Gabon: Penal Procedure Code Loin°043/2018 of July 5, 2019

Gabon: Code de procédure pénale Loin°043/2018 du 5 juillet 2019

www.droit-afrique.com Gabon Code of Criminal Procedure 1 Gabon Code of Criminal Procedure Law No. 043/2018 of July 5, 2019 [NB - Law No. 043/2018 of July 5, 2019 on the Code of Criminal Procedure (JO 2019-27 bis sp) Promulgated by Decree No. 000100/PR of July 5, 2019 promulgating Law No. 043/2018 on the Code of Criminal Procedure (JO 2019-27 bis sp)] Book 1 - General Provisions Title 1 - Principles and Rules Art.1.- Criminal procedure must: be fair and adversarial; preserve the balance of the rights of the parties; guarantee the separation of the authorities responsible for the exercise of public action and the judging authorities. Persons prosecuted for the same offenses and in identical conditions must be judged according to the same rules. Art.2.- The judicial authority ensures the information and guarantee of the rights of the parties. Art.3.- Everyone is presumed innocent until their guilt is established. Infringements of the presumption of innocence are repaired and punished under the conditions provided by law. Every person prosecuted has the right to be informed of the charges against them and has the right to be assisted by a defender. The coercive measures to which a person may be subjected are taken by decision of the judicial authority or under its control. It must, in all cases, have definitively ruled on the charge(s) against this person within the time limits prescribed by this Code. Art.4.- The procedure during the investigation and instruction is secret, except in cases where the law provides otherwise and without prejudice to the rights of the defense. Anyone participating in this procedure is bound to respect professional secrecy under the conditions provided by law, under penalty of legal proceedings. By way of derogation from the provisions of paragraphs 1 and 2 above, the Prosecutor of the Republic may, until the opening of the information, disseminate through the press certain information and objective elements drawn from the procedure that may promote the search for truth or rectify errors that may spread in public opinion. Title 2 - Public Action Art.5.- Public action aims to repress violations of criminal law. Art.6.- It is initiated by the Public Prosecutor, any authorized public agent, or by any natural or legal person harmed, under the conditions set by the texts in force. Art.7.- Public action extinguishes by: the death of the alleged author of the facts; the statute of limitations; amnesty; the repeal of the criminal law; the thing judged. It can also extinguish: by transaction, when the law provides specifically; by the execution of a penal composition under the conditions provided by this law; by the withdrawal of the complaint, when this is a necessary condition for the prosecution. Public action can be resumed when the decision declaring it extinguished was made on false or erroneous facts or acts. In this case, the statute of limitations must be considered as suspended from the day the concerned decision became final until the day of the conviction of the concerned person for falsehood or use of falsehood.

 Renunciation of civil action cannot stop or suspend the exercise of public action, except in cases where the exercise of civil action is necessary for the initiation of public action. Art.8.- In matters of crime, except for those declared imprescriptible by law, public action is subject to a statute of limitations of twenty years from the day the crime was committed or discovered, or from the civil majority of the victim if it concerns a sexual offense punishable by law and if, during this interval, no act of instruction or prosecution has been carried out. If any act has been carried out during this interval, public action is only subject to a statute of limitations after twenty years from the last act. This will also apply to persons who were not involved in this act of instruction or prosecution. Art.9.- In matters of offense, public action is subject to a statute of limitations of ten years. The computation of the limitation periods is done in accordance with the provisions of Article 8

above. Art.10.- In matters of contravention, public action is subject to a statute of limitations of one year. The computation of the limitation periods is done in accordance with the provisions of Article 8 above. Title 3 - Civil Action Art.11.- Civil action aims to repair the damage directly caused by a crime, an offense, or a contravention. It belongs to any natural or legal person who has personally suffered damage. It can also be exercised by any regularly declared association proposing, by its statutes: to fight against discrimination based on national, ethnic, racial, or religious origin; to defend or assist children in danger or victims of any form of abuse; to fight against sexual violence in all its forms; to defend and ensure respect for human rights; to defend wildlife and flora. Art.12.- Civil action can be exercised simultaneously with public action before the same jurisdiction. It is admissible for any head of damage resulting from the facts subject to prosecution.

