

**INTERIM CRIMINAL CODE FOR COURTS  
2004**

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## **INTERIM CRIMINAL CODE FOR COURTS**

### **Chapter 1      General Provisions**

#### **Article 1      Applicable Rules**

1. Three judges shall be assigned to every primary court. One of them as President of the Court. In places where the said team cannot be deployed because of lack of availability or security reasons, one judge shall be assigned thereto, functioning as a monocratic court. The decision to deploy one judge to a district as a monocratic court is made by the President of the Provincial Court.

#### **Article 2      Record of Procedural Activities**

1. All the activities accomplished in execution of the provisions of this code shall be recorded in written form by a public officer.
  - a. The judicial police activities shall be recorded by a police officer taking part in the operations.
  - b. The Saranwal activities shall be recorded by a secretary of the office.
  - c. The activities of the judges shall be recorded by a clerk.
2. The activities which are mentioned in paragraph 1 of this article include a full text or a terse compilation of the statements of the suspect, accused, victim, expert and witness as well as the description of the expert's activities and the running of the hearings.
3. The records of the statements of the suspect, accused, victim and witness shall be undersigned by them or when the person is unable to do so signed by finger prints.
4. In case the latter refuse or are unable to sign, the public officer responsible for the recording shall mention the circumstances.
5. The above mentioned records constitute official documents.
6. The lack of recording, apart possible disciplinary actions against the responsible of the omission brings about the legal inexistence of the related activities.

#### **Article 3      Terms**

1. The procedural terms are indicated by hours or days.
2. When a term established by days expires on a holiday it is extended to the following working day.
3. In the calculation of the duration of the term the hour or the day of commencement shall not be included.
4. The final day term for filing a document or accomplishing any procedural activity expires at the hour of closure of business of the related office as established by the home rules.

#### Article 4 Presumption of Innocence

1. From the moment of the introduction of the penal action until when the criminal responsibility has been assessed by a final decision the person is presumed innocent. Therefore decisions involving deprivations or limitations of human rights must be strictly confined to the need of collecting evidence and establishing the truth.

#### Article 5 Suspect and Accused

1. A person is considered a suspect when in any deed of the investigations the commission of a crime is attributed to him.
2. A person is considered an accused when an act of indictment has been enacted by the Saranwal according to paragraph 4 of article 39.
3. The quality of accused remains until when the person is discharged or sentenced by a final decision.
4. The suspect and the accused shall not undergo intimidations or any form of physical or psychological pressure.
5. Their statements shall be made in a condition of absolute moral freedom.
6. The suspect and the accused have the right to abstain from making any statement even when they are questioned by the relevant police or judicial authorities.
7. The police, the Saranwal and the Court are duty bound to clearly inform the suspect and the accused before interrogation and at the time of arrest about his or her right to remain silent, right to representation at all times by defense counsel, and right to be present during searches, line-ups, expert examinations and trial.
8. The words or terms “suspect” and “accused” also include in their definition his/her defense counsel.

#### Article 6 Duration of Provisional Arrest

1. The terms for the duration of provisional detention following the arrest during the investigative phase are those established in article 36.
2. During the trial at the Primary level, the Court can extend the detention for two additional months; during the trial at the appeal level the Court can extend the detention for another two months term; during the trial before the Supreme Court the detention can be further extended by the same Court for additional five months.
3. Whether during the celebration of the above mentioned trials the related terms expire, the arrested person shall be released.

Article 7 Exclusionary Rule

1. The evidence which has been collected without respect of the legal requirements indicated in the law is considered invalid and the Court cannot base its judgment on it.

Article 8 Final Decision

1. The decision of the Primary Court is final if a valid appeal has not been filed within the term prescribed by the law.
2. The decision of the Court of Appeal is final if recourse to the Supreme Court has not been filed within the term prescribed by the law.
3. The decision of the Supreme Court is final.
4. The Saranwal at the Primary Court shall give execution to the final decisions. To this end the Court of Appeal and the Supreme Court shall deliver to the Saranwal at the Primary Court that adopted the initial decision the file containing the procedural documents and the objects confiscated.

Article 9 Denunciation of Forgery

1. In every phase of the proceeding, the suspect, the accused and the victim can denounce the forgery of a document considered among the evidence material.
2. The denunciation is submitted to the Primary Saranwal during the investigations and to the Court in the successive phases and degrees.
3. The Saranwal is also entitled to make the denunciation of forgery to the Court.
4. If the investigating Primary Saranwal or the Court deems the denunciation grounded the procedure is stayed. In this case the same Saranwal during the investigation phase or the competent Saranwal to whom the document shall be transmitted introduces the penal action for forgery.
5. The proceedings are resumed when the issue has been settled by a final decision.
6. Otherwise the proceedings are not discontinued and the document in question is delivered after the final decision to the Primary Saranwal for the adoption of the decisions belonging to his competence.
7. In the decision that rejects the denunciation of forgery the suspect or accused that made the case can be sentenced according to provisions of law.

Article 10 Abstention and disqualification of the Saranwal

1. The primary Saranwal is entitled to request his superior to make him abstaining from the investigations when he believes that there are grounded reasons to do so.
2. The suspect has the right to request the higher Saranwal to exonerate the primary Saranwal conducting the investigations against him, presenting the evidence of the occurrence of the grounded reasons indicated in paragraph 1.

3. The superior Saranwal can decide to authorize the abstention of the Primary Saranwal or exonerate him accepting his request or responding to a complaint of the suspect when there are grounded reasons to do so.
4. When the superior Saranwal has authorized the abstention of the Primary Saranwal or has exonerated him, shall substitute the same.

