court with regard to criminal matters may be executed in any part of the Republic.

Article 246

Enforcement of Judgment and of an Order that Proceedings be Terminated

1. The judgment of a Court shall be executed when it becomes final or when the law permits its provisional execution.

2. A judgment is final when no appeal other than an application for revision can be lodged against it.

3. When an appeal can be lodged against a judgment, the judgment shall become final from the day on which the time-limit for appeal expires, when no appeal has been lodged within such time-limit.

4. In cases in which appeal is allowed to the Supreme Court, a judgment shall become final from the day on which:

a) an appeal against the decision of the Court of Appeal which declared the appeal to be inadmissible has been rejected;

b) an appeal has been declared inadmissible or has been rejected.

5. A judgment of acquittal shall be executed immediately after being pronounced.

6. A judgment of conviction shall be executed within 5 days from the day on which the authority charged with the execution of the judgment receives notice that the judgment has become final. However, if the judgment provides for the release of the accused, such accused shall be released immediately.

7. Insofar as applicable, the provisions of this Article shall also be observed with respect to an order that proceedings be terminated.

8. A petition for an extension of the time-limit to lodge an appeal made in accordance with the provisions of paragraph 2 of Article 214 shall not operate as a stay of the execution of sentence, unless a competent Court orders otherwise.

Article 247

Rules governing Execution

The execution of judgments shall be governed by the provisions of this Code and by the provisions of the Penal Code.

CHAPTER II

Execution of Punishments

Article 248

Execution of Death Sentence

1. When a sentence of death has become final, the Attorney General shall urgently inform the Supreme Court and the Minister of Grace and Justice.

2. The Supreme Court, having received the records of the trial concerned, shall order the execution, fixing the date, time and place, and shall send such order to the Attorney General.

3. A death sentence shall be carried out by shooting and shall be executed by members of the Prison Guards. The death sentence shall not be executed in public, unless the Minister of Grace and Justice provides otherwise.

At the execution there shall be present a representative of the Attorney General, a medical officer appointed by him, and a Minister of the religion practised by the convicted person if he so requests.

4. A special record shall be made by the representative of the Attorney General of anything which the condemned man said, of the execution and of the medical certificate that death took place.

5. A death sentence shall be postponed:

a) when a petition for mercy has been submitted and until such time as a decision is reached on the petition;

b) against a pregnant woman as long as she is pregnant;

c) against a woman who has given birth to a child less than one year previously, unless the child has died, or has been entrusted to the care of another person and birth occurred more than two months previously.

Article 249

Execution of Sentence of Imprisonment

1. When a judgment sentencing a person to imprisonment has become final, the President of the Court that pronounced judgment in the first instance shall issue an order of imprisonment against the convicted person, and shall send such order together with a copy of the judgment to the Attorney General for execution.

If the convicted person is already in detention, a copy of the order of imprisonment shall also be sent to the authority detaining such convicted person.

2. An order of imprisonment shall indicate:

a) the type and the length of the term of imprisonment;

b) the date on which the convicted person shall be released without any further order, unless he is to be detained for another reason.

3. The President of the Court may order that a sentence of imprisonment be suspended in the cases coming within the provisions of paragraph 2 of Article 44, until such time as the reasons for the suspension are no longer valid.

Article 250

Execution of Fines

1. When a judgment sentencing a person to a fine has become final, the President of the Court that pronounced judgment in the first instance shall issue an order for payment against the convicted person and shall send such order for execution to the Attorney General, together with a copy of the judgment.

2. The order for payment shall:

a) indicate the form of the fine and the amount to be paid;

b) indicate the time-limit within which payment must be made to the State treasury;

c) contain a warning that, if the fine is not paid, it shall be collected in the manner laid down for the execution of civil judgments.

3. The President of the Court, upon a request from the convicted person, may order that the fine be paid by instalments.

4. In cases where the convicted person is unable to pay the fine, the President of the Court shall order conversion of the fine into imprisonment, in accordance with the conversion rate laid down in Article 112 of the Penal Code and may issue an order of imprisonment in accordance with Article 249.

Article 251

Detention prior to Judgment

1. A period of imprisonment undergone prior to a judgment becoming final shall be deducted from the overall sentence of imprisonment; where the sentence is one of a fine, an amount corresponding to such period of imprisonment shall be deducted from the total fine.