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 If the facts that led to the criminal prosecution do not constitute a criminal offense or if the prosecuted person is acquitted or discharged, civil action is inadmissible. Art.13.- Civil action can be exercised separately from public action. In this case, the judgment of this action before the civil jurisdiction is suspended as long as the repressive jurisdiction has not definitively ruled on public action. Art.14.- The party that has exercised its action before the competent civil jurisdiction can no longer bring it before the repressive jurisdiction, except when the latter has been seized by the Public Prosecutor before a decision on the merits has been rendered by the civil jurisdiction. Art.15.- Civil action can no longer be initiated before the repressive jurisdiction after the expiration of the statute of limitations for public action. It can only be brought before the civil jurisdiction and is then subject to a statute of limitations of thirty years. When it has been definitively ruled on public action and if a criminal conviction has been pronounced, civil action exercised before the civil judge within the legal deadlines is subject to a statute of limitations of thirty years. When it appears that the damages suffered are in whole or in part covered by an insurance contract taken out by the author of the offense or the civilly responsible party, the insurer is summoned before the same repressive jurisdiction at the same time as the insured. Within the limit of the amount guaranteed by the contract, the insurer, like the accused or the civilly responsible party, is liable for the payment of civil convictions in favor of the victim. The judgment of the action for compensation for bodily injury resulting from an accident caused by a motor vehicle, its trailers, and semi-trailers, will be suspended as long as the transaction period granted to the parties has not expired, or the transaction offer has not been expressly rejected in accordance with insurance legislation. Book 2 - The Exercise of Public Action and Instruction Title 1 - Authorities Art.16.- The following contribute to the initiation and exercise of public action: the Minister in charge of Justice; the authorized personnel of the defense and security forces; the agents of the administrations responsible for judicial police missions; the magistrates of the Public Prosecutor's Office.

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 Chapter 1 - The Minister of Justice Art.17.- The Minister in charge of Justice has authority over all members of the Public Prosecutor's Office. In this capacity, he can in particular: report to any member of the Public Prosecutor's Office any violations of criminal law of which he is aware; direct, by written instructions, to initiate, have initiated prosecutions or to seize the competent jurisdiction of such written requisitions that he deems appropriate. These written instructions are included in the case file. Art.18.- The Minister of Justice cannot give instructions not to prosecute. Chapter 2 - Judicial Police Art.19.- The Judicial Police is responsible for establishing violations of criminal law, gathering evidence, seeking out the authors, and bringing them before the competent

jurisdictions. Art.20.- The Judicial Police is exercised, under the direction of the Prosecutor of the Republic, by judicial police officers or authorized public agents. The Prosecutor of the Republic has the free choice of the judicial police units to which he entrusts the investigation. Art.21.- The Judicial Police is placed, within the jurisdiction of each Court of Appeal, under the authority of the Prosecutor of the Republic and the supervision of the Attorney General. Art.22.- The Judicial Police includes: the judicial police officers; the judicial police agents; the other agents to whom the law assigns certain judicial police missions. Section 1 - Judicial Police Officers Art.23.- The following have the status of Judicial Police Officers: the gendarmerie officers, the non-commissioned gendarmerie officers holding the diploma of judicial police officer as well as the brigade commanders and the heads of post; the officers and non-commissioned officers of the national police holding the diploma of judicial police officer; the governors, prefects, and sub-prefects; the mayors and their deputies.

