

CRIMINAL PROCEDURE CODE

Law N°2005 of 27 July 2005
on the Criminal Procedure Code

The National Assembly deliberated and adopted,

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

BOOK I GENERAL PROVISIONS

PART I PRELIMINARY PROVISIONS

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

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

Section 2:

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

Section 3:

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

(a) Prejudicial to the rights of the defence as defined by legal provisions in force;

(b) Contrary to public policy.

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

Section 4:

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

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

Section 5: Any document rejected by a decision of the court shall be withdrawn from the case file and filed in the registry.

It shall be forbidden to obtain information from the document withdrawn for use against the person concerned under pain of a civil action in damages.

Section 6:

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

related offences.

(2) Offences are said to be indivisible:

(a) when the same offence has been committed by several persons as co-offenders or with accomplices; or

(b) when one and the same person commits several offences which are so connected that one cannot be tried, heard and determined without the other; or

(c) when separate offences have been committed at the same time for the same objective.

(3) Offences are said to be related:

(a) when they are committed at the same time by several persons acting together; or

(b) when they are committed by different persons even in different places and at different times in pursuance of a conspiracy; or

(c) when the offenders have committed the offences either to facilitate the commission of another offence or to ensure that the offence is not punished;

(d) when there is a case of receiving property procured by the commission of a misdemeanour or felony whether knowing or having reason to suspect the criminal origin of the property;

(e) in all cases where the relationship existing between them is as close as that of offences enumerated in this subsection.

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

(a) the day when the act was committed shall not be included in calculating the time-limit;

(b) the day on which the act was done which sets the time running shall not be included in calculating the time-limit;

(c) The time-limit fixed in years or months shall be calculated from date to date;

(d) Time-limit fixed in hours shall be calculated from hour to hour;

(e) Time-limit shall be extended to the next working day when the last day is a Saturday, a Sunday or a public holiday.

Section 8:

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

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

Section 9:

(1) A suspect shall be a person against whom there exists any information

or clue which tends to establish that he may have committed an offence or participated in its commission.

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

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

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

**PART II
COURT PROCESSES**

Section 11:

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

- the appearance or production of an individual before them; or
- the remand in custody of a suspect, a defendant, an accused, or

- a witness suspected of hindering the search for evidence; or
- the imprisonment of a convict; or
- the search of objects either used for or procured by the commission of an offence.

(2) The following shall constitute court processes:

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

Section 12:

(1)

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

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

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

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

Section 13:

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

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

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

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

Section 14:

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

(2)

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

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

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

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

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

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

- the original of the warrant is signed either by the head of the administrative unit, or the mayor, or the village or quarter head of the residence or the last known place of abode of the wanted person;

- a copy of the warrant shall be posted either at the residence or last known place of abode of that person, or at the offices of the administrative unit, the council office or the village community hall; mention of such posting shall be made on the original of the warrant;

- a report of the entire process shall be made, for transmission to the author of the warrant; a copy of the report shall be posted at the same place as the copy of the warrant.

Section 15: A remand warrant shall be an order given by the State Counsel in case of felony or misdemeanour committed flagrante delicto, the Examining Magistrate or the trial court to the

superintendent of prison to receive and detain a defendant or an accused. It shall be issued in accordance with the provisions of the sections 218 to 221.

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

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

Section 18:

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

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

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

Section 19:

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

(2)

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

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

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

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

Section 20:

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

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

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

Section 21:

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

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

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

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

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

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

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

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

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

Section 27:

(1) Court processes shall be executed throughout the Republic of Cameroon.

(2) A court process remains enforceable unless it is withdrawn by the competent magistrate.

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

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

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

PART III ARREST

Section 30:

(1) An arrest shall consist of apprehending a person for the purpose of bringing him without delay before the authority prescribed by law or by the warrant.

(2) A judicial police officer, agent of judicial police or any officer of the forces of law and order effecting an arrest, shall order the person to be arrested to follow him and, in the event of refusal, he shall use reasonable force, necessary to arrest the person.

(3) Any person may in case of a felony or misdemeanour committed flagrante delicto as defined in section 103, arrest the author of such an offence.

(4) No bodily or psychological harm shall be caused to the person arrested.

