

CRIMINAL PROCEDURE CODE
OF THE STATE OF ERITREA

2015

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CODIFICATION OF THE CRIMINAL PROCEDURE CODE OF THE STATE OF ERITREA

Under instructions from the Government of Eritrea, the Ministry of Justice, to which the drafting and codification of laws is entrusted under Article 2(4)(5) of Legal Notice 14/1993, initiated the drafting process of the Criminal Procedure Code by assembling a team of international experts in the field of criminal procedure to work in tandem with the Law Reform Committee composed of Eritrean legal professionals.

The meetings, correspondences, studies and references to the experiences of other nations that followed produced an initial draft Criminal Procedure Code. The Ministry of Justice then convened all professional and institutional stakeholders engaged in the administration of the criminal procedure in order to solicit opinions and comments on the draft document. A series of meetings were subsequently held with judges, public prosecutors, attorneys, law lecturers, police officers and other legal professionals to deliberate on the proposed Criminal Procedure Code.

The second stage of the drafting process included a further review, in consultation with pertinent stakeholder, of the draft Code especially from the perspective of problems and challenges in the practice of criminal procedure in Eritrea. Some key amendments were thus introduced before a completed version of the Criminal Procedure Code of Eritrea was presented.

The Criminal Procedure Code basically follows the adversarial system. It seeks to ensure the protection of the basic rights of the accused from the moment of the reporting of an offence through to the award of final judgment and balance such rights with the

interests of the public who are duly represented in the criminal procedure. As with all laws, this Criminal Procedure Code will continue to be amended from time to time to accommodate new conditions.

The drafting and review process of the Criminal Procedure Code of the State of Eritrea was long and demanding, but all efforts and resources spent all along the process have at last been rewarded by this, *the Criminal Procedure Code of the State of Eritrea*.

Fawzia Hashim
Minister of Justice
15 May 2015

PRELUDE

The laws of criminal procedure are introduced to preserve the balance, throughout the process from the reporting of an offence through to the final judgment, between the fundamental rights due to the accused and the interests of the public in the criminal process. That any person suspected or accused of a crime is to be presumed innocent until proved guilty beyond a reasonable doubt; that he (she) is to be insulated from unwarranted investigation and prosecution; that, as needed, select persons shall always be assisted by counsel; that due process be given the accused in the investigation, prosecution and trial stages in a speedy and just manner are some of the rights that all persons suspected of accused of any offence under Eritrean laws are accorded. The Code will simultaneously accommodate the interests of the public through the establishment of clearly demarcated lines of function, authority and relationship among the various institutions that represent the interest of the public in the criminal process, viz. the courts, the prosecution department, the police, the prison authorities and other similarly constituted organs, by also allowing the public, especially the alleged victims of crimes, in actively participating in the overall objective of prevention and swift prosecution of offences.

The Transitional Criminal Procedure Code of Eritrea, most of the provisions of which have been incorporated into this Code, has thus far served as the testing ground for the establishment of the criminal procedure that we have always believed is deserved by the people and inhabitants of Eritrea. The experience earned in the practice of the Transitional Criminal Procedure Code of Eritrea and the practices of other jurisdictions was instrumental in designing this Code. An effort was also exerted in incorporating some acceptable and basic principles and perspectives in the age-long indigenous laws, traditions and

practices similarly extant in the various communities of the Eritrean people as are related to criminal procedure.

The enactment and active functioning of this Code assumes the further institutionalization under law of the various organs of adjudication and law enforcement as well as the continued and enhanced public awareness of the basic tenets of Eritrean criminal law and procedure. To function in tune with the Penal Code and other relevant regulations of Eritrea, this *Criminal Procedure Code of the State of Eritrea* will ensure the aggregated objectives of ensuring peaceful and secured life under law, the prevention of and willingness to fight crime as well as the just treatment of offenders.

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PREAMBLE

WHEREAS the people of Eritrea, owing to age-long indigenous laws and values, are not estranged to the inevitability of the existence and practice of fair opportunities to accusers and wrongdoers until such time when judgment is made;

WHEREAS the sustained continuance of this culture for posterity must be provided for;

WHEREAS it is necessary for our criminal justice system to pursue efficient procedures to filter out offenders from the innocent mass;

WHEREAS such procedures must secure speedy and just investigation, prosecution and trial of offences; and

WHEREAS the knowledge and practice of such procedures is the twin pillar of the provisions of the Penal Code in securing of order, peace and stability for the people of Eritrea;

NOW, THEREFORE, it is issued as follows.

CRIMINAL PROCEDURE CODE OF THE STATE OF ERITREA

BOOK I - THE COURTS, PROSECUTION, DEFENSE AND INVESTIGATION

TITLE I – GENERAL PRINCIPLES AND PROVISIONS

Art. 1. - Short Title and Repeal.

This Code may be cited as the *Criminal Procedure Code of the State of Eritrea*. Any other laws concerning procedure in penal matters are repealed and replaced by this Code.

Art. 2. - Objectives.

The objectives of this Code are to ensure:

- (1) that a person accused of a crime is presumed innocent until proven guilty beyond a reasonable doubt;
- (2) that no person is subject to unwarranted investigation or prosecution;
- (3) a speedy and just process of investigation, prosecution and trial of any criminal offence and just punishment for any offender found guilty, all in accord with due process of law; and
- (4) that the interest of the public is represented and its participation in consciously fighting crimes encouraged in the criminal justice processes; and
- (5) obedience to the law and willingness to fight crime.

Art. 3. - Scope of Application.

The provisions of this Code shall apply to the investigation and prosecution of all penal matters.

Art. 4. - Transition.

- (1) The provisions of this Code shall apply from the day of its coming into force to all cases pending on that day or in which charges are filed thereafter, except as provided in sub-Article (2).
- (2) Any trial or appeal being conducted in a trial or appellate Court on the date of the coming into force of this Code shall be completed by that Court under the procedures contained in the Transitional Criminal Procedure Code of Eritrea.
- (3) The right of review of cases decided prior to the Proclamation enacting this Code shall be governed by this Code.

Art. 5. - Duty to Follow Constitution.

All persons involved in the investigation and prosecution of crime shall follow the Constitution of Eritrea and the provisions of this Code shall be interpreted in accordance with the Constitution of Eritrea.

Art. 6. - Double Jeopardy.

- (1) No person shall be tried for an offence if he has previously been finally acquitted of the same offence and no person shall be tried of or punished for an offence if he has previously been finally convicted of and punished for the same offence, provided that:

- (a) the previous proceeding was conducted before a Court constituted by law to try offences and impose punishments therefor;
- (b) the person was prosecuted in accordance with the provisions of this Code;
- (c) a final judgment as provided in this Code was given during the previous trial regardless whether the judgment was executed; and
- (d) any disciplinary measure or relevant institutional action taken against the person with respect to the offence shall not constitute a ground for the benefits granted by this sub-Article.

A person shall, within the limits of paragraphs (a) – (d), benefit from the rule contained in this sub-Article if the public prosecutor unreasonably splits a case.

- (2) This Article shall not be read to prohibit the right of the prosecution to appeal a sentence or an acquittal, nor shall it be read to prohibit the retrial of an offence upon the awarding of an appeal, unless the defendant is awarded an acquittal on the appeal.
- (3) Notwithstanding sub-Article (1), if a person's act caused the death of another person, he may be tried for causing that death even if he had previously been convicted of a lesser offence constituted by the same act. It is further provided that, for any additional prosecution authorized under this sub-Article:

- (a) the Court having jurisdiction over the homicide offence must find that the death was not known to the prosecution or the Court, or the victim had not died, at the time of the earlier conviction;
- (b) the Court must enter an order vacating the previous conviction;
- (c) the accused shall be entitled to a new trial on all issues relevant to the case; and
- (d) any sentence previously served in connection with the previous conviction shall be subtracted from any sentence imposed after the successive trial.

Art. 7. - Right to an Interpreter.

- (1) An interpreter shall be provided at any stage of a criminal investigation or proceeding, to any accused or witness who needs such assistance.
- (2) When a Court finds that an interpreter is required for the purpose of any proceeding, the Court shall select a qualified Court interpreter. When a duly qualified interpreter is not available, the Court shall select a competent interpreter, but no person shall be selected who is himself a witness, a relative of the accused or other party to the proceeding, or in any other way is not neutral or disinterested in the proceedings.

Art. 8. - Definitions.

In this Code:

- (a) “**acquittal**” means a finding of not guilty and an order for the discharge of the accused;
- (b) “**arrestable offence**” means any Serious Offence as defined by Article 65 of the Penal Code;
- (c) “**building**” means an entire building or structure or part thereof, whether portable or not, and its adjacent facilities;
- (d) “**complaint**” means any allegation of past or present criminal activity by some person, known or unknown, made orally or in writing to a police officer or prosecutor;
- (e) “**conviction**” means a finding of guilt and the imposition of sentence by a competent tribunal;
- (f) “**dwelling**” means a part of a building or structure, whether portable or not, used, adapted or designed for habitation;
- (g) “**final judgment**” includes a conviction or an acquittal;
- (h) “**flagrant offence**” means an offence punishable by imprisonment which is in the process of being committed or attempted, or which has just been committed or attempted and the offender is fleeing or attempting to flee, or to which help is summoned;

- (i) “**police officer**” means any officer, employee or person employed by any entity authorized by law to constitute a police or law enforcement agency;
- (j) “**premises**” means any building or structure where a person works or resides, even temporarily, including a hotel room;
- (k) “**probable cause**” means reasonable grounds to believe that a crime has been, is being, or will be committed, or that evidence or other things related to criminal activity are in a place or thing.
- (l) “**property**” means anything of value, including personal and real property, tangibles and intangibles, contract rights, interests in or claims to wealth, admissions or transportation tickets, credit cards, captured or domestic animals, crops, food and drink, electric, gas or other forms of power or utilities;
- (m) “**receptacle**” means any container or place of storage, locked or unlocked, portable or fixed, separate from or within the premises;
- (n) “**relative**” means blood relatives up to the seventh degree and as regards relation by affinity it shall be up to the third degree;
- (o) “**spouse**” means the same as in the Civil Code;
- (p) “**vehicle**” means any means of public or private transportation, including motor vehicles, and those means propelled, driven

or towed by muscular power of human beings or animals;

- (q) **“young offender”** means any person accused of an offence who is under the age of 18 at the time the offence was committed; and
- (r) **“weapon”** means anything used, designed to be used or intended for use (1) in causing death or injury to any person, or (2) for the purpose of threatening or intimidating any person, and includes real and imitation weapons

In this Code, references to any gender shall be interpreted to also equally apply to the opposite gender.

TITLE II - THE COURTS

Chapter 1. - The Courts: General Principles

Art. 9. - Powers and Duties of Courts.

The Courts shall have the power and the duty to:

- (1) conduct pre-trial proceedings pursuant to Books I and II of this Code;
- (2) conduct trial proceedings pursuant to Book III of this Code;
- (3) conduct appellate proceedings pursuant to Book IV of this Code;
- (4) conduct extraordinary review proceedings pursuant to Book V of this Code;
- (5) investigate the conditions in prisons, police stations and other places of detention and to make such orders as are necessary to ensure the proper and humane treatment of inmates in such institutions; and
- (6) make such orders as are necessary to conduct the business of the Court and to preserve order in the Court.

Art. 10. - Independence of Judges.

Judges shall, in the exercise of their functions, be independent from the control and direction of any person or authority and shall submit to no person or authority other than that of the Constitution and the law.

Art. 11. - Prohibition of Trial and Punishment Other Than by Courts.

No person accused of any offence punishable by criminal law shall be tried by any person or institution other than Courts constituted by law and no person or institution other than Courts constituted by law may, for any offence committed in violation of penal law, impose the penalties described in the Penal Code of Eritrea.

Art. 12. - Recusal of Judges.

- (1) Upon motion by any party involved in the case, or upon his own motion, any judge scheduled to hear matters at the pre-trial, trial or appeal stages of a case shall recuse himself from participation in any proceedings in which:
 - (a) he has a personal interest;
 - (b) he is a relative of any person involved;
 - (c) he has had prior substantial involvement in the case; or
 - (d) for any other reason his impartiality in the proceeding might reasonably be called into question.
- (2) If a judge decides not to recuse himself in accordance with this Article, that decision is subject to immediate appeal, before the continuation of the proceedings, to the Court which would hear the appeal of the case after judgment. In the case where the judge is a Justice of the Supreme Court, the appeal shall be heard by other Justices of the Supreme Court.

Chapter 2. - Access to the Courts

Art. 13. - Courts to be Open to Public.

- (1) Except as provided in sub-Article (2), all proceedings in Court shall be open to the public.
- (2) Sub-Article (1) shall not apply if:
 - (a) the accused is a young offender; or
 - (b) the Court deems it necessary to exclude the public from all or part of any proceeding for reasons of morality, state security, or the privacy or security of a person concerned in the proceeding.
- (3) The Court may, if the interests invoked warrant such an order, warn the persons allowed to attend a trial from which the public has been excluded under sub-Article (2) not to discuss or disclose what is said in Court.

Art. 14. - Right of the Accused to be Present.

An accused shall be present at all Court proceedings in his case unless he refuses or his behavior makes it impossible to conduct the business of the Court and the Court finds that no alternative means are available to ensure the orderly conduct of the proceedings.

Art. 15. - Authority to Exclude Individuals.

A Court may exclude from all or part of any Court proceeding:

- (1) any person other than the accused under 18 years of age; or

- (2) any person or persons who fail to comply with a request by the Court to maintain silence or order.

Art. 16. - Form and Appeal of Order Limiting Access to Court Proceedings.

- (1) Any Court issuing an order under Article 13(2) limiting public access to a criminal proceeding, or under Article 15 barring an individual from attending a criminal proceeding, shall clearly state its reasons for such order, shall make no order which is broader than necessary to protect the interest invoked and shall reduce the order to writing as soon as is possible.
- (2) The accused or the prosecutor may take an immediate appeal from an order limiting, or refusing to limit, access to Court proceedings entered pursuant to this Chapter. The appeal shall be to the Court which would hear the appeal of the case after judgment.

Chapter 3. - Jurisdiction of Courts

Art. 17. - Subject Matter Jurisdiction for Trial of Offences.

- (1) High Courts shall have jurisdiction to try Class 1 through Class 7 Serious Offences.
- (2) Regional Courts shall have jurisdiction to try Class 8 and Class 9 Serious Offences and Petty Offences.
- (3) Community Courts shall have jurisdiction to try Petty Offences that may fall within their jurisdiction by other laws.
- (4) If a person is charged with multiple offences of different degrees of seriousness, the Court with

jurisdiction of the most serious charge shall have jurisdiction to try all of the charges.

- (5) The Minister of Justice may from time to time by law amend jurisdiction of Courts in criminal matters.

Art. 18. - Territorial Jurisdiction.

Unless the High Court shall order otherwise under Article 21,

- (1) Proceedings relating to criminal charges shall be heard by the Court in whose territorial jurisdiction the offence was committed, in whole or in part, or where the consequences of the offence ensued.
- (2) If an offence is committed in more than one jurisdiction, it may be heard in any Court which has territorial jurisdiction under sub-Article (1).
- (3) If an offence is committed abroad or outside the territorial jurisdiction of any Court, or if the place where the offence was committed is not known, the proceedings shall be heard in the Court of the territorial jurisdiction where the defendant was arrested or where the defendant resides.
- (4) If no Court has territorial jurisdiction under sub-Articles (1)-(3), the offence shall be tried in Asmara.

Art. 19. - Territorial Jurisdiction in Cases with Multiple Charges or Multiple Defendants.