#### Article 11 Abstention of the Judge

1. A judge cannot handle the case if:
  - a. the crime was committed against him or his relatives;
  - b. he has performed the duties of the judicial police, of the Saranwal or has given witness or functioned as an expert in the same case;
  - c. he has been defense counsel of the accused.
2. When the cases indicated in paragraph 1 occur, the judge of a single member court shall request the President of the Provincial Court to authorize him to abstain.
3. When the cases indicated in paragraph 1 occur to a judge member of a collegial court, then he or she shall request the President of the Court to authorize him or her to abstain.
4. When the cases indicated in paragraph 1 occur to the President of a collegial court, he or she shall request the President of the next higher court to authorize him or her to abstain.
5. The President of the appropriate level Court either accepts or rejects the request. This decision cannot be protested.
6. When the President of the appropriate level Court authorizes the abstention, he or she shall substitute the requesting judge or President for the handling of the case.
7. Pending the decision, the criminal procedures shall be stayed.

#### Article 12 Disqualification of the Judge

1. The accused or the Saranwal can request the disqualification of a judge or a President when he/she thinks that one of the cases indicated in paragraph 1 of art. 11 occurs.

The request shall be addressed according to the case to the appropriate President indicated in paragraph 2, 3 and 4 of art. 11.

The president either accepts or rejects the request.
2. In case of acceptance, the President of the appropriate level Court shall substitute the disqualified judge or President. This decision cannot be protested.
5. Pending the decision, the criminal procedures shall be stayed.

#### Article 13 Definition of Flagrante Delicto

1. A crime is considered flagrante delicto in the moment in which is committed.
2. The perpetrator who is caught during the commission of crime is in a state of "flagrante delicto."

3. It is considered also in state of flagrante delicto the perpetrator when, upon the commission of the crime, is immediately pursued by the police, or the victim or other persons.

#### Article 14 Joinder and Severance of Cases

1. The Primary Saranwal or the Court can join different cases when:
  - a. a suspect or an accused is alleged of having committed more than one crime;
  - b. different investigations or trials are conducted in relation to accomplices in the same crime;
  - c. the same evidence is relevant for different crimes.
2. The primary Saranwal and the Court can sever joint cases when:
  - a. this contributes to a more expeditious handling of them;
  - b. adults and minors are accomplices in the same crime.

#### Article 15 Procedural Nullity and Consequences

1. The criminal procedure is considered null and so declared, even ex officio, when:
  - a. The persons who have acted as judges or Saranwal did not possess the related legal status;
  - b. The procedure has not been instituted by the Saranwal and when he has not been present in cases in which his presence is mandatory.

#### Article 16 Procedural Invalidities and their Consequences

1. All the violations of procedural provisions different from those indicated in the previous article bring about the invalidity of the procedure only if they are denounced by the interested party.
2. When the denunciation is made during the investigations or the trials the responsible judicial authority shall make decisions to redress the procedure whenever possible.
3. In any case the denunciation can be made in the appeal or in the recourse to the Supreme Court.
4. The Court of Appeal or the Supreme Court declares the invalidity of the procedure whenever it appears that the violations of procedural provisions have provoked relevant distortions in the decision of the case.

#### Article 17 General Rules for Notifications

1. The notifications are served by the judicial police that shall give the requesting judicial organs a report on the service rendered.
2. The notifications are served in the domicile of the concerned person in his hands or in the hands of an adult relative or cohabitant. Should this not be possible, a copy of the deed is left at his dwelling place.

3. When the person is under arrest the notification is served on him through the Director of the prison.
4. When it has not been possible to locate the domicile of the concerned person, the judicial police shall conduct accurate investigations aimed at identifying the places where the person lives or works. In case the search for finding these places proves fruitless, the notification deed shall be delivered to the administrative organ of the place considered as the person's last place of residence.

## Chapter 2 Common Provisions for the Suspect and the Accused

### Article 18 Defense Counsel

1. Legal assistance to the suspect and the accused requires the service of a qualified professional.
2. To this end an official register is established in the Ministry of Justice where only persons with a university degree in law or sharia can be included.
3. The suspect and the accused can be, in any case, assisted by a defense counsel of their choice.

### Article 19 Legal Aid

1. The suspect or the accused be financially unable to appoint a defense attorney are entitled to have a free defense attorney appointed for him or her in the following manner:
  - a. The investigating Saranwal or the Court adjudicating the case, on the petition of the person, appoints a defense attorney for the destitute person from amongst the lawyers officially permitted to work as defense attorney.
  - b. The person for whom an attorney has been appointed reserves the right not to accept the appointed defense attorney and to defend himself in person.
  - c. The fees of the aforesaid attorney shall be paid from the State budget and its extent shall be fixed by regulation.

### Article 20 Interpreter

1. The suspect or the accused who does not know the language used during the investigations and the trials or who is deaf, dumb or deaf and dumb shall be given an interpreter for, at least, explaining to him the charge and the indictment and for assisting him during the interrogations and confrontations.

### Chapter 3 Reporting of Crimes and Role of the Saranwal

#### Article 21 Reporting of Crimes

1. Police are duty bound to report within 24 hours to the Primary Saranwal all the crimes they happen to know.
2. Public officers are duty bound to report crimes ascertained in the performance of their duties.
3. Private citizens are duty bound to report to the judicial police or the Primary Saranwal only crimes against internal and external security.

#### Article 22 Institution of Proceedings

1. The Primary Saranwal has the obligation to introduce the penal action for prosecution of all crimes, known directly by him or reported to him, committed in the territory of the District, unless otherwise expressly provided by law.
2. The Saranwal shall not dismiss or stay a case except as otherwise provided by the law.

#### Article 23 Investigations

1. The Primary Saranwal performs the investigation activities by his own or making recourse to the collaboration of the judicial police.
2. The purpose of the criminal investigation is the establishment of the truth and in order to do so the Primary Saranwal shall extend his assessment to cover all facts and evidence relevant for establishing whether the crime has been committed and ascertaining who is responsible for it.
3. In conducting the investigations the Primary Saranwal is duty bound to evaluate incriminating and exonerating circumstances equally and to respect the interest of the victims.