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

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

Section 33: Any magistrate who witness a felony or misdemeanour being committed flagrante

delicto may, verbally or in writing, and after disclosing his identity, capacity and functions, order the arrest of the offender and the accomplice and direct that they be brought before the competent authority.

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

Section 35:

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

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

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

Section 36:

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

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

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

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

provisions of section 174 of the Penal Code shall be applicable.

PART IV LEGAL NOTIFICATION, SUMMONSES AND SERVICE

CHAPTER I LEGAL NOTIFICATION

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

CHAPTER II SUMMONSES

Section 40:

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

Section 41:

- (1) A summons shall state besides the date of service, the full name, affiliation, date and place of birth, occupation, address, residence and where necessary, the address for service on the complainant, the full name and address of the bailiff. It shall state the full name, affiliation and

the full address of the addressee and particularly his residence or his place of work.

(2) A summons shall state the facts of the case and provisions of the law under which the defendant is charged.

It shall also state, as the case may be, the Examining Magistrate or the court seized of the matter, the place, date and hour of the hearing, and shall specify whether the person has been summoned as defendant, accused, civil party, person vicariously liable, witness or as insurer.

(3) The summons served on a witness shall in addition mention that non-appearance, refusal to testify or giving of false evidence is punishable by law.

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

Section 43:

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

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

Section 44:

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

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

Section 45:

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

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

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

Section 46:

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

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

Section 47:

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

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

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

Section 49:

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

be requested by the Legal Department 10 undertake another search with a view 10 effectively notifying the person concerned.

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

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

Section 50:

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

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

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

Section 51:

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

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

(3) The bailiff shall indicate at the bottom of the original and of the copies of the summons the cost of issuing and serving it; otherwise, he shall be liable to pay a civil fine of from 5.000 to 25.000 francs which shall be ordered by a ruling of the President of the court seized either of his own motion or at the request of the Legal Department.

Section 52:

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

(2)

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

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

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

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

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

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

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

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

CHAPTER III SERVICE

Section 56:

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

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

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

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

BOOK II INVESTIGATION AND PROSECUTION OF OFFENCES

PART I CRIMINAL AND CIVIL ACTIONS

Section 59:

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

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

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

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

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

pronounced.

Section 62:

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

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

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

- the withdrawal is voluntary;
- the matter has not been heard on the merits; government department or by the injured person under the conditions laid down by law.

the offence committed does not disturb public order or good morals; in case of many civil claimants, all of them withdraw their complaints or civil claims;

the withdrawal is not as a result of violence, fraud or deceit.

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

Section 63: When a court has been seized at the same time of a criminal action and a civil action, except in the case provided for in sub-section 1 (h) above. The judge seized of the matter shall be bound to adjudicate thereupon.

Section 64:

- (1) The Procureur General of a Court of Appeal may, by express authority of the Ministry in charge of Justice, enter a nolle prosequi, at any stage before judgement on the merits is delivered, if such proceedings could seriously imperil social interest or public order.
- (2) In the case completed in sub-section (1) above, the Examining Magistrate or the court shall record the fact of the discontinuance of the criminal action, and order if need be, the cancellation of any warrant against the suspect or the accused.
- (3) While the criminal action has been discontinued pursuant to sub-section (1) above, the EX
- (4) The discontinuance of criminal proceedings shall be without prejudice to their reinstatement when this becomes necessary.
- (5) Except for the cases contemplated in subsection (1) above and in section 62 (1) h), prosecution regularly instituted, shall not in anyway be discontinued or suspended, without the risk of a civil action for damages against the magistrate who so does.

Section 65:

- (1) Prescription shall be a barring of prosecution following the failure to commence action within the prescribed limitation period.
- (2) In the case of a felony, criminal proceedings shall be time-barred after the years have elapsed from the day following the day of commission of the felony, if within the interval no step is taken within the meaning of section 66.
- (3) Where a step has been taken within that interval, prosecution can only be time-barred after ten years have elapsed from the day following the date of such step.
- (4) In the case of a misdemeanour except where there are special provisions in relation to certain offences, the period of prescription shall be three years. It shall be calculated according to the circumstances specified in sub-sections (2) and (3).
- (5) In the case of a simple offence the period of prescription shall be one year shall be calculated according to the circumstances specified in sub-sections (2) and (3).
- (6) In the case of prosecution for several related offences, the delay for prescription to be taken into consideration shall be that of the offence with the most severe punishment.

npuomp:aétést inle 66.