Where charges in respect of several offences have been joined or where several accused have been charged with related offences, the proceedings may be heard by any Court which has territorial jurisdiction to try any of the offences or any of the

accused and has subject matter jurisdiction over all of the offences.

Art. 20. - Venue for Reinstatement.

Requests for reinstatement of rights (Penal Code Art. 91) shall be made to the Court that passed the sentence which deprived the person of his rights.

Art. 21. - Change of Venue.

- (1) Before the start of any criminal trial, the High Court, upon motion of any party, may decide to hear the case itself or may order that the proceedings be moved to another Court which has subject matter jurisdiction over the proceedings upon a finding that:
 - (a) a fair and impartial trial cannot be held in the Court scheduled to conduct the trial;
 - (b) it will be of convenience to the defendant, to the prosecution, or to the witnesses in the case to have the case tried in a different location and that the parties jointly consent to such a move;
 - (c) a question of law of unusual difficulty is likely to arise; or
 - (d) the ends of justice otherwise require the removal of the case.
- (2) In a case of unusual circumstances, the Supreme Court may decide a motion for a change of venue made in relation to a case within the jurisdiction of the High Court.

- (3) The provisions of this Article shall not apply to cases being heard in the Community Courts.

TITLE III - THE POLICE, PROSECUTION AND DEFENSE

Chapter 1. - Law Enforcement: Prosecutors and Police Officers

Art. 22. - Powers and Duties of Police Officers.

Police officers have the power and the duty to:

- (1) prevent the commission of offences;
- (2) investigate reports of criminal offences;
- (3) make arrests and searches and seizures, as allowed by law; and
- (4) assist prosecutors in the investigation and prosecution of criminal cases.

Art. 23. - The Attorney General.

The power to prosecute cases in the Courts shall be vested in the Attorney General and prosecutors of Eritrea.

Art. 24. - Powers and Duties of Prosecutors.

- (1) The Attorney General and other prosecutors shall have the power and the duty to:
 - (a) oversee and direct police investigations, or personally carry out investigations, of criminal activity, when such is necessary;

- (b) ensure that the police investigate crimes and detain persons in accordance with the provisions of this Code and the Constitution;
 - (c) initiate criminal prosecutions when such are warranted;
 - (d) prosecute criminal cases in the Courts on behalf of the State and represent the State in appeals and all other matters relating to criminal cases in the Courts of Eritrea;
 - (e) investigate the conditions and treatment of inmates in prisons, police stations and other places of detention; and
 - (f) carry out such tasks as they may be required to undertake in civil matters.
- (2) The Attorney General and any public prosecutor have the authority to ensure, by entering at any time into prisons and other places where detainees are held, that detainees or prisoners are held in accordance with the law. Where the Attorney General or the public prosecutor find that detainees or prisoners are not held in accordance with the law, they shall:
- (a) cause criminal proceedings to be instituted against the person or persons responsible, if such violation amounts to an offence under the Penal Code;
 - (b) order that disciplinary action be taken by the competent authority against the person or persons responsible, if the violation does not amount to an offence;

- (c) inform the Court in writing in order for the Court to order, if the Court finds it necessary, the immediate release of the detainees or prisoners; and/or
- (d) direct any inappropriateness towards proper procedure and take any other measure within his authority.

Art. 25. - Recusal of Prosecutors, Other Officials and Police Officers.

- (1) Upon motion made to him by any party involved in the case or the victim of the offence, or upon his own motion, any prosecutor, other official or police officer involved in an investigation, prosecution, trial or appeal of a case shall recuse himself from participation in any proceedings in which:
 - (a) he has a personal interest;
 - (b) he is a relative of any person involved;
 - (c) he has had prior substantial involvement in the case; or
 - (d) for any other reason his impartiality in the proceeding might reasonably be called into question.
- (2) If a public prosecutor or other official decides not to recuse himself in accordance with this Article, any person entitled to apply for recusal of such prosecutor or other official may ask the Attorney General to decide the issue and the Attorney General shall as soon as possible decide the issue and in doing so shall give reasons for the decision. Copy of the decision and the reasons therefor shall be kept with the Court's file for the case.

- (3) If the application under sub-Article (2) was made during trial or appeal stage, the Court of trial or appeal shall adjourn the proceedings until the decision of the Attorney General is communicated to the Court and the parties involved in the case.
- (4) If any other official decides not to recuse himself in accordance with this Article, any person entitled under this Article to apply for recusal of such official may ask the Court conducting the proceedings to decide the issue and Court shall before the continuation of the proceedings and in doing so shall give reasons for the decision.

For the purpose of this sub-Article, “other officials” include expert witnesses, interpreters, clerks and other such persons.

- (5) The provisions of sub-Articles (1) – (3) shall apply *mutatis mutandis* to the Attorney General if he is involved in an investigation, prosecution, trial or appeal of a case, except the application to decide on the recusal of the Attorney General, if the Attorney General decides not to recuse himself, shall be made to the Minister of Justice of the State of Eritrea.
- (6) If a police officer decides not to recuse himself in accordance with this Article, any person entitled to apply for recusal of such police officer may ask the Police Commissioner to decide the issue and the Police Commissioner shall as soon as possible decide the issue and in doing so shall give reasons for the decision. Copy of the decision and the reasons therefor shall be sent to the Office of the Attorney General.

Chapter 2. - The Defense

Art. 26. - Representation by Counsel.

An accused may be represented by duly qualified counsel at any stage of a criminal proceeding, including investigation.

Art. 27. - Right to Appointed Counsel.

- (1) A Court, at the accused's first Court appearance (Article 61), shall appoint counsel to represent an accused when the accused cannot afford or is not otherwise able to hire his own counsel and:
 - (a) the accused is suspected of, or charged with, a Serious Offence;
 - (b) the accused is under 18 years of age; or
 - (c) the accused is mentally or physically incapable of conducting his own defense without the assistance of counsel.
- (2) A Court may appoint counsel to represent an accused in any case where the accused cannot afford or is not able to hire his own counsel and the Court finds that counsel is necessary to ensure justice is done in the case.
- (3) When it appears to the Court at any time, by motion of the defendant or otherwise, that the conditions described in sub-Article (1) exist, the Court shall appoint counsel.
- (4) Notwithstanding the presence of any of the factors set forth in sub-Article (1), the Court may decline to appoint counsel if the accused so requests and/or the Court considers that no injustice will be

done if the accused is not represented by defense counsel.

Art. 28. - Obligations and Rights of Defense Counsel.

- (1) Counsel shall have the obligation, within the law, to represent the interests of the accused.
- (2) Counsel shall continue to represent the accused until final judgment in the case, including any appeal, unless permitted to withdraw by the Court.
- (3) Court appointed counsel shall be entitled to compensation paid by the State.

TITLE IV – INVESTIGATION

Chapter 1. - Arrest

Art. 29. - Arrest With Warrant Preferred.

Unless otherwise expressly provided by law, no person may be detained or arrested except by a warrant of a Court.

Art. 30. - When Arrest Warrant To Be Issued.

- (1) Any Court may issue a warrant to arrest a person if it is satisfied, upon asking the applying police officer or otherwise, that there exist reasonable grounds to believe that the person:
 - (a) committed any offence punishable with imprisonment; or
 - (b) having been arrested and granted pre-trial release, or having been granted conditional release, or having been sentenced to probation after conviction for any offence, failed to appear as required or otherwise

violated the conditions attached to bail, probation or conditional release.

- (2) The finding that there are reasonable grounds to support the issuance of a warrant must be based upon information provided under oath or affirmation.
- (3) In cases of urgency the police may apply for a warrant by telephonic or electronic means. If such means are used, the Court issuing the warrant shall make a contemporaneous record of the information being supplied and the police shall submit a written application for the warrant under oath or affirmation within 24 hours of the issuance of the warrant.

Art. 31. - Issuance and Service of Arrest Warrant.

- (1) An arrest warrant shall be signed by the judge issuing the warrant.
- (2) The arrest warrant shall state the offence for which the person is sought and shall include the name of the person, the person's address, if known, and any other information as is available to identify such person.
- (3) The arrest warrant shall order the police to apprehend the person against whom it is issued and to bring him before the Court issuing the warrant or before some other Court having jurisdiction in the case, to answer the charge mentioned in the warrant and to be further dealt with according to law.
- (4) A Court issuing a warrant for arrest may direct by endorsement on the warrant that such person be

released by the police on the posting of a certain bond, with or without guarantors, that he will appear in Court at a specified date. If before being brought before the Court the arrested person satisfies the conditions of this bond, he shall be released.

- (5) Every arrest warrant issued pursuant to this Article shall remain in force until it is executed, or until it is canceled by the Court which issued it.
- (6) The police officer serving an arrest warrant shall, in addition to complying with the requirements of Article 33, show and read out the warrant to the person arrested.
- (7) A police officer who is ascertained that an arrest warrant has been issued against a person may arrest that person and shall cause to have the warrant produced forthwith and served pursuant to sub-Article (6).
- (8) Unless otherwise expressly authorized by the Court in writing in the warrant, an arrest shall be carried out only between the hours of 6 a.m. and 6 p.m.

Art. 32. - When Arrest by Police Officer without Warrant Allowed.

A police officer may arrest without a warrant any person whom he has reasonable grounds to believe:

- (1) has committed, is committing, or is about to commit an arrestable offence;
- (2) is committing a breach of the peace as provided in Penal Code Articles 184 (Escape), 185 (Aggravated

Escape), 192 (Participation in Unlawful Assembly), 196 (Disturbance of Religious or Ethnic Feelings), 197 (Violations of Corpses and Funeral Rites), 198 (Disturbance of Meetings), 200 (Disorderly Conduct) and an assault in which the assailant:

- (a) carries, uses or threatens to use a weapon;
 - (b) threatens to cause serious bodily injury to a person other than the person assaulted and who is dependant or under the protection of the first;
 - (c) endangers the life of the person assaulted;
 - (d) assaults a police officer acting in the execution of his duties, or anyone assisting a police officer so acting, knowing that the person assaulted or the person being assisted is a police officer; or
 - (e) tortures the person assaulted;
- (3) has committed a flagrant offence;
 - (4) is obstructing a law enforcement officer in the lawful execution of his duties, or who has escaped or is attempting to escape from lawful custody;
 - (5) is a deserter from the armed forces; or
 - (6) is committing the crime of vagrancy under Article 207 of the Penal Code.

Art. 33. - Arrest - How Made.

- (1) Before making an arrest for an offence that is not a flagrant offence, the police officer shall seek to establish the identity of the person he is arresting.
- (2) In making an arrest, the police officer or other person making the arrest shall actually touch or confine the body of the person being arrested, unless there is submission to his custody by word or action.
- (3) If the person being arrested forcibly resists arrest or attempts to evade the arrest, the police officer or other person making the arrest may use all means reasonably necessary to effect the arrest.
- (4) The police officer shall forthwith inform the person arrested, in a language he understands, of the offence for which he is being arrested and shall also inform him of his right to be brought before a Court within 48 hours and of his right to counsel.
- (5) The police officer making the arrest shall make a reasonable effort without delay to inform a relative of the arrested person of his arrest.

Art. 34. - Arrest by Private Persons.

- (1) Any private person may arrest without warrant any person whom he has reasonable grounds to believe is committing or has committed a flagrant offence.
- (2) The private person making such an arrest shall without delay surrender the person arrested to a police officer, or, in the absence of a police officer, shall take such person to the nearest police station.

- (3) The private person making such an arrest shall, upon surrendering the person arrested to a police officer, provide the police officer with information supporting the arrest.

Art. 35. - Duty of Assistance to Police Officers.

Every person has a duty to assist a police officer reasonably requesting his aid, if aid can be given without risk, in making a lawful arrest or preventing the escape from lawful custody of any other person.

Art. 36. - Protection of Persons Acting Under Authority.

Any person who is required or authorized to act under this Code, so long as he is acting on reasonable grounds, is justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

Art. 37. - Release from Police Station.

- (1) At any time before the initial Court hearing (Article 61) a police officer may release a person arrested without a warrant solely for a Petty Offence or a Class 8 or 9 Serious Offence upon the person signing a written promise, or executing a bond, with or without guarantors, that he will appear in Court at such time as the police officer shall direct. The police officer shall not release a suspect without issuing a Notice of Appearance (Article 58).
- (2) Such bond or the guarantee therefor shall not exceed a total of 10,000 Nakfas.
- (3) The police officer shall, in making his decision on the bond, the guarantors and the amount to be guaranteed consider:

- (a) the likelihood of the arrested person's appearance in Court at the fixed time;
 - (b) the seriousness of the offence for which the person was arrested;
 - (c) the danger to any person or to public safety by the release of the arrested person; and
 - (d) the resources of the arrested person or his guarantors.
- (4) If the arrested person appears before the Court at the time fixed by the police officer, the Court shall order the bond and/or any guarantee undertaken by guarantors of the arrested person to be released and proceed with the procedure provided for under Article 61.
- (5) If the arrested person fails to appear before the Court at the time fixed by the police officer, the Court shall take the following measures as the case may be.
- (a) If the bond has been deposited by the arrested person, the Court shall order that the bond be forfeited.
 - (b) Where there are guarantors, the Court shall summon the guarantors and they shall be required to show cause why their guarantees should not be forfeited.
 - (c) If the guarantor fails to pay, within the time limit to be set by the Court, the amount guaranteed without reasonable justification, the Court may order that execution be carried out in accordance with the relevant

provisions of the Civil Code and Civil Procedure Code.

- (d) The Court may reduce the amount of bail or guarantee fixed by the police officer if, in the Court's opinion, the amount of the bond, in view of the penalty that may be imposed for the offence for which the person has been arrested or for any other reason, is excessive. The Court shall not, however, increase the amount of bail or guarantee fixed by the police officer.
 - (e) The Court may make such other order with respect to the bond as the circumstances of the case may require.
- (6) If at any time before the initial Court hearing (Article 61) for a person arrested without a warrant, a police officer determines, after further inquiry, that there is no longer reasonable grounds to believe that the person committed the offence, he shall release from custody the person arrested without bond or any other precondition.

Chapter 2. - Searches and Seizures

Art. 38. - Search of Arrested Person.

A police officer making an arrest or, when the arrest is made by a private person, the police officer to whom the arrested person is surrendered:

- (1) may search such person to the extent necessary to ensure the person does not possess any weapons and may seize any weapons found; and

- (2) upon reasonable grounds to believe that the person arrested has about his person any articles which may be material as evidence in respect of the offence for which he has been arrested, may search such person to the extent necessary to find such articles.

Art. 39. - Emergency Medical Examination of Arrested Person at Request of Police Officer.

When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination forthwith of the person will afford evidence as to the commission of an offence, a police officer may arrange for a registered medical practitioner, and for any person acting in good faith in the medical practitioner's aid and under his direction, to collect or extract blood or other bodily fluid, or to conduct any other non-invasive and non-painful medical procedure, as is reasonably necessary in order to ascertain the facts which may afford such evidence.

Art. 40. - Order for Medical Examination by Court.

- (1) A Court may, at any stage of a case, order that the accused be medically examined for the purpose of ascertaining any matter which is, or may be, in the opinion of the Court, material to the proceedings before the Court, provided that such examination can be conducted in a reasonable and safe manner. Without the consent of the accused, the Court may not order any procedure that is reasonably likely to endanger the health or safety of the accused or cause him undue pain.
- (2) When a person who is arrested alleges, when appearing before the Court or at any time during his detention in custody, that the examination of

his body will afford evidence which will disprove the commission by him of any offence or which will establish the commission by any other person of any offence against his body, the Court shall, if requested by the arrested person to do so, direct the examination of the body of such person by a registered medical practitioner unless the Court considers that the request is made for the purpose of vexation or delay or for defeating the ends of justice.