 Art.24. The Public Prosecutor of the Republic, his deputies, his substitutes and the investigating judge enjoy in their own right all the powers and prerogatives attached to the quality of judicial police officer. Art.25. Officers and non-commissioned officers holding the diploma of judicial police officer, the brigade commanders and the heads of gendarmerie posts, the officers and non-commissioned officers of the national police forces holding the diploma of judicial police officer may only effectively exercise the powers attached to their quality of judicial police officer or claim this quality if they are assigned to a position involving these powers and if they have been authorized by the Attorney General. The conditions for granting and withdrawing authorization are set by regulatory means. Art.26. Judicial Police Officers receive complaints and denunciations. They conduct flagrant investigations and preliminary investigations provided for by the present Code. Art.27. Judicial Police Officers are competent within the territorial limits of their jurisdiction. In case of emergency, crime, and flagrant offense, they may: travel within the jurisdiction of neighboring courts to pursue their investigations and possibly make any arrests, provided they inform the Public Prosecutor of the Republic and the Judicial Police Officer having normal competence in the area where they travel; upon express requisition of the Public Prosecutor or on a commission rogatory from the investigating judge, carry out the operations prescribed by these magistrates throughout the national territory, provided they are assisted by a Judicial Police Officer exercising his functions in the relevant district, the Public Prosecutor of the said district being immediately informed by the magistrate who ordered these operations. Art.28. Judicial Police Officers are required to immediately inform the Public Prosecutor of the crimes, offenses and contraventions of which they are aware. Upon closing their operations, they must send him directly the original of the reports they have drawn up as well as all acts, documents, and seized objects. The reports must state the quality of Judicial Police Officer of their writer. Section 2 Judicial police agents Art.29. Judicial police agents are the non-commissioned officers of the national police forces and gendarmes, holders of the diploma of judicial police agents or having this quality by virtue of their functions.

 They have the mission: to assist, in the exercise of their functions, the Judicial Police Officers; to report to their hierarchical superiors all crimes, offenses, or contraventions of which they are aware; to observe, in compliance with the orders of their superiors, violations of the penal law and gather all information to discover the authors. Section 3 Other agents assigned certain judicial police missions Art.30. Other agents of the administrations and services to which special texts attribute judicial police powers exercise them under the conditions and limits set by these texts.

Chapter 3 The Public Prosecutor's Office Art.31. The Public Prosecutor's Office is constituted by all magistrates responsible for exercising public action and requiring the application of the law. It is represented before each repressive jurisdiction. It attends the debates of the trial courts. The representative of the Public Prosecutor's Office is required to make written requisitions in accordance with the instructions given to him. He freely develops the oral observations he deems appropriate for the proper application of the law. The decisions rendered in public hearings are pronounced in his presence. Art.32. The Public Prosecutor's Office ensures the execution of court decisions. In this capacity, the Public Prosecutor proceeds, no later than thirty days following the date on which the court decision has become final, to the transmission of the execution documents respectively: to the accounting agency of the Treasury for collection; to the central criminal record; to the criminal record of the jurisdiction of the place of birth of the convicted person; to the Ministry in charge of the Interior. If the convicted person does not pay the fine and court costs by the expiration of the time allotted to him, the Public Prosecutor must resort to bodily coercion.

 Section 1 Powers of the Attorney General at the Court of Appeal Art.33. The Attorney General represents, in person or through his general attorneys and his deputy general attorneys, the Public Prosecutor's Office in all formations of the Court of Appeal. Art.34. The Attorney General is responsible for ensuring the application of criminal law in the jurisdiction of the Court of Appeal. To this end, he receives, every month, from each Public Prosecutor, a report on the affairs of his jurisdiction. The Attorney General has, in the exercise of his functions, the power to directly requisition the public force. Art.35. The Attorney General has authority over all members of the Public Prosecutor's Office in the jurisdiction of the Court of Appeal. In relation to these magistrates, he has the same prerogatives as those recognized to the Minister in charge of Justice, in matters of initiating or exercising public action. Art.36. The Attorney General has authority over all officers and agents of judicial police exercising their activities in the jurisdiction of the Court of Appeal. In case of failure of the interested parties to their professional duties, the Attorney General may take any useful measures to suspend them from their functions, pending the decision of the Minister in charge of Justice. Section 2 Powers of the Public Prosecutor Art.37. The Public Prosecutor represents, in person or through his deputies and substitutes, the Public Prosecutor's Office in all formations of the court. Art.38. The Public Prosecutor receives complaints and denunciations. He assesses the follow-up to be given to them. In case of classification without follow-up, he is required to inform the complainant indicating the reason for the classification and to let him know that this classification does not extinguish public action. Art.39. Any constituted authority, any public officer or public agent who, in the exercise of his functions, is aware of a crime or an offense, is required to inform the Public Prosecutor and to transmit to him all information, reports, and acts related thereto. Art.40. The Public Prosecutor proceeds or has proceeded to all acts necessary for the investigation and prosecution of violations of the penal law.