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

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

Section 68:

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

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

(a) there is an interlocutory plea against the judgement being given;

(b) there is parliamentary immunity;

(c) a fiat to prosecute is being awaited;

(d) an appeal to the Supreme Court has been lodged;

(e) there is a conflict of jurisdiction.

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

(a) invasion of the territory by enemy forces;

(b) insanity of the suspect, the defendant or the accused after the commission of the offence;

(c) the escape of the suspect, defendant or accused;

(d) the enlisting of the case for hearing;

(e) adjournment of the case entered in the record-book;

(f) the fact that a court by failing to perform an act within its jurisdiction, has prevented a party from exercising his legal rights to take action or to defend himself.

Section 69:

(1) Prescription of prosecution shall be a matter of public policy.

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

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

Section 71:

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

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

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

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

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

Section 74:

(1) Associations, trade unions and professional organisations may make civil claims in criminal actions only if they invoke specific damages and a collective or professional interest.

(2) An insurance company shall not, in a criminal action, be competent to bring a civil claim against an accused person for the recovery of compensation paid by it by virtue of a contract of insurance.

Section 75:

(1) A civil claim made in a criminal action, shall be entertained only where it is based on a direct, certain and actual damage.

(2) Except where otherwise provided by law, a civil claim emanating from an offence shall be barred after thirty (30) years even where it is embodied in a criminal action.

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

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

PART II
THE AUTHORITIES RESPONSIBLE FOR POLICE INVESTIGATION

CHAPTER I
JUDICIAL POLICE

Section 78:

(1) The duties of the judicial police shall be performed under the supervision of the State Counsel by judicial police officers, judicial police agents and all other civil servants or persons to whom judicial police duties are assigned by law.

(2) In this capacity, the persons referred to in the preceding sub-section shall be auxiliaries of the State Counsel.

(3) In each jurisdiction of the Court or Appeal, the judicial police shall be under the control of the Procureur General. The Procureur General shall evaluate, at the end of each year, the work of judicial police personnel referred to in subsection (1).

SUB-CHAPTER I THE STATUS OF A JUDICIAL POLICE OFFICER

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

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

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

Section 81:

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

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

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

SUB-CHAPTER II DUTIES OF THE JUDICIAL POLICE

Section 82: Judicial police shall be responsible for:

- (a) investigating of offences, collecting evidence, identifying offenders and accomplices and bringing them before the Legal Department;
- (b) executing rogato11' commissions of judicial authorities;
- (c) serving court processes;
- (d) executing warrants and court decisions.

Section 83:

- (1) Apart from the duties defined in section 82, judicial police officers shall receive complaints and reports against persons and shall make preliminar11' investigations according to the conditions provided for in sections 116 to 120.
- (2) In cases of felonies and misdemeanours committed flagrante delicto, they shall exercise the powers conferred on them by sections 104 to 115.
- (3) They shall have a right to request directly the assistance of the forces of law and order in the discharge of their duties.
- (4) They shall receive instructions from the State Counsel to car11' out all investigations or any additional investigation which he considers necessary.
- (5) The State Counsel may stop any judicial police officer from continuing with the investigation. In such a case, he shall inform that officer's immediate superior of his reason for doing so.

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

However, the judicial police officer shall automatically hand over the cases to any agent

mentioned in section 80 above by virtue of their special knowledge.

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

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

Section 86:

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

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

Section 87:

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

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

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

Section 89:

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

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

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

Section 90:

(1) The police report shall state:

(a) The date and time when each phase of investigations started and ended;

(b) The full name and the status of the investigator;

(c) Where necessary, the authorization referred to in section 88 (2).

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

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

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

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

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

(7) Any person asked to sign a report

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

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

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

CHAPTER II POLICE INVESTIGATIONS

SUB-CHAPTER I GENERAL PROVISIONS

Section 92:

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

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

(2) A judicial police officer may:

- conduct the search of a house, or premises and make seizures in accordance with the provisions of sections 93 to 100;

- remand persons in police custody, pursuant to sections 119 and following;

- request the assistance of any expert or of any person capable of assisting him in any given phase of the investigation; make a request in writing for transportation with immediate effect, in any public or private road, railway, water or air transport vehicle. The original of the written request shall be left with the carrier.

