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Law on Criminal Procedure

Publisher	National Legislative Bodies
Author	Kingdom of Cambodia
Publication Date	8 March 1993
Reference	KHM-125
Cite as	*Law on Criminal Procedure* [], 8 March 1993, available at: http://www.refworld.org/docid/3ae6b55c8.html [accessed 15 November 2013]
Comments	This is an unofficial translation. The Law was adopted by the National Assembly of the State of Cambodia on 28 January 1993 during the 24th Session of its first legislature. it was promulgated by Decree No. 21 on 8 March 1993. Please note that article 99 is incompleted.
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The Council of State of the State of Cambodia

-Considering the Constitution of the State of Cambodia,

-Considering the Law on the organization and Functioning of the National Assembly and Council of State of the People's Republic of Cambodia, which si promulgated by Decree nº 04 DECR. dated 10 February 1982.

DECIDES:

To promulgate the law on Criminal Procedure which was adopted by the National Assembly of the State of Cambodia on 28 January 1993, at its 24th Session of its First Legislature.

Made in Phnom Penh,
on 8 March, 1993.
For The Council of State,
PRESIDENT,
signed and sealed by: HENG SAMRIN.

Sent to:

-Cabinet of the Central Committee of the Kampucheen People's Party,

-Cabinet of the National Assembly,

-Cabinet of the Council of Ministers,

-All the offices of Ministries, and institutions of similar levels,

-All the People's Committees of the provinces and municipalities.

-Official Journal, Copied and disseminated,

-Chronos.- Archives. Cabinet of the Council of State,

Signature and seal of:

CHAN VAEN.

LAW ON CRIMINAL PROCEDURE

Law adopted by the National Assembly of the SOC on 28 Jan. 1993 and promulgated by Decree nº 21 DECR. of Council of State of the State of Cambodia dated 08-3-1993, signed by Heng Samrin.

CHAPTER IGeneral Provisions

Article 1.

The law on criminal procedure has the purpose of establishing the rules that shall be respected and strictly implemented in order to determine by law the existence of a criminal offence.

Article 2.

Any criminal offence may give rise to two separate legal actions: public action and civil action.

Article 3.

The penal action is for the purpose of condemning all acts disrupting social order and breaching the peace and the offenses provided by the law.

Therefore, public actions strive to prevent these offenses from re-occurring by imposing on offenders punishments provided by the law.

Article 4.

Only officials appointed by law may initiate public actions.

Article 5.

The civil action is for the purpose, shall receive award proportionate to the damages incurred to him/her.

Article 6.

Both actions, public and civil, even though closely inter-related, can always be separately filed.

Article 7.

Public action may not be settled by any arrangement.

The court of repressive jurisdiction provided in further articles; when seized upon knowledge of any penal

infraction, shall decide on the case. the non-compliance to this principle shall be considered as a miscarriage of justice and punishable of a disciplinary measures or imprisonment from 6 days to 1 month.

Article 8.

The exercise of penal action and putting it into process are the responsibilities of the prosecution department.

In principle, at the prosecution department, the deputy general prosecutor and prosecutor perform their duties on behalf and under the responsibilities of the prosecution department.

In principle, at the prosecution department, the deputy general prosecutor perform their duties on behalf and under the responsibilities of the general prosecutor, whether or not in his/her presence.

At the municipal and provincial prosecution department, the deputy prosecutor performs his/her duties on behalf and under the responsibilities of the prosecutor, whether or not in his/her presence.

Article 9.

The person who believes to be injured by an infraction may lodge a complaint along with the prosecution proceedings in order to obtain award.

Article 10.

In case when the complaint of any plaintiff, believing to be injured by an act that he/she thinks consisting a criminal offence and the representative of the prosecution office does not respond or file it without follow-up, the plaintiff may summit the case to the appellate court.

Article 11.

The penal action can be exercised against any person in the State of Cambodia without discrimination of race, nationality, religion, sex or social class.

Article 12.

The civil action may be grounded only on any crime, misdemeanour or minor offence, however, in order to judge whether or not a civil action is relevant, the fact constituting the criminal offence that gives rise to civil reparation shall be clearly and appropriately indicated according to the law.

On the other hand, the criminal offence shall have really caused damages even though the damage is a moral one.

Article 13.

It is not sufficient to just have criminal offence and damages caused by the offence but there shall also be relationship between the two elements: cause and effect, or in other words the damage is the direct result of the offence and it really and currently occurs.

Article 14.

In principle, only the person who is personally injured by the offence may file a civil action.

May also file a civil action on behalf or for the benefit of the person injured by the offence are those who have legal guardianship of the injured person or those, by law, have the authority to represent the victim.

Article 15.

The civil action can be exercised against all those who are liable for the reparation of damages resulting from the offence; that is to say principals, co-principles as well as those liable for civil action that offence.

The civil action may exercise against the persons civilly liable because it is a consequence of the liability to the person whom he/she shall respond in accordance with the provisions of the civil law. However, the civilly liable persons shall not be subject to direct or sole condemnation.

Article 16.

The civil action may be filed together with the penal action at the same time and before the same judge.

The civil action may also be filed separately. In the latter case, the exercise of the civil action shall be suspended as long as the penal action is not finally decided.

Article 17.

The victim of any offence who has lodge a complaint for damages before the civil judge and who has already received reparation shall not be a plaintiff claiming damages in the public prosecution of the same case.

Article 18.

This principle can only be applied when the civil and penal jurisdictions receive the same case, that means there is identity of subject, of cause and of parties.

Article 19.

The criminal jurisdiction, receiving complaints for damages from an injured party, shall not only decide on criminal jurisdiction, receiving complaints for damages from an injured party, shall not only decide on criminal case and continue to hear the and decide on the civil action in another session. If it is not sufficiently clarified it shall put off the judgment till later time.

Nevertheless, in any particular case when the amount for damage cannot be evaluated at the present time, the jurisdiction shall just recognize the rightfulness of the claim for the claim for damages and delay assessing the amount of compensation which will later be furnished by the plaintiff claiming damages.

Article 20.

Even though, in principle, a judge who hears a case may hear all issues arising from the case; that means any criminal judge has the competence to adjudicate all questions raised be parties before him; but "preliminary question" which is a question necessary to establish an offence, and that the criminal jurisdiction cannot resolve. It is so when the question raised is the question of pure civil law.

Article 21.

There are two kinds of preliminary questions: the preliminary for action and the preliminary on judgment.

The preliminary question for action exists where the prosecution cannot be carried out as long as this preliminary has not been definitely resolved.

The preliminary question on judgment is the question that causes the stay of proceeding of prosecution. That is to say the criminal judge has received valid prosecution but he cannot decide on the merits unless he has received preliminary decision from the civil jurisdiction.

Article 22.

Preliminary questions for action are those which can occur on the issue of a crime or a misdemeanour relating to a taking away or a concealment of a baby newborn.

No prosecutions can be instituted on a crime or a misdemeanour of the suppression of the status of birth of a person if there is no judgment previously recognizing the filiation of the child whose status bas been suppressed.

Article 23.

The preliminary questions to judgment are incidental pleas relating to the right to proprietorship or another real estate right, and the plea concerning the existence of marriages in the bigamy case.

Article 24.

To be considered that there is an preliminary question relating to the proprietorship right or another real estate right, such as usufruct, use or easement, the real estate right, put forward as means of defense in the criminal proceeding, shall be of a really rights. If it's only of a personal right the criminal judge is always competent to adjudicate and there is no preliminary question to be decided by the civil jurisdiction.

Article 25.

The right of possession will constitute an preliminary question only if it is substantiated by a valid title or by a title of which the nature is sufficiently serious for consideration. In other case, if it only is invoked by using witnesses to establish the right, the case then remains subject to the consideration the penal jurisdiction.

Article 26.

The preliminary question relating to the right to proprietorship or other right of real estate shall not be automatically raised by the jurisdiction, but only by the accused him/herself.

Article 27.

The preliminary question can be raised at any stage of the case even in the stage of appeal.

Article 28.

In case when the prosecution relates to the polygamy, the nullity of one of the two marriages may be raised but to the condition that the alleged facts raised make the nullity possible.

Article 29.

When the preliminary question is raised and considered admissible by the criminal judge, the judge, under penalty of nullity, shall stay the judgment and set up a time allowing the party who raises the preliminary question to submit to a competent jurisdiction.

Article 30.

In any case, the judge shall not discharge any defendant without hearing.

If the judge considers that the incidental plea is not admissible he will simply reject it and continue the hearing and obligatory indicate it in the ground of his decision. If the judgment does not indicate the ground in this regard, it is vitiated by absolute nullity.

Article 31.