#### Article 24 Transfer of the Investigation

1. When in the course of the investigations it appears that the competence belongs to another District the Primary Saranwal shall transfer the case to the latter.
2. The suspect who deems that the competence belongs to a different Primary Saranwal can submit to the investigating Primary Saranwal a request for transfer.
3. Should the Primary Saranwal refuse to transfer, the suspect can file a complaint to the higher Saranwal, whose decision cannot be protested.

Chapter 4 Jurisdiction of the Courts

Article 25 Jurisdiction on crimes

1. The District Courts are competent for adjudicating petty, misdemeanors and felony crimes according to the provisions of the law.

Article 26 Territorial Jurisdiction

1. The territorial jurisdiction is determined by the place where the crime is committed.
2. In case of attempt crime the competence belongs to the Court which has jurisdiction on the place where the last action for the commission of the crime has been accomplished.
3. In case of continuing or permanent crime the competence belongs to the Court having jurisdiction on the place where the continuation or the permanence ceased.
4. When an accused is to be adjudicated for more than one crime, the territorial competence belongs to the Court having jurisdiction in the venue where the most serious crime has been committed.
5. When the Court realizes that in cases of multiple crimes committed by the accused the most serious crime has been committed in another venue, it shall transfer the procedure to the court having jurisdiction in that venue.

Article 27 Conflict between Two Courts

1. When between two District Courts located in the same Province raises a conflict on the attribution of territorial jurisdiction, the case is ruled by the President of the Provincial Court.
2. When the said conflict raises between Courts in different Provinces, the case is ruled by the Supreme Court.
3. The settlement of the territorial jurisdiction conflict is made at the request of one of the conflicting Courts or of the related Saranwal.
4. The decision settling the conflict is notified to the competent Court.

Chapter 5 Duties and Jurisdiction of Judicial Police

Article 28 Categories of Judicial Police Officers

1. Judicial police are categorized as follows:
  - a. the Judicial police's commissioned officers are the superior ranks of the State police;
  - b. the ordinary officers of the judicial police are the low ranks of the State police.
2. Special laws can attribute the functions of judicial police to other public officers.

Article 29 Role of Judicial Police

1. The judicial police perform their duties under the direction and supervision of the Saranwal.
2. The judicial police have the role of detecting crimes, collecting evidence, and seeking suspects in the pursuit of justice.

Article 30 Judicial Police's Arrest

1. The judicial police shall arrest on their own initiative: a) the offender who is caught in state of flagrante delicto of misdemeanors, punished by medium term imprisonment, or felony; b) the person who is allegedly the author of a felony and there is risk of his disappearance.
2. In all other circumstances, the judicial police perform arrests only in execution of orders of the judicial authorities.

Article 31 Judicial Police's Interrogation

1. The judicial police, after having identified the person arrested on their own initiative, inform him of the reasons of the arrest and interrogate the same about the crime and its circumstances within a maximum of twenty-four hours.
2. Immediately after a report shall be sent to the Primary Saranwal and the person shall be put at his disposal.

Article 32      Judicial Police's Urgent Activities

1. In case of flagrante delicto and whenever there are grounded reasons to believe that urgent action is needed to preserve the evidence the judicial police can, on their own initiative, conduct preliminary investigations which include:
  - a. personal frisks or searches of premises and other places;
  - b. seizure of objects and documents;
  - c. inspection of persons and places, taking photos;
  - d. requesting the assistance of experts for performing activities which require special professional qualification.
2. Immediately after having performed the above listed activities, the judicial police shall send a report to the Primary Saranwal.
3. Defense Counsel of suspect and accused has the right to be present in investigation and interrogation phases according to art. 38 of this code.

## Chapter 6 Investigation Performed by the Saranwal

### Article 33 Ratification of the Police's Decisions

1. The Primary Saranwal immediately after having been informed about the judicial police's activities indicated in articles 30, 31 and 32 either sanctions the deeds of the judicial police's activities or adopts decisions to revoke or modify them.
2. Before taking the actions mentioned in the previous paragraph the Saranwal can ask the police to provide explanations.

### Article 34 Interrogation of the Person Arrested

1. The Primary Saranwal shall interrogate the person arrested within forty-eight hours from the moment when the person has been put at his disposal.
2. The Primary Saranwal can release the arrested suspect whenever he deems no more necessary the deprivation of liberty.

### Article 35 Arrest and Seizures by the Primary Saranwal

1. In the course of the investigations activities the Primary Saranwal can order the arrest of the alleged author of a misdemeanor punishable by medium term imprisonment or felony and seizure of items and goods connected with the crime.
2. The person arrested shall be interrogated within forty-eight hours.

### Article 36 Terms for Indictment in Case of Arrest

1. When the arrest performed by the Judicial Police is sanctioned or when the arrest has been ordered by the Saranwal and it remains in force, the arrested person shall be released if the Saranwal has not presented the indictment to the Court within fifteen days from the moment of the arrest except when the Court, at the timely request of the Saranwal, has authorized the extension of the term for not more than fifteen additional days.

### Article 37 Collection of Evidence

1. During the investigations phase the Primary Saranwal shall collect all relevant evidence which can substantiate a decision pros or cons the suspect.
2. The collection of evidence is not restricted to particular forms or matters. The Primary Saranwal is free in selecting tools and modalities of proof.
3. The following shall be considered as key tools:
  - a. Witnesses
  - b. Confrontations
  - c. Line up procedures
  - d. Inspections
  - e. Searches
  - f. Seizure

- g. Expert exams and evaluations
- h. Interrogations

Article 38 Defense Counsel Presence

1. The defense counsel has the right to be present at all times during the interrogation of the suspect.
2. The suspect and the defense counsel have the right to be present during searches, confrontations, line-up procedures and expert examinations as well as during the trial.
3. In the investigation phase the Saranwal and the judicial police shall notify the suspect and his defense counsel of searches, confrontations, line-up procedures and expert examinations in order to allow them to be present. This duty can be waived only when there is an urgent need to conduct the said operations, which is defined as when it is a flagrante delicto crime or there is a fear of the loss of evidential facts.