Art. 41. - Stopping and Detention of Vehicles.

Any police officer with reasonable grounds to believe there may be found any person suspected of committing a crime, contraband or evidence of a crime in or on any vehicle, may stop and detain such vehicle for a reasonable time to seize the person suspected of committing the crime, to seek voluntary consent to search such vehicle, or to obtain a search warrant for the vehicle.

Art. 42. - Warrant Required for Search of Premises and Vehicles.

- (1) Except as otherwise provided by law, all searches of premises and vehicles, or of portions of premises and vehicles, or of receptacles contained in premises or vehicles, must be conducted pursuant to a search warrant issued under the provisions of this Chapter.
- (2) A search warrant is not required when a police officer:
 - (a) enters the premises or vehicle in hot pursuit of a suspect whom the police officer has reasonable grounds to believe has committed an offence and has entered the premises or vehicle;

- (b) has reasonable grounds to believe that an arrestable offence has been committed and articles which may be material as evidence in respect to that offence are concealed or lodged in the premises or vehicle and a delay in order to obtain a search warrant will result in the removal or destruction of such articles; or
- (c) conducts the search with the express and voluntary consent of a person in possession of the premises or vehicle.

Art. 43. - Search Warrants.

- (1) Any Court may issue a warrant to search any premises or vehicles, or portions thereof, or receptacles kept on premises or vehicles, upon finding that there exists probable cause to believe, in respect to an offence which has been or is being committed, or is being planned, that there is present in that premises, vehicle or receptacle any object or thing which is relevant to the investigation or prevention of an offence.
- (2) A finding of probable cause must be based upon information provided under oath or affirmation.
- (3) A search warrant must be signed by the judge issuing the warrant.
- (4) Every search warrant issued shall specify clearly the premises, vehicle, or receptacle, or portion of premises, vehicle, or receptacle to be searched, and the items to be searched for and seized and the person or persons authorized to conduct the search or seizure.

- (5) On seizing any property such investigating police officer or member of the police shall make a list of the property seized and, unless it is practically impossible, an independent person shall personally attend the seizure, check the list prepared by the investigating police officer or member of the police and sign the list. .
- (6) In effecting a search the police may use such force as is necessary and, where access to premises is denied, may use reasonable force to gain entry.
- (7) Unless otherwise expressly authorized by the Court in writing in the warrant, searches shall be carried out only between the hours of 6 A.M. and 6 P.M.
- (8) A search warrant shall be executed within 7 days of its issuance and the warrant shall expire, unless the time is extended by the Court.

Art. 44. - Compliance with Warrant.

- (1) Whenever any premises, vehicle or other place liable to search is closed, any person residing in or being in charge of such building or place shall, on demand of the police officer executing the search warrant and on production of the warrant, allow the police officer and others accompanying him free entry into and exit from the property and shall afford all reasonable assistance for the search.
- (2) If, after the police officer provides notification of his authority and purpose and if after demand of admittance duly made he cannot otherwise obtain admittance, the police officer may use reasonable means to gain entry into such place and to effect the search.

Art. 45 - Seizure of Articles during Lawful Search.

A person conducting a lawful search may seize any article that the person has reasonable grounds to believe has been obtained by the commission of, or has been used in the commission of, an offence.

Art. 46. - Storage and Disposal of Seized Property.

- (1) A receipt showing the articles seized by a police officer shall be given to the person from whom the articles are seized.
- (2) Any article seized which is required for the criminal prosecution shall be preserved in a safe place until handed over to the Court as an exhibit. Any property not so required may be returned to the person from whom it was taken and a receipt shall be given that the property was returned.
- (3) If the articles seized are necessary for a trial, or an appeal, the Court may order the article to be further detained in a safe place for the purpose of the trial or appeal.
- (4) If a seized article is no longer required for the purposes of criminal proceedings, the Court shall direct such article to be restored to the person from whom it was taken, unless the Court is authorized or required by law to dispose of it otherwise.
- (5) Any person from whom an article has been seized may request the Court having custody of the article, or if no Court has custody, in any Court within the territorial jurisdiction in which the article was seized, for return of the article.

Art. 47. - Searches by Person of the Same Sex.

All searches of persons shall be conducted by persons of the same sex, unless there is an emergency involving the safety of persons or the imminent destruction of evidence and a person of the same sex is not available to make the search. In such an emergency situation the search shall be limited to what is necessary to prevent the danger to others or the destruction of evidence.

Chapter 3. - Investigation of Criminal Activity

Art. 48. - Right to Make a Complaint of Criminal Activity.

- (1) Any person may complain to the police or prosecutor that an offence has been, is being, or may be committed. Consistent with Article 24(1), when the complaint is made to the public prosecutor, the prosecutor shall carry out the investigation himself or forward it to the competent police officer with a view to an investigation being made.
- (2) If a complaint is made to a person who does not have the authority to investigate that complaint, the complaint shall be referred to the person with such authority.

Art. 49. - Putting Complaint into Writing.

- (1) The police officer or prosecutor taking the complaint shall reduce it to writing and, if practicable, present it to the person or persons making the complaint for their signature.
- (2) The complaint shall contain all of the details that are known to the person or persons making the complaint, even if the person or persons making

the complaint do not know the identity of the offender or other material details of the offence.

- (3) In an offence which requires the preferring of charges by a specific person or class of persons before prosecution is allowed, the complaint must be signed by that person.

Art. 50. - Investigation.

- (1) If it appears that an offence has been committed, is being committed, or may be committed in the future, the police shall investigate.
- (2) If a police officer decides that a complaint does not provide sufficient grounds for entering into an investigation, or if during an investigation the police officer concludes that there are not reasonable grounds to bring a charge against a suspect, the police officer shall inform the complainant of this conclusion. Such information shall include the reasons for this decision, notice that the complainant may lodge an objection to this decision with the prosecutor and the name and address of the prosecutor.

Art. 51. - Review of Refusal to Investigate.

If a prosecutor or police officer refuses to record a complaint (Article 49), or to investigate a complaint (Articles 48 and 50), the person making the complaint may make the complaint again before a superior or higher prosecutor. If the prosecutor appealed to is satisfied that the complaint warrants investigation, he shall investigate the matter himself or refer the matter to the police for investigation.

Art. 52. - Diary of Investigation.

Every police officer conducting an investigation under this Chapter shall enter all activity conducted in the course of the investigation into a daily diary, including:

- (1) the dates on which the investigation began and ended;
- (2) all material steps taken in the course of the investigation;
- (3) the name and whereabouts of each witness interviewed and the information obtained from that witness;
- (4) all of the circumstances surrounding the offence which the investigation disclosed;
- (5) an inventory of all of the evidence collected;
- (6) a record of any instructions or orders received from a Court or prosecutor in the course of the investigation; and
- (7) if he has terminated the investigation, the reason and the circumstances leading to the termination.

Art. 53. - Interviewing Witnesses.

- (1) The police may interview any witness who has information relevant to an offence.
- (2) The police may issue a directive to a witness to appear at the police station for questioning about the offence. It shall be the duty of any person to cooperate with this directive, provided, however, that if the person is a suspect, the provisions of

Article 54 shall apply and provided further that it shall not be a crime for a person to fail to comply with a directive issued pursuant to this Article.

- (3) The witness shall answer truthfully all questions put to him, but he may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge.
- (4) Any statement made shall be reduced to writing and signed, or recorded otherwise and shall be made part of the record of the police investigation in the case.
- (5) No police officer or other person in authority shall offer, use, or cause to be offered or used any force, inducement, threat, promise or any other improper method to any person examined by the police.
- (6) No police officer or other person in authority shall prevent or discourage by whatever means any person from making, or from requiring to be recorded, in any manner, in the course of the police investigation, any statement relating to such investigation, which statement the person may be disposed to make of his own free will.

Art. 54. - Interrogation of Suspects.

- (1) Any person under investigation as an offender who is questioned by the police in regards to the investigation shall, before any questioning takes place, be cautioned that he has the right not to answer any question put to him, that any statement that he may make may be used in evidence against him and that if he wishes he may consult with a lawyer.

- (2) If the suspect asserts his right to silence or to consult with an attorney, the questioning must cease until his requests are complied with.
- (3) No inducements, threats, promises, coercion or compulsion of any kind shall be used in taking a statement from a suspect.
- (4) Any statement made shall be reduced to writing and signed, or otherwise recorded and shall be made a part of the record of the police investigation in the case.
- (5) If there is any indication that the person being investigated is unable to fully understand the language in which the questioning is conducted or in which his answers are being recorded, he shall be supplied with a competent interpreter who shall fully explain the suspect's rights under sub-Article (1), as well as all of the questions being asked and shall then certify the correctness of all questions and answers in the suspect's statement.
- (6) Any young offender under investigation shall be interrogated only in the presence of his parent, guardian, or other person *in loco parentis*.
- (7) Once a suspect has been removed from police custody and detained in a prison or other place of detention pursuant to Articles 60-61, the police may question him only after obtaining his express, voluntary consent to be questioned.

Art. 55. - Recording of Statements before A Court.

- (1) A police officer investigating an offence or an accused may appear before a Court with a witness

for the purpose of recording a statement from that witness when:

- (a) it appears that the witness may be unavailable for the trial of the offence; and
 - (b) the witness is able and willing to give evidence material to the offence.
- (2) If the witness, owing to bodily injury or impairment, is unable to appear before the Court, the provisions of the Evidence Code of Eritrea on visit by the Court to the situs of an evidentiary item shall apply.
- (3) If the evidence relates to or is expected to relate to an offence for which any person has already been charged or arrested, reasonable notice of the intention to take the statement shall be given to the prosecutor and the accused person or his counsel. If the accused person is in custody he may and shall, if he so requests, be brought to Court by the person in whose charge he is.
- (4) The prosecutor and the accused, either personally or through his counsel, shall have the right to examine the witness.
- (5) A copy of any statement made under this Article shall be provided to the prosecutor and the accused and shall be sent to the Court before which the case is to be tried and to the prosecutor.

Art. 56. - Arrest of Suspect during Investigation.

- (1) When during the course of an investigation a police officer has reasonable grounds to believe

that a suspect has committed an arrestable offence, he may arrest him.

- (2) When during the course of the investigation the police officer has reasonable grounds to believe that a suspect has committed a non-arrestable offence, he may apply to a Court for a warrant for the arrest of the suspect in accordance with the provisions of Article 30.

Art. 57. - Notice of Appearance in Lieu of Arrest.

- (1) When during the course of an investigation a police officer has reasonable grounds to believe that a suspect has committed only a Class 3 Petty Offence or Offences, the police officer shall, instead of arresting the suspect or applying for an arrest warrant, issue a Notice of Appearance directing the suspect to appear in a specified Court on a date and at a time certain. This Subsection shall not apply if the police officer is unable to establish the identity of the suspect.
- (2) When during the course of an investigation a police officer has reasonable grounds to believe that a suspect has committed only a petty offence or offences, the police officer may, instead of arresting the suspect or applying for an arrest warrant, issue a Notice of Appearance directing the suspect to appear in a specified Court on a date and at a time certain.
- (3) In deciding under sub-Article (2) whether to issue a Notice of Appearance in lieu of following the procedures for arrest, the officer shall consider:
 - (a) the seriousness of the alleged offences;

- (b) the likelihood that the suspect will appear in Court on the date specified in order to be dealt with according to law;
- (c) the need to secure or preserve evidence of or relating to the offence;
- (d) the likelihood that the suspect will continue or repeat the offence or commit another offence; and
- (e) the likelihood that the suspect will harm or be a danger to others.

Art. 58. - Contents of Notice of Appearance.

- (1) A Notice of Appearance issued by a police officer shall:
 - (a) state the name of the accused;
 - (b) state the offence or offences that the accused is alleged to have committed; and
 - (c) require the accused to attend Court at a time and place to be stated therein and to attend thereafter as required by the Court in order to be dealt with according to law.
- (2) An accused shall be requested to sign his Notice of Appearance and if he refuses he shall be subject to arrest according to law. If an accused is unable to write his signature, the contents of the Notice shall be read to him and he may by mark indicate his acceptance of the Notice.
- (3) A copy of the Notice of Appearance shall be given to the accused and another copy shall be filed

forthwith with the Court before which the accused is directed to appear.

Art. 59. - Report of Investigation.

- (1) Every police investigation shall be conducted as promptly as possible.
- (2) As soon as an investigation is completed, the investigating police officer shall forward to the prosecutor a report stating:
 - (a) the name and other identifying information of the accused;
 - (b) the criminal offence alleged to have been committed;
 - (c) the name or other identifying information of any victims of the crime;
 - (d) the information about the crime collected during the investigation as well as the names and other identifying information of all persons who appear to be acquainted with the circumstances of the case; and
 - (e) the means by which all of the evidence has been collected and the whereabouts of that evidence.

BOOK II - PROSECUTION AND INQUIRY

TITLE I - SETTING IN MOTION PROSECUTION AND INQUIRY

Chapter 1. - Commencement of Proceedings

Art. 60. - Procedure after Arrest.

- (1) Where the accused has been arrested by the police, or by a private person and surrendered to the police, the police shall bring him before the nearest Court forthwith. He shall be presented to the Court no later than forty-eight (48) hours after his arrest or after being surrendered to the police, and if this is not reasonably possible, as soon as possible thereafter as local circumstances and communications permit.
- (2) No person shall be detained for a period longer than that allowed in sub-Article (1) without an order of the Court.

Art. 61. - First Appearance in Court.

- (1) Upon the first appearance of the arrested person in Court, the Court shall:
 - (a) ascertain whether the provisions of Articles 31 through 35 of Chapter 1 were followed in making the arrest;
 - (b) ascertain whether there has been any unjustifiable delay in bringing the arrested person before the Court;
 - (c) make a determination on pre-trial release according to Article 69 and, if appropriate,

set the conditions of pre-trial release according to Article 70;

- (d) inform the arrested person of the reasons for his arrest and appearance in Court and that charges may be filed against him;
- (e) advise the arrested person that he has a right to be represented in proceedings against him, that the Court may appoint counsel to represent him pursuant to Articles 27 and 28 and that he has a right to an interpreter pursuant to Article 7; and
- (f) ascertain in cases where an arrest has been made without a warrant, whether there are reasonable grounds to believe that the accused committed the offence for which he was arrested.

(2) If the Court determines that an arrested person is entitled to appointed counsel pursuant to Article 28, it shall adjourn the proceedings to allow for counsel to be appointed to represent the arrested person. The Court may order the release of the person or may defer making a decision on the arrested person's pre-trial release, until counsel has been appointed and appeared on the person's behalf.

(3) If the Court has a reasonable belief that a violation has occurred pursuant to its inquiry under sub-Article (1) (a) or (b), it shall:

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

the Penal Code, by referring the matter to the Attorney General's Office; or

- (b) order that disciplinary action be taken by the competent authority against the person or persons responsible, if the violation does not amount to an offence;
 - (c) order, if the Court finds it necessary, the immediate release of the arrested person or direct any inappropriateness towards proper procedure; and/or
 - (d) take any other measure that the Court finds necessary under the circumstances.
- (4) The Court shall keep a record of the actions that it takes in accordance with this Article.
- (5) The provisions of sub-Article (3) shall be without prejudice to the accused person's rights to institute claims for damages caused to him as a result of the violation.

Art. 62. - Duty to Commence Proceedings.

- (1) Except as provided in Article 64, the prosecutor shall commence proceedings in accordance with the provisions of this Chapter whenever in his opinion there is sufficient evidence that an offence has been committed by the accused.
- (2) If the prosecutor decides that further investigation shall be conducted in order to decide whether to institute a case against the accused, he shall make such decision within fifteen (15) days of receipt of the police report (Article 59).