At the expiration of the set-up time as specified in article 29, if the accused justifies having submitted to a competent civil jurisdiction about the preliminary question, a new time limit may be granted in order to obtain judgment on the question is notified of the date of expiration of this time limit by the representative of the prosecution department.

If, at the expiration of the time limit, a final decision is taken on the preliminary question, the procedure shall proceed normally. Without the decision and if the delay is imputed to the negligence of the accused, the later is considered as having renounced the exercise of the interlocutory question. The criminal tribunal shall continue the proceeding.

Article 32.

If the accused is the applicant of the incidental plea and if she/he brings in a judgment in his favour on the preliminary question, the criminal jurisdiction shall recognize this decision and discharge the accused.

If the accused loses in the process of the preliminary question, the penal jurisdiction shall proceed with the action as if the incidental plea has not been jurisdiction shall proceed with the public action as if the incidental plea has not been occurred.

Article 33.

The renunciation of the civil action may neither stop nor suspend the prosecution.

Article 34.

The prosecution may be extinguished in the cases below:

-the death of offenders,

-the expiration of statute limitation of the offence,

-the amnesty,

-the withdrawal of the injured party in a number of penal offenses, such as the taking away of minors above 14 years of age with consent, the insult on ancestors.

CHAPTER IIJudiciary police

Article 35.

The judiciary police searches crimes, misdemeanours and minor offenses, gather evidence and handover perpetrators to the jurisdiction in charge of punishment. But the offenders can be arrested and handed over to the court by the judiciary police only in the case where they commit obvious crimes or misdemeanours caught red-handed in the act or when there is an order to appear or a warrant of arrest.

Article 36.

The judiciary police or those who can perform the duty of judiciary police are:

1.prosecutors and magistrates in charge of investigation "on duty only",

2.directors and deputy directors of the departments of the judiciary and economic police,

3.directors and deputy directors of the department of counter terrorism,

4.commissioners and inspectors of municipal and provincial police,

5.chairman of the criminal and economic police,

6.chairman of the office of counter terrorism,

7.chairman of the office of security police,

8.district, provincial and Khan political inspectors,

9.chairman of administrative police station "in regards to criminal offence",

10.commissioners of traffic police or traffic violation section "for traffic violation",

11.chairman and officers of military police or "for military offence",

12.border police officers,

13.customs inspectors "for customs violation",

14.officers of the forestry and fishing,

All operation of the judiciary police is under direct guidance of the prosecutors and under supervision of the prosecutor general of the appeal court.

Article 37.

The officers of the judiciary police component to perform are as the following:

-the judiciary police officers at places where criminal offenses occur,

-the judiciary police at the residence of the offenders,

-or the judiciary police officers at the place where the offenders is found.

Article 38.

The officers of the judiciary police

-receive denunciations complaints as well as judiciary police reports relating to crimes, misdemeanours and minor offenses.

-gather evidences

-can request the assistance of the public force.

-make reports.

-may accept rogatory commission.

-may decide the detention for a maximum of 48 hours.

In cases of crimes or misdemeanours caught red-handed in the acts, the judiciary police may interrogate witnesses, search and confiscate the object produced in evidence, assign experts, decide to detain offenders for 48 hours.

Article 39.

The officers of the judiciary police shall write down their findings and the result of their searches in the document called "report".

In principle, the police reports are not necessary the base for prosecution. They simply provide elements of appraisement for prosecutors and judges.

Article 40.

The reports shall indicate first and last name and function of the reporter who shall sign and date the report which shall be made without delay. The erasures and writing over the existing text must be approved.

Article 41.

In principle, the reports worth only as information. In other terms, the police reports possess the value of simple reports and do not obligate the jurisdiction or judges to believe.

Article 42.

Nevertheless, the reports of the judiciary police shall be considered as authentic evidence to the contrary when they are drawn up by the officers of the judiciary police. In this case, judges shall consider the essence of the report truthful and accurate as long as contradictory evidences are not brought up. These contradictory

evidences may be freely brought to the judge by all legal means.

Article 43.

For minor offenses, the report of the judiciary police shall always be considered as authentic until the showing of contradictory evidences. There is only one condition: police officers who make the reports shall have the quality to conduct the inquiry on minor offenses.

Article 44.

The officers of the judiciary police shall, in the shortest period of time, submit his reports, with object produced in evidence, to the prosecutor of the competent jurisdiction.

Article 45.

The officers of the judiciary police have the rights to directly conduct official inquiries on all penal offenses, except some offenses for which the law requires the complaints from the injured party prior to the inquiries.

Article 46.

The officers of the judiciary police also have the rights to collect evidence and the rights to also conduct searches, but this rights of house-search may only be conducted when crimes or misdemeanours are flagrant delicto.

Article 47.

The officers of the judiciary police have the rights to offenders only in cases of crimes or misdemeanours caught red-handed in the act. They shall bring the alleged offenders to the competent jurisdiction within 48 hours without counting necessary transportation time by the quickest transportation means possible.

In case of non-compliance with this strict rule, the offices shall be punished in accordance with articles 22 and 57 of the interim penal code.

Article 48.

In any case, the officers of the judiciary police have no rights to file without continuation the penal case that they have received, even though already coming to terms. They shall always forward their reports to the competent prosecutor.

CHAPTER IIIProvincial Public Prosecutor Department

Article 49.

There is one public prosecutor department in each provincial court. In each public prosecutor department there are one prosecutor and one assistant prosecutor.

Article 50.

In principle, the prosecutor has the same rank as the president of the court.

Article 51.

The court adjudicating penal actions as well as civil actions, is considered as plenary only if there is the participation of the representative of the public prosecutor department.

Article 52.

Concerning the penal jurisdiction, the prosecutor shall be always the "principal party. In that sense, this is the prosecutor files the prosecution in the court, by accusing and asking for the application of the law upon the accused.

Article 53.

Concerning the civil jurisdiction, the representative of the public prosecutor department is only a joint-party in a civil case the representative of the public prosecutor may not appeal the case to the appeal courts or to the supreme court.

Article 54.

Concerning the civil actions, the ones which are related to the public law and order or the to the interest of a minor or a disabled person etc..., the representative of the public prosecutor shall consider herself/himself as principal party. In this case, the public prosecutor department takes action automatically.

Article 55.

Once the perpetration of any crime or any misdemeanour is known, the prosecutor shall proceed immediately to the investigation measures which are provided to him/her by the law and which are necessary to find the truth. In case where the committed crime or misdemeanour is exceptionally serious, the prosecutor shall inform immediately the general prosecutor at the appeal court and the Minister of Justice. The Prosecutor shall carry out the instruction he/she receives from them in this matter.

In case where the prosecutor is unavailable because of the sickness or other reason, the assistant prosecutor shall be in charge in his/her place. If there are many assistant prosecutors, the one who is senior in the rank shall replace the prosecutor.

If there is no assistant prosecutor the Minister of Justice shall decide immediately any judge from the jurisdiction to replace the prosecutor. In case of extreme emergency, the president of the jurisdiction may designate a judge to temporary replace the prosecutor and shall inform immediately the Minister of Justice.

Article 56.

The prosecutor has the duty:

-to receive the complaint and the denunciation related to the crime or the misdemeanour even though the complaint is from any person, from any officer of the judicial police or from any official competent for the penal action.

-to receive the report made by the officer of the judiciary police who ascertains crimes, misdemeanours or the minor offenses.

-to proceed to preparatory investigation by himself/herself in case where the offense is a crime or a flagrante delicto misdemeanour.

-to call out the public force for the performance of his/her duty.

Article 57.

The prosecutor has no duty to search for the minor offender but when the penal court judges on the minor offense, the prosecutor may ask for the punishment related to that minor offense.

Article 58.

When the prosecutor upon receiving a complaint, denunciation or report, shall immediately register or ask someone to register it in a registration book called "order register" which consists of different columns as follows:

-first column is for the case number and the date of the registration into the book

-second column is for the offender's surname and name

-third column is for the plaintiffs surname and name if there is any

-fourth column is for the nature, the date and the place of the offenses

- ifth column is for miscellaneous.

Article 59.

Once the complaint, denunciation or report have been received, and if the prosecutor thinks that it does not constitute a penal offense, he/she shall file that case without processing and with his remark written on that complaint denunciation or report and also on the order register. In that case, the prosecutor shall inform the plaintiff on his/her decision within a period not longer than two months starting from the date he/she received the complaint. The plaintiff may appeal his/her decision to the appeal court.

The decision to file without processing by the prosecutor, has no res judicata. This mans the prosecutor shall inform the plaintiff on his/her decision, unless the prosecution expires due to the statute of limitation or due to the other cases provided by law.

Article 60.