2. When a case is heard abroad and is re-heard in the Somali Republic, the punishment served abroad shall always be deducted from any punishment inflicted by a Court in the Somali Republic, taking into account the form of such punishment served abroad; if a person has been in detention prior to judgment abroad, the provisions referred to in the preceding paragraph shall apply.

Article 252

Execution of Accessory Penalties

1. Insofar as applicable, the provisions of this Chapter shall apply to the execution of accessory penalties.

2. The following periods shall not be deducted from accessory penalties:

a) the period of time during which a convicted person is serving a sentence of imprisonment;

b) the period during which the convicted person was subject to detention as a security measure;

c) any period during which the convicted person wilfully avoided the execution of imprisonment or a security measure.

Article 253

Revocation of Conditional Suspended Sentence and of other Benefits

1. Revocation of conditional suspended sentence shall be carried out in the form laid down for enforcement measures by the President of the Court that pronounced judgment in the first instance or by the Court which later pronounced a sentence of conviction, in the cases laid down in paragraph 2 of Article 127.

2. In the same way, the following measures shall be revoked:

a) the benefit of conditional release in the cases indicated in sub-paragraph a) of paragraph 2 of Article 127;

b) any amnesty, conditional pardon or indult, whenever the convicted person fails to comply with any of the required conditions or obligations.

3. Revocation of the benefit of conversion of a sentence of imprisonment to a fine shall be ordered in the manner laid down for enforcement measures by the President of the Court who pronounced judgment in the first instance, in the cases laid down in paragraph 3 of Article 125.

4. Insofar as applicable, the provisions of paragraphs 2 and 3 of Article 223 shall apply.

CHAPTER III

Extinction of Offence and Punishment

Article 254

Declaration of Extinction of Offence or Punishment

1. Whenever, after conviction, an offence or punishment becomes extinct, the President of the Court which pronounced sentence in the first instance shall declare the offence or the punishment to be extinct, taking all necessary measures which result from such extinction.

2. Insofar as applicable, the provisions of paragraphs 2 and 3 of Article 223 shall apply.

Article 255

Measures relating to Pardon and Conditional Release

1. An appeal for pardon or for conditional release shall be addressed to the President of the Republic and sent to the Attorney General.

The appeal shall be signed:

a) by the convicted person,

b) by a «descendant», «ascendant» or spouse of the convicted person.

2. Pardon or conditional release shall be granted by decree of the President of the Republic, having heard the Minister of Grace and Justice and the Attorney General.

3. Insofar as possible, the provisions of Article 254 shall apply with regard to the implementation of the decree.

Article 256

Rehabilitation after Conviction

1. In the cases indicated in Article 153 of the Penal Code, rehabilitation shall be granted, at the request of the convicted person, by an order from the Court of Appeal, having heard the Attorney General.

2. If rehabilitation is not granted because the convicted person has not given proof of good conduct, a petition for rehabilitation may only be submitted again after a period of 2 years from the submission of the previous petition.

3. Rehabilitation shall be revoked by the President of the Court of Appeal that granted it or by the Court which pronounced a subsequent conviction in the cases referred to in Article 154 of the Penal Code.

4. Insofar as applicable, the provisions of paragraphs 2 and 3 of Article 223 shall apply.

CHAPTER IV

Matters Arising in Execution

Article 257

Competence in Matters arising in Execution

The President of a competent Court who has the power to enforce any order or other measures shall also have the power to decide on all matters arising in the course of the execution thereof.

Article 258

Proceedings relating to Matters arising in Execution

1. Matters relating to execution may be raised by the Attorney General or the party concerned.

2. The President of the Court shall decide on such matters after granting the interested parties reasonable time to present their arguments, petitions and defences in writing.

3. Insofar as applicable, the provisions of paragraphs 2 and 3 of Article 223 shall apply.

CHAPTER V

Execution of Security Measures

Article 259

Application, Modification, Substitution and Revocation of Security Measures

1. Security measures shall be ordered by a Court together with the judgment of conviction or the order that proceedings be terminated.

2. In the cases referred to in paragraph 2 of Article 165 of the Penal Code, security measures shall be applied, at the request of the Attorney General, in the manner provided for matters arising in execution, by the President of the Court which has passed the judgment of conviction or the order that proceedings be terminated.