 He directs, for this purpose, the activity of the Judicial Police Officers of the jurisdiction and controls the measures of police custody and their execution. In case of crime or flagrant offense, he exercises the powers provided for in articles 52, 63 and 67 of the present Code. Art.41. The Public Prosecutor has, in the exercise of his functions, the power to directly requisition the public force. He has authority over the officers and agents of judicial police of his jurisdiction. Each year, he participates in the evaluation of the Judicial Police Officers regardless of the framework to which they belong. He

may propose to the Attorney General any suspension of a Judicial Police Officer by a reasoned request, accompanied by the responses provided by the Judicial Police Officer concerned, previously heard on the grievances against him. Art.42. Competent to exercise public action are the Public Prosecutor of the place of the offense, that of the residence of one of the persons suspected of having participated in the offense, that of the place of arrest of one of these persons, even if this arrest was made for another cause. Art.43. The Public Prosecutor may order: an additional investigation; a classification without follow-up; a direct summons of the authors by notice to defendants; a translation of the authors before the trial court by report of interrogation of flagrant crime or offense; the opening of an investigation. Art.44. In addition to the means of exercising public action referred to in article 43 above, the Public Prosecutor may propose to the author of an offense who acknowledges the facts, before the referral to the trial court, and with the agreement of the victim, a penal composition which consists of implementing the following cumulative measures: paying to the public treasury a penal composition fine whose amount may not exceed the maximum of the fine incurred by the offense and whose payment may be staggered according to a schedule set by the Public Prosecutor over a maximum period of six months; offer the author of the offense to compensate the victim within a maximum period of three months, the compensation possibly consisting, with the agreement of the victim, in restoring a property damaged by the commission of the offense. Art.45. The proposal for penal composition emanating from the Public Prosecutor may be communicated to the author of the facts through a Judicial Police Officer.

 In the event of refusal of the penal composition by the author of the offense or partial non-execution within the allotted time, the Prosecutor of the Republic seizes the court of judgment. When the measures decided have been fully executed, the Prosecutor of the Republic acknowledges the execution of the penal composition. The execution extinguishes public action. No penal composition can be ordered in cases of moral or physical harm to individuals. The penal composition cannot be proposed if the victim of an offense triggers public action by filing a complaint with civil party constitution or by direct citation through a bailiff. Title 2 - Investigations Chapter 1 - Preliminary Investigations Art.46.- Judicial Police Officers and, under their control, judicial police agents carry out preliminary investigations, either ex officio or on instructions from the Prosecutor of the Republic. Art.47.- Searches, home visits, and seizures of evidence cannot be carried out without the express consent of the person at whose premises the search takes place. This consent must be the subject of a written declaration by the individual or the affixing of their fingerprint if they cannot write, which is noted in the report. In case of non-consent to home visits, searches, or body searches, these can be expressly authorized by the Prosecutor of the Republic informed of the refusal of consent. Art.48.- Judicial Police Officers inform, by any means, victims of their right to obtain compensation for the harm suffered and to constitute themselves as civil parties. When the Prosecutor of the Republic instructs the Judicial Police Officers to conduct a preliminary investigation, he sets the deadline within which this investigation must be carried out. He may extend this deadline at the request and in view of the justifications provided by the investigators. When the investigation is conducted ex officio, the Judicial Police Officers report to the Prosecutor of the Republic on its progress.