Article 39 Conclusion of the Investigation

1. At the conclusion of the investigations phase, if the Primary Saranwal deems that there is not grounded evidence dismisses the case.
2. The victim or higher Saranwal can file a complaint to the Court against this decision within ten days.
3. The Court, after having examined the case, can confirm the decision of the Saranwal or vice versa request him to lodge the indictment.
4. In any other case the Saranwal shall submit to the Court the act of indictment requesting the assessment by trial of the criminal responsibility of the indicted person.
5. The act of indictment is comprised of the following:
  - a. Complete identification of the suspect;
  - b. Complete description of the crime.
6. Together with the act of indictment the Primary Saranwal shall transmit to the Court the file containing all the deeds formed during the investigations, putting at the Court's disposal the seized items and goods.

Chapter 7 Notification of the Deeds and Representation During the Investigations

Article 40 Notification on the suspect

1. During the investigations the judicial police and the Saranwal shall give notifications of the deeds to the suspect, to his defense counsel and the victim of the activities to be accomplished, to which they have the right to be present.
2. If there are no particular grounded reasons of urgency, the notification should be served at least three days before the performance of the activity.
3. Reasons of urgency imposing a shorter period or absence of notifications shall be clearly mentioned in the record of the activities.

Article 41 Notification on the Not Found Suspect and his Representation

1. When it has not been possible to identify any of the places indicated in article 17, the notifications shall be served on a defense counsel appointed by the police during their autonomous investigations, or by the Saranwal during his investigations.
2. The appointment of the defense counsel is made by the police and the Saranwal in a written form.
3. In this case the defense counsel represents the suspect.
4. The above indicated decision ceases to take effect at the end of the investigations.

## Chapter 8 The Trial

### Article 42 Preparation of the Trial

1. The Court immediately after having received the act of indictment, orders the notification of the deed indicating the day and hour fixed for the commencement of the trial.
2. The deed shall contain the name of the accused and the indication of the alleged crime with its factual circumstances in reference to the related law provisions and shall be served on the accused and his defense counsel, the victim and the Saranwal at least five days in advance.

### Article 43 Access of the Accused to the Findings of the Investigation

1. The accused and his defense counsel are entitled to examine the documents contained in the file mentioned in the last paragraph of article 39 and the objects under seizure.

### Article 44 Mental Insane Accused

1. If during the trial it appears that the accused suffers of a mental illness which prevents him from the possibility of defense, the Court either ex officio or at the request of the Primary Saranwal stays the proceeding submitting the accused to mental examination.
2. Should examination confirm the above indicated mental state, the resumption of the proceedings is postponed until the suspect recovers.
3. In case the accused is later on sentenced to imprisonment, the time spent in a close institution for the mental examination is detracted from the prison term.

### Article 45 Accused's Obligation to Appear

1. The accused, either under detention or at liberty, shall be obliged to appear before the court when confrontations or experiments involving his physical presence are scheduled.
2. The accused at liberty refusing to appear in the instances indicated in the previous paragraph shall be accompanied by the police.

### Article 46 Trial in Absence of the Not Found Accused

1. When it has not been possible to serve the notifications on the accused in any of the forms provided for in article 17, because none of the places there indicated are known, the Court shall issue a decree stating that the accused cannot be found, appointing a defense counsel for him.
2. Later on the notifications shall be served on the defense counsel.

3. Notifications made in this way are valid to all intents and purposes. The accused that cannot be found is represented by the defense counsel.
4. The decree indicated in the first paragraph ceases to take effect at the end of the degree in which has been issued and shall be re-issued in each of the following degrees.
5. Every decree must be preceded by a new search in the places indicated in article 17.

#### Article 47 Trial in Absence of the Summoned Accused

1. When the notification indicated in article 42 has been delivered to the accused and he does not appear, the judge appoints a defense counsel for him.
2. Notifications continue to be served on the accused following the provisions of article 17.

#### Article 48 Hearings in Progress

1. When the trial requires more than one hearing, the Court fixes the date and hour of the successive hearing, giving verbal notice to the accused, the defense counsel and the other persons who have to appear.

#### Article 49 Attendance of Witnesses and Experts

1. Witnesses and experts are duty bound to be present in the hearing indicated in the notification served on them.
2. If they do not appear without grounded justifications the Court orders their accompaniment by the police imposing on them a fine up to 500 Afghani.

#### Article 50 Oaths

1. Witnesses who have completed fourteen years of age are duty bound to swear, before giving evidence in Allah's name to tell the truth and be honest in their testimony.
2. If the witness has used the term "Ash-ha-do" knowing that the term itself implies taking an oath, he or she is not required to swear in that terms. However, it is permissible for information gathering to hear the testimony of a witness under fourteen years of age without making him take the oath of truthfulness.

#### Article 51 Admission of Witnesses and Experts

1. The Primary Saranwal submits to the Court the list of the witnesses and experts he wants to be heard together with the act of indictment, indicating the reasons of the relevance of their testimony and exams.
2. The accused and/or his defense counsel have the right to present their own lists of witnesses and experts indicating the reasons of the relevance of their testimony and exams.

3. The Court can exclude those witnesses or experts that in its view do not appear material for the adjudication of the case.
4. The Court, on its own initiative, can order the appearance of witnesses or experts who are not included in the above mentioned lists.