3. Insofar as applicable, the provisions of paragraphs 2 and 3 of Article 223 shall apply.

CHAPTER VI

Criminal Records

Article 260

Criminal Records Office

1. There shall be one unified Criminal Records Office, which shall be a section of the Headquarters of the Police Force. It shall be under the immediate direction and supervision of the Attorney General.

2. In the Criminal Records Office, there shall be kept extracts of orders or other measures referred to in Articles 261 and 262, given by a Court of the Somali Republic, as well as by foreign Courts which have been recognized in accordance with law.

3. Extracts of orders or other measures concerning foreign or stateless persons shall be kept separately in the Criminal Records Office.

Article 261

Orders relating to Criminal Proceedings to be recorded in the Criminal Records Office

1. In the Criminal Records Office there shall be recorded extracts of:

a) convictions which have become final;

b) orders which grant or revoke rehabilitation;

c) any other measures relating to the application, modification or revocation of punishments, security measures and benefits provided by law.

2. There shall not be recorded in the Criminal Records Office convictions for contraventions for which it is permissible to pay the fine to the administrative authorities or which may be compounded.

Article 262

Civil and Administrative Matters to be Recorded

1. In the Criminal Records Office there shall also be recorded abstracts of:

a) as regards civil matters:

i) final judgments declaring partial or total incapacity or final judgments revoking such declaration;

ii) orders issued by a Civil Court for the committal of a person to a mental hospital or for the revocation of such order;

iii) judgment of bankruptcy;

b) administrative orders relating to the loss of citizenship and to the expulsion of aliens.

Article 263

Record Cards

1. Abstracts of the orders or judgments referred to in the preceding Articles shall be recorded on appropriate cards by the Registrar of the Court in which the judgment or order became final or, in the case of appeal, by the Registrar of the Court which decided the matter in the final instance.

2. A separate record card shall be maintained for each person and for each proceedings. If a person has been convicted of more than one offence, a separate reference shall be made on the card for each such offence in the order followed in the judgments or orders.

3. For record purposes, the Registrar shall use a form, to be provided by the Police, containing the fingerprints of the person concerned.

4. The record shall be prepared not later than 10 days after the order or judgment has become final. A reference shall be made on the original of the order or judgment that the matter has been recorded in the Criminal Records Office.

Article 264

Forwarding of the Record Card

1. As soon as the record card has been completed, the Registrar shall forward it with an accompanying note to the Criminal Records Office where the note shall be signed and returned to the Registrar as a receipt.

2. If the person to whom the record refers has no previous convictions, the Registrar shall prepare and send a second copy of the record card.

3. If the record refers to an alien, the Registrar shall prepare and transmit another copy of the record card, which will then be sent to the Government of the country of which the alien is a citizen, in accordance with international conventions or by way of reciprocity.

Article 265

Maintenance of the Record Cards

1. The record card, as soon as it is received by the Criminal Records Office, shall be registered in the Register maintained for this purpose.

2. If the record card refers to a person who has no previous convictions, the Criminal Records Office shall place one of the copies of the card in a file indicating the personal details of the person concerned, his fingerprint classification, the serial number of the file, and a reference to the record card. The other copy of the record card shall be kept by the fingerprint archives. The Crim-

inal Records Office shall also prepare an index card containing personal details of the person, his fingerprint classification and the number of his file. Such cards also shall be maintained in appropriate filing cabinets in alphabetical order.

3. If the record card refers to a person who has previous convictions, it shall be put in such person's existing file, after having made the necessary reference on the file cover.

Article 266

Destruction of Criminal Records

1. Criminal records of a person shall be destroyed upon official notification of such person's death or after 80 years from the date of birth of such person.

2. The following criminal records shall also be destroyed:

a) those that record an order or judgment that has already been duly recorded;

b) criminal records incorrectly attributed to another person as a result of mistaken or false identification of the person concerned or as a result of an error in the record of the Court proceedings, provided that the judgment or order on the basis of which the record has been made has been corrected by a subsequent decision.

3. The Officer-in-Charge of the Criminal Records Office shall remove each month all record cards from the office which are due to be destroyed, making a reference to the card in the appropriate register.

Article 267

Certificate to be issued to a Public Authority

1. A Judicial Authority shall have the right to obtain, for judicial purposes, a certificate showing the criminal record concerning any person.