 The Judicial Police Officer conducting a preliminary investigation concerning a crime or offense informs the Prosecutor of the Republic as soon as a person against whom there are indications suggesting that they have

committed or attempted to commit the offense is identified. Art.49.- Judicial Police Officers carry out all other operations provided for in Articles 47 to 51 of this Code. Art.50.- The exercise by Judicial Police Officers of the prerogatives and powers provided for in the context of preliminary investigations or flagrant offenses must be strictly limited to the necessities of the procedure. Chapter 2 - Investigations in cases of flagrant crimes and offenses Art.51.- A crime or offense is qualified as flagrant if it is currently being committed or has just been committed. There is also a flagrant crime or offense when, in a very short time after the action, the suspected person is either pursued by public outcry, found in possession of objects, or presents traces, indications, or has left traces or indications suggesting that they participated in the crime or offense. It is assimilated to a flagrant crime or offense any crime or offense that, even if not committed under the circumstances provided for in the previous paragraph, was committed in a house whose occupant requests, in a very short time after the action, the intervention of the Prosecutor of the Republic or a Judicial Police Officer. The same applies when, within thirty days of the commission of the offense, the crime or offense appears established, by any means, against a person. Art.52.- In the case of a flagrant crime or offense, the Judicial Police Officer seizing the offense informs the Prosecutor of the Republic without delay and proceeds with all useful findings. He ensures the preservation of evidence and everything that may serve to establish the truth. He seizes all objects, weapons, and documents that may have been used in the commission of the offense as well as what appears to be the product thereof. All seized objects are immediately inventoried and placed under seal. Art.53.- The Judicial Police Officer may carry out all searches, home visits, or body searches. Home visits and searches may not take place before six o'clock and after seven o'clock in the evening, except upon complaint made by the occupant or owner of a house, or except for exceptions provided by law.

 The Judicial Police Officer is obliged to take all necessary measures in advance to ensure respect for professional secrecy, human dignity, and the rights of the defense. For any search carried out in the office of a lawyer, notary, bailiff, or doctor, the Judicial Police Officer is obliged to be assisted by the person responsible for the order or professional organization to which the individual belongs or their representative after having, beforehand, informed the Prosecutor of the Republic. Art.54.- If there is a need to carry out findings or technical or scientific examinations that cannot be delayed, the Judicial Police Officer resorts to any qualified person. Art.55.- The Judicial Police Officer hears any person suspected of having participated in the offense. He may collect, if necessary under oath, the testimony of any person whose statement appears useful for establishing the truth. He draws up a report of all operations he has carried out and all testimonies he has collected. The persons heard sign the report of their statements. If they cannot sign, they affix their fingerprints. All of this is noted in the report. Art.56.- For the needs of the investigation, any person suspected of having participated in the offense, or heard as a witness, may be subject to a measure of police custody in the premises of the gendarmerie, police, or any other security force invested with judicial police powers. The duration of police custody may not exceed forty-eight hours. It may be extended for a new non-renewable period of forty-eight hours by written authorization from the Prosecutor of the Republic. Throughout the duration of police custody, it is mandatory to maintain the person in perfect nutritional and hygienic condition. However, persons against whom there is no evidence suggesting they have committed or attempted to commit an offense may only be held for the time necessary for their statement. In all cases, these persons may not be held beyond working hours. The representative of the Public Ministry may, at any time, control the strict application of the provisions relating to police custody and, if necessary, terminate it. Art.57.- In all places where, due to distance or communication difficulties, it is not possible to immediately bring the person

in custody before the Prosecutor of the Republic, the Judicial Police Officer may issue a non-renewable detention order valid for eight days including the time for transportation. The Prosecutor of the Republic is informed by any means, no later than twenty-four hours after this issuance. As soon as possible, in any case before the expiration of the aforementioned eight-day period, the Judicial Police Officer brings the detained person before the Prosecutor of the Republic who may, as the case may be, decide on their provisional release, open an investigation, issue a detention order, or order the Judicial Police Officer to continue their investigations. Art.58.- Any person placed in police custody is immediately informed by the Judicial Police Officer or, under his control, by a judicial police agent, of the rights they benefit from during this police custody. This information must be communicated to the person in custody by a sworn or ad hoc interpreter if they do not speak French. Mention of this notice is made in the report signed by the person in custody. In case of refusal to sign, it is noted in the report. Art.59.- Any person in police custody has the right to inform, by any means, a family member or someone close, their employer, lawyer, or doctor, of the measure they are subject to. However, due to the necessities of the investigation, the Judicial Police Officer may proceed in the presence of the interested party. He informs the Prosecutor of the Republic without delay. Art.60.- Any person in police custody, at their request, or that of their lawyer or a family member, must be examined by a doctor