If the complaint pertained to the crime or the misdemeanour, the prosecutor shall immediately open a judicial enquiry, this means, the prosecutor makes a charge called introductory requisition which indicates the offense in accordance with the law and the person presumed to be responsible for the offense and sends it to the judge.

Article 61.

In case of misdemeanour, the prosecutor may accuse the offender and send him/her directly to the penal court for judgement or proceed the same way as described in article 60 above.

The prosecutor accuses and send the offender to the court for judgement when the file is completed and there are sufficient factors that constitute the offense.

The prosecutor has also the right to make additional inquiry before sending the case to the court. In this case, he/she may ask necessary infirmations from the judiciary police officer. Once all the information is obtained, the prosecutor sends the case to the court for judgement which is based on the full knowledge of the facts.

Article 62.

In the case where the committed crime is flagrante delicto, and if the investigating judge did not receive the case, the prosecutor may issue order to the suspect to appear through arrest.

The prosecutor shall interrogate immediately that person. If that person is accompanied by a human right defender, the prosecutor shall interrogate him in the presence of his human right defender. The prosecutor may interrogate the witness who is present and issue an order to take temporary measures, in order to ensure the sufficiency of the evidence.

The prosecutor may search the criminal offender's house and confiscate the object produced in evidence necessary for finding the truth.

The prosecutor may interrogate any person who may provide useful information but may not order him/her to have witness or order to take an oath. The prosecutor has right to assign an expert to evaluate the object produced in evidence that the prosecutor thinks necessary.

The prosecutor has the right to forbid any person from leaving the scene of the crime. If the prohibition is not respected, the prosecutor may issue a requisition to detain that person for 24 hours.

Once the report on the place of the accident is completed, the prosecutor shall send immediately the file and the introductory requisition to the judge who will continue to gather some more information or reviewed all the documents if he/she feels there is a need. When the investigating judge receives the case and is present at the scene of the offense, the prosecutor or the judiciary police officer shall give the whole investigation process to the judge.

Article 63.

The prosecutor shall examine immediately whether or not the charge on the offender is sufficiently established. If the offender is detained and with proper send to him.

If the charge is related to a flagrante delicto offense punishable by imprisonment, the prosecutor interrogates the offender the following firstly:

-Identity card with the surname and name, age profession, the domicile place and date of birth of the offender

-Surname and name of the offender's parents

-Summary of the offender's biography specially on the past judiciary record.

After that, the prosecutor asks the questions on:

-The offense that is charged on the offender

-All circumstances related to the offense

The prosecutor shall make and sign the report written by a clerk.

This report shall also be signed by the offender. If the offender does not know how to sign the prosecutor shall mention it in the report and have the offender's to fingerprint.

Article 64.

Upon receiving a misdemeanour case, the presiding judge decides on the detention and asks to bring the accused for the next hearing. If the judge finds that the file is incomplete, he may postpone the hearing to a later date which is not longer than four months counting from the date of detention.

Article 65.

If the presiding judge thinks that the accused may be temporarily released, with or without bail, he/she shall decide on this issue before examining the merit. He/she will act the same way if the accused requests it in writing.

Article 66.

If the presiding judge thinks the case that he receives, does not constitute a flagrante delicto misdemeanour as determined in the accusation, he/she cancels this procedure and send it back to the public prosecutor for action in accordance with the law. The prosecutor issues an assumed order of for the investigation and send it to the investigating judge who shall continue the regulations as stated by the law.

Article 67.

The prosecutor shall apply the procedure directly to the court in case where the convicted person is liable to a punishment of imprisonment not more than one year as the maximum term, if not, the prosecutor shall send the case to the investigating prosecutor.

CHAPTER IVTHE INVESTIGATING JUDGE

Article 68.

In each provincial and city court, there is one or many judges is responsible for investigating criminal cases depending on the work load and the court's needs.

No judge may participate in the judgement of a case of which he/she has involved n the investigations.

Article 69.

The investigating judge cannot make any investigative acts if he/she did not receive the introductory charge from the representative of the prosecution office.

In the case in which the investigating judge has directly been submitted a complaint, he/she shall, before

instituting any investigation, forward the complaint and attached documents to the public prosecutor who will process in accordance with the provisions of the preceding chapter.

Article 70.

The investigating judge is referred for the prosecution of a determined act. Therefore, the investigating judges shall investigate only in the area of criminal act specified in the introductory charge from the prosecution office.

Article 71.

During the investigating, if a new punishable act arises, the investigating judge shall have a new introductory charge for investigation in order to be able to investigate this new punishable act.

If the new act was only an aggravating circumstance of the former one for which the judge is referred, the same obligation regarding the introductory charge is not required.

Article 72.

The investigating judge has the rights to visit the scene of the offence occurrence always accompanied by a clerk. In this case, previous notice of the visit shall be given to the public prosecutor.

Article 73.

If the imputed act investigated by the judge does not have the misdemeanour character and is only a minor offence, the investigating judge continues the investigation, then forward the case file to the court.

Article 74.

In the case of a conflict among many investigating judges in different territorial circumscriptions who receive the same criminal case, the conflict shall be directed to the appeal court which decides without appeal.

Article 75.

When the accused person appears for the first time, the investigating judge shall record his/her identity, inform him/her of the imputed act, receive his/her statement after informing him/her of the right to answer or not to answer without the assistance of a lawyer or defender chosen by him/her or appointed automatically.

Article 76.

At this first appearance and after recording the identity and informing his/her accused act, if the accused tells the judge that he/she chooses a lawyer, or requests that a lawyer shall be automatically appointed by the government for his/her defence, then the investigating judge shall suspend the interrogation and call the counsel shortly in order to interrogate the accused in the presence of the counsel.

The automatic appointment of a lawyer shall be made by the presiding judge in the following cases:

-the victim is a minor without defence,

-the accused person is a minor without defence,

-the accused person is mute, deaf, blind, or has mental disorder,

-the accused of committing any crimes and is not able to afford a defender.

In other cases as mentioned above, the investigating judge may interrogate the accused person when he/she accepts to defend by him/herself.

Article 77.

If the lawyer or the defender did not show up at the indicated date and time, the investigating judge has the rights to interrogate without the presence of the lawyer. The investigating judge shall mention this absence in the report.

Article 78.

The case file shall be put at the disposal of the lawyer or the defender at any time.

The communication of the case file shall be made at the clerk's office or, if possible, in the investigating judge's office.

The lawyer or the defender may be authorized to make copies of all pieces of the documents contained in the case file by his/her clerk under his/her entire responsibility.

Article 79.

Right after the first appearance of the accused person, the investigating judge has the rights to decide whether the accused person shall be put in liberty or in temporary detention. This decision is enforceable immediately, even if there is ann appeal, unless the appeal is from the public prosecutor.

All parties have the right to appeal the above decision to the appeal court within 15 clear days from the date of receiving the notification of their decision rejecting their request.

The appeal court shall decide the case within 15 days, for the most, from the date of receiving the appeal request.

Article 80.

If the accused person is in detention and has a lawyer or a defender, the lawyer or the defender may freely communicate with his/her clients.

The conversation between the lawyer or the defender with his/her detained client shall not be heard to, nor recorded. The lawyer or the defender has the rights to tell his/her client about all documents h/she has seen or copied from the file, and that he/she thinks useful for his/her client;s defence. Nevertheless, the lawyer shall not and over ant documents or object to his/her client without the investigating judge's special authorization.

Article 81.

The investigating judge subpoenas to appear before him/her all persons, whose names indicated in the

complaint or denunciation complaint, witnesses called upon by the accused person, as well as all other persons of whom the hearing appears to be useful to the revelation of the truth.

In all cases, the investigating judge has the rights to confront one party with another, or one witness with other witnesses, or the witnesses with the parties.

Article 82.

Before the interrogation, the witnesses shall take an oath in accordance with their religion or belief. The witnesses shall be interrogated separately one by one. The accused person may be brought in front of the witnesses whenever the judge thinks that the confrontation is required.

Article 83.

The deposition of the witness shall be signed by the judge, the clerk and the witness after reading this deposition to the latter. If the witness refuses to sign, this refusal shall be mentioned this refusal. Each page of the deposition shall be signed by the judge, the clerk, and the witness.

No blank space between lines is allowed. Any crossing out, deletion, and reference shall be approved and signed by the judge, clerk, and witness. The same procedure as mentioned above shall be applied to the deposition of other person in the case.

Article 84.

All person subpoenaed to be witnesses shall respond satisfactory to the subpoena.

If, after receiving the subpoena, the witnesses does not appear before, the judge, the judge may order him/her domicile accompanied by his/her clerk to hear and record the witness's testimony.

Article 86.