2. The Public Authorities shall have the same right when a criminal record certificate is required for official purposes in respect of the person concerned.

Article 268

Certificates issued to private Persons

Without having to give any reason therefor, a person shall have the right to obtain a criminal record certificate concerning him from the Criminal Records Office.

Article 269

Entries no to be Recorded on a Certificate issued to a private Person

In a criminal record certificate issued to a private person upon his own request, no mention shall be made:

a) of convictions in the following cases:

i) when a conviction has been set aside, and the accused acquitted in revision proceedings;

ii) when the person concerned had not yet attained eighteen years of age at the time he committed an offence for which he was convicted to a fine or imprisonment alone or jointly with another punishment, not exceeding 6 months' imprisonment for a crime or one year's imprisonment for a contravention, provided the person concerned has not been subsequently convicted to imprisonment;

iii) when an offence of which a person was convicted has been declared extinct or when the person has been re-habilitated and such rehabilitation has not been subsequently revoked;

b) of any measures referred to in Article 262.

Article 270

Requests for and Issue of Criminal Record Certificates

1. A request for a criminal record certificate shall be addressed to the Criminal Records Office. In the request there shall be shown the name of the person concerned, the names of his father and mother, the date and place of his birth and any other details which may identify such person including, when necessary, his fingerprints.

2. A certificate shall be issued by the Officer-in-Charge of the Criminal Records Office.

If no criminal records exist concerning a person in the Criminal Records Office, or if there are only such records as are prohibited by law from being disclosed, the Officer-in-Charge shall write on the certificate the word «Nil». Otherwise the Officer-in-Charge shall write on the certificate details of matters recorded concerning such person in chronological order.

When entering the record of criminal convictions, besides mention of the date and of the Court which pronounced the sentence there shall also be shown the type of offence, the fine or imprisonment inflicted, any accessory penalty, any security measures and any benefits which may have been granted.

The Officer-in-Charge of the Criminal Records Office shall also, in such certificate,show the date of issue, affix his signature and the stamp of the Criminal Records Office, and make a note of the issue in the appropriate register.

3. A certificate issued by the Criminal Records Office to a private person upon request shall be written on stamped paper. If a certificate issued by the Criminal Records Office requires authentification, the signature of the Officer-in-Charge shall be authentificated by the Attorney General.

Article 271

Disputes regarding Entries and Criminal Record Certificates

In case of any dispute regarding any matter arising out of the preceding Articles, or if correction of any records or certificates issued by the Criminal Records Office is requested by any person, the Attorney General shall make a decision upon such matters on request of the person concerned. If the person concerned wishes to contest any decision by the Attorney General, he shall have the right to do so as a matter arising out of execution.

CHAPTER VII

Effect of Criminal Proceedings on Civil, Administrative and Disciplinary Proceedings

Article 272

Suspension of Civil, Administrative or Disciplinary Proceedings

If criminal proceedings are instituted against a person, and the result of such proceedings may affect a civil, administrative or disciplinary proceeding, the latter shall be suspended, unless it is

provided otherwise by law, until the judgment in the criminal proceedings or the order that criminal proceedings be terminated has become final or until an order that the case be closed has been issued.

Article 273

Relations between Criminal Proceedings and Civil Action

No civil or administrative action may be initiated, continued or brought up again where, in the course of a criminal proceeding, a Court has declared that:

a) the act was not committed;

b) the accused did not commit it;

c) the act was committed:
   i) in the fulfilment of a duty, or
   ii) in the exercise of a lawful right;

d) there was not sufficient evidence to prove that:
   i) the act was committed, or
   ii) the accused committed it.

Article 274

Effect of Judgment in Criminal Proceedings

1. In a civil or administrative proceeding for the restitution of, or compensation for, damages, a final conviction or a final judgment of acquittal, and a final order that proceedings be terminated, shall have the authority of *res judicata* as regards:

a) the question of whether or not the act was committed;

b) the lawfulness or unlawfulness of the act;

c) the responsibility of the accused.

A final judgment in a criminal proceeding granting judicial pardon shall also have the authority of *res judicata* as regards a civil or administrative proceeding.

2. Apart from the cases mentioned in the preceding paragraph, the decisions referred to therein shall also have the authority of *res judicata* in civil, administrative or disciplinary proceedings when the dispute relates to a right the recognition of which depends on the ascertainment of facts which were in issue in the criminal proceeding.