designated by the Prosecutor of the Republic or by a doctor of their choice. The doctor examines the person in custody without delay. The medical certificate by which he pronounces on the fitness of the interested party to remain in police custody is added to the file. Art.61.- At the beginning of their police custody, the interested party is informed of their right to consult with a lawyer. If they are unable to choose one, or if the chosen lawyer cannot be contacted, they may request that one be appointed for them in accordance with the legal and regulatory provisions on legal assistance. The person in police custody is informed by the Judicial Police Officer that a lawyer has been appointed for them. Mention of all this is made in the report.

 The chosen lawyer communicates with the person in police custody under conditions that guarantee the confidentiality of the interview. He has free access to his client's file. At the end of this interview, which cannot exceed one hour, the lawyer presents, if necessary, written observations that are attached to the proceedings. In case of an extension of police custody, the lawyer is entitled to an additional interview that also cannot exceed one hour. Art.62. Every Judicial Police Officer must mention on the audition report of any person in police custody, the reasons, the day and time from which they have been held in custody, the hours of interrogation and rest, as well as the day and time from which they have either been released or brought before the representative of the Public Prosecutor. These mentions must be approved by the person in police custody. In case of refusal, it is noted in the report. These mentions must also appear in a special register kept for this purpose in any police, gendarmerie, or any other security force premises entrusted with judicial police missions. Art.63. In the case of a crime, the Public Prosecutor, informed by the Judicial Police Officer, must go to the scene, unless prevented from doing so. The Judicial Police Officer is relieved of duty upon the arrival of the Public Prosecutor, who ensures the regularity of the operations and carries out, if necessary, the acts provided for in this chapter. The Public Prosecutor may also instruct the Judicial Police Officer to continue the operations. Art.64. In cases of crime or flagrant offense, any person has the right to apprehend the perpetrator and bring them before the nearest Judicial Police Officer. Art.65. In the event of the discovery of a corpse, if the cause of death is unknown or suspicious, the Judicial Police Officer who is informed must immediately notify the Public Prosecutor, go to the scene without delay, and proceed with

the initial findings. He proceeds as stated in Articles 52, 54, and 55 of this Code. The Public Prosecutor may order an investigation to determine the causes of death or request information for the same purposes. Art.66. In cases of flagrant crime, the duration of police custody may not exceed forty-eight hours. It may be extended for a new period of up to eight days by written decision of the Public Prosecutor. The provisions of this Code relating to the rights and guarantees of persons in police custody apply in cases of flagrant crime.

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www.droit-afrique.com Gabon Code of Criminal Procedure 15 Art.67. In the case of a flagrant crime, the Public Prosecutor may, based on the results of the investigation, after questioning the accused about their identity and the facts they are accused of, charge them and then place them under a detention order. If the accused has admitted the facts they are accused of and these appear to be established by other elements of the proceedings, they are informed that the Attorney General may have them brought before the Criminal Court at the next session. The accused is questioned on whether they oppose this procedure and whether they request the opening of an investigation. Their response is recorded in the interrogation report prepared by the Public Prosecutor. Art.68. In case of acceptance by the accused, the file is transmitted to the Attorney General who notifies the accused of his decision referring them to the Criminal Court. This referral decision must mention, under penalty of nullity, the facts attributed to the accused as well as the texts providing for and punishing the offenses pursued. The accused is transferred without delay to the seat of the Court of Appeal. Art.69. Within the fourty-eight hours of this notification, the accused may, by declaration to the registry of the court of the place of detention or to that of their place of residence, appeal the decision referring them to the criminal court. The chamber of indictment rules on this appeal within fifteen days from its referral. Art.70. If the chamber of indictment recognizes the merits of the appeal, the procedure is referred back to the competent Public Prosecutor for the opening of an investigation. If the appeal is rejected, the execution of the decision referring the accused to the criminal court is carried out. Art.71. The decisions made by the chamber of indictment under this article are not subject to cassation appeal. Art.72. The criminal court may be called to sit in an extraordinary session set in accordance with the provisions of this Code. Art.73. The notification of the date and time of the appearance before the criminal court is made to the accused, at the diligence of the Public Ministry. The accused is invited to inform whether they have chosen a counsel. Otherwise, they are informed that one will be appointed for them by the president of the criminal court, on the proposal of the Bar Association or its representative, from among the lawyers regularly registered with the National Bar. The chosen or appointed lawyer may freely communicate with the accused and the court is obliged to provide them with a copy of the file without causing any delay in the continuation of the proceedings.