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

- intercept, record or transcribe all correspondences sent by means of telecommunication;

- take any photographs at private premises.

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

Section 93:

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

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

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

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

(4) In the absence of the occupant or of the person in possession of the objects or of their representatives, and in case of urgency, the State Counsel may, in writing, authorize the judicial police officer to conduct the search or seizure in the presence of the witnesses described in subsection (2) above and one other judicial police officer or two judicial police agents.

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

Section 94:

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

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

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

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

Section 96:

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

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

(3)

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

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

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

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

Section 98:

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

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

Section 99:

- (1) No search may be conducted on a private house and premises between six (6) p.m. and six (6) a.m.
- (2) However, a search already begun may continue after six (6) p.m. on the authorization of the State Counsel.
- (3) In case of impossibility of getting in touch with the State Counsel, the judicial police officer may exceptionally continue with the search after 6 p.m. and shall, without delay, keep the State Counsel informed.

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

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

Section 101:

- (1) A judicial police officer may, in the course of an investigation, assign part thereof to any other judicial police officer under his authority.
- (2) Any judicial police officer to whom any part of the investigation has been assigned shall in his report specifically mention the fact of the such delegation.

Section 102:

- (1) The entire judicial police investigation process shall be secret. However, the secrecy of the investigation shall not apply to the Legal Department.
- (2) Any person who assist in these investigations shall be bound by professional secrecy subject to the penalties laid down in section 310 of the Penal Code.
- (3) Notwithstanding the provisions of sub-section (1), judicial police officers may with the approval of the State Counsel, publish press releases and documents relating to certain matters which have been the subject of the investigation.
- (4) Press releases and documents published by the judicial police shall be disseminated without

comments by the press. Any violation of this provision shall be punished under sections 169 and 170 of the Penal Code.

Sub-chapter II Felonies and misdemeanours committed flagrante delicto

Section 103:

(1) Felonies and misdemeanours are deemed to be committed flagrante delicto when they are in the course of being committed or when they have just been committed.

(2) Shall also be classified as felonies or misdemeanours committed flagrante delicto when:

(a) after the commission of the offence, the suspect is pursued by public clamour;

(b) soon after the commission of the offence, the suspect is caught in possession of an article or shows a sign or trace which tends to suggest that he took part in the commission of the felony or misdemeanour.

(3) There shall equally be flagrante delicto where a person requests the State Counsel or a judicial police officer to investigate a felony or misdemeanour committed in a house, which he occupies, or over which he has charge.

Section 104:

(1)

(a) A judicial police officer informed of a felony committed flagrante delicto shall immediately inform the State Counsel of it.

(b) Any notice whether given by telephone or other oral communication shall be confirmed in writing. Within forty eight hours of the oral message.

(c) Mention of these measures shall be made in the report.

(2) The judicial police officer shall without delay visit the place where the felony was committed and shall take all necessary steps particularly:

(a) to prevent any person likely to supply useful information from leaving the place without his permission, subject to the punishment provided in the Penal Code for defaulting witness. He may

not, under pain of prosecution for false arrest detain such person for more than 12 hours;

(b) to, where necessary, remand in police custody any suspected person;

(c) to ensure the preservation of evidence that may be used for the discovery of the truth;

(d) to seize any articles or documents used in committing, or which appear to be the product of the felony;

(e) to, in case of urgency, carry out his duties outside his territorial jurisdiction in accordance with section 88 (2);

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

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

Section 106:

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

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

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

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

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

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

Section 109:

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

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

Section 110:

(1) Notwithstanding the provisions of section 88 (1) above, the judicial police officer may, in case of felonies and misdemeanours committed flagrante delicto, and where the investigations, necessitate, go outside, either his territorial jurisdiction, or outside the territorial II jurisdiction of the Legal Department where he carried out his duties, to follow up r his investigations. In this case, he shall, under pain of nullity of the acts accomplished and disciplinary sanctions, obtain the authorisation of the State Counsel of his area of jurisdiction.

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

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

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

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

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

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

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

Section 114:

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

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

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

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

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

SUB-CHAPTER ID POLICE INVESTIGATION

Section 116:

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

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

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

- his right to counsel;

- his right to remain silent

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

Section 117:

(1) Judicial police officers shall conducting investigations have the powers provided for under sections 83 to 93,95,97,99.101,102,104,110,114, 15 and 116.