#### Article 52 Order of the Hearing

1. The order of the hearing is explained to the persons present by the Head of the Court.
2. The court keeps the order of the hearing. Hearings are open to the public except when the court decides that all or part of it shall be run without the presence of the public for reasons of morality, family confidentiality or public order.
3. The Primary Saranwal, the accused and his defense counsel have the right to be always present.
4. The accused that with his behavior disrupts the proceedings can be excluded by the Court for part or all the duration of the hearing. He is anyhow readmitted in the room when the verdict is read out.

#### Article 53 Conduct of the Hearing

1. The Primary Saranwal is duty bound to take part in the hearing.
2. The accused and his defense counsel have the right to be present.
3. The Court proceedings are conducted according to the following order:
  - a. At the opening of the hearing the Court reads out the act of indictment;
  - b. When the accused is under detention the Court shall immediately assess the legality of the arrest and order the liberation of the accused when realizes that the arrest was unlawful or not necessary;
  - c. The Primary Saranwal makes an oral presentation of the case and of the findings of the investigations;
  - d. The judicial police officers who have conducted the investigations make oral reports of the activities accomplished;
  - e. The first witness to be heard is the victim;
  - f. Then the other witnesses and the experts are heard;
  - g. The accused can testify if he does not avail himself of the right to remain silent and the accused or his defense counsel can ask questions to the witnesses and the experts;
  - h. In case the witness cannot be present for health reasons the Court can hear him in his domicile;
  - i. The primary Saranwal and the defense lawyer can ask question to the accused.
4. The Court can, at any time, address questions to the accused, to any witness in the hearing and order confrontations.
5. The accused can refuse to answer the questions of the Court consistent with his right to remain silent.

Article 54 Exemption from Testimony

1. Spouses have the right not to give evidence against each other, even though their marital relation be ended.
2. The accused's ancestors and descendants and their relatives of second degree have the right to avoid testifying against one another except when:
  - a. the charge legally attributed to the accused is not committed against the witness himself; or
  - b. they reported the criminal offense.

Article 55 Evidentiary Value of Investigative Activities

1. The records of the testimonies of the witnesses as well as of the expert exams, collected during the investigative phase, can have the value of evidence as basis for the decision only if it results that the accused and/or his defense counsel were present during the operations and were in a position to raise questions and make objections.
2. Otherwise the related deeds have the sole value of clues.

Article 56 Concurrent Crimes and Circumstances

1. If from the deeds of the investigations or during the trial it results that there are alleged additional crimes and/or facts contributing as aggravating circumstances which have not been included in the act of indictment the Court, at the request of the Primary Saranwal, makes the related accusation to the accused and/or to his defense counsel, when present, giving them adequate time to prepare the defense.

Article 57 Different Definition of the Crime

When the Court deems that the crime is to be given a different definition from that indicated in the act of indictment on the basis of the same facts and circumstances included in the accusation shall grant the accused and the defense counsel a time allowance for presenting a defense vis-à-vis the change in the definition.

Article 58 Conclusion of the Trial

1. At the conclusion of the operations indicated in the previous articles, the Primary Saranwal expresses his opinion requesting the Court to make a decision of dismissal or sentence, indicating the kind and the amount of punishment he deems adequate.
2. The accused or the defense counsel, when present, submits to the Court arguments in rebuttal of the accusation.

Article 59 Decision of the Court

1. At the completion of the activities, the Court declares the closing of the hearing and leaves the trial room for writing down 'in chamber' the decision of the case.
2. Later on, the Court enters the trial room again and reads out the verdict together with its reasons. This reading has the value of notification. If the reasons of the verdict are not read out by the Court in the same context, they shall be deposited in the office of the secretary of the Court within fifteen days from the moment of the decision.
3. The Primary Saranwal, the accused and his defense counsel shall receive notification of the deposit indicated in paragraph 2 of this article.
4. The accused tried in absentia, in the case of article 47, shall receive notification of the decision read out by the Court together with the reasons deposited later on in the office of the secretary of the Court.
5. The notification indicated in the previous paragraph is served on the defense counsel of the accused in the case of article 46.

Article 60 Order of Arrest in the Decision

1. When the Court decides to impose a sentence of more than three years of imprisonment in the same decision can include an order of arrest.

Article 61 Requirements of the Decision

1. The decision shall contain:
  - a. The identification of the accused;
  - b. The description of the facts and of the circumstances included in the accusation;
  - c. A terse exposition of the reasons of the same decision with reference to facts and law provisions;
  - d. The verdict

Article 62 Payment of Expenses of the Procedure

1. In imposing the sentence, the Court shall also order that the sentenced person pays the expenses incurred during the procedure.
2. If the related amount cannot be specified in that moment the order shall be given in generic terms mandating the administrative office to make the calculation.

## Chapter 9 Appeal Procedure

### Article 63 Appeal against the Decision of the Primary Court

1. The person who has been sentenced or the Primary Saranwal can contest the decision of the Court by filing an appeal.
2. The competent Court of Appeal is the Provincial Court.
3. The act of appeal shall be deposited with the secretary of the Court, which has made the decision, or with the secretary of the competent Court of Appeal within twenty days from the moments in which:
  - a. The Court has read out in the Court room, in the same context, the verdict and its reasons at the conclusion of a trial in which the accused and/or his defense council were present;
  - b. The reasons of the verdict, which were not read out together with the verdict, have been notified to the accused and to the defense counsel; in this case the second notification is considered the beginning of the term;
  - c. The accused tried in absentia has received the notification of the decision.
4. When in the same decision more than one person has been sentenced the last notification is considered the beginning of the term for all sentenced.