Art. 63. - Cases Where Proceedings Should Not be Instituted.

- (1) No proceedings shall be instituted where:
 - (a) the prosecutor is of the opinion that there is no sufficient evidence that the offence was committed by the accused; or
 - (b) the prosecution is barred by the time limitations set forth in Article 46 of the Penal Code, or the offence or class of offenders is made the subject of a Presidential amnesty under Article 105 of the Penal Code; or
 - (c) the accused:
 - (i) dies;
 - (ii) is under twelve years of age at the time of the alleged offence, provided that the provisions of Article 101 of the Penal Code shall apply to such offenders; or
 - (iii) cannot be prosecuted under any special law or under international treaties or agreements to which Eritrea is a party.
- (2) The Attorney General or prosecutor may not refuse to institute proceedings on any other grounds.

Art. 64. - Proceedings Involving National Security.

- (1) The Attorney General shall decide on whether to commence proceedings in cases involving national security.
- (2) If the Attorney General decides not to commence proceedings under sub-Article (1), an application under Article 66 to review the decision of the Attorney General may for all classes of offences be made to the High Court of appropriate jurisdiction.

Art. 65. - Form of Refusal and Notice.

- (1) Within fifteen (15) days of receipt of the police report (Article 60), the Attorney General or prosecutor shall clearly record, in writing, the reasons for his refusal to commence proceedings under Article 63.
- (2) A copy of this refusal shall be sent to:
 - (a) the Attorney General, except where he has made the decision not to commence proceedings;
 - (b) the investigating police officer;
 - (c) the injured party and his representative; or
 - (d) the person who is the subject of the complaint.

- (3) Upon issuance of the Attorney General's or prosecutor's decision not to institute proceedings, if the person who is the subject of the complaint is still being held in custody, a copy of the decision shall be sent forthwith to the detaining authority and he shall be released forthwith and any bond deposited or any guarantee undertaken immediately released.

Art. 66 - Review of Refusal to Commence Proceedings.

- (1) The injured party and his representative shall, within 30 days from having received the decision of the prosecutor, request the Attorney General to direct the prosecutor to institute proceedings.
- (2) Where the prosecutor refuses to institute proceedings under Article 63 (1)(a), the injured party or his representative may, within thirty (30) days from having received the decision of the Attorney General under sub-Article (1), or if the Attorney General has not ruled, within sixty (60) days of having received the decision of the prosecutor, shall, in accordance with Article 67, apply to the Court for an order that the prosecutor institute proceedings.

Art. 67. - Form of and Decision on Application for an Order to Institute Proceedings.

- (1) An application under Article 66 for all Petty Offences and Classes 8 and 9 Serious Offences shall be made to the Regional Court of appropriate jurisdiction, and for all Class 1 through 7 Serious Offences, to the High Court of appropriate jurisdiction.

- (2) The Court shall, after considering the refusal of the Attorney General or the prosecutor to institute proceedings under Article 103, the reasons therefor, and any statements by the Attorney General and any person referred to in Article 65 (2) (c) or (d), either confirm the decision of the Attorney General or prosecutor, or order him to institute proceedings.
- (3) The decision of the Court shall be final and there shall be no further appeal from that decision.
- (4) In the event that the Court orders the prosecutor to institute proceedings, the trial Court shall consist exclusively of a judge or judges who were not involved in the decision to order the prosecutor to proceed.

Chapter 2. - Pre-Trial Detention and Release

Art. 68. - Purpose of Pre-Trial Detention.

The detention of an arrested person is justified only for the following reasons:

- (1) to ensure his attendance in Court; or
- (2) for the protection and safety of any person or the public, having regard for all the circumstances, including any substantial likelihood that the accused will, if he is released from custody, commit a criminal offence or interfere with the administration of justice.

Art. 69. - Pre-Trial Release.

- (1) The Court shall, where the arrested person has been charged with a Petty Offence, order his release upon his own undertaking, without conditions, unless the prosecutor shows that the arrested person should be detained or released only upon conditions.

- (2) The Court shall, where an arrested person:
 - (a) has been charged with a Serious Offence;
 - (b) has committed the offence charged while released awaiting trial for another offence, or on conditional release; or
 - (c) is not ordinarily a resident of Eritrea and is charged with a Class 1 or 2 Petty Offence,order that the arrested person be released only upon conditions, or be detained in custody pending trial, unless the arrested person shows that the conditions or his detention in custody is not justified pursuant to the principles of Article 108.

- (3) If the Court determines that the arrested person shall be released only with conditions or upon conditions, it shall impose one or more of the conditions set forth in Article 70 (1) (a) through (h).

- (4) Where the Court orders an arrested person's release pursuant to this Article, it shall include, in the record, the reasons for making such an order.

- (5) The Court shall deny an application for pre-trial release only where it determines that the arrested person, if set at liberty:
 - (a) is unlikely to appear in Court;
 - (b) is likely to commit other offences;
 - (c) is likely to interfere with witnesses or tamper with evidence;
 - (d) is unlikely to comply with restrictions or conditions imposed by the Court; or
 - (e) is likely to endanger the safety of any person or the public.

Art. 70. - Conditions upon Release.

- (1) Where, pursuant to Article 69, the Court determines that the arrested person shall be released only with conditions or upon conditions, the Court shall order that he be released subject to one or more of the following conditions:
 - (a) enter into a bail bond, with or without guarantors and with or without deposit of money or other valuable security, as set forth in Article 71;
 - (b) report at stated times to a police officer or other designated person such as members of the accused's family or community;
 - (c) notify the police officer or other person designated in sub-Article (b) of any change of address, employment or occupation;

- (d) remain within a territorial jurisdiction, municipality or area;
 - (e) refrain from communicating with any witness or other person expressly named in the order, except in accordance with the conditions in the order that the Court considers necessary;
 - (f) deposit his passport, if the arrested person holds a passport, with the authority designated by the Court;
 - (g) refrain from engaging in any activity, conduct or business as designated by the Court; or
 - (h) comply with such other reasonable conditions specified in the order which the Court considers appropriate.
- (2) The Court, in setting any of the conditions under sub-Article (1), shall base its decision upon reliable evidence.

Article 71. - Conditions of Bail.

- (1) At any hearing determining the pre-trial release of the arrested person, the Court may fix the terms on which bail is granted.
- (2) The Court shall order that the arrested person be released, consistent with Article 69:
 - (a) on his entering into a bail bond with or without guarantors, in such amount but without deposit of money or other valuable security; or

- (b) on his entering into a bail bond with or without guarantors, in such amount but with deposit of money or other valuable security.
- (3) Where the Court, pursuant to sub-Article (2) or any other provision of this Chapter, orders that an arrested person be released upon entering into a bail bond with guarantors, the Court may, in the order, name the particular persons as guarantors, who have agreed thereto to be guarantors.
- (4) In determining the guarantors, the Court may include members of the arrested person's family or community.

Art. 72. - Amount of Bail to Be Secured.

- (1) The amount of the bail bond shall be fixed with due regard to the circumstances of the parties concerned and shall not be excessive.
- (2) The Court shall, in making its decision on the bail bond, the guarantors and the amount to be guaranteed, consider:
 - (a) the seriousness of the charge;
 - (b) the likelihood of the accused's appearance at trial;
 - (c) the danger to any person or to public safety by the release of the accused; and
 - (d) the resources of the arrested person and his guarantors.

Art. 73. - Finding of Guarantors.

Any person detained prior to trial, who is eligible for release on bail, shall be given the opportunity to find guarantors.

Art. 74. - Obligations of Guarantors.

Unless otherwise expressly provided in the bail bond, the guarantors shall be responsible for securing the appearance of the person released on bail at any time and place during the proceedings, including adjournments.

Art. 75. - Discharge of Guarantors.

- (1) The guarantors shall be discharged if:
 - (a) at any time, they bring the released person to the Court which granted bail and request that they be discharged as guarantors;
 - (b) they apply to the Court, which caused the bond to be taken, to discharge the bail bond, the Court issues a warrant for the arrest of the person on whose behalf the bail bond was executed and the person is arrested and brought before the Court; or
 - (c) they are of the opinion that the accused may abscond, they inform the Court, the Court issues an arrest warrant and the accused is in fact arrested.
- (2) The guarantee shall lapse upon the death of the guarantor, provided death occurs before an order has been issued for the payment of the amount of his bond or for the forfeiture of his deposit. Any monies or securities deposited with the Court shall

be returned to the guarantor's personal representative.

- (3) If the Court discharges the guarantors pursuant to sub-Article (1), or the guarantor has died, the accused shall be given the opportunity to find other guarantors, pursuant to Article 113, and if he is unable or refuses to do so, the Court may order his arrest and detention.

Art. 76. - Form and Duration of Bail Bond.

- (1) The bail bond shall be in a prescribed form.
- (2) The bail bond shall remain in force for such period as shall be fixed by the Court, as extended from time to time, but may not extend beyond the day of the judgment of the Court which ordered the bail bond.
- (3) When the charge against the person released on bail is withdrawn, the bail bond shall terminate and the Court shall discharge the bail bond.

Art. 77. - Release upon Court Order or on Bail.

The accused shall be released from custody when:

- (a) the Court orders his release; or
- (b) the bail bond has been entered into and all the conditions of the bond have been fulfilled.

Art. 78. - Revocation of Pre-Trial Release.

- (1) The Court which ordered the release of the person arrested may, upon application or on its own motion, order the revocation of the pre-trial release

order and issue a warrant for the arrest of the accused if:

- (a) the accused has violated any of the conditions imposed upon him by the pre-trial release order or bail bond;
 - (b) the amount of the bail bond is:
 - (i) insufficient because of mistake or fraud or similar cause; or
 - (ii) has subsequently become insufficient for any other reason.
 - (c) the guarantors have been discharged pursuant to Article 75; or
 - (d) new facts are disclosed which were unknown when the pre-trial order was granted.
- (2) The Court shall conduct a hearing prior to revoking the pre-trial order or bail and issuing an arrest warrant for the accused, or to modifying the pre-trial order or bail and requiring the accused to produce new guarantors.

Art. 79. - Forfeiture of Bail.

- (1) Where the person released prior to trial fails to appear on the date fixed in the pre-trial release order or bail bond:
 - (a) if the bail bond has been deposited by the person released, it shall be forfeited.
 - (b) where there are guarantors, the Court shall summon the guarantors and they shall be

required to show cause why their guarantees should not be forfeited.

(c) if the guarantor fails to pay the amount guaranteed or the amount the Court has ordered to be paid in accordance with sub-Article (1) (b), without reasonable justification, within the time limit set by the Court, the Court may order that execution be carried out in accordance with the relevant provisions of the Civil Code and Civil Procedure Code.

(2) The Court may make such other order with respect to the bail bond as the circumstances of the case may require.

Art. 80. - Conditions of Detention and Release Pending Completion of Investigation.

(1) Where the Court has ordered that a person be detained pursuant to Article 61, the detention shall be in a prison facility and the police shall promptly, following the issuance of a Court order, transfer the person to the appropriate prison facility. The Court has the authority to ensure, by entering at any time into prisons and other places where detainees are held, that detainees or prisoners are held in accordance with the law. Where the Court finds that detainees or prisoners are not held in accordance with the law, the Court shall take measures pursuant to Article 61 (3).

(2) The following conditions shall apply:

(a) No person held pending trial shall be detained in the same cell with persons convicted after trial.

- (b) Detainees of one sex shall not be kept with detainees of the opposite sex.
- (c) Where a detainee has money of his own, he may buy and bring food, tobacco, clothes and bedding.
- (d) The detainee may, at regular intervals, meet his relatives and correspond with them and purchase, borrow or otherwise obtain books and newspapers.
- (e) The Prison Administrator may exercise reasonable control over the books and newspapers brought in and the letters to relatives written by the detainee.
- (f) Where the prosecutor deems the privileges of the detainee under sub-Article (d) to be an obstruction to preparation for trial, he may apply to the Court which issued the detention order, after notice to the detainee or his counsel, for revocation of these privileges. Revocation, if ordered by the Court, shall be in writing, setting forth the reasons therefor. Upon request, the detainee's counsel shall be given an opportunity to appear before the Court and argue against revocation.
- (g) A detainee shall always be offered opportunity to perform work but shall not be obligated to work. If a detainee chooses to work, he shall be paid for his labor.
- (h) All other conditions of detention prescribed by the law relating to prisons and not inconsistent with this Article shall apply to detainees being held pending trial.

- (3) The public prosecutor shall take all measures necessary to ensure that the investigation is completed promptly with a view to preparation of charge and commencement of trial. The Prison Administration shall for the same purpose also periodically, but not later than monthly, inform the Courts which have issued detention orders pursuant to this Article and the public prosecutor in writing of detainees against whom charges have not been framed.
- (4) The detainee, his counsel, a relative or any other interested person acting on behalf of the detainee shall, fifteen (15) days after the order of the detention, have the right to apply in writing to the Court which issued the detention order with a view to completion of the investigation and preparation of a charge against the detainee.
- (5) The Court shall, after receipt of the application under sub-Article (4) hereof, notify the public prosecutor that a decision will be taken under sub-Article (6) hereof, if the Court does not receive a copy of the charge against the detainee or a copy of the public prosecutor's decision not to institute proceedings under Article 103 or 104.
- (6) If neither of the copies requested by the Court is submitted to the Court fifteen (15) days after the date of the issue the Court's notice under sub-Article (5), the Court shall order the release of the detainee under sub-Article (7) until receipt of either of copies requested by the Court under sub-Article (5).
- (7) The Court shall order that the detainee be released until receipt by the Court of either of copies requested by it under sub-Article (5), subject to one

or more of the conditions set forth in Article 70 (1) (a) through (h) or any other condition that the Court deems appropriate. The Court may, in its discretion and in view of the continuance of reason for which it had ordered the detention of the person, decide that the person be released after such time as the Court shall decide, but not longer than thirty (30) days from the date of the order of the Court under this sub-Article.

- (8) If the person had, however, been detained for the reason contained in Article 69 (5)(e) and unless the Court decides that such reason does not exist anymore, the public prosecutor shall take all measures necessary to complete the investigation as soon as possible and make the necessary subsequent decisions.
- (9) The provisions of sub-Articles (3) – (7) shall apply *mutatis mutandis* to persons who have been released upon deposit of bail with or without guarantors as well as persons who have been released under the condition contained in Article 70 (1)(g), provided that the period of time described in sub-Articles (4) and (6) regarding the persons referred to in this sub-Article shall be thirty (30) and fifteen (15) days respectively.
- (10) In any decision that the Court makes pursuant to sub-Articles (6) – (9), the Court may, if it is of the opinion that such a measure is necessary for proper determination of its order, require the applicant and the public prosecutor to give their opinions on the order that the Court wants to give.

Art. 81. - Application for Pre-Trial Release.

- (1) An arrested person may apply to the Court before which he is first brought under Article 61 or the trial Court after being formally charged, for pre-trial release at any time. The application for pre-trial release may be granted by that Court.
- (2) The application for pre-trial release shall be in writing and signed by the applicant or his representative or counsel. It shall contain a summary of the reasons for the application and the amount of the bail bond, if any, the applicant is prepared to enter into, or the guarantors, if any, who are willing to be responsible for securing the applicant's appearance.
- (3) The Court to which the application is made shall ensure that the applicant has the opportunity to consult with his representative or counsel in preparation of the application for pre-trial release.

Art. 82. - Hearing and Decision on Application for Pre-Trial Release.