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

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

SUB-CHAPTER IV POLICE CUSTODY

Section 118:

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

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

(3) Save in the cases provided for in sub-sections (1) and (2) above, no person may be remanded

in police custody for the purpose of criminal investigation without the written approval of the State Counsel.

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

Section 119:

(1)

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

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

(2)

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

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

(c) Reasons shall be given for each extension.

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

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

Section 120:

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

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

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

Section 121:

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

Section 122:

(1)

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

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

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

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

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

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

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

Section 123:

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

by another chosen by the person on remand at his own expense.

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

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

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

Section 124:

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

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

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

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

Section 125:

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

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

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

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

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

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

PART III THE LEGAL DEPARTMENT

CHAPTER I COMMON PROVISIONS

Section 127:

(1) The Legal Department shall be indivisible.

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

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

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

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

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

(6) The Legal Department of the Court of First Instance shall comprise the State Counsel and the

Magistrates of the said Legal Department. Its jurisdiction shall be that of the Court of First Instance.

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

Section 128:

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

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

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

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

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

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

CHAPTER II FUNCTIONS OF THE LEGAL DEPARTMENT

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

Section 132:

- (1) The Procureur General at the Supreme Court shall be a party to appeals lodged by the parties and may of his own motion raise grounds for the annulment of the decision appealed against.
- (2) He shall be the principal party in all appeals brought by him before the Supreme Court.

SUB-CHAPTER II

FUNCTIONS OF THE PROCUREUR GENERAL AT THE COURT OF APPEAL

Section 133:

- (1) The Procureur General at the Court of Appeal shall ensure that the criminal law is applied throughout the jurisdiction of the Court of Appeal.
- (2) He shall have authority over all the magistrates of the Legal Department within his jurisdiction.
- (3) He shall, in the exercise of his functions, have the right to call directly on the forces of the law and order.

Section 134:

- (1) The Procureur General at the Court of Appeal may instruct the magistrates of the Legal Department within his jurisdiction to investigate offences of which he has knowledge, to close a case file or to institute proceedings.
- (2) The Procureur General at the Court of Appeal:
 - (a) Shall supervise the activities of the judicial police officers and agents working within the jurisdiction of the Court. of Appeal;
 - (b) Shall submit half yearly reports to the Minister in charge of Justice on their activities and conduct;
 - (c) May direct them to obtain any information which he deems useful for the proper administration of Justice;

(d) Shall evaluate the work and give marks to each judicial police officer within his jurisdiction;

(e) Shall forward his appreciation and the marks given to the judicial police officer concerned, to the head of his service of origin.

SUB-CHAPTER III FUNCTIONS OF THE STATE COUNSEL

Section 135:

(1)

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

- a written information;

- a written or oral complaint; or

- a written report by a competent authority.

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

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

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

(4)

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

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

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

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

Section 137:

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

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

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

Section 138:

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

(2)

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

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

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

Section 140:

(1) the competent State Counsel shall be either:

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

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

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

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

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

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

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

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

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

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

PART IV PRELIMINARY INQUIRIES

CHAPTER I GENERAL PROVISION

Section 142:

(1) preliminary inquiries shall be obligatory in cases of felonies unless otherwise provided by law.

(2) They shall be discretionary in case of misdemeanours and simple offences.

(3) They shall be carried out by Examining Magistrate who shall be a magistrate on the bench.

Section 143:

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

Section 144:

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

Section 145:

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

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

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

Section 146:

- (1) where there are several Examining Magistrates in a court, the president shall for each inquiry appoint the magistrate who shall be responsible for it.
- (2) The State Counsel may, by a reasoned application, request the president of the court to replace the Examining Magistrate in charge of the inquiry with another Examining Magistrate, in the interest of the proper administration of justice.
- (3) The defendant or the civil party may also by a reasoned application make such a request to the President of the court.
- (4) The President of the court shall within five (5) days determine the issue by a reasoned ruling, which shall not be subject to appeal.
- (5) In case of urgency and with respect to specific isolated acts, an Examining Magistrate may, with the authorization of the President of the court, urge another Examining Magistrate of the same court to perform such acts.