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www.droit-afrique.com Gabon Code of Criminal Procedure 16 Art.74. The appearance before the criminal court cannot take place before the expiration of a period of fifteen days from the notification by the Attorney General of the decision referring the accused to the criminal court or of the rejection order made by the chamber of indictment. Until the appearance before the criminal court, release may be requested from the chamber of indictment, which must rule within eight days. Art.75. The completion of the personality investigation, the investigation into the material, family, and social situation of the accused is optional in cases of flagrant crime. Art.76. The provisions of this Code relating to the rules of appearance of the accused and the designation of jurors before the criminal court are applicable in cases of flagrant crime. Art.77. Accused persons who have fled before the notification of the decision referring them to the criminal court or before the notification of the rejection of the appeal against this decision

cannot be brought before the criminal court under the flagrant crime procedure. The procedures concerning them must then be subject to an investigation initiated by the Attorney General near the Court of Appeal. Accused persons who flee after the notification of the definitive referral decision are judged without the participation of jurors under the provisions relating to contumacy. Chapter 3 – Identity Checks Art.78.– In order to prevent a breach of public order, particularly the safety of persons or property, identity checks may be carried out on any individual. Judicial Police Officers or, under their orders and responsibility, judicial police agents may invite any individual to justify, by any means, their identity when there are one or more plausible reasons to suspect: – that they have committed or attempted to commit an offense; – that they are preparing to commit a crime or offense; – that they are likely to provide useful information for the investigation in case of a crime or offense; – that they are the subject of searches ordered by a judicial authority. The identity of any person, regardless of their behavior, may also be checked to prevent a breach of public order, particularly the safety of persons and property. Art.79.– When there are one or more plausible reasons to suspect that a driver or passenger has committed, or attempted to commit as an author or accomplice a flagrant crime or offense, Judicial Police Officers, assisted if necessary by judicial police agents, may proceed to search vehicles circulating or stopped on public roads or in places accessible to the public. Art.80.– If the person checked refuses or is unable to justify their identity, they may, if necessary, be held on the spot or in the police or gendarmerie premises where they are taken for verification of their identity. In all cases, the apprehended person is immediately presented to a Judicial Police Officer who enables them to provide by any means the elements allowing for the establishment of their identity and who proceeds, if necessary, with the necessary verification operations. The apprehended person is immediately informed by the Judicial Police Officer of their right to notify the Public Prosecutor of the verification they are undergoing and of their right to inform a family member or any person of their choice at any time. When the apprehended person is a minor under eighteen years old, the Public Prosecutor must be informed at the beginning of the detention. The legal representative of the minor must be informed immediately and called to assist them throughout the duration of the detention. Art.81.– The person undergoing verification may only be held for the time strictly required to establish their identity. Art.82.– If the apprehended person maintains their refusal to justify their identity or if they provide manifestly inaccurate identity elements, fingerprinting or photography may be

carried out when this is the only means to establish the identity of the individual. In all cases, the apprehended person whose identity is not established must be presented to the Public Prosecutor within forty-eight hours from their apprehension. Title 3 – Investigative Jurisdictions Chapter 1 – The Investigating Judge Art.83.– The investigating judge is responsible for conducting investigations, with a view to impartially revealing the truth in the most serious and complex criminal cases. Art.84.– The investigating judge performs their duties at the seat of the court to which they belong.