If the witness lives in a city or province other than city or province under his/her jurisdiction, the investigating judge may issue a rogatory commission to the judge of the province or town where the witness is located to hear and write down his/her statement.

Article 87.

Besides hearing the witnesses, the investigating judge may take other actions deemed useful to the revelation of the truth. For example, the investigating judge may go to visit the accused person's domicile for a house search. In this case, the lawyer or the defender shall be informed and also invited to accompany the judge in the visit.

The investigating judge shall make a report describing, in details, his/her performance and shall sign with the clerk and all other persons participating in the search.

The investigating judge shall also draw up a precise and detailed inventory of things and papers that he/she has seized and keep them in a closed and stamped package on which the judge and the clerk sign.

Article 88.

The investigating judge may call for an expertise whenever he/she thinks that this measure is necessary for the revelation of the truth. In this case, the investigating judge shall look for the persons deemed to be capable of evaluating the nature and circumstance of the offence.

If there was a death with an unknown cause, the investigating judge shall have recourse to a physician specialist to establish the cause.

All expertise expenses shall be included into the court cost which is in the accused person's charge if he/she will be finally convicted. If there is no ground for prosecution or if the accused person is discharged, the state will be in charge of the expertise expenses.

The investigating judge may order a second expert appraisement to check the first one whenever he/she deems necessary.

Article 89.

If the investigating judge thinks that the investigation is complete, the case file shall be kept for the disposal of the accused person's lawyer for 24 hours. After that, the investigating judge shall issue an order "of discovery". Then, the file is forwarded to the public prosecutor.

Three days after the date of receiving the file, the public prosecutor shall make a charge in writing and refer it back to the investigating judge.

Article 90.

If the investigating judge thinks that the act does not constitute a felony, a misdemeanour, or a minor offense, or the charge on the accused offender is not sufficiently substantiated by evidence, the investigating judge has the rights to issue a nonsuit order. In principle, the order of the investigating judge shall be well motivated.

This order and the file shall be immediately forwarded to the public prosecutor for allowing him/her to file an opposition to the appeal court within 24 hours. If there is an opposition from the public prosecutor, the detained accused person shall remain in temporary detention. In the contrary, if there is no opposition from the public prosecutor and the accused person does not have other causes to be detained, the investigating judge issues and order to release him/her.

Article 91.

If there is plaintiff claiming damages, he/she shall be informed of the "nonsuit" order which is approved by the public prosecutor. Within the 60 days from the date of receiving the information, the plaintiff has the rights to make and opposition to the appeal court.

If the appeal court overrules the nonsuit order, the president of the appeal court can issue an order to re-arrest and provisionally detain the accused person, if he/she temporarily released.

Article 92.

If the nature of the crime found is a misdemeanour or felony, the investigating judge shall send the accused person to the provincial-city court after receiving the charge from the public prosecutor.

The investigating judge is absolutely free to determine the qualification of the crime related to the imputed act.

If the investigating judge believes that his/her qualification of the offence is different from that of the public prosecutor, he/she shall specify in the committal for trial the motives of this change of qualification.

In this case, the order of the change of qualification of the offence shall be forwarded to the public prosecutor who has the right to give notice of appeal to the appeal court within 48 hours.

Article 93.

In the case of change of qualification of the offence from misdemeanour to the felony, it is necessary to have new charge and the person accused of the felony shall be reinterrogated on the new prosecuted act.

Article 94.

In all cases, the public prosecutor may appeal the decision of the investigating judge that he/she is not satisfied with.

Article 95.

When the plaintiff requests the detention of the accused person who is temporarily released, the investigating judge shall make the decision on this issue within 5 days and inform the plaintiff of the decision. The latter has the right to oppose the investigating judge's decision before the appeal court within 15 days from the date of notification.

CHAPTER VProvincial or municipal tribunals

Article 96.

In each province or municipality there exist one court of which the territorial jurisdiction covers all territory of the province or municipality. As a **"criminal tribunal"**, the provincial or municipal court has competence of all kinds of criminal cases.

To be valid by constitute, the criminal court, as well as civil court, requires the presence of a judge, an assistant prosecutor and the assistance of the a court clerk.

The judge may be the president, the vice-president or the magistrate of the court.

Article 97.

Parents and relatives, by marriage until fourth degree included, shall no be simultaneously members of the same court, either as a judge or a representative of the prosecution department.

This principle is not only applied to provincial or municipal court, but also to all jurisdictions irrespective of level.

Article 98.

In principle, there is an absolute incompatibility of office between a judge and a representative of the prosecution department.

The representative of the prosecution department who performs his/her duty in any proceeding may not be a judge in the same case.

There is also incompatibility of office between an investigating judge and a trial judge.

Article 99.

In case of the absence or impediments of the investigating judge or trial judge, he/she may be replaced by another judge assigned by the presiding judge of the same court.

If that tribunal does not have a judge...............(not legible).

Article 100.

The absent or impeded prosecutor shall always be substituted by one of his/her assistants. In default of an assistant, a representative of the prosecution department of the adjacent provincial or municipal court shall be assigned by the general prosecutor to replace him/her.

Article 101.

If any misdemeanour occurs on the premises and during the hearing the judge shall make a report on the matter, hear the charge of the representative of the prosecution department, the declaration of the accused and of the witnesses then the tribunal shall apply the punishment provided by law and continues the process as usual without leaving the courtroom.

If a felony occurs the culprit shall be immediately arrested and, at the same time, a report shall be made. Objects produced in evidence and the accused shall be sent to the investigating judge with the charge of the prosecution office.

Article 102.

Criminal jurisdiction shall be referred:

-by the direct summon of the prosecutor,

-by the committal for trial of the investigating judge,

-by a letter of transfer to the court of appeal or other - jurisdiction,

-by the immediate hand-over of the accused to the court, in a flagrante delicto case.

Article 103.

The criminal jurisdiction shall only decide on cases of the accused transferred to it. If a person, subpoenaed as a witness, is found to be a principal, co-principal or an accomplice shall not be judged unless there is a charge or a committal for trial issued against him/her in accordance with the ordinary formality and time limit provided by law.

Article 104.

The criminal jurisdiction may only decide on acts mentioned in the charge, in the committal for trial or the remand and on accessory circumstances truly related to the act resulted from the hearing.

Article 105.

If the court ascertains that the offence qualification cited in the referral paper is not proper, the court may change the qualification which shall be exactly imputed to the act, but on express condition that there shall be no addition to the elements that are closely related to the facts specified in the direct summon, the committal for trial or the remand.

Article 106.

In case where the change is from a misdemeanour to a felony, the criminal court shall return the case to the prosecutor to proceed on a new charge in conformity with the time limit and formality provided by law.

Article 107.

If the act which is referred for judgement seems insufficiently clear the court may proceed itself with the complementary investigation or return the case to the judge or the prosecutor.

Article 108.

The accused shall appear in person before the judge at all sessions either for additional interrogation or hearing. If the accused appears in court and has the opportunity to defend him/herself, judgement to be made shall be judgement after trial.

Article 109.

The civilly responsible person or the plaintiff may be represented by an attorney or defender.

They may be represented by his/her direct line parent or relatives by marriage with a written power of attorney.

Article 110.

The accused, the civilly responsible person and the plaintiff may red his/her case file at the clerk's office.

Article 111.

If the accused, who is properly summoned, does not appear in court the judgment shall be proceeded by default. If the judge considers that the accused has not received the summon within the time limit, he.she may put off the hearing till the next session. The judge may render judgement by default if the accused does not appear by the new summons.

Article 112.

When the civilly responsible person doe not appear, this non-appearance shall be recorded in the minute-book of clerk to the court. The court shall determine on whether or not there is legal connection which ties the responsible person to the accused. When there is sufficient evidence of guilt on the accused, the court shall

evaluate the consequences of the damages.

Article 113.

When the plaintiff does not appear in court and the guilt of the accused has been recognised, the court, based on its own judgement, shall determine the cost of the damage reparation when there is a claim in the plaintiff's file.

Article 114.

Even though the accused does not appear, the court shall proceed a if the accused is present by hearing the witnesses testimony, examining all the documents and information that may lead the court to find out the truth. The court may dismiss the absent accused when it finds that there is not enough evidence. In case of sentencing, the court may also decide to allow extenuating circumstances for the accused. In one word, the non-appearance of the accused during the hearing shall not constitute an aggravating circumstance.

Article 115.

Sentencing an accused by default shall become null and void when the accused oppose the decision of the court within 15 days from the day of the reception of the decision notification.

But if the notification is not made in person or if there is no writ of judgement enforcement to be known to the accused, the decision may be opposed till the terms of limitation for punishment expires.

Article 116.