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

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

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

Section 150:

- (1) Where the Examining Magistrate decides to commence an inquiry, he shall carry out all acts he deems necessary for the discovery of the truth.
- (2) He shall have powers to prefer a charge against any person he identifies to have taken part in the commission of the offence either as principal offender, co-accused or an accomplice.

Section 151:

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

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

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

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

Section 153:

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

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

(3)

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

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

Section 154:

(1) Preliminary inquiries shall be secret.

(2) Anyone participating in the proceedings shall be bound by professional secrecy subject to the

penalties provided for in section 310 of the Penal Code; provided that the secrecy of preliminary inquiries shall neither apply to the Legal Department nor to the defence.

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

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

Section 155:

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

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

Section 156:

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

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

CHAPTER II COMPLAINT WITH A CIVIL CLAIM

Section 157:

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

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

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

Section 158:

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

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

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

Section 159:

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

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

Section 160:

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

(2) the submissions of the State Counsel may:

a) declare the civil claim inadmissible;

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

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

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

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

Section 163:

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

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

CHAPTER III PROCEDURE DURING THE PRELIMINARY INQUIRY

Section 164:

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

It shall specify:

(a) the full name and function of the Examining Magistrate who made it;

(b) the statement of the offence committed;

(c) the full name and identity of the defendant if he is known, or the sign if he is unknown;

(d) a precise statement of the provisions of the law which have been violated;

(e) the place and date of the commission of the offence.

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

Section 165:

- (1) All proceedings in a preliminary inquiry shall be in writing. Records of the proceedings shall be typed by the registrar under the effective control of the said Examining Magistrate.
- (2) A file shall be opened for every preliminary inquiry.
- (3)
 - (a) An up-to-date detailed inventory shall be kept of the inquiry file.
 - (b) All documents in the file shall be numbered and listed by the registrar as soon as they are drawn up or received.
- (4) All documents in the case file including the inventory shall be drawn up in at least two copies so that in the event of an appeal, a copy shall be forwarded to the court of appeal
- (5)
 - (a) The Legal Department may request to be given certified true copies of the record of proceedings by the registrar of the inquiry.
 - (b) The other parties may also , at their request and upon payment of the required fees, be given copies of any document of the proceedings.
- (6) Copies may be made by all means of reproduction.

Section 166:

- (1) Any statement made shall give rise to the drawing up of the report in compliance with the provisions of the sections 164 and 165.
- (2) The provisions of sections 182 to 190 shall apply.

**SUB-CHAPTER I
THE RIGHTS OF THE DEFENDANT**

Section 167:

(1)

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

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

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

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

Section 169:

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

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

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

Section 170:

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

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

(a) He is free to reserve his statement;

(b) He has the choice to prepare his defence either without counsel; or with the assistance of one or more counsels;

(c) Where he is represented by more than one counsel, he shall give the name and address of one

of them to whom all summonses and other processes shall be addressed;

(d) Where he cannot immediately brief counsel, he shall be free to do so at any time before the close of the inquiry.

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

(e) he shall choose an address within the seat of the court for service of all documents of the inquiry;

(f) he shall inform the Examining Magistrate of any change of address.

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

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

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

Section 171:

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

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

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

Section 172:

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

(2) He shall be notified in writing of the date and time of appearance at least forty-eight (48)

hours before the said appearance, if the counsel resides within the seat of the court, and at least seventy-two (72) hours, if he resides outside the seat of the court.

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

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

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

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

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

Section 174:

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

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

(3) However, the provisions of section 170 (2) and (5) shall not apply in the case of felony or misdemeanour committed flagrante delicto and in all urgent cases, notably where relevant evidence may disappear or a witness may die. The Examining Magistrate shall in all such cases, from the first appearance of the defendant, proceed to charge and interrogate the defendant even against the latter's wish. He may also proceed to confrontations, which he deems necessary. The report shall mention the reason for the urgency.

Section 175:

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

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

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

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

Section 176:

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

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

SUB-CHAPTER II

VISIT TO THE LOCUS IN QUO, SEARCHES AND SEIZURES

Section 177:

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

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

Section 178:

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

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

Section 179:

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

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

(3)

21.10.2007 11:13 AM and other document found on the premises and decide on which articles and documents to seize.

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

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

(5) Any pedimanche 21 octobre, 2007 11:13 21.10.2007 11:13 AM of the State Counsel, decide on it by ruling not subject to appeal and served on the parties.