- (1) At any proceeding related to pre-trial release, the accused shall have the right to be present at such proceedings. The investigating police officer and the prosecutor shall also have the right to be present, provided that the hearing may be held in their absence, if the public prosecutor has been given 24 hours' notice of the hearing.
- (2) The Court to which an application for pre-trial release is made shall hold a hearing without delay and shall make its decision with 48 hours of the close of the hearing. Any decision granting or denying the application for pre-trial release shall be

in writing and set forth the reasons for any such grant or denial.

Art. 83. - Review of Decision on Application for Pre-Trial Release.

- (1) The arrested person and the public prosecutor may seek a review of the decision of the Court under Article 82 to the next highest Court, whose decision on this matter shall be final.
- (2) If another application is filed at a later stage of the proceedings, another review of a denial of that application may be made.

Art. 84. - Release during Trial.

- (1) At any time after the commencement of the trial, the trial Court upon application by the accused detained prior to trial, or on its own motion, may order the release of the defendant during the trial.
- (2) The provisions of this Title shall apply in any determination made under sub-Article (1).

Art. 85. - Detention during Trial.

- (1) At any time after the commencement of the trial, the trial Court, upon application of the prosecutor or on its own motion, may order the detention of the defendant until the completion of the trial.
- (2) The provisions of this Title shall apply in any determination made under sub-Article (1).

BOOK III - PROSECUTION AND TRIAL

TITLE I - PROCEDURE AT COMMENCEMENT OF PROSECUTION

Chapter 1. - Charge

Art. 86. - Principle.

Unless specifically provided in this Code or any other laws, no person may be tried for any offence unless a charge has been prepared by the public prosecutor in accordance with the provisions of this Chapter.

Art. 87. - Framing, Filing and Service of Charge.

- (1) Within fifteen (15) days of receipt of the police report (Article 59), the prosecutor shall determine what charges, if any, shall be filed and he shall file charges in the Court having jurisdiction to try the matter.
- (2) Where the prosecutor determines that the accused shall be charged with offences that lie within the subject matter jurisdiction of two different Courts, the prosecutor shall join and file charges in the higher Court having territorial jurisdiction in the matter and that Court shall have subject-matter jurisdiction to try all of them.
- (3) At the time when charges are filed, the prosecutor shall serve upon the accused and his counsel a copy of each charge against him and no fee shall be imposed upon the defense for such copy or copies.
- (4) The Attorney General shall take all measures within his authority, including ordering disciplinary measures or the institution of criminal

proceedings, as the case may be, against unwarranted delays by the public prosecutor to frame, file or serve a charge.

- (5) The provisions of sub-Article (4) shall also apply to unwarranted delays by the public prosecutor in making his decision to refuse to institute criminal proceedings against the accused pursuant to Article 63 (1) (a) or (b) or in ordering the conduct of further investigation by the police pursuant to Article 62.

Art. 88. - Setting Trial Date.

- (1) When the charge has been filed under Article 87, the Court shall forthwith fix the date of trial and cause the accused and the prosecutor to be summoned to appear for trial and, if the accused is in custody, it shall order such measures as are necessary to secure the attendance of the accused.
- (2) The date for the commencement of the trial shall in all cases be not later than thirty (30) days after the filing of charges.
- (3) The parties may request an extension of the periods described in sub-Article (2) but the Court shall not grant an extension unless it is satisfied that the parties, or the Court, cannot reasonably be prepared to proceed within the prescribed periods.

Art. 89. - Charge Wrongly Filed.

Where the prosecutor files a charge in a Court without jurisdiction, the Court shall refuse to accept such charge and, by written endorsement on the charge sheet, shall direct the prosecutor to file the charge in a Court having jurisdiction.

Art. 90. - Content of Charges.

- (1) Each charge shall, in order to enable the accused to know with sufficient clarity what charge he has to answer by properly identifying the accused and describing the factual circumstances and the legal elements of the alleged offence, include:
 - (a) the name and proper description of the accused;
 - (b) the offence with which the accused is charged and its legal and material elements;
 - (c) the time and place of the offence and, where appropriate, the person against whom or the property in respect of which the offence was committed; and
 - (d) the law and article of the law against which the offence is said to have been committed.
- (2) Each charge shall be signed and dated.

Art. 91. - Included and Alternative Offences.

- (1) Where the commission of the offence charged, as described in this Code or Proclamation creating it or as framed in the charge, includes the commission of another offence, the accused may be convicted, even if the original offence charged is not proved, of an included offence that is proved or of an attempt to commit the offence charged or an included offence.
- (2) Where the accused is charged with actual commission of an offence, he may be convicted of it

if the evidence proves his participation in the offence as a secondary party and *vice versa*.

Art. 92. - Joinder of Charges.

- (1) A charge-sheet may contain several distinct charges relating to the same accused and each offence so charged shall be described separately.
- (2) All charges may be tried together, but where the accused is likely to be prejudiced in his defense the Court shall order the charges to be tried separately.

Art. 93. - Joinder of Accused.

- (1) All persons accused of having participated in whatever capacity in the offence or offences shall be charged and tried together.
- (2) Where several persons are alleged to have committed different offences connected with the same criminal activity, they may be charged and tried together.
- (3) The Court shall order separate trials where it is satisfied that such an order is required in the interests of justice.

Art. 94. - Effect of Errors.

No error in the formulation of a charge shall be regarded as material unless the accused is prejudiced by such error or the interests of justice are likely thereby to be defeated.

Art. 95. - Amendment or Replacement of Charge.

- (1) Where the accused is brought to trial on a defective charge, the Court may order the charge to be

amended or replaced at any time before final decision and may do so of its own motion or upon application by one of the parties.

- (2) Every such amendment or replacement shall be read and explained to the accused by the Court.

Art. 96. - Effect of Amendment or Replacement.

- (1) Where a charge is amended or replaced, the Court shall ask the prosecutor and the accused to state whether they are ready to proceed.
- (2) Where the prosecutor or the accused states that he is not ready, the Court shall order the matter adjourned to a fixed date so as to allow sufficient time to ensure that the parties are not prejudiced in the preparation of the case for trial upon the amended or replaced charge.

Art. 97. - Withdrawal of Charges.

- (1) The prosecutor may withdraw any charge before plea at trial and only with permission of the Court after plea at trial.
- (2) The withdrawal of a charge before plea is not a bar to subsequent proceedings but the withdrawal of a charge after plea is a bar to subsequent proceedings.
- (3) When the prosecutor seeks permission to withdraw a charge after plea, the Court shall give reasons for its decision to allow or refuse such permission.

Art. 98. - Discharge.

Where a charge is withdrawn before plea and no new charge is framed in accordance with Article 95, the accused shall be discharged.

Chapter 2. - Disclosure

Art. 99. - Duty to Disclose.

- (1) As soon as possible after filing charges against the accused, the prosecutor shall make disclosure to the accused or his counsel of any relevant information or evidence in his possession or of which he has knowledge.
- (2) Where the Court is satisfied that there has not been compliance with the provisions of this Chapter, it shall adjourn the proceedings until in its opinion there has been compliance and it may make such other order as it considers appropriate in the circumstances. The Court may also grant an adjournment, at the request of the accused, if it is satisfied that the accused requires more time in which to prepare for trial.
- (3) The duty of disclosure by the prosecution is continuing and the prosecutor is required forthwith to communicate to the accused any new and subsequent information that he receives if such information falls within the terms of Article 100.

Art. 100. - What to Disclose.

- (1) The Court shall not commence a trial and the accused shall not be called upon to plead to the charge of an offence, unless the Court is satisfied that:
 - (a) the accused knows that he is entitled before trial to disclosure of the prosecution case;
 - (b) the accused has been given a copy of the charge or charges against him in that prosecution; and
 - (c) disclosure of the prosecution case has been made with adequate time to prepare for trial.

- (2) The accused is entitled, from the prosecutor:
 - (a) to receive a copy of any relevant statement made by him;
 - (b) to inspect anything that the prosecutor proposes to introduce as an exhibit;
 - (c) to receive a copy of any relevant statement made by any person and recorded in writing or, in the absence of a statement, a written summary of the information provided by that person;
 - (d) to inspect the electronic recording of any relevant statement made by a person whom the prosecutor proposes to call as a witness;
 - (e) to receive, where his request demonstrates the relevance of such information, a copy of

the criminal record of any alleged victim or proposed witness;

- (f) to receive, where known to the police officer or prosecutor in charge of the investigation, and not protected from disclosure by law, the name and address of any other person who could be called as a witness or other details enabling that person to be identified; and
- (g) to receive any other relevant information that might assist the accused in the preparation of his defenses, whether the prosecutor intends to use such information as evidence at trial or not.

Art. 101. - Application for Non-disclosure.

Upon application by the prosecutor, the Court may order that one or more of the items identified in Article 100 shall not be disclosed, or that disclosure be delayed, if it is satisfied that disclosure would endanger life or safety, or interfere with the administration of justice or national security.

TITLE II - TRIAL

Chapter 1. - General Provisions

Art. 102. - Witness Summonses.

- (1) As soon as the date of the trial has been fixed, the prosecutor shall give the Court a list of witnesses whose attendance is required and the Court shall forthwith issue summonses in a prescribed form.
- (2) After the prosecutor has presented all of the evidence in the prosecution case, the accused or his counsel shall give to the Court a list of witnesses whose attendance is required and the Court shall forthwith issue summonses in a prescribed form.
- (3) Where a proposed witness is confined in prison or jail, the Court shall issue an order to the person in charge of such prison or jail that the proposed witness be escorted under appropriate protection to attend Court on the date and at the time specified in the order for the purpose of giving evidence.
- (4) The prosecutor and the accused shall be responsible for ensuring that all exhibits to be produced at the trial shall be in Court on the day fixed for the presentation of evidence.

Art. 103. - Arrest Warrant.

Where an accused person or a witness, who has been duly summoned to attend Court and there is proof of service of such summons, has failed to appear as required, the Court may issue an arrest warrant to compel the attendance of such persons before the Court.

Chapter 2. - Hearing

Art. 104. - Opening of Hearing.

- (1) The Court shall sit on the day and at the hour fixed for the trial.
- (2) The case shall be called and the accused shall appear before the Court.

Art. 105. - Attendance of Accused.

- (1) The accused shall appear personally to hear and answer the charge and, if he is assisted by counsel, his counsel shall appear with him.
- (2) The accused shall be adequately guarded and shall not be physically restrained unless there are reasonable grounds to believe that he might be dangerous, might become violent, might try to escape or might disrupt the proceedings.

Art. 106. - Verification of Identity.

When the accused has been brought before the Court, his identity, age and occupation shall be established.

Art. 107. - Reading of Charge.

The charge shall be read and explained to the accused by the Court, who shall then ask the accused if he has any objection to the charge.

Art. 108. - Objections to the Charge.

- (1) If the accused objects to the form or content of the charge, or to the jurisdiction of the Court, the provisions of Article 95 and the following shall apply.
- (2) The provisions of Article 109 shall apply where the accused states:
 - (a) that the matter is pending before another Court;
 - (b) that he has previously been acquitted or convicted on the same charge;
 - (c) that the charge against him has been barred by limitation or the offence with which he has been charged has been made the subject of amnesty;
 - (d) that he will be prejudiced in his defense if he is not granted a separate trial, where he is tried with others;
 - (e) that no permission to prosecute as required by law has been obtained;
 - (f) that the decision in the case against him cannot be given until other and separate proceedings have been completed;
 - (g) that he is not mentally able to participate in the conduct of his own defense;
 - (h) that the charge is not stated with sufficient particularity to allow the accused to know clearly the factual and legal basis of the charge against him;

- (i) that the Court lacks jurisdiction; or
 - (j) that any other objection must be resolved before the commencement of trial.
- (3) Where no objection is made under this Article immediately after the accused has been required by the Court to state his objections, the accused shall be allowed to make such objection after plea only if the Court is satisfied that it is in the interests of justice to do so.
- (4) The Court may raise an objection under this Article of its own motion.

Art. 109. - Settlement of Objections.

- (1) The Court shall record any objection that may have been made under Article 108 (2) and shall ask the prosecutor whether he wishes to reply.
- (2) Whenever possible, the Court shall decide forthwith on the objection.
- (3) If an objection is made under Article 108 (2) (g) and the Court is satisfied that the accused is not mentally responsible for the conduct of his own defense, the Court shall order the proceedings adjourned indefinitely and shall instruct the prosecutor and counsel for the accused that the Court will hear any representations that the parties might wish to make concerning confinement of the accused under the provisions of the civil law.
- (4) If an objection is made under Article 108 (2) (h) and the Court is satisfied that the charge is not stated with sufficient particularity, the Court shall order the prosecutor to amend the charge by

providing additional details and if the charge is so amended, the prosecutor shall be bound to prove the amended charge beyond reasonable doubt.

- (5) Where a decision cannot be made forthwith owing to lack of evidence, the Court shall order that the necessary evidence be submitted without delay and it may order an adjournment for this purpose.
- (6) The Court shall make its decision forthwith when the necessary evidence is produced.

Art. 110. - Plea of Accused.

- (1) After the charge has been read and explained to the accused, the Court shall ask the accused whether he pleads guilty or not guilty.
- (2) Where there is more than one charge, the Court shall read and explain each charge and shall record the plea of the accused in respect of each charge separately.
- (3) The plea of the accused shall be recorded as nearly as possible in the words of the accused

Art. 111. - Plea of Not Guilty.

- (1) Where the accused says nothing in answer to the charge or denies the charge, the Court shall record a plea of not guilty.
- (2) Where the accused admits the charge with reservations, the Court shall record a plea of not guilty.

Art. 112. - Plea of Guilty.

- (1) Where the accused admits without reservation every ingredient of the offence charged, the Court shall record a plea of guilty and may forthwith enter a finding of guilt against the accused in the record.
- (2) The Court shall not record a plea of guilty unless and until it is satisfied that the plea is made freely, voluntarily and with a clear understanding that the plea is an admission of guilt that might lead to the imposition of sentence.
- (3) Where a plea of guilty has been recorded, the Court shall require the prosecution to produce such evidence as the Court considers necessary to substantiate the charge and the Court may also permit the accused to produce evidence.

Art. 113. - Amendment of Plea and Bond for Victims' Losses.

- (1) Where a plea of guilty has been recorded and it appears to the Court in the course of proceedings that a plea of not guilty should have been recorded, the Court may change the plea to one of not guilty and set aside any finding of guilt already entered in the record.
- (2) After the Court has decided on the plea of the accused and at any time before the public prosecutor opens his case, the Court may, if it deems that such an order is necessary for the proper dispensation of the case, order the accused to deposit a bond for securing the compensation for the injuries suffered by the victims of the offence.

- (3) The Court shall make the order described in sub-Article (2) only if it is of the opinion that the offence with which the accused has been charged is of such a nature as to cause injuries to any specific victim.
- (4) The order of the Court under sub-Article (2) shall be based on the following conditions:
 - (a) The Court shall make such an order only after an application of the alleged victims of the offence which application shall be filed at any time before the date when the public prosecutor opens his case.
 - (b) The bond that the Court orders to be entered shall apply only to the alleged victims who have filed timely applications in accordance with paragraph (a).
 - (c) In fixing the bond, the Court shall consider the seriousness of the charge, the likelihood of the accused's continued appearance at trial, the severity of the injuries that the victims could have suffered and the resources of the accused person.
 - (d) The bond shall be entered in cash deposit or by attaching property of the accused in accordance with the Civil Procedure Code of Eritrea.
 - (e) The amount of the bond shall be fixed with due regard to the circumstances of the accused and the victims of the offence and shall not be excessive.