If the accused no longer resides at the previously indicated location and if the judiciary police in charge of notifying cannot locate his/her new residence, the notification of the judgement by default shall be posted at the last known domicile of the accused. This notice shall also be posted at the Khum or district office of the people's committee and be announced on national radio and published in the official newspaper.

Article 117.

The notification of the judgement by default transforms this judgement into a true judicial decision having the effect of substituting the term of limitation for punishment for terms of limitation for prosecution. The term of limitation for 3 years for a misdemeanour, 10 years for a felony.

This principle is also applicable when the court decision is notified by means of posting on the accused residence or at the Khum or district offices of the people's committee broadcast on national radio or published in the official newspaper.

This decision may also be applicable for the civil reparation when the plaintiff claims for it.

Article 118.

When there is a protest on the notification of the judgement by default, for example: in the case when the original copy of the notification is lost, this notification shall be considered as undone.

Article 119.

The notification shall preferably be made in person. If the accused cannot be found, after diligent effort, measures shall be taken as provided in article 116.

Article 120.

In principle, the opposition shall be filed at the court clerk's office, nevertheless, it may also by made by certified or regular letter or by a declaration made before any judiciary police officer who shall urgently forward it to the concerned court clerk office.

Article 121.

The opposition suspends the enforcement of the judgement and remit the facts and the parties as in the stage where the default judgement is rendered. Thereafter, the court receiving the opposition of the accused recovers full power to proceed and may augment or reduce the criminal or civil punishment pronounced in the judgement by default.

Upon opposition of the accused, the court may raise the aggravating circumstance that was not done in the default judgement or discharge the accused in accordance with the law.

Article 122.

The court examines whether or not the opposition is relevant. If the court consider that the opposition is relevant, it shall declare that it is admissible and decide on the merits as if it were before the court for the first time.

Article 123.

If the party who opposes does not appear at the time set by the court, the judgement by default put down by the court shall be considered as having the presence of the party.

Article 124.

The judgement rendered on the opposition may be brought before the court of appeal by any party.

Article 125.

The evidences of a criminal offence may be produced by any means in order to convince the judge, for example by confession, by witness's appropriate and convincing testimony, by examination on all indications, by expertise or by other legal means such as the on-site visit etc...

To ascertain its conviction, the criminal jurisdiction may examine all document put forward for questioning during the hearing and examinations between parties and attorneys in order to render judgement. Judges shall not base their conviction on personal knowledge he/she might acquire outside the hearing.

Article 126.

In any criminal jurisdictions, the clerk shall be responsible for writing a summary report of the hearing for allowing the appeal court to control the effectively the lawfulness of the proceeding, and to have a knowledge as compete as possible of the oral investigation during the hearing. The clerk shall try the best he/she can to

carefully write down the progress of the proceedings, and all statements of the witness and the answers of the offender.

The above summary report shall be signed by the clerk, and certified by the judge after a detailed review in the period of ten days after the hearing during which the judgement was pronounced. The clerk will receive an administrative discipline, if he/she fails to perform this task.

Article 127.

The summary report signed by the clerk and certified by the judge is considered a valid of its content until there is evidence to the contrary. In the case of a discrepancy between the summary report and the original judgement, the latter will be considered as valid.

Article 128.

The investigation during the hearing shall be in public, if not, it will be considered as null and void. The proceedings in open court are required not only for the pronouncement of the judgement, but, also for the investigation, and the hearing. Therefore, the judgement shall mention the proceedings in open court, because without it, the judgement shall be considered as null.

Article 129.

Nevertheless, the hearing can be conducted in camera, if the proceedings in open court might deem dangerous to the public order and good tradition. The in camera hearing may only conducted on part of the investigation. In another sense, the time for the in camera proceeding is limited to the investigation of the case. The pronouncement of the judgement shall be in public, if not it shall be considered as null.

Article 130.

The judge is the person who keeps the hearing in order, and who conducts the interrogation.

During the interrogation, the judge can stop or reject anything that may unnecessarily delay the interrogation, without contributing to the revelation of the truth.

When there is a protest between the representative of the prosecution's office or the plaintiff with an accused person or the civilly responsible person concerning the usefulness of any interrogation's measures: hearing of witness asking questions, or other issues, the judge may decide by order and simply mention it in the hearing report, in order to know which measures are accepted or refused.

Article 131.

The injured party may always become a plaintiff as long as the judge has not yet issued a judgement. He/he does not need to submit the hearing that he/she wants to b a plaintiff, claiming damages and requests it to be recorded in the minute book, and then starts to make conclusion on the action instituted by him/her.

Article 132.

At the opening of the hearing, the judge calls the case to be judged. The clerk calls the parties, the witnesses in the case, and checks their identification. Each party seats in the reserved place in the court room. The

witnesses shall withdraw into a waiting room which was reserved for them from which they cannot see, or hear anything from the court room and in which they cannot communicate to each other.

Afterward, the judge hears the accused person about the accusations made on him/her. After listening to the oral statement of the accused person, the judge starts to ask him/her questions useful to the case. This question shall be completed by the other party's questions through the judge. If there is no objection from any party, including the representative from the prosecution's office, the judge asks questions which are requested through him/her. If there was an objection, the judge shall decide through an order whether he shall ask the question. All the questions shall be asked through the judge, except the questions by themselves after obtaining the permission from the judge.

After the accused, the judge hear the civilly responsible know and especially on the causal connection of his/her liability.

Next, the judge hears the plaintiff the claimming damages if there exists, having properly submitted the complaint. The judge hears the plaintiff, his knowledge of the fact, especially the element of the evidence that shows the damage made upon him/her in addition to the cost and the causal connection between himself/herself and the offence.

Article 133.

Then the judge hears the witness's testimony in the following order: prosecutor's witness, plaintiff's witness and accused's witness. This order may if there is an important reason (Cambodian version missing. I translate from French version). The judge may not necessarily hear any testimony when he/she considers that it does not help to reveal the truth. In the event of objection, the judge shall decide this case by order which shall be recorded in report of the hearing.

Article 134.

Any witness who did not take an oath during the investigation shall take an oath before answering. Any witness who testified in accordance with the discretionary power of the judge, may no take an oath. After the testimony, the witness may remain in the hearing room. at the witness's request, the judge may allow him/her to stay outside if his/her hearing is no longer necessary.

Article 135.

All objects produced in evidence shall be shown to the witness and the parties for one more time but if this process was not done, it does not cause the judgement to be null.

Article 136.

If the accused or the witness is mute, deaf but know how to write, the clerk shall write down the questions and various remarks for them in order to get back the answer in written form. If they do not know how to write, the judge shall assign automatically by himself a person who used to communicate with them by using sign language as interpreter.

Article 137.

Article questions and answers, the judge successively allows the plaintiff, the civilly responsible person, the

accused, the lawyer or the defender of the civilly responsible person and the last one, the lawyer or the defender of the accused to speak. The accomplishment of the above formalities shall be indicated in the report of the court hearing and the court order, otherwise it shall be considered as null.

Article 138.

The representative of the prosecution department shall have the opinion not only on the merits of the hearing but also on any incidental plea and if he declares that he agrees with the court decision, thus the decision is considered as sufficient in accordance with the law.

Article 139.

As long as, the judge still has not yet begun to read the judgement, the parties may always be allowed to submit to the court their briefs and documents they think useful.

Article 140.

The court shall render interlocutory judgement on all incidental pleas usefully rased by the representative of the prosecution office, the plaintiff, the civilly responsible person and the accused.

If the incidental plea is related to incompetency, the court shall decide before-hand the incompetency incidental plea.

But if, in order to evaluate the grounds for the incompetency incidental plea, the court has to, first, examine the merits, then the court may decide to join the incidental plea to the merit. The court shall then, decide on the competency by a decision that is separate from the decision on the merits. Ir the court decides in favour of the incompetency, it does not have to examine the merits.

Article 141.

After the hearing, the prosecutor's charge and the counsel pleading, the judge withdraw into the secret chamber for discussion. From this stage on, neither request nor argument shall be presented to the court.

Article 142.

All judgements shall be pronounced in public. That means it shall be read aloud by the judge. A judgement shall be rendered in the soonest time possible. If the judgement cannot be rendered immediately, the judge shall announce at the hearing and the date of the next hearing in which the judgement shall be pronounced so that the interested party of the case can be present.

Article 143.

All judgements shall consist of two parts: the record of proceedings before judgement and judgement itself.

1The record of proceedings which is written on the top of the judgement shall consist of: surname, name, profession, domicile and the role of the parties, the surname and first name of the lawyer or the defender, the charge and the request of the parties, if any, the reminder of the procedure with indication of the principal acts and different incidents from the hearing.