### Article 64 Stay of the Procedure and Appeal of the decision in case of the not found accused

1. After the decision of the court in case of the not found accused the procedure stays until when the accused personally or the defense counsel delegated by him/her lays down an appeal.
2. In this case the beginning of the appeal term starts for the accused from the moment in which the same has been found and also a notification according to article 17 has been delivered to him/her.
3. The beginning of the appeal term starts for the Saranwal from the moment in which the Court notifies him about the notification delivered to the accused.
4. If the accused and the Saranwal do not lay down an appeal during the said term the decision becomes final.

### Article 65 Modalities of the Appeal

1. The act of appeal shall be signed by the accused or by his defense counsel when the latter has represented the accused during the trial or by the Primary Saranwal.
2. The secretary of the Court receiving the act of appeal has to register it specifying the date and hour of the delivery.
3. If the accused who wants to file the appeal and delivers a written text is unable to sign it because illiterate or for any other reason he/she can fingerprint it and the secretary of the Court shall certify this in the register.
4. If an illiterate person wants to file an appeal but is not in a position to present a written text, the secretary of the Court shall write down in the register his verbal statements.

Article 66      Content of Appeal

1. The act of appeal shall contain the indication of the contested decision and expose the reasons according to which the decision is considered wrong.
2. The denunciation of the errors of the decision shall make reference to:
  - a. Wrong application of the law and definition of crime;
  - b. Wrong evaluation of facts and circumstances;
  - c. Wrong application of the penalty and/or of its amount.

Article 67      Introductory Activities to the Appeal Trial

1. When the act of appeal has been deposited with the secretary of the Court which has made the contested decision, he shall immediately transmit to the Provincial Court the act of appeal deposited with him, and a copy of the related annotations on the register.
2. In the same time he shall forward to the Provincial Court the file containing all documents produced in the previous procedural phases, and the objects and documents seized.
3. When the act of appeal has been deposited with the secretary of the competent court of appeal, the President of the Provincial Court shall request the secretary of the court, which has made the contested decision to transmit the file containing the documents produced in the previous procedural phases, the objects and documents seized.
4. The President of the Provincial Court, upon reception of the above indicated material, shall fix the date and hour of the hearing for discussing the appeal and shall order the police to notify to the appellant and the Provincial Saranwal his decision. Similar notification shall be made to the appealing Primary Saranwal and to the adjudicated person in case the appeal was filed by the Primary Saranwal.
5. The notification shall be served to the accused, the adjudicated person and the primary Saranwal at least five days before the date of the hearing.
6. The Provincial Saranwal, the accused, the adjudicated person and defense counsels have the right to consult the documents and to vision the seized material.

Article 68      Powers of the Court of Appeal

1. The Court of Appeal shall confine its review to the points of the decision to which the act of appeal makes reference.
2. When the Appeal is filed by the primary Saranwal the Court can:
  - a. impose punishment in the case the accused was found not guilty in the Primary Court;
  - b. increase the punishment in the case the decision was founded on an error in the interpretation or application of the law.
3. When the appeal is filed only by the accused the Court can in no case increase the punishment inflicted by the Primary Court.

Article 69      Appeal Hearing

1. Whether the Court of Appeal deems that the activities accomplished in the previous procedure are not sufficient for making a sound decision, it can hear the witnesses and experts already appeared in the Primary Court and collect new documents and explore new proofs.
2. Otherwise the Court makes its decision on the basis of the existing material and of the arguments presented during the discussion.

Article 70      Decision of the Court of Appeal

1. The appeal is rejected if it has not been filed within the established term.
2. The decision of the Court of Appeal can confirm or modify in all or in part the previous decision.
3. In the verdict the Court can order the arrest of the accused or release the accused under arrest.
4. The provisions of article 59 are applicable.

## Chapter 10 Recourse to the Supreme Court

### Article 71 Recourse against the Decision of the Court of Appeal

1. The person sentenced by the Court of Appeal, the victim or the Saranwal can lodge a recourse to the Supreme Court only if the complaint refers to:
  - a. Violations in the application of the law or wrong interpretation of the law; and
  - b. A decision based on the provisions of article 7.

### Article 72 Terms of the Recourse

1. The act of recourse shall be deposited with the secretary of the Court of Appeal which has made the decision or with the secretary of the competent collegium of the Supreme Court within thirty days from the moments indicated in paragraph 3 of article 63.

### Article 73 Modalities of the Recourse

1. For the modalities of the act of recourse the provisions of article 65 are applicable.

### Article 74 Introductory Activities to the Supreme Court Trial

1. When the act of recourse has been deposited with the secretary of the Court of Appeal, this shall immediately transmit to the Supreme Court the act of recourse deposited with him and a copy of the related annotations on the register.
2. In the same time he shall forward to the Supreme Court the file containing all documents produced in the previous procedural phases, the objects and documents seized.
3. When the act of recourse has been deposited with the secretary of the competent collegium of the Supreme Court this shall request the secretary of the Court of Appeal, which has made the contested decision to transmit the file containing all documents produced in the previous procedural phases, the objects and documents seized.
4. The competent collegium of the Supreme Court, upon reception of the above indicated material shall fix the date and the hour of the hearing for discussing the recourse and shall order the police to notify to the accused claimant and to the Saranwal his decision. Similar notification shall be made to the claimant Saranwal and to the adjudicated person when the recourse has been filed by the Saranwal.
5. The notification shall be served to the accused, the adjudicated person and the Saranwal at least five days before the date of the hearing.
6. The accused, the adjudicated person, defense counsels and the Saranwal have the right to consult the documents and to vision the seized material.

#### Article 75 Supreme Court Hearing

1. At the opening of the hearing a judge of the collegium of Supreme Court makes an oral exposition of the case indicating the points of the Court of Appeal's decision which are in question and the reasons of the complaint.
2. Then the party which has filed the recourse makes an oral presentation of the recourse with comments on the alleged errors or violation of the law.
3. Thirdly, the other party takes the floor presenting arguments in support of the appeal decision.
4. During the discussion the President and the members of the Court can address question in order to receive clarifications on given issues. At the end of the discussion the Court leaves the trial room and takes its decision in Chamber. Later on the Court enters the trial room and the President reads out the adopted verdict.
5. The Court can read out the reasons of the decisions in the same context, or otherwise, deposit them with the secretariat later on.