- (f) The bond shall remain in force for such period as shall be fixed by the Court, as extended from time to time, but may not extend beyond the day of the judgment of the trial Court.
- (5) If the Court decides not to order the deposit of a bond, it shall give reason for so ordering and the applicants shall have the right to appeal against such decision within fifteen (15) days of the decision to the Court that hears appeals on criminal matters from the Court which has made the order not to deposit the bond. The trial shall progress while the appellate Court decides on the appeal. The appellate Court, whose decision on the matter is final, shall itself fix the bond to be deposited by the accused if it reverses the decision of the lower Court not to order deposit of a bond.
- (6) If the victims of the crime prefer to file a separate civil action against the accused, the bond entered in accordance with sub-Articles (2) – (5) shall be dismissed forthwith.

Art. 114. - Adjournment.

- (1) Of its own motion, or upon application of one of the parties, the Court of trial may adjourn its proceedings where the interests of justice so require.
- (2) An adjournment may be granted if the Court is satisfied that:
 - (a) the prosecutor or the accused fails for good cause to appear;

- (b) witnesses for the prosecution or the defense are not present;
- (c) the prosecution or the defense requires time for investigation;
- (d) further evidence must be produced;
- (e) evidence is produced either by the prosecution or the defense which takes the other side by surprise and the production of which could not have been foreseen;
- (f) the charge has been amended or substituted and the prosecutor or the accused requires time to reconsider the prosecution or defense;
- (g) the accused has not been served with a copy of the charge or has been served too short a time before the trial to enable him properly to prepare his defense;
- (h) prior authorization for a prosecution is required before the trial may start;
- (i) a decision on the charge or charges cannot be given unless other proceedings are first completed;
- (j) the mental fitness of an accused must be established by an expert; or
- (k) the trial cannot be completed in one day and is adjourned to the following day or another day.

Art. 115. - Limitation on Adjournment and New Summonses.

- (1) The Court shall adjourn the hearing for such time as is sufficient to enable the purpose of the adjournment to be carried out.
- (2) Where a hearing has been adjourned to a fixed date the Court shall remind the parties of the obligation to attend Court on that date; but when an adjournment is ordered without a fixed date for the resumption of the proceedings, the Court shall, when the purpose of the adjournment is achieved, issue new summonses to the parties and witnesses.

Art. 116. - Effect of Adjournment.

- (1) On granting an adjournment, the Court shall make such order as is necessary to ensure that the purpose of the adjournment is achieved.
- (2) Where an adjournment has been granted under Article 114 (2) (j), the Court shall remand the accused to a place where his state of mind can be examined.

Art. 117. - Record of Trial.

- (1) The record of a trial shall be signed by the Court and shall contain:
 - (a) a copy of the complaint;
 - (b) the date of the warrant of arrest, if any, or on which the accused was first arrested;
 - (c) the date on which the accused was first brought before a Court in answer to the charge;

- (d) the charge filed by the prosecutor and any alterations, additions or substitutions therein;
- (e) the plea of the accused;
- (f) a summary of any address or submission made on behalf of the prosecutor or the accused;
- (g) a full record of the evidence of all the witnesses, including cross-examination and re-examination, prepared in accordance with Article 129;
- (h) a contemporaneous note of any objection made by the prosecutor or the accused and the ruling given thereon;
- (i) a note of the exhibits admitted as evidence and the number attached thereto including whether the exhibit has been put in by the prosecutor or the accused;
- (j) a full and contemporaneous note of any submission on points of law and the decision thereon;
- (k) a note of all adjournments granted and the date to which the trial is adjourned together with a note of the reasons for granting such adjournment;
- (l) a copy of any decision rendered in accordance with Article 150;
- (m) a note that the prosecutor and the accused have been informed of their respective rights of appeal; and

- (n) any other matter that the Court, either as required by this Code or as necessary in its opinion, keeps a record of.
- (2) The record of the trial at each hearing shall start with:
 - (a) the name of the accused and number of the case;
 - (b) the date and time;
 - (c) the names of the prosecutor and defense counsel; and
 - (d) the names of the judges.
- (3) The record of the trial at each hearing shall close with a note of the time of disclosure and the date and time to which the hearing is adjourned.

Chapter 3. - Trial in the Absence of the Accused

Art. 118. - Limitations on Trial *in Absentia*.

- (1) Except as provided in this Chapter or in cases under Chapter 1, Title III of this Book, no person shall be tried *in absentia* for any criminal offence.
- (2) No young offender shall be tried *in absentia*.
- (3) No person shall be tried *in absentia* except if charged with Class 1 through Class 7 Serious Offences.
- (4) No person shall be tried *in absentia* except upon application by the Attorney General.

- (5) No person shall be tried *in absentia* unless the Supreme Court finds that the accused was properly informed of the date, time and place of his trial, and that the accused, without good cause, failed to appear for his trial.

Art. 119. - Proceedings When Accused Fails to Appear.

- (1) Where the accused does not appear in the High Court on the date fixed for the trial and no representative appears to satisfactorily explain his absence, the Court shall issue a warrant for the arrest of the accused.
- (2) Where the warrant cannot be executed, the Court shall adjourn the proceedings.
- (3) The prosecutor shall advise the Attorney General of the accused's failure to appear and the Attorney General shall decide whether to apply to the Supreme Court for an order that the accused be tried *in absentia*.

Art. 120. - Proceedings in the Supreme Court.

The Supreme Court may order that the High Court try the defendant in his absence upon finding that:

- (1) the accused was charged with Class 1 through Class 7 Serious Offences;
- (2) the accused received notice of the trial date and place;
- (3) the accused failed to appear for trial at that place and time; and

- (4) the interests of justice will be served by bringing the defendant to trial in his absence.

Art. 121. - Time of Trial.

- (1) Any trial in which evidence had already been heard before the accused's absence may be forthwith continued to its conclusion.
- (2) If no trial had commenced before the accused's absence, trial may not be set earlier than 15 days from the order of the Supreme Court, and the Supreme Court shall order the publication of a summons which shall show the date fixed for the hearing. It shall contain a notification to the accused that he will be tried in his absence if he fails to appear.

Art. 122. - Hearing and Judgment.

- (1) The trial shall proceed in the High Court as in ordinary cases. The prosecution witnesses shall then be heard and the public prosecutor shall make his final submission.
- (2) If the defendant is found guilty, the Court may sentence the defendant or may defer sentencing until such time as the defendant is brought before the Court. No defendant may be sentenced to death *in absentia*.

Art. 123. - Setting aside of Judgment.

An application to set aside a conviction or sentence given *in absentia* may be made to the Supreme Court by the person convicted or sentenced in his absence to the Court that passed the judgment.

Art. 124. - Time and Form of Application.

An application under this Title shall be made to the Supreme Court at any time and shall contain the reasons on which the person convicted or sentenced *in absentia* bases his application.

Art. 125. - Grounds for Granting Application.

No application under this Title shall be granted by the Supreme Court unless the applicant can show:

- (1) that he has not received a summons to appear; or
- (2) that he was prevented by *force majeure* from appearing in person or by advocate; or
- (3) that he had good cause for failing to appear for trial or that his failure to appear was not willful.

Art. 126. - Action upon Filing of Application.

- (1) On the filing of the application, the Supreme Court shall cause a copy of the application to be sent to the public prosecutor and the applicant and the public prosecutor shall be informed of the hearing date.
- (2) Where the applicant, having been duly summoned, fails to appear on the hearing date, the application shall be dismissed.

Art. 127. - Hearing.

- (1) The applicant or his advocate shall speak in support of the application and the public prosecutor shall reply. The applicant shall have the right to reply.

- (2) The Court shall then give its decision on the application.

Art. 128. - Judgment.

- (1) Where the application is allowed under Article 239, the Supreme Court shall order a retrial and the public prosecutor shall file the charge in the Court having jurisdiction.
- (2) Either side may, under the provisions of Book V, appeal to the ordinary appellate Court against the judgment of the Court of retrial.

Chapter 4. - Evidence

Art. 129. - Recording of Evidence.

- (1) The evidence of every witness shall start with his name, address, occupation and age and an indication that he has been sworn or affirmed.
- (2) The evidence of each witness shall be recorded by the presiding judge or by another judge or clerk acting under his personal direction and supervision.
- (3) The evidence shall be divided into examination, cross-examination and re-examination with a note as to where the cross-examination and re-examination begin and end.
- (4) The evidence shall ordinarily be taken down in the form of a narrative but the presiding judge may, in his discretion, take down or cause to be taken down any particular question and answer.

Art. 130. - Opening of Case and Calling of Witnesses for Prosecution.

- (1) After the plea of the accused has been recorded, the prosecutor shall explain briefly, and in an impartial manner, the charges he proposes to prove and the nature of the evidence he will present.
- (2) The prosecutor shall then call his witnesses, who shall be sworn or affirmed before they give testimony.
- (3) They shall be examined by the prosecutor, cross-examined by the accused or his counsel and may be re-examined by the prosecutor.
- (4) The Court may put to a witness any question that appears necessary for the determination of the case.

Art. 131. - Witness Who Refuses to Testify or Produce Evidence.

- (1) Where a person, who is summoned to give evidence as a witness:
 - (a) refuses to be sworn;
 - (b) having been sworn, refuses to answer the questions that are put to him; or
 - (c) refuses to produce any tangible evidence that he has been required to produce, without offering a reasonable excuse for his refusal,

the Court may adjourn the proceedings and commit the person to prison for a period not exceeding eight days or for the period during

which the proceedings are adjourned, whichever is the lesser.

- (2) No witness may refuse to answer a question that is put to him on the ground that the answer might tend to incriminate him, but any answer that he gives may not be used directly or indirectly against him in any other criminal or civil proceedings.
- (3) A witness who is the mother, father, brother, sister or spouse of the accused shall not be punished for refusing to testify or produce evidence.

Art. 132. - Exclusion of Witnesses.

The Court shall order the exclusion of any witness from the Courtroom, except the accused who chooses to testify, until he is called to testify.

Art. 133. - General Principles of Admissibility.

- (1) If an objection is made to the admission of any proposed evidence, the Court shall determine the admissibility of that evidence by taking into account its relevance, reliability and probative value and any prejudice that its admission might cause to a fair trial or to a fair evaluation of the testimony of a witness.
- (2) No evidence shall be admitted in any criminal prosecution if the Court is satisfied that such evidence was obtained in violation of the Constitution of Eritrea or the provisions of this Code.
- (3) In any case where the admissibility of evidence under the preceding paragraph is challenged, the prosecution shall bear the burden to prove that the

evidence was obtained in a manner that is consistent with the Constitution and with the provisions of this Code.

Art. 134. - Best Evidence.

- (1) The Court shall consider the reliability of all evidence produced by the parties and, for greater certainty, the Court shall consider whether evidence is given by witnesses who testify to relevant facts within their personal knowledge and any other evidence shall be subject to strict scrutiny by the Court in accordance with Article 133.
- (2) The Court shall admit, and may order, the evidence of experts if the Court is satisfied that it is relevant, that it is necessary for assisting the Court to make findings of fact and that the person who is proposed to give such evidence is properly qualified as an expert in the matters on which he is to give evidence.
- (3) The Court shall not refer to any statement made by a witness in the course of a police investigation unless the Court is satisfied that the witness is not available to testify and, further, that the statement made by the witness is both necessary and reliable as evidence.
- (4) The prosecutor shall not introduce evidence of a statement made by the accused out of Court to a police officer or prosecutor unless the Court is satisfied that the statement was made by the accused freely, voluntarily, without inducement and in accordance with the requirements of Article 54 of this Code.

Art. 135. - Inadmissibility of Undisclosed Material in Evidence.

Subject to Article 101, the prosecutor shall not be permitted to produce in evidence any undisclosed information that he was required to disclose under Chapter 2 of Title I of this Book.

Art. 136. - Privilege.

- (1) Privileged communications may not be introduced in evidence by any person unless the person or entity whose communications are protected by privilege informs the Court that the privilege is voluntarily waived, in whole or in part, with respect to those communications.
- (2) In accordance with this Article, the following persons may assert a privilege over communications that would otherwise be relevant and admissible at trial under the provisions of this Chapter:
 - (a) any person, in communication with his or her spouse;
 - (b) a child in communication with one of his parents, including any person recognized in law as standing *in loco parentis* in relation to that child;
 - (c) a parent, including any person recognized in law as standing *in loco parentis*, in communication with his child
 - (d) a patient, in communication with a physician for the purpose of therapeutic treatment;

- (e) a client, in communication with his counsel for the purpose of obtaining legal advice;
- (f) a penitent or parishioner, in communication with his spiritual adviser for the purpose of obtaining pastoral or spiritual guidance; or
- (g) a member of the national government, concerning communications relating to matters of national security.

Art. 137. - Testimonial Competence of Family Members.

- (1) The prosecution may not call the parent, child or sibling of an accused person, including any half-siblings, to give a statement out of Court or to give evidence against an accused person in Court except where the Court is satisfied that proposed witness freely consented to give such a statement or to give such evidence.
- (2) The preceding paragraph does not apply in any case where the parent or sibling of an accused person is allegedly a victim of the offence charged against that person.
- (3) Nothing in this Article affects the competence of a parent or sibling of an accused person to give a statement or to give evidence in Court for the accused.

Art. 138. - Judicial Notice.

No party shall be required to prove undisputed facts of common knowledge and the Court shall take judicial notice of the existence of such facts.

Art. 139. - Objections to Evidence.

Where the prosecutor or the accused objects to the admission of any evidence or the putting of a question to a witness, the Court shall decide forthwith on the admissibility of such evidence.

Art. 140. - Form of Questions.

- (1) Questions put in direct examination shall only relate to facts that are relevant to the issues to be decided and to such facts of which the witness has personal knowledge and no leading questions may be put to a witness in direct examination without permission of the Court.
- (2) Questions put in cross-examination shall only relate to relevant issues before the Court, including what might be erroneous, doubtful or untrue in the answers given in direct examination and leading questions may be put to a witness in cross-examination.
- (3) The prosecutor, the accused or his counsel may on re-examination only ask questions for the purpose of clarifying matters that have been raised in cross-examination.

Art. 141. - Previous Convictions of Accused.

- (1) Subject to Article 145 (6) – (8), previous convictions of an accused person shall not be introduced into evidence before the Court makes a finding of guilty or not guilty on the charge or charges.
- (2) The Court shall not receive or admit any evidence of previous convictions against the accused, or any

other evidence of criminal conduct by the accused that does not form part of the charge against him, unless and until the Court makes a finding of guilty or not guilty on the charge or charges.

Art. 142. - Evidence of Accomplices.

- (1) In a case where more than one person is charged, any evidence given by one accused person may be used as evidence against any other accused person in that trial.
- (2) No accused person may be found guilty solely upon the uncorroborated evidence of a person who is a co-accused or alleged accomplice in relation to the offence or offences charged against the accused.
- (3) Where the prosecutor calls an accomplice or co-accused to give evidence against an accused, the prosecutor shall inform the Court of any inducement or consideration extended to the proposed witness for his testimony.

Art. 143. - Absence of Cross-Examination.

Failure to cross-examine on a particular point does not constitute an admission of the truth of any fact asserted by a witness for the opposite party.

Art. 144. - Acquittal of Accused when No Case for Prosecution.

At the conclusion of the prosecution evidence, the Court shall order the acquittal of the accused on any charge if it determines that the prosecution has not produced sufficient evidence against the accused on that charge that would warrant a finding of guilty.

Art. 145. - Opening of Case for Defense.