2The judgement itself shall be sub-divided into two parts: the ground and the enacting term of judgement.

athe grounds of judgement are the reasons on which determine the decision of the court.

bthe enacting terms of judgement express measures taken or the sentence pronounced by the court.

Article 144.

All judgements shall be grounded on each of the counts of accusations as well as on each of the parties' requests. The ground of the decision shall be precise, that means expressing unequivocally and uncontradictorily the thought of the judge.

The enacting terms which is the essential part of the judgement, shall also be as precise as the grounds. In the enacting terms of judgement, there shall be references to all legal texts on which the decision is based.

Article 145.

The judgement shall be drawn up right away and b read to the audience when the judge comes back from the secret chamber.

The only parts that shall be read in public are the grounds and enacting terms of judgement.

Before reading the judgement, the judge shall sign it first.

Article 146.

The acquitted accused may immediately submit the claim for damages. However, to be admissible, the claim hall justifies the plaintiff is at fault and the fault results from the mala fide or careless action. Only the court that has decided on the case has the competence to decide on this claim.

Article 147.

Concerning the restitution of object produced in evidence, in the case when the accused is acquitted, the court shall only order the restitution when it is certain that the object belongs to the accused. If there is the least doubt, the judge shall declare that the object produced in evidence be restituted to its legitimate owner. This will open to interested parties willing to claim for it, to file before the civil court which determines the legitimate owner.

Article 148.

Even in the case of acquittal, if provided by law, the object in evidence shall be confiscated, for example, in the case of illegal possession of arms or counterfeit etc...

Article 149.

If the fact is only minor offence, the court shall apply the minor punishment and decide on the damaged, if there is a claim for it.

Article 150.

In its enacting terms, after declaring the guilt of the accused, and the responsibility of the civilly responsible person, the judgement shall determine the principal penalty and the accessory penalty, if there is any. On the other hand, the judgement shall mention the text of the law applied.

Article 151.

Together with the with decision on the punishment, the court shall also decide on the reparation and the damages.

Article 152.

The acquitted accused shall be immediately released, if the decision is not appealed right away. If the court decide on punishment and the detained accused appels against the judgement, the accused hall remain in temporary detention.

Article 153.

In case of sentencing, the judgement shall be enforced and insured by the prosecutor, concerning the imprisonment and the collection of fin. Regarding the payment of the reparation, it shall b enforce at the request of each plaintiff claiming for his/her damages.

Article 154.

If the accused is put in liberty the appeal temporarily suspends the enforcement of judgement, that means the accused shall remain in liberty.

Article 155.

All contradictory judgement of the criminal jurisdiction can be appealed within two clear months from the day when the judgement is rendered.

CHAPTER VIThe Appeal Court

Article 156.

The appeal court is located in Phnom Penh.

The competence of the appeal court covers the entire territory of the State of Cambodia.

Article 157.

In the penal case as well as in the others, the appeal court has competence for the appeals against all decisions made by the military court, the provincial or municipal court, as well as those made by the public prosecutor department of these inferior courts.

Article 158.

During the judgment, the appeal court shall be composed of three judge one of which is the president, a

representative of the prosecutor office and a clerk.

Article 159.

At the appeal court, there is a prosecution department which i composed of a general prosecutor, a deputy general prosecutor and a prosecutor.

The competence of the general prosecutor covers the entire territory of the State of Cambodia.

In case the impediment due to sickness or other causes, the general prosecutor at the appeal court shall be substituted by the deputy general prosecutor who is senior among all of them if there are more than one deputy general prosecutors.

Article 160.

The important role of the general prosecutor at the appeal court is to give his conclusion during the hearings of the appeal court and appeal to the supreme court against the judgement of the appeal court which he thinks rendered in error or in violation of law.

Article 161.

Those who have the right to appeal are:

-the accused or the civilly responsible person

-the plaintiff claiming damages

-the prosecutor

Article 162.

The accused, the civilly responsible person or the plaintiff who want exercise their rights to appeal, shall use it by themselves or by proxy. The power given to that proxy shall be special.

Only the father or the mother of a minor child may appeal on behalf of his/her child without using special power of attorney, it the same of the tutor.

Article 163.

The appeal has devolving effect that means that submits to the second jurisdiction (appeal court) all points of the fact and law which were examined by the inferior jurisdictions.

Article 164.

During the trial of the appeal submitted by the accused, the appeal court shall not add more punishment. It may modify the judgment in the sense that it benefits the accused.

The appeal court may change the qualification of the offenses which were decided by the judge of the first jurisdiction but with the condition that no punishment is added to the accused.

The appeal court also may, in maintaining the same punishment decided by their criminal court, apply to the fact, a penal text different from the one mentioned in the appealed judgement.

Article 165.

Deciding on the accused's appeal, the appeal court shall no add to the principal penalty the accessory penalty which the judge of the first jurisdiction forgot to decide on.

Nevertheless, in case where the accessory penalty shall be applied, the appeal court must explain it is impossible for the court to correct the omission made by the judge of the first jurisdiction without the appeal from the department of the public prosecutor.

If the appeal court confirms the judgment without specifying as above, the judgement of the appeal court shall be considered as having the same defect as the first jurisdiction. For that reason, this decision is null.

Article 166.

The appeal court shall not decide on the accused's appeal, by increasing the amount of the damages which was already decided by the court of the first degree for the plaintiff.

Article 167.

The appeal court may increase of the rate of fine in suppressing the imprisonment. The court may change the imprisonment into the fine, whatever the short period of time the imprisonment and the rate of the fine, because the seriousness of punishment does not base on the duration or the amount. But on the determination of the rank in the penal scale that is meant the imprisonment is more serious than the fine.

Article 168.

In the contrary, the appeal court may at the accused's appeal, decides on the imprisonment for debt which was forgotten by the inferior court, because it is a punishment, it is measures of execution which shall be applied by right.

Article 169.

In the case where the court of the first jurisdiction dismisses the case and the plaintiff's appeals, the appeal court may decide all kinds of punishments including the accessory penalty and the fine.

Article 170.

The prosecutor's appeal and the appeal of the plaintiff, even though without the accused's appeal, throw back into question the decision made by the inferior court, including the charge and discharged or may dismiss the accused.

Article 171.

The appeal court may decide may on the prosecutor's appeal, all the accessory penalties that the judge of the first jurisdiction forgot to decide on.

Article 172.

Nevertheless the prosecutor's appeal will have such effect if it is general.

If the prosecutor's appeal is restricted, the appeal court may decide, only within the limit determined by the appeal.

Article 173.

The prosecutor's appeal will be considered as general, when the prosecutor appeals against too mild a sentence.

Article 174.

Whatever the extend of the appeal effects, the appeal can only be applied to the prosecutor's appeal and may not have effect on the plaintiff's claim.

Article 175.

The appeal court may change the qualification of the offense made by the judge of the first jurisdiction but shall not add any new element which the judge of the first jurisdiction has not received and made decision.

Article 176.

The appeal made by any parties, in principle, shall be done at the clerk's office which issue the judgement. The appellant needs not inform other parties of his/her appeal. The clerk shall record the appeal in the register used only for this purpose. The clerk and the plaintiff shall sign or finger print on the recorded appeal. The appellant may be represented by a proxy having a special power.

Article 177.

The appeal may be sent by a certified letter or regular letter, addressed to the clerk of that court. This letter shall contain the willingness to appeal formally expressed.

Article 178.

The appeal may be lodge within a time-limit of two months. When the judgement is contradictory, this time-limit starts on the day of the judgement. When the judgement was made by default, the time-limit shall be determined from the expired date of the opposition. The party who was not present, may appeal before the expiration of the time-limit for opposition.

Article 179.

During the appeal and during the appeal judgement, the enforcement of the judgement made by the inferior jurisdiction shall be stayed.

Article 180.

The brief on appeal, the judgement, the case and the complaint that the appellant think should be added to the his/her appeal, shall be forwarded to the clerk's office of the appeal court as soon as possible. Then the president of the appeal court forwards the case to the general prosecutor in order for him to make the charge during the hearing.

Article 181.

If the person against whom the judgement is rendered is arrested, he/she shall be sent as soon as possible by order of the prosecutor or the judge, from the house of arrest in the province, city, to the one in Phnom Penh.

Article 182.

The judgement by default on the appeal, may be attacked by the way of opposition in the same method of procedure and the same time-limit as the judgement by default rendered by the penal court.

Article 183.

The opposition delays the summon to the next hearings. If the opponent does not appear, then the judgement of the appeal court which decides for the second time and makes the judgement by default reiteratedly, may not be attacked for the second time unless it is done before the supreme court.

Article 184.