BOOK FIVE

JUDICIAL RELATIONS WITH FOREIGN AUTHORITIES

FINAL PROVISIONS

PART I

JUDICIAL RELATIONS WITH FOREIGN AUTHORITIES

CHAPTER I

General Provisions

Article 275

General Rules

1. Extradition may only be granted subject to prior international convention, in accordance with the provisions of such convention; and, when no provision is made therein, in accordance with the provisions of this Part.

2. International letters rogatory on criminal matters, recognition of foreign criminal judgments and other relations with foreign judicial authoritesregarding criminal matters shall be governed by international conventions and customs and, where no provision is made therein, in accordance with the rules of this Part.

CHAPTER II

International Letters Rogatory

Article 276

Letters Rogatory to foreign Judicial Authorities

1. Letters rogatory to foreign judicial authorities regarding evidence to be taken in a foreign country shall be transmitted through diplomatic channels.

2. In urgent cases, the Court may transmit such request directly to Diplomatic and Consular Agents of the Republic in a foreign country, informing the Ministry of Grace and Justice.

3. Summons to a witness resident in a foreign country shall be transmitted in the same way.

Article 277

Letters Rogatory from foreign Judicial Authorities

1. Letters rogatory from foreign judicial authorities regarding evidence to be taken within the territory of the Somali Republic shall become executory by order of the President of the Court of Appeal, after having heard the Attorney General, provided that the taking of such evidence is not contrary to the general principles of law of the State.

The President of the Court of Appeal shall either take the evidence himself or direct that it be taken by the Regional or District Court within whose jurisdiction the necessary action has to be taken.

2. A summons to witnesses resident within the territory of the Somali Republic, requested by foreign judicial authorities, shall be served directly by the Attorney General.

3. Evidence shall be taken and summonses shall be served in conformity with the general provisions of this Code.

CHAPTER III

Extradition

Article 278

Powers of the Minister of Grace and Justice in relation to Extradition

1. The Minister of Grace and Justice shall be empowered to offer or grant the extradition of a person accused or convicted in a foreign country in cases where extradition is not prohibited under Article 11 of the Penal Code, and he shall establish the precedence when extradition is requested by more than one foreign country.

2. An offer or grant of extradition shall always be made subject to the condition that the person to be extradited shall not be tried for a different offence, nor be subject to different punishment, other than those for which extradition was offered or granted. The Minister of Grace and Justice may also make the offer or grant of extradition subject to any conditions which he shall deem fit and proper.

Article 279

Judicial Guarantees

1. The extradition of an accused or convicted person to a foreign country may be granted only subject to a favourable decision of the President of the Court of Appeal within whose jurisdiction such person is found, having heard the Attorney General and the person to be extradited. The request for extradition shall be made to the President of the Court of Appeal by the Minister of Grace and Justice.

An order of extradition may be appealed against to the Supreme Court both by the accused or convicted person and by the Attorney General.

2. In the cases where the person to be extradited has to be arrested, the President of the Court of Appeal shall issue a warrant of arrest in accordance with normal procedure.

3. Such warrant of arrest shall be revoked automatically and the arrested person shall be released if:

a) within 60 days from the date of the arrest, where the request for extradition was made by an African State; or

b) within 90 days from the date of the arrest, where the request for extradition was made by a State outside Africa,

the Minister of Grace and Justice has not received the documentation in support of the request for extradition.

Such time-limit may be extended, at the request of the State which asks for the extradition, only once and for a period not exceeding one month. Such extension may be granted by the Supreme Court, upon request by the Minister of Grace and Justice.

Article 280

Procedures relating to Extradition

1. If the President of the Court of Appeal decides that extradition shall not be granted, he shall order that the accused or convicted person, if he is under arrest, be released immediately.

2. Where, instead, the President of the Court of Appeal decides that extradition be granted, the accused or convicted person, after the issue of a warrant of arrest, if necessary, shall be placed at the disposal of the Authority which made the request for extradition.

3. Extradition shall be suspended if the person to be extradited has to be tried in, or has to serve a sentence in the Somali Republic, unless otherwise decided by the President of the Court of Appeal.