- (1) If the Court does not order the acquittal of the accused in accordance with Article 144, it shall invite the accused to enter upon his defense and shall inform him that he or his counsel may make an opening statement in answer to the charge and may call witnesses in his defense.
- (2) The accused or his counsel may then open his case and briefly explain his defense stating the evidence he proposes to put forward.
- (3) The accused shall then call his witnesses, who shall be sworn or affirmed before they give testimony.
- (4) Witnesses for the defense may be called in any order, but if the accused chooses to testify in his own defense, he shall be called as the first witness for the defense.
- (5) The failure of the accused to testify in his own behalf may not be used as evidence against him in any way or for any purpose.
- (6) The accused may not be compelled to testify but is competent to testify and, if he elects to give evidence, he shall be treated in the same manner as any other witness.
- (7) If the accused testifies in his own behalf, he may not subsequently be charged with perjury for the testimony that he gives.
- (8) Notwithstanding Article 141, an accused who testifies in his own behalf may be cross-examined about any previous conviction if in his testimony he claims to be of good character, but any evidence of a previous conviction that is admissible under this

sub-Article, shall be considered relevant only to the credibility of the accused as a witness.

Art. 146. - Recall of Witnesses.

Whenever a charge is amended or substituted in the course of trial in accordance with Article 209, or when otherwise necessary in the interests of justice, the prosecutor and the accused shall be allowed to recall and examine, with reference to any amendment or substitution any witnesses who have been examined previously and may also call any further evidence that might be relevant to the amended or substituted charges.

Art. 147. - Additional Witnesses.

- (1) At any time before making a decision of guilty or not guilty the Court may call any witness whose testimony it considers necessary in the interests of justice.
- (2) The prosecutor may call any witness whose name does not appear on the list of prosecution witnesses if the Court is satisfied that he is a material witness who could not have previously been identified as such by the prosecutor and the application for a summons is not being made for the purpose of delaying the case.
- (3) The accused may call any witness if the Court is satisfied that he is a material witness and the application for a summons is not being made for the purpose of delaying the case.

Art. 148. - Exhibits.

All exhibits shall be marked and numbered by the registrar of the Court and they shall be kept by the registrar in a safe place and shall not be withdrawn without an order of the Court. No

order of release shall be granted by the Court unless it is satisfied that such release would not prejudice the trial or otherwise be contrary to the public interest.

Art. 149. - Final Addresses.

- (1) After the evidence for the defense has been concluded the prosecutor may address the Court on questions of law and fact.
- (2) The accused or his counsel shall then address the Court on questions of law and fact and in all cases he shall have the opportunity to address the Court last.
- (3) Where there are more than one accused the Court shall decide in which order the accused or their counsel shall address the Court.

Art. 150. - Decision and Sentence.

- (1) When the final addresses have been concluded, the Court shall make a finding of guilty or not guilty on the charge or charges and a written copy of this decision shall be given to the parties.
- (2) The decision concerning guilt or innocence shall contain a summary of the evidence, shall give reasons for accepting or rejecting evidence and shall contain the provisions of the law on which it is based and, in the case of a finding of guilt, the Article of the law under which the finding of guilt is made.
- (3) Where the accused is found not guilty, the decision shall contain an order of acquittal and, where appropriate, an order that the accused be released forthwith from custody and be relieved of any

release condition imposed pursuant to Article 70 on him and/or his guarantors during the trial.

- (4) Where the accused is found not guilty by reason of mental impairment under Article 21 of the Penal Code, the Court shall adjourn the proceedings to consider an appropriate disposition under Article 99 of the Penal Code.
- (5) Where the accused is found guilty, the Court shall adjourn the proceedings for consideration of sentence and upon the resumption of proceedings the Court shall ask the prosecutor whether he has anything to say as regards sentence by way of aggravation or mitigation and at this time the prosecutor may call witnesses to testify or submit any other evidence on any matter relevant to sentence. The Court may allow the prosecutor to request a specific sentence that the accused shall, in the prosecutor's opinion, receive.
- (6) Where the prosecutor has made his submissions on sentence, the accused or his counsel shall reply and may call witnesses or submit any evidence on any matter relevant to sentence.
- (7) Where the accused does not admit his previous convictions or any other disputed fact, the prosecutor shall prove the convictions or the disputed facts beyond reasonable doubt.
- (8) The Court may order the detention of the accused person or take any such action as the Court deems necessary to secure the attendance of the accused at the date of the delivery of the sentence.
- (9) The Court shall record the evidences submitted under sub-Articles (5)-(6) and accordingly pass sentence. The Court shall record the Articles of the

law under which the sentence has been passed and shall give analysis of the process by which it has set the sentence.

- (10) Upon delivery of judgment in accordance with this Article the prosecutor and the accused shall be informed of their rights of appeal.

TITLE III - SUMMARY PROCEDURE FOR PETTY OFFENCES

Chapter 1. - Procedure by Endorsement

Art. 151. - Summons.

- (1) Where it is alleged that a petty offence has been committed, the prosecutor shall apply to the Court having jurisdiction to summon the accused to appear.
- (2) The application and the summons shall contain the name of the accused and the charge or charges prepared in accordance with this Book.

Art. 152. - Accused May Plead Guilty in Writing to Petty Offence.

The accused may return the summons to the Court endorsing thereon that he pleads guilty to such offence. Such endorsement shall be dated and signed by the accused. In such a case, and without prejudice to the provisions of Article 112 (3), he shall not be required to attend Court in answer to the summons.

Art. 153. - Proceedings and Decision on Endorsed Plea of Guilty.

- (1) On receipt of the summons so endorsed, the Court shall record the plea of guilty and, having ascertained the facts of the case from the prosecutor, shall sentence the accused and send him a copy of the judgment.
- (2) Where the Court proposes to impose a fine only, it shall do so forthwith.
- (3) Where the Court intends to impose a sentence of imprisonment or any sentence other than a fine, it shall summon the accused to appear and shall give the accused an opportunity to defend himself before sentence is passed.

Chapter 2. - Procedure Where There is No Endorsement

Art. 154. - Summons and Prosecution.

- (1) Where the accused does not endorse on the summons that he pleads guilty, he shall appear on the day and at the time fixed for the hearing.
- (2) The trial of a charge under this Chapter shall be conducted in accordance with the provisions of Title II.
- (3) Where the accused does not appear as required under this Article, the prosecutor may request the Court to issue a warrant of arrest and the accused shall be prosecuted in accordance with the provisions of this Book when he is apprehended.

TITLE IV - COSTS AND EXECUTION OF SENTENCES

Art. 155. - Costs in Criminal Prosecutions.

All the costs of prosecutions, including appeals and any other proceedings taken pursuant to this Code, shall be borne by the Government. In the interest of justice and when the financial status of the accused so justifies, the court may order that the costs of the witnesses of the accused be borne by the Government.

Art. 156. - Authority to Issue Orders of Execution.

- (1) A Court imposing a sentence under Article 150 shall issue the necessary orders in writing requiring the appropriate authorities to carry out or supervise the carrying out of the sentence. Such order shall be sufficient authority for any official or other person vested with the responsibility to carry out the sentence and the Court shall provide such authorities and persons with copies of the relevant orders.
- (2) When the sentence is death or imprisonment, or when the Court finds that the defendant needs to be confined as a dangerous irresponsible person pursuant to Article 73 (3) of the Penal Code, the order shall be in a prescribed form.

Art. 157. - Special Procedures in Cases Involving the Sentence of Death.

- (1) No sentence of death may be carried out without confirmation of the conviction and sentence by the Supreme Court and confirmation by the Head of State of Eritrea pursuant to Article 64 of the Penal Code.

- (2) If the sentence is confirmed, it shall be carried out in accordance with the conditions laid down in the order of confirmation.
- (3) If the sentence is commuted to a term of imprisonment, the order of commutation shall be sufficient authority for carrying into effect the terms of such order.

Art. 158. - Postponement of Imprisonment.

- (1) A Court, having sentenced a defendant to a term of imprisonment, may postpone the beginning of the service of that sentence for a term not exceeding six months, if the Court finds that:
 - (a) the defendant is not likely to be a danger to public security;
 - (b) the defendant is not likely to abscond or otherwise avoid the service of the sentence;
 - (c) the defendant is primarily responsible for the support of the defendant's family; and
 - (d) the defendant produces guarantors for his good behavior and submission to imprisonment at the end of the specified term.
- (2) If defendant is a pregnant woman the court may postpone the beginning of the service of the term of imprisonment until after the pregnancy ends, or for six (6) months after that date.
- (3) If a defendant has been sentenced to a term of imprisonment of not more than three months and an appeal has been made against the judgment or

sentence of a court, the court that passed the judgment or sentence shall suspend the carrying out of the sentence of imprisonment until the appellate court makes its decision and order the production of guarantor(s) for his good behavior and submission to imprisonment in case the appellate court affirms the judgment of the lower court or awards another term of imprisonment.

TITLE V - PROCEDURE CONCERNING YOUNG OFFENDER

Chapter 1. - Application

Art. 159. - Application.

Criminal cases concerning young offenders shall be dealt with in accordance with the provisions of this Title.

Art. 160. - Principles.

- (1) It is hereby recognized and declared that:
 - (a) crime prevention is essential to the protection of society and requires addressing the underlying causes of crime by young offenders and developing approaches to identifying and responding to young offenders at risk of committing criminal offences in the future;
 - (b) while young offenders should not in all instances be held accountable in the same manner or suffer the same consequences for their behavior as adults, young offenders who commit offences should nonetheless bear responsibility for their conduct;
 - (c) society must, although it has the responsibility to take reasonable measures to prevent criminal conduct by young offenders, be afforded necessary protection from illegal behavior;

- (d) young offenders who commit offences require supervision, discipline and control, but, because of their dependency, level of development and maturity, they also have special needs and require guidance and assistance;
- (e) the protection of society, which is the primary objective of the criminal law applicable to youth, is best served by rehabilitation, wherever possible, of young offenders who commit offences and rehabilitation is best achieved by addressing the needs and circumstances of a young offender that are relevant to the young offender's offending behavior, his family and his community;
- (f) where it is not inconsistent with the protection of society, taking no measures or taking measures other than judicial proceedings under this Title should be considered for dealing with young offenders who have committed offences;
- (g) young offenders have a right to be heard in the course of, and to participate in, the processes that lead to decisions that affect them and young offenders should have special guarantees of their rights and freedoms;
- (h) in the application of this Title, having regard to the needs of young offenders and the interests of their families, young offenders shall be dealt with in a manner that involves the least possible interference with freedom that is consistent with the protection of society; and

- (i) families have responsibility for the care and supervision of their children and for that reason young offenders should be removed from the supervision of their families, either partly or entirely, only when measures that provide for continuing supervision by the family are inappropriate.
- (2) This Title shall be liberally construed to the end that young offenders will be dealt with in accordance with the principles set out in sub-Article (1).

Art. 161. - Mode of Procedure.

- (1) When the prosecutor receives a police report that identifies a young offender as a participant in the commission of a criminal offence, the prosecutor shall determine under Article 158 whether the young offender may be eligible to be dealt with by alternative measures, according to this Title, or prosecuted according to Chapter 3 of this Title.
- (2) Notwithstanding any other provisions of this Code, no young offender who is prosecuted shall be tried jointly with an adult.

Art. 162. - Eligibility for Alternative Measures.

- (1) Every young offender suspected of participation in a Class 8 or 9 Serious Offence or a Petty Offence shall be considered eligible for admission to a program of alternative measures under Chapter 2 and may be admitted to such a program, by the prosecutor or other person acting under the authority of the Attorney General for this purpose

and such decision may be made without the approval of the Court.

- (2) A young offender who is not admitted to a program of alternative measures may be prosecuted in accordance with Chapter 3 of this Title.
- (3) No young offender suspected of participation in a Class 1 through Class 7 Serious Offence shall be considered eligible for admission to a program of alternative measures under this Chapter unless the Court decides that such treatment is in the best interests of the young offender and of society and only the Court may order the admission to such a program.
- (4) If a young offender who is suspected of participation in a Class 1 through Class 7 Serious Offence is not admitted to a program of alternative measures by the Court, he may be prosecuted according to the provisions of Chapter 3 of this Title before a judge other than the judge who refused to admit the young offender to alternative measures under sub-Article (2).
- (5) Where a parent or other adult responsible for an accused young offender objects to any measure proposed by a prosecutor, the matter shall be considered and decided by the Court.

Chapter 2. - Alternative Measures

Art. 163. - Alternative Measures.

Under this Chapter alternative measures may be used to deal with a young offender only if:

- (a) the measures are part of a program of alternative measures authorized by the Attorney General;
- (b) the person who is designated to decide whether to use such measures is satisfied that they would be appropriate, having regard to the needs of the young offender and the interests of society;
- (c) the young offender, having been informed of the alternative measures, fully and freely consents to participate therein;
- (d) the young offender has, before consenting to participate in the alternative measures, been advised of his right to be represented by counsel and been given a reasonable opportunity to consult with counsel;
- (e) the young offender accepts responsibility for the act or omission that forms the basis of the offence that he is alleged to have committed;
- (f) there is, in the opinion of the Attorney General or his agent, sufficient evidence to proceed with the prosecution of the offence; and
- (g) the prosecution of the offence is not barred at law.

Art. 164. - Meaning of Alternative Measures.

Alternative measures include all means, other than formal prosecution and punishment, that are designed for the reform and

rehabilitation of young offenders who have committed criminal offences and these measures include, but are not restricted to, those contemplated in Article 101 of the Penal Code.

Art. 165. - Challenge to Prosecutor's Refusal of Alternative Measures.

In any case where the prosecutor refuses to admit a young offender to alternative measures and decides instead to charge him, the decision of the prosecutor may be challenged by the young offender or his parent or his counsel, or by the Court itself, and in such cases the Court shall determine whether the young offender may be admitted to alternative measures.

Art. 166. - Ineligibility for Alternative Measures.

Alternative measures shall not be used to deal with a young offender alleged to have committed an offence if the young offender:

- (a) denies his participation or involvement in the commission of the offence; or
- (b) expresses his wish to have any charge against him dealt with by the Court.

Art. 167. - Statements by Young Offender.

No admission, confession or statement accepting responsibility for a given act or omission made by a young offender alleged to have committed an offence as a condition of his being dealt with by alternative measures shall be admissible in evidence against him in any civil or criminal proceedings.

Art. 168. - Subsequent Proceedings.

The use of alternative measures in respect of a young offender alleged to have committed an offence is not a bar to proceedings against him under this Code, but:

- (1) where the Court is satisfied on a balance of probabilities that the young offender has totally complied with the terms and conditions of the alternative measures, the Court shall dismiss any charge against him; and
- (2) where the Court is satisfied on a balance of probabilities that the young offender has partially complied with the terms and conditions of the alternative measures, the Court may dismiss any charge against him if, in the opinion of the Court, the prosecution of the charge would, having regard to the circumstances, be unfair, and the Court may consider the young offender's performance with respect to the alternative measures before making a disposition under this Code.

Chapter 3. - Prosecution of Young Offenders

Art. 169. - Commencement of Criminal Proceedings.

- (1) In any case where a young offender is prosecuted the prosecutor shall prepare a charges or charges in accordance with this Book.
- (2) Any young offender who is arrested shall be taken forthwith by a police officer to appear before a Court and the Court shall release the young offender in accordance with sub-Article (3).
- (3) No young offender shall be detained in prison before trial and, pending trial, an accused young offender shall be given forthwith into the care of

his parents, guardian or relative and, in the absence of any such person, to a reliable person who shall be responsible for ensuring his attendance at Court.

- (4) Witnesses shall be summoned to be present at Court when required.

Art. 170. - Summons to Young Offender's Guardian.

Where the young offender is brought before the Court and his parent, guardian or other person *in loco parentis* is not present, the Court shall immediately inquire whether such person exists and shall summon such person to appear without delay.

Art. 171. - Young Offender May Be Assisted by Counsel.

The Court shall appoint counsel to assist the young offender where no parent, guardian or other person *in loco parentis* appears to represent the young offender and in any case where the young offender is prosecuted according to this Chapter.