#### Article 76 Reject of the Recourse

1. The Supreme Court rejects the recourse and confirms the decision when:
  - a. It has not been lodged within the established term;
  - b. The complaint does not concern one of the issues indicated in article 71;
  - c. It results that the complaint is not grounded.

#### Article 77 Amendment of the Protested Decision

1. Wrong interpretations of the law or wrong references to law provisions contained in the reasons of the verdict of the Court of Appeal do not bring about the annulment of the protested decision if they have not had a decisive influence on the verdict. In this case, the Supreme Court makes the amendments on its own and informs the Court which made the protested decisions about the errors.
2. When in the protested decisions must be corrected only the kind or the amount of the punishment, because they were wrongly indicated or calculated, the correction is made directly by the Supreme Court.
3. The Supreme Court amends directly the protested decision when law provisions more favorable to the accused, even if supervened after the filing of the recourse, must be applied.

#### Article 78 Decision of the Supreme Court without Referral

1. The Supreme Court quashes the protested decision when:
  - a. The accusation does not constitute a crime, statute limitation has occurred or the prosecution was not permitted;
  - b. The decision concerns matters which are beyond the jurisdiction powers;
  - c. The sentence was adopted against a wrong person;

- d. Results that for the same person and the same facts a previous decision was already adopted;
- e. The same Supreme Court deems superfluous to refer the decision or can amend it on the basis of the already existing documentation.

Article 79 Referral to the Court of Appeal

1. In any other case different from those indicated in articles 76, 77 and 78 the Supreme Court quashes the decision and refers the case to a Court of Appeal different from the one which made the decision or to the same Court composed by different judges.
2. In its referral the Supreme Court gives directions to be followed in reviewing the case.
3. The decision of the Court of Appeal can be protested according to the provisions of article 71 and following.

Article 80 Scope of the Supreme Court Decision

1. The protested decision can be quashed in full or in part.

## Chapter 11 Review of Court Sentences

### Article 81 Cases of Revision

1. It is permitted, at all times, the revision, in favor of the person sentenced for misdemeanors or felonies, of the final decision in the following cases:
  - a. When the facts on which the sentence is based cannot be reconciled with the facts established in another final decision;
  - b. When a judgment drawn up by a civil Court upon which the sentence is grounded has been quashed;
  - c. When facts, circumstances or documents, demonstrating the innocence of the sentenced person, which were not known before the sentence, are newly disclosed or emerged;
  - d. When it turns out by means of judicial assessment that the sentence was based on false testimonies, forged documents or any other fact of criminal nature which have been assessed by a final judicial decision;
  - e. When after a sentence for murder new evidentiary elements supervene or emerge according to which results that the death of the person did not occur;
  - f. When the sentence was adopted at the end of a process conducted without informing the accused by regular notifications or not giving him the possibility to appear so to deprive him of the right of defense or when a real impediment for appearing was not known or disregarded by the Court.

### Article 82 Right to Revision

1. The revision can be requested by the Saranwal, the sentenced person, or his or her defense counsel, or a close relative or heir.
2. In any instance, the request for revision must have the consent of the sentenced person unless the sentenced person is determined by the court to be incompetent, in which case the revision may be requested by the defense counsel or a close relative or heir without consent of the sentenced person.

### Article 83 Revision Procedure

1. The petition for revision shall be forwarded to the Supreme Court together with the documents on which it is grounded.
2. Filing a revision petition does not stay the execution of the protested sentence except in the case of capital punishment.
3. The petition is evaluated by a Committee composed of a Supreme Court Justice and two appellate judges who are assigned by the Court's Presidents for consideration of the case.
4. The Attorney General shall express his opinion on the granting of the petition.
5. If the Committee finds that the petition is not convincingly grounded rejects the same, otherwise submits the petition to the Supreme Court delivering together with it the related file.

6. The decision of the Committee cannot be protested.
7. The Supreme Court upon reception of the petition and the related file shall fix a hearing ordering the notification of its decision to the requesting person and the attorney General that shall be served at least five days before the day of the hearing.
8. During the hearing the sentenced person or his defense counsel and the Saranwal express their views on the fundament of the petition.
9. In the event the Court approves the petition, it quashes the sentence and acquits the sentenced person if his innocence is obvious.
10. If the Court deems that the petition is not based on valid grounds, rejects the same.
11. When the Court finds that the case needs to be reassessed it shall dispatch the case to the Court that adopted the protested decision composed of different judges, or to another Court of the same level, giving it instructions for a proper review.
12. The review shall be conducted according to the rules applicable for normal hearings and the decision adopted replaces the previous one, remaining subject to protests which were allowed against the latter.
13. When as a consequence of the revision the sentenced person is acquitted the court, composed of different judges, shall order the restitution of the procedural expenses and any other cost paid as a result of the previous sentence. In case the concerned person is dead the restitution shall be made to his heirs.
14. Whenever a revision petition is rejected it is not allowed to file it again on the same grounds.

## Chapter 12 Execution of Courts' Final Decisions

### Article 84 Authority Responsible for Execution

1. The execution of final decisions is the responsibility of the Saranwal indicated in paragraph 4 of article 8.

### Article 85 Execution of Prison Punishments

1. The Saranwal shall transmit to the Commander of the local police office the order to commit the sentenced person to prison when the latter is not already detained.
2. When the sentenced person is outside the jurisdiction of the local police office the police commander who has received the order shall forward it to the Commander of the police having jurisdiction on that place.
3. The same Saranwal can send the order directly to the said Commander.
4. If the sentenced person is already detained the Saranwal shall inform the Ministry of Justice about the sentence requesting its execution.
5. The above mentioned order and information shall contain personal particulars and whatever is needed to identify the person as well as the indications of the judicial decision and of the penalty imposed.