Article 281

Extradition from a foreign Country

1. When it is necessary to make a request for the extradition from a foreign country of an accused or convicted person, the President of the Court of Appeal, within whose jurisdiction the criminal proceedings took place or such person was convicted, shall make such request to the Minister of Grace and Justice, transmitting to him the necessary documentation. Notice of such request shall be given to the Attorney General.

2. Request for extradition may be made by the Minister of Grace and Justice on his own initiative, informing the competent Court of Appeal and the Attorney General.

CHAPTER IV

Reccgnition of foreign Criminal Judgments

Article 282

Request for Recognition of foreign Criminal Judgments made by the Attorney General

1. When a foreign judgment convicting a Somali citizen in a foreign country or a foreigner or stateless person residing in the Somali Republic is received by the Minister of Grace and Justice, he shall, without delay, transmit to the Attorney General such judgment together with all related documentation.

2. The Attorney General, if he deems it necessary to request the recognition of such foreign judgment in the cases provided in Article 10 of the Penal Code, shall make application to the President of the Court of Appeal within whose jurisdiction the Criminal Records Office is located.

The Attorney General may, through the Minister of Grace and Justice, request any details concerning the conviction which he may deem proper from the competent foreign authority.

Article 283

Request for Recognition of foreign Criminal Judgment made by private Persons

A person who wishes to bring before a Court of the Somali Republic a foreign criminal judgment for the purpose of supporting a claim for restitution of, or compensation for, damages or for other civil purposes as laid down in sub-paragraph (b) of paragraph 1 of Article 10 of the Penal Code, may request recognition of such criminal judgment by filing an application before the President of the Court of Appeal within whose jurisdiction the Criminal Records Office is located.

Article 284

Form of Application

The application referred to in Articles 282 and 283 shall contain:

a) the name of the Court which pronounced the judgment for which a request for recognition is made,

b) the date and the place where the judgment was pronounced;

c) the reasons for which the request for recognition is made.

A certified copy of the judgment shall be attached to the application.

Article 285

Procedure for Recognition

1. The President of a Court of Appeal shall not grant recognition to a foreign criminal judgment if:

a) the convicted person was not summoned to appear at the trial or was not provided with a defence Counsel in the cases in which, according to Somali law, a defence Counsel is mandatory;

b) the judgment has not become final in accordance with the law of the State in which it was pronounced;

c) the judgment contains any provisions which are contrary to, or incompatible with, any provisions of the Constitution of the Somali Republic or any of the general principles of the law of the State.

2. The President of the Court of Appeal shall make his decision whether the judgment shall or shall not be allowed following the procedure for matters arising in execution.

A party concerned or the Attorney General may appeal against such decision to the Supreme Court.

3. After recognition of such judgment has been allowed, the Registrar of the Court of Appeal shall send brief details of the Court's decision to the Criminal Records Office.

4. If no mention is made in the decision allowing recognition of the judgment with regard to anything that may be done as a result of such decision and if no mention is made regarding any security measures which may be applied, the President of the Court may order such provisions later, upon the request of the Attorney General, following the procedure for matters arising in execution.

Article 286

Recognition of Civil Provisions contained in Criminal Judgment in foreign Countries

1. Civil provisions contained in a criminal judgment in a foreign country which provide for restitution, or compensation for civil damages may be recognized and enforced in the territory of the Somali Republic.

2. Recognition and enforcement may be granted at the instance of the interested party at the same time as the decision referred to in the preceding Article is passed by the Court.

3. In other cases, the application may be made by whoever has an interest in it to the President of the Court of Appeal within whose territorial jurisdiction the civil provisions contained in the foreign criminal judgment should be enforced.

4. Insofar as applicable, the provisions of paragraphs 1, 2 and 3 of the preceding Article shall apply.

PART II

FINAL PROVISIONS

Article 287

Power to issue Regulations

The Minister of Grace and Justice may issue the necessary regulations for the implementation of this Code.

Article 288.

Abrogation

The following are hereby abrogated:

a) the Italian Criminal Procedure Code;

b) the Criminal Procedure Ordinance;

c) the provisions regarding criminal proceedings contained in the «Ordinamento Giudiziario» approved by Ordinance No. 5 of 1956, and in the Indian Evidence Act, 1872;

d) Regulations regarding the Criminal Records Office approved by Decree No. 32 of 1956;

e) any other provision contrary to, or inconsistent with, this Code.

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CRIMINAL PROCEDURE CODE

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