Art. 172 - Hearing.

Except as provided in this Chapter, a young offender shall be prosecuted in accordance with the provisions of Title II of this Book.

Art. 173. - Removal of Young offender from Chambers.

When the young offender is brought before the Court, all proceedings shall be held in chambers. Nobody shall be present at any hearing except the prosecutor, witnesses, experts, the parent or guardian or representatives of welfare organizations.

Art. 174. - Decision.

- (1) The judgment shall specify the provisions of the law on which it is based. Where the young offender is found not guilty, he shall be acquitted and set free forthwith. Where he is found guilty, the Court shall impose an appropriate measure or penalty.
- (2) The Court may call before it any person or representative of any institution with a view to obtaining information concerning the character and antecedents of the young offender so as to arrive at a decision that is in the best interest of the young offender.
- (3) After these persons have been heard, the parties may reply and call witnesses as to character, who shall be questioned by the Court and thereafter the parties shall address the Court as to sentence.
- (4) Judgment shall be given as in ordinary cases. The Court shall explain its decision to the young offender and warn him against further misconduct.

BOOK IV - APPEAL

TITLE I - GENERAL PROVISIONS

Art. 175. - Principle.

- (1) A final judgment of conviction, acquittal or discharge in a criminal Court may be subject to first appeal in accordance with the provisions of this Book.
- (2) There shall be no right of second appeal except in accordance with the provisions of this Title.

Art. 176. - General Appellate Jurisdiction.

- (1) A first appeal may be made as of right from the decision of:
 - (a) a Community Court to the Regional Court in whose territorial jurisdiction such Community Court lies;
 - (b) a Regional Court to the High Court; or
 - (c) the High Court to the Supreme Court.
- (2) The accused or the prosecutor may appeal and if the appellate Court confirms the judgment of the lower Court the decision shall be final as to the appellant except as provided in Article 177 (1).

- (3) Where the first appellate Court reverses the judgment of the lower Court the respondent on the first appeal may appeal further to the Court of the next level and the decision of the second appellate Court shall be final as to both parties except as provided in Article 177 (1).
- (4) In case of disagreement among the judges hearing an appeal, the decision of the majority of the judges shall be the decision of the Court. A Judge or the Judges who disagree with the majority opinion may write dissenting opinions expressing their views.

Art. 177. - Special Appellate Jurisdiction of the Supreme Court.

- (1) In addition to the appellate jurisdiction as set out in Article 176, the Supreme Court may hear an appeal from final judgment by any party to a case in which an issue concerning the constitutionality of any law is raised, or in which an interpretation of a significant constitutional or legal principle is required for making a decision in the case.
- (2) Where the Supreme Court hears an appeal, it may consider all of the issues in the case.
- (3) An appeal under this Article shall be subject to the requirements and limitations set out in this Title.

Art. 178. - Interlocutory Appeals.

Except as provided in Articles 12, 16, 84, 85, 128 and 182 (4) of this Code, there shall be no interlocutory appeal from a decision made before final judgment during the course of a criminal prosecution.

Art. 179. - Appeal From Final Judgment.

- (1) Following final judgment at trial, any decision made during the course of proceedings may be the subject of appeal in accordance with the provisions of this Book.
- (2) A person who has been found guilty and sentenced may appeal against a finding of guilty or sentence, except that a person who has been sentenced following a plea of guilty may appeal only against sentence.
- (3) The prosecutor may appeal against a judgment of acquittal, discharge or sentence.
- (4) An appeal by a young offender or by an incapable person may be made through his legal representative.
- (5) In any case in which the penalty of death is imposed the case shall be referred for review to the Supreme Court even where there is no petition for appeal or review to that Court.

Art. 180. - Grounds of Appeal.

- (1) A first appeal may be filed on the ground that
 - (a) the Court made an error in any decision taken during the course of trial, or
 - (b) the final judgment cannot reasonably be supported by the evidence.
- (2) A second appeal may be filed only on the ground that the first Court of appeal made an error.

Art. 181. - Notice of Appeal and Memorandum of Appeal.

- (1) Notice of appeal shall be given in writing by the appellant or his counsel within fifteen (15) days of the judgment under appeal. On receipt of a notice of appeal, the registrar shall cause the judgment appealed to be copied and served upon the appellant or his advocate and, where the appellant is in custody, the copy shall be sent to the superintendent of the prison in which he is confined for service on the appellant. Such copy shall be dated and the date on which it is handed to the appellant or his counsel, or is sent to the superintendent of the prison, shall be certified by the registrar.
- (2) The memorandum of appeal under Article 183 shall be filed within thirty days of receipt of the copy of the decision appealed. The notice and memorandum of appeal shall be filed in the registry of the Court that gave the judgment under appeal.
- (3) Where the appellant is in custody, the superintendent of the prison in which he is confined shall deliver the notice and memorandum of appeal without delay to the Court against whose decision appeal is made.
- (4) A copy of the memorandum of appeal shall be served on the respondent to the appeal.
- (5) Within thirty (30) days of the filing of the memorandum of appeal, the respondent shall have the right to file a memorandum in reply and any such memorandum shall be served upon the appellant at the time of filing.

Art. 182. - Stay of Execution.

- (1) Where a convicted person has given notice of appeal, no sentence or other order of the trial court shall be executed until the outcome of the appeal has been finally determined. However, where an accused person who had been released on conditions during the trial has been sentenced to a term of imprisonment of more than three months, the trial court shall order his detention or make any other appropriate order to secure his attendance to the appellate court.
- (2) A person who has been found guilty and sentenced by a trial Court, but who has been detained pursuant to Article 69 or under sub-Article (1), may apply for release pending appeal according to the provisions of Article 70.
- (3) Where an accused person is released on conditions pending his appeal, a sentence of imprisonment shall not commence until the Court of appeal delivers judgment.
- (4) Where an accused person who during the trial had been ordered to be detained according to the provisions of Article 85 or was under any other obligation under Article 70 has been acquitted by the trial court and the public prosecutor appeals against the acquittal, the appellate court shall decide anew whether the detainee shall be detained until the completion of the appeal, released with or without conditions, or make any other decision that the appellate court deems necessary. The appellate court shall give reasons for its decision and in making such decision, the appellate court shall consider:

- (a) seriousness of the charge against the acquitted person;
 - (b) the weight of the evidence presented against the accused person;
 - (c) the prospect of reversal of the trial court's decision; and
 - (d) any other relevant factor deemed appropriate by the appellate court.
- (5) Except where the appellate Court is the Supreme Court, the decision of an appellate Court pursuant to sub-Article (4) shall constitute ground for an interlocutory appeal.
- (6) The decisions of an appellate Court pursuant to sub-Articles (1) – (4) shall also apply if a second appeal has been made against the final judgment of the first appellate Court.

Art. 183. - Contents of Memorandum of Appeal.

- (1) The memorandum of appeal shall state concisely the grounds of appeal, under enumerated headings and shall conclude with a statement of the remedy sought.
- (2) The memorandum of appeal and reply shall be signed and dated by the party and his counsel, if any.

Art. 184. – Case Forwarded to Appellate Court.

- (1) Within fifteen (15) days of receipt of the memorandum of appeal and reply, or the date for the reply to be filed, the trial Court shall forward the case on appeal to the appellate Court and it shall contain a copy of:
 - (a) the judgment under appeal;
 - (b) the record of trial;
 - (c) the notice and memorandum of appeal and reply, if any; and
 - (d) the record of the first appeal, if any.
- (2) The Court of appeal, upon the application of one of the parties, may dispense with making a copy of the record of trial where the making of such copy would delay unduly the hearing of the appeal and the Court may order the original file to be produced.

Art. 185. - Application for Leave to Appeal Out of Time.

- (1) If a notice of appeal or a memorandum of appeal is filed out of time, the court shall refuse to accept it and shall require the person submitting such notice or memorandum to apply in writing to the court of appeal for leave to appeal out of time.
- (2) The application shall state clearly the reasons why the appeal should be heard out of time, including the appearance of any substantial miscarriage of justice that emerged following final judgment in the matter and the reasons that occasioned the delay in bringing the appeal.

- (3) The court shall not give leave to appeal out of time unless it is satisfied, after hearing the parties, that the delay was not occasioned by the applicant's intent or negligence.
- (4) Where leave to appeal out of time is given the court of appeal shall fix the date by which the memorandum of appeal is to be filed.
- (5) Any paper or document submitted by an appellant in custody to the Prison Administrator of the prison in which he is held shall be deemed to have been filed on the date that such paper or document was submitted to the Prison Administrator.

Art. 186. - Hearing.

- (1) The Court of appeal shall fix a date on which the appeal will be heard and the parties to the appeal shall be notified.
- (2) Where the appellant is in custody pending appeal, the Court shall order that he be delivered for the hearing of the appeal and in the event that the prison authorities fail to deliver the appellant in a timely manner, the Court shall order a postponement of the appeal so as to preserve the appellant's right of appeal.
- (3) The appellant or his counsel shall state the case on appeal, the respondent shall answer and the appellant may reply except for cases governed by Article 189 (6) of this Code.

Art. 187. - Absence of a Party to the Appeal.

- (1) Where the appellant or his counsel is not present on the day fixed for the appeal and he has been notified of the hearing date, the appeal shall be struck out, provided that the appeal may be restored to the list where the appellant or his counsel can show that he was not present for reasons beyond his control.
- (2) Where the respondent or his counsel is not present, the appeal shall proceed in his absence if adequate notice has been given pursuant to Article 185 concerning the date and time of the hearing.

Art. 188. - New Evidence.

- (1) The court of appeal may admit and consider fresh evidence, or compel the submission thereof, if it is satisfied that such evidence is necessary for a just determination of the case and is otherwise admissible under the provisions of this Code and in any case where the court admits new evidence it shall record its reasons for doing so in its judgment.
- (2) Evidence admitted under this Article shall be considered as if it were evidence in the court of first instance.

Art. 189. - Powers of Court of Appeal.

- (1) At a first appeal the court shall allow the appeal if it is satisfied that there was an error at trial or that the evidence does not support the finding of guilt or innocence or the sentence at trial.

- (2) If a second appeal is heard in accordance with Article 180, the court shall allow the appeal only if it is satisfied that there was an error in the judgment of the first court of appeal.
- (3) Where it allows an appeal, the court may:
 - (a) on an appeal from an order of acquittal or discharge, reverse such order and direct that the accused be retried on the same charge or charges by a court of competent jurisdiction; or
 - (b) on an appeal from conviction or sentence:
 - (i) reverse the finding of guilt and acquit the accused or direct that the accused be retried on the same charge or charges by a court of competent jurisdiction; or
 - (ii) with or without altering the finding of guilt, substitute a fit sentence, although in no case of appeal from sentence by the offender may the court of appeal substitute a more severe sentence than was imposed at trial.
- (4) Where the court of appeal confirms the conviction but alters the sentence, or *vice versa*, a second appeal may be filed with leave only in respect of the conviction or sentence that has been altered.
- (5) Where the court would otherwise allow an appeal based upon an error in the lower court, it may nonetheless dismiss the appeal if it is satisfied that

the error would not have affected the outcome of the judgment in the court below.

- (6) A court of appeal may dismiss an appeal after hearing oral argument by the appellant and without hearing argument by the respondent.

Art. 190. - Appeal in Cases Concerning Several Convicted Persons.

- (1) Where a Court hears an appeal that concerns several convicted persons but only one of them appeals, it may direct that its judgment be applied to those other accused as though they had appealed where:
 - (a) the judgment is to the benefit of the appellant; and
 - (b) had the accused appealed, they would have benefitted similarly.
- (2) Where more than one person has appealed in relation to the same case or matter, the appellate Court shall order that their appeals be heard together.
- (3) No order made to the prejudice of an appellant may be applied to a person who has not appealed.

BOOK V - HABEAS CORPUS AND EXTRAORDINARY REVIEW

TITLE I - HABEAS CORPUS

Art. 191. - Right of Habeas Corpus.

Every person arrested or detained prior to trial shall have the right to petition any court for his release on the grounds that his arrest or detention is without due process in violation of the laws and Constitution of Eritrea. Such petition may be filed by the arrested person, his counsel, a relative or any other interested person acting on behalf of the arrested person.

Art. 192. - Priority of Petitions of Habeas Corpus.

- (1) Every Court receiving a petition of habeas corpus for release of an arrested or detained person shall give the petition the utmost priority, unless the petition fails to state a sufficient claim and shall forthwith issue a summons directing the person who has custody of the arrested or detained person to appear before the Court, together with that person, on such day as shall be fixed in the summons, and show cause why the person should not be released.
- (2) In all cases, the Court summons shall fix the date for appearance pursuant to sub-Article (1), no more than 24 hours after the petition has been filed.

Art. 193. - Form and Content of Petition of Habeas Corpus.

- (1) The petition shall contain a statement of the grounds upon which habeas corpus is sought.

- (2) The petition for release shall be accompanied by a declaration by the applicant stating the name of the person under whose custody he is being held, the nature and place of the restraint or detention, and the names of the persons, if any, who can testify to the facts alleged in the petition.
- (3) If the person restrained or detained is unable to make the petition or affidavit, for whatever reason, then the petition and the affidavit made on his behalf shall state the name of the person restrained and that he is unable to make the application or affidavit himself.
- (4) Notwithstanding sub-Articles (1) and (2), the petition for release may be in any form, with or without affidavit, and should include, if possible the place of the person's detention and the responsible police officer or custodian, if known.

Art. 194. - Power of the Court to Compel Testimony.

- (1) In the event that the petition for release does not specify the place of detention, the responsible police officer or custodian, or any other facts deemed by the Court necessary to issue an order, the Court shall have the power to summon any public prosecutor, police officer, custodian of detention centers, or any other person the Court determines has information relating to the petition, to appear in Court and provide, under oath, whatever testimony the Court deems necessary.
- (2) If the Court has a reasonable belief that a violation has occurred pursuant to its inquiry under sub-Article (1), it shall:

- (a) cause criminal proceedings to be instituted against the person or persons responsible, if such offence amounts to an offence under the Penal Code; or
- (b) order that disciplinary action be taken by the competent authority against the person or persons responsible, if the violation does not amount to an offence.

Art. 195. - Hearing and Decision on Application for Habeas Corpus.

- (1) On the day fixed in the summons under Article 192 (2), the Court shall investigate the truth of the facts alleged in the application and may make such orders as it deems appropriate, in light of the evidence.
- (2) Where the Court is satisfied that the restraint is unlawful, it shall order the immediate release of the person arrested or detained. The person who has custody of the arrested or detained person, notwithstanding any other orders or instructions by any person or authority to the contrary, shall forthwith release that person.
- (3) Where the Court is in doubt as to the truth or the facts alleged in the application, it may order the release of the person arrested or detained upon his own undertaking, or subject to any of the conditions specified in Article 70.
- (4) The Court shall, if it issues an order pursuant to sub-Article (2), require proof of the arrested or detained person's release in whatever form it deems necessary.

TITLE II - EXTRAORDINARY REVIEW

Art. 196. - Application.

- (1) A party may apply to the Supreme Court for leave to review any interlocutory decision made by a Court during the course of proceedings.
- (2) An application for review may also be made under this Article to the Supreme Court in any case where all rights of appeal have been exhausted and no application for appeal out of time is permitted under Article 184.
- (3) Leave may be sought and granted on the sole grounds that the decision in issue reflects manifest error of principle or gross unfairness that cannot be remedied by final judgment or by appeal in the matter without causing further prejudice or unfairness to a party or the parties.

Art. 197. - Remedy.

If the Court grants leave in accordance with Article 196, it may also grant such remedy as it considers appropriate in the circumstances to ensure the orderly progress and disposition of proceedings.