### Article 86 Execution of Sanctions Alternative to Imprisonment

1. The Saranwal shall transmit to the Commander of the local police office the order for the execution of sanctions alternative to imprisonment.
2. The provisions of paragraphs 2, 3, and 4 of article 85 are applicable.
3. The police shall supervise the regularity of the execution and report to the Saranwal periodically about the behavior of the sentenced person.
4. If the sentenced person infringes the prescriptions contained in the execution order the Saranwal shall report the case to the competent Court which can replace the adopted sanction with a prison term of original duration.

### Article 87 Execution of Fines

1. The Saranwal shall transmit to the Ministry of Justice the order for the execution of fines.
2. The Ministry of Justice, directly or requesting the collaboration of financial institutions, shall collect the indicated sums which will be delivered to the Ministry of Finance.

### Article 88 Execution of Decisions for Confiscation of Objects and Assets

1. The Saranwal shall transmit to the Command of the police having jurisdiction on the place where the objects and assets to be confiscated are located the related

- order containing the indications needed for the identification of the said objects and assets.
2. The confiscation and the destination of the objects and assets are performed by the police.

#### Article 89 Special Provisions for the Execution

1. The time spent under arrest before the final decision shall be deducted from the prison or alternative sanction term to be executed.
2. When a prison sentence is to be executed towards a woman who is six months pregnant the Saranwal can stay the execution until four months after the delivering of the child.
3. When a prison sentence is to be executed towards a person who results to be mental insane the execution is stayed until his recovery. The Saranwal orders his transfer to a medical centre for the treatment of the mental illness. The time spent in intramural treatment shall be deducted from the prison term.
4. When a prison sentence is to be executed against a person affected by a serious physical illness, the Saranwal can stay the execution at the suggestion of a medical doctor who certifies that the imprisonment could be seriously prejudicial for the health of that person. The execution shall start as soon as the physical conditions of the concerned person permit the imprisonment. In this case no time is deducted from the prison term.
5. When a husband and his wife have been sentenced to prison for a term not exceeding one year, though for different charges, the Saranwal can stay the execution against one of them if he/she is not a recidivist and is supporting a child of less than fifteen years. The execution shall start when the child reaches the age of fifteen.

## Chapter 13 Conditional Release

### Article 90 Definition

1. Conditional release is the decision to put at liberty, under given conditions, a sentenced person before the expiration of his prison term, for a period equivalent to the duration of the same term.

### Article 91 Conditions

1. Conditional release can be granted to a person serving a prison term as consequence of one or more crimes who, during the execution of the penalty, has behaved in such a way to demonstrate his social rehabilitation.
2. This benefit can be granted only if the person has served three quarters of the term and at least nine months of imprisonment.
3. In case of life sentence the benefit can be granted only after fifteen years of imprisonment.
4. The decision is adopted ex officio or following the proposal of the Director General of the Prisons, by the Court having jurisdiction on the place where the sentenced person is detained.
5. In its decision the Court shall indicate the behavioral prescriptions that the person must follow in the future.
6. The police shall report periodically to the Saranwal about the behavior of the person under conditional release.

### Article 92 Revocation

1. Conditional release is revoked if before the expiration of the original term the person commits another crime or commits gross violations of the prescriptions.
2. In case of revocation half of the time spent under conditional release is subtracted from the prison term.
3. The revocation is decided by the same Court that has granted the benefit at the request of the Saranwal.

### Article 93 Procedure

1. Both the decisions for granting conditional release and for its revocation are adopted by the Court after having heard the concerned person and the Saranwal in an informal hearing.
2. Before adopting the decision for granting the release the Court shall also hear the Director of the prison in which the sentenced person has served the previous prison time.

## Chapter 14 Problems of Execution

### Article 94 Competence and Procedure

1. The Court indicated in paragraph 4 of article 8 is competent to consider, at the request of the sentenced person or of the Saranwal, any problem raised in the course of the execution.
2. Whenever the Court finds the raised problem of no or scarce relevance it declares it inadmissible, otherwise, after having informally heard the complainer, the Saranwal and, in case of imprisonment execution, the Director of the prison adopts a decision giving instructions for redressing the situation.
3. The decision is notified to the person under execution, the Saranwal and the Director of the prison.
4. The decision can be appealed to the Provincial Court only in case of a gross violation of human rights in question.

### Article 95 Disputes on Property

1. When a dispute arises on the belonging of objects or assets seized or confiscated and the case cannot be solved by the penal Court on the basis of existing documents and evidence, the dispute shall be handled by the civil Court or traditional justice entities.

## Chapter 15 Miscellaneous Provisions

### Article 96 Interim Defense Counsel

1. Up to when in the Country there will be not available a sufficient number of defense counsels, as established in article 18, the suspect or the accused can make recourse to the assistance of an educated person having some knowledge of legal issues.
2. To this end the President of each Court shall institute a list of persons having the qualities indicated in the previous paragraph following the indications for the Capital of the Ministry of Justice and for Districts and Provincial Courts of Government Cases Department.

### Article 97 Districts with no Functioning or Established Courts

Whenever there is no district court established or functioning in a given district, the district court in the capital city of the Province will have territorial jurisdiction over all crimes committed within said district.

### Article 98 Effective Date and Duration

1. This code shall become effective upon the execution of a Decree by the President of the Islamic Republic of Afghanistan published on the Official Gazette.
2. This code will remain in force until the enactment of rules of criminal procedure by the newly elected National Assembly, unless the National Assembly adopts this code with or without modifications.
3. Upon entry of the Presidential decree, any existing laws and decrees contrary to the provisions of this code are abrogated.

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