The report made by a judge of the appeal court has the purpose to set forth in public various documents of the case, and then let the judges of the court know in the presence of the parties, not only the court decision which is referred, but also all the elements which were submitted to the first jurisdiction for examination and decision.

The accomplishment of this formality shall be under penalty of nullity, mentioned in the judgement.

Article 185.

If the appeal court orders one of its judges to make additional investigations, this judge shall prepare a new report once the investigation is finished. This report shall be enclosed in the case which the appeal court will consider during the hearings. otherwise, the report is considered as null.

Article 186.

The report shall be in writing and hall be enclosed in the case file.

The appellant shall be interrogated after the reading of the report. In the simple case, this report may be summary. But if the case is complex, the report shall be more developed in order for the court to examine the case with full knowledge of the fact.

Article 187.

After the reading of the report, the appeal court hears the accused and the civilly responsible person. After that, the appeal court hears the plaintiff, if any.

If the parties who appeal are defended by attorneys, their attorneys shall be heard before the representative of the general prosecution department have.

If the prosecutor is the appellant, the representative of the general prosecution department shall be heard before the attorneys.

If the order established is not followed. It is not punished by penalty of nullity.

Article 188.

The procedure to submit evidence shall be the same as the procedure used by the provincial and municipal court.

Article 189.

The appeal court may, therefore, take all investigation measures which are used by the provincial, municipal court such as the expert evaluation, visit of officials to the scene of the occurrence, gathering of evidence...etc...which they think important to clarify the court.

Article 190.

Exhibiting the object produced in evidence at the appeal court is not necessary when it is shown that the exhibition was correctly done for the first time at the first jurisdiction.

Article 191.

The appeal court has the discretionary power to hear or not to hear for one more time, the witness whom the judge of the first jurisdiction has already heard.

The appeal court may decide to hear or not to hear new witnesses even at the request of the accused, the plaintiff, the attorney or the representative of the general procedure department. If the appeal court refuses their request, this means, if the appeal court thinks that the new witness would not bring more clarification to the hearing, the appeal court shall issue a preparatory judgement, including the above motives, otherwise it shall indicate the reason in the final judgement.

Article 192.

The appeal court has the right to order a complementary investigation in writing when it thinks that the last investigation was incomplete. In this case the appeal court designate one of its members to investigate.

The competency and the procedure to appoint a judge shall be the same as those of the judges in the first jurisdiction. The who is appointed by the above procedure, if necessary, may sub-delegate his/her powers to a judge of lower level.

Article 193.

If there are many appeals simultaneously from the prosecutor, the accused, the attorney or the plaintiff, it is the representative of the prosecution department who first delivers his/her address to the court because his/her appeal throws back into question all issues of the charge.

If the plaintiff and the accused appeal, then the plaintiff delivers his/her statement first, then the accused states his/her defence.

Article 194.

All judgement shall be motivated. Nevertheless, if the appeal court considers that the decision of the first jurisdiction must be confirmed base on the motive indicated in its decision, the appeal court may purely and simply pronounce that it adopts them without having to write them.

If, before the appeal court, an incidental plea or a new brief is submitted, this court shall expressly make the decision on the incidental plea and the brief that makes this case a new aspect.

When the appeal court quashes the appealed decision it shall provide the reason which motive its decision.

Article 195.

Regarding the pronouncement, the wording, the authenticity, the signature and the interpretation of the judgement, the same rules as that of the provincial or municipal criminal court shall be applied.

Article 196.

When the judgement is overruled because the reputed fact is not a misdemeanour or a felony, the appeal court nonsuits the accused.

Article 197.

When the judgement is confirmed and the fact is punishable by felony or misdemeanour penalty, the appeal court shall issue a committal order or a warrant for arrest, if any.

Article 198.

The appeal court has the right to trial the case by themselves when they overrule the decision made by the first jurisdiction.

It is so when there is unrepairable violation or omission of the formalities required by law under the penalty of nullity or when that decision was wrongfully made on the incidental plea and specially the ability on the rationae materiae competence.

Article 199.

When the case is not complete, the appeal court shall take or shall cause to take all useful measures or shall make necessary investigation in order to discover the truth.

Article 200.

The appeal court may judge the case by itself when it decides to overrule the whole judgement.

Article 201.

The appeal court may not judge the case by itself when the appeal court overrule the decision of the provincial, municipal court which has wrongfully refused to judge based on competence ground because the first jurisdiction is not exhausted.

Article 202.

The appeal court is also competent:

1.To judge the appeal on the decision made by the prosecutor of the military court and the prosecutor of provincial or municipal court.

2.To judge the appeal on all the decisions made by the judge of the first instance in the matters of the detention awaiting trial, release on bail or no ground for prosecution.

Article 203.

If the appeal court overrule the decision of no prosecution made by the prosecutor or of nonsuit directed by the investigating judge in the case where the accused is not detained, it may decide to detain the accused person awaiting trial. In this case the appeal court shall issue a warrant for arrest.

The appeal court shall send the accused person to appear before the same criminal court when he/she considers that the file is complete.

Article 204.

When the appeal court overrule the decision of detention awaiting trial, it shall order that accused person be free immediately.

Article 205.

When the appeal court overrule the decision not to detain, it shall order the detention of the accused person by issuing a warrant for arrest.

CHAPTER VIITHE SUPREME COURT

Article 206.

The Supreme Court is located in Phnom-Penh.

The competence of the Supreme Court extends over the whole territory and all jurisdiction in the State of Cambodia.

Article 207.

The Supreme Court renders decision on the law, not on the facts. Nevertheless, it also renders decision on the facts in the case of the second appeal to the supreme court in the condition specified in the following articles.

The decision of the Supreme Court is sovereign which means no remedy at law, except the appeal for

revision in a certain cases restrictively provided by law.

Article 208.

The Supreme Court, judging penal as well as civil cases, shall have a president of that supreme jurisdiction, assisted by 4 judges, one representative from the prosecution's office, and a clerk.

One vice-president will replace the president in case of his/her absence or preoccupation.

Article 209.

The cases which allow the Supreme Court to render the decision for annulment are:

1.the composition of the jurisdiction is not legal, either because the number of the judges is insufficient, or other reason, resulting from the non-observance of the provisions of the law,

2.the breach or omission of the required formality under penalty of nullity such as a hearing not in public,

3.the refusal or the omission to decide on one, or many requests or charge of any party including the prosecution's office who properly use their rights or option given by the law,

4.incompetence,

5.lack of motives, or contradiction between motives and enacting terms,

6.violation or misapplication of the law of substance,

7.distortion of the facts,

8.abuse of power.

Article 210.

In all cases, the statement of appeal shall be made in the clerk's office of the court which issued the judgement. This statement of appeal shall be recorded in the register at the clerk's office of the court which will decide on the appeal.

Article 211.

The statement of appeal shall be personally made by the interested person, or by a third person who receives the special power in writing, or by a person recognized by the law as legal representative such as a father represents his minor child.

Article 212.

The statement of appeal shall have the signature of the interested person or his/her representative, and of that the clerk. The date needs to be included. If the person does not know how to sign, he/she shall have a finger print.

Even if there is neither clerk's signature, nor the date, the statement of appeal is still admissible, if no fraud is

discovered, but the clerk shall be fined for 5,000 Riels. by the supreme court in its judgement. This fine shall be decided by the Supreme Court even if the appeal is not admissible in its form.

Article 213.

After receiving the statement of the appeal from the court which decided on the case, the clerk shall immediately prepare the file and forward it to the president of the Supreme Court.

Article 214.

Upon receiving the file, the president of the Supreme Court causes to register the file in numerical order in the Supreme Court clerk's office.

The clerk shall immediately notify the appellant, who shall, within twenty days from the date of receiving the notification, submits to the Supreme Court a statement in which he/she puts forward the legal grounds.

If the appeal is from the general prosecutor's office, a conclusion raising all legal issues shall be made to the court.

If the appellant did not use his/her rights within the period mentioned above, the president of the Supreme Court forwards the case file to one of his/her judge for a report. If the appellant sent a statement, the clerk shall inform that to another party for response within the period of twenty days.

The same notification shall be addressed to the lawyer who, after causes his/her secretary to make copies as needed.

The above formalities are under penalty of nullity, if they are not complied with. The party injured time limit appears insufficient, the appellant, the defendant or their lawyer may request for an extension of ten-day from the president. The request maybe brought forward by simple letter filed at the Supreme Court clerk's office.

After the expiration of required time limit, with or without response, the president of the Supreme Court forwards the file to one of his/her judges for report.

Article 215.

The report of the judge shall describe:

-the facts and the acts of procedure,

-the scrupulously objective summing up of the elements of charge and elements of discharge, and responses to all legal issues raised by the parties. The report shall point out different possible solutions to the judicial issues that the Supreme Court may solve.

This report shall be attached as an annex in the file which shall be forwarded to the general public prosecutor's office for charge. the charge of the general public prosecutor or his/her deputy performing on his behalf is required in each case. During the hearing, the conclusion may be oral. However, for any important judicial issues, the charge shall be in writing. The written charge shall be enclosed in the file before the hearing.

Article 216.

After examining the file, the general public prosecutor refers it back to the president of the Supreme Court. This file shall be registered in the list for the next hearing.

The hearing shall be held in public. The reporting judge shall read the report in public. After that, the representative of the prosecution's office makes his/her conclusion, following by the appellant, the defendant, and their lawyers.

At the end of the debates, the court goes to a meeting room for deliberation and write the verdict. The verdict shall be delivered at the hearing time, or at other hearing determined by the Supreme Court.

In case, as long as the hearing has not been held in public, the Supreme Court may not deliberate and issues a judgement on any case. All parties may be represented by the their lawyers or new legal issues as long as the hearing is not closed. The rights for responses shall always by respected.

Article 217.

The appeal to the Supreme Court and the time limit for the appeal has a suspensive effect. Therefore, the enforcement of the appeal court judgement shall be suspended during the time of appeal, if there is an appeal during the appeal period, until the date of the issuance of the Supreme Court judgement.

Article 218.

The appeal also has a devolving effect which means it submits all issues in the attacked appeal to the Supreme Court, unless the appellant expressly and in a clear and precise manner limits the appeal to some determined issues of the judgement. In this case, the Supreme Court is competent to decide on issues determined in the appeal. This determined issues shall be recorded in the register in the clerk's office at the time of the appeal.

Article 219.

In principles, the Supreme Court shall judge within the period of three months, at the latest, from the date of receiving the file and documents in support of the case by the Supreme Court's clerk office.

Article 220.

The judgement of the Supreme Court shall absolutely be motivated, either this jurisdiction quashes the attacked judgement, or the Supreme Court dismissed the appeal, or issues its own judgement replacing the attacked judgement after receiving the appeal for the second time.

If the appeal is dismissed, the attacked judgement acquired res judicata. The party with the dismissed appeal may not re-appeal for annulment on the same judgement, even with any supporting reasons or means, except in the case related to the request for revision as mentioned in the articles below.

Article 221.

If the judgement is entirely squashed, following an appeal which has general devolving effects, the judgement of the Supreme Court puts the parties back to the same situation as before the squashed judgement, and refer the case back to the same jurisdiction, but with different composition.

If the quashing is on some issues of the judgement of the lower level court, the other issues shall remain the

same, and the quashing and the transfer for judgement shall have the effect only on the issues stated in the appeal.

But, in the case of a limited appeal, the Supreme Court may examine the nullity of the entire judgement, whenever the quashing of some issues affects the entire judgement.

Article 222.

If the fact is not a felony, or a misdemeanour, or a minor offence, the Supreme Court only declares that no offence has been committed, and decides to acquit the accused, and allows the plaintiff, if he/she wants, to submit the case to the civil court.

Article 223.

The Supreme Court may decide on the same issues without transferring the file to the lower level of jurisdiction, such as in the case of wrongful application of accessory penalty, or the stay of proceeding unlawfully allowed by inferior jurisdiction.

Article 224.

If the Supreme court finds that the judgement is appropriate, but the committed acts are not related to the mentioned offence, but related to the offence which shall receive the same punishment, the Supreme Court may decide no to annul, but only change it by maintaining the same punishment and the same amount of damages.

Article 225.

In the case that Supreme Court finds that the facts shall be considered as an offence requiring higher or lower punishment, it shall annul and return the case for judgement to the same jurisdiction by differently composed, or to the other competent jurisdiction.

Article 226.

To avoid the unnecessary extension of the legal proceedings, after receiving the appeal from the representative of the prosecution's office, the condemned person, or from the plaintiff, or his/her lawyer, the Supreme Court may sit in banc on the facts and on the law, when the lower court did not obey the first judgement in which it decided to dismiss and return the file to that lower court, then issues a final judgement.

The sitting in banc is composed of nine judges including the titular president of the Supreme Court who is a president. In the case of the impediment of the president, he/she will be replaced by one of the vice-presidents. There is no distinction for the composition of the Supreme Court sitting in banc between the judges who were involved in the case and in the first appeal, and the judges who have never involved before. The judges who were involved in the case in different capacities may not be included in the **compositon of the Supreme court.**

Article 227.

The Supreme Court also has a special competence for judging the revision case.

Article 228.

The provision is a remedy at law against judgements which become final and which acquire res judicata.

The only purpose of the revision is to reestablish the innocence of the condemned person.

Article 229.

The revision may be requested in criminal case, whatever court which has rendered the decision and whatever punishment which is pronounced.

Article 230.

The revision may be requested in the following cases:

1.when, after the condemnation for man slaughter, there is sufficient evident indicating that the victim is still alive.

2.when, after a condemnation for felony, or misdemeanour, there is another judgement condemning another accused person for the same fact, without any complicity or collaboration between them and the two condemnations are not related. This contradiction is a proof of innocence of one among the two condemned persons.

3.when, after the condemnation one of the witnesses is charged and condemned of false testimony, and, if without such false testimony, the innocence of the condemned person shall be established.

4.when, after the penal condemnation, there is new fact just adduced or discovered or objects produced in evidence which were not known at the time of the hearing and those facts and the objects produced in evidence are of the nature to establish the innocence of the condemned person.

Article 231.

In all cases, the person who have the rights to ask for a revision is:

1.the Minister of the Justice Department,

2.the condemned person, or a legal representative of the condemned person, in case the condemned person is disable,

3.spouse, parents, children of the condemned person, in one word everybody who has material or moral interests, when the condemned person dies or disappears.

Article 232.

Upon receiving the request for a revision, the Supreme Court shall, in sitting in banc, decide about the postponement of the enforcement of the court of the first instance or the court of appeal's judgement for which the revision has been requested, in the period, the most, of 8 days, by issuing a judgement with clear motives.

The request for revision has the effect to bring the case to the Supreme Court for judgement.

Article 233.

Next, the president of the Supreme Court causes the clerk to inform the plaintiff and the lawyer, if there is any. The plaintiff has thirty days form the notification date to file the complaint.

The lawyer appointed for the revision shall receive the same notification as the plaintiff, and can cause his/her secretary to make copies from the file at the clerk's office.

At the expiration of the third days allowed for the plaintiff and his/her lawyer, the president of the Supreme Court forwards the file and all objects produced in evidence, and the revision request to the general public prosecutor who shall make the charge in writing within the time limit of thirty days.

All these formalities are required under penalty of nullity.

When the file returns from the general public prosecutor, the president of the Supreme Court designates a judge to make a detailed report including all circumstances of the case/

At the hearing, after listening to the report of the judge, the charge of the prosecution's office, the hearing of the plaintiff, and the plea of the defendant's lawyer, the case is open for consultation, them the Supreme Court will issue the term of its judgement.

In any case, the Supreme Court shall not consult, or draft the judgement as long as the hearing are not held in public.

Article 234.

If the Supreme Court consider that the case is ready, it decides in sitting in banc again, and the judgement is final. In the contrary, the Supreme may decide to have an additional investigation of the fact, by referring to a court chamber or appointing a judge of the Supreme Court, or, in special case, by appointing an investigating judge of an inferior jurisdiction.

The Supreme Court shall bring the knowledge of the person who requested the revision and his/her lawyer of any information collected in this additional investigation.

The lawyer can assign his/her secretary to make copies of the documents.

After finishing this additional investigation, the president of the Supreme Court causes to submit the case in a public hearing, hears anew the report of the judge, the charge of the representative of the prosecution's office, the statements of the person who requests the revision and the pleadings of his/her lawyer.

The judgement shall be declared in public.

Article 235.

reprieve and the general amnesty which have been granted shall not be an obstacle to a revision's judgement.

Article 236.

The judgement of the Supreme Court which establishes the innocent of the condemned person shall be posted at the office of the jurisdiction which decided on the case, and at the Khum or Sangkat's office of the

People's Committee, where the condemned person resides.

FINAL PROVISIONS

Article 237.

The provisions of any law which contradict with the provisions of this law shall be abrogated.

Article 238.

This law shall be proclaimed urgent.

This law was adopted by National Assembly of the State of Cambodia on the 28th of January, 1933 at the 24th session of its First Legislature.

Phnom Penh, 29th January 1993

For THE NATIONAL ASSEMBLY. President,
Signature and seal of: CHEA SIM
Certified true copy,

The General Secretary of Council of State,
Signature and Seal of Chan Vaen.

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