 If the investigating judge is temporarily prevented from performing their duties for any reason, the president of the court may appoint a replacement by order, designating another magistrate from the jurisdiction. Art.85.– The investigating judge can only conduct an inquiry after being seized by an indictment from the Public Prosecutor. The investigating judge can also be seized by a complaint with civil party constitution. The qualification of the facts is determined by the requisitions of the Public Prosecutor. If there is disagreement regarding the qualification of the facts in question, the investigating judge rules by a reasoned order. This order can be appealed by the accused, the

civil party, the Public Prosecutor, and the Attorney General within the time limits and conditions provided in this chapter. Art.86. Under penalty of nullity of their acts, the investigating judge is assisted by a clerk. In case of the latter's impediment, the president of the court designates, by order, one of the clerks of the jurisdiction to replace them. Art.87. Unless otherwise provided by law, the investigating judge cannot, under penalty of nullity, participate in the judgment of cases they have known in their capacity as Investigating Judge. Art.88. The investigating judge has, in the exercise of their functions, the power to directly request public force. Art.89. The competent investigating judge is the one from the place: of the commission of the offense; of the residence of one of the persons suspected of having participated in the offense; of the arrest of one of the persons suspected of having participated in the offense, even if this arrest was made for another reason; of the detention of one of the persons suspected of having participated in the offense, even if this detention occurred for another reason. Art.90. The preparatory investigation is mandatory: for crimes, subject to the provisions of this Code relating to the procedure for flagrant crimes; for all crimes and offenses committed by minors aged thirteen to eighteen, in accordance with the legislation on juvenile delinquency. Art.91. The preparatory investigation is optional for offenses. In this matter, it must be justified by the seriousness or complexity of the case.

 Art.92. The Public Prosecutor can seize the first investigating judge by an indictment aimed at designating at least two investigating judges to follow the same inquiry in complex cases. The first investigating judge issues an order designating the investigating judges responsible for following this inquiry. In case of refusal, the first investigating judge issues a reasoned order, designating a single investigating judge to follow the inquiry. This order is subject to appeal by the Public Prosecutor under the conditions and time limits provided in this chapter. In this case, and pending the decision of the indictment chamber, the judicial inquiry is conducted at the diligence of the judge designated by the contested order. Art.93. The indictment can be taken against any named or unnamed person. The investigating judge has the power to charge any person against whom there are serious or consistent indications suggesting that they participated as an author or accomplice in the facts brought before them. When facts not mentioned in the indictment come to the knowledge of the investigating judge or when the unnamed person is identified, they must immediately communicate to the Public Prosecutor the complaints or reports that document them. The Public Prosecutor can then request the investigating judge to investigate these new facts or request the opening of a separate inquiry. Art.94. The investigating judge proceeds, in accordance with the law, to all acts of inquiry they deem useful for the manifestation of the truth. If they are unable to carry out certain acts of investigation themselves, they can delegate to an investigating judge or a Judicial Police Officer the execution of these acts. All documents in the file are established in duplicate. They are initialed, classified, numbered, and inventoried by the clerk. After the closure of the inquiry, the file is sealed by the clerk. Art.95. In criminal matters, the investigating judge proceeds, either by themselves, or through Judicial Police Officers, or by any authorized person, in accordance with the applicable texts, to an inquiry into the personality of the accused, their material, family, or social situation. The inquiry into the personality of the accused, optional in the case of an offense, is mandatory for minors. The inquiry must provide information on the material and moral situation of the family, the character and background of the minor, their school attendance, their behavior at school, as well as the conditions in which they were raised. The investigating judge may order a medical or psycho-medical examination or any other useful measures. Art.96. The Public Prosecutor, the duly constituted civil party, the accused, or the lawyer of any of the parties may each, as far as they are concerned, and at any time during the inquiry, request or solicit the

investigating judge to carry out certain acts. If the investigating judge does not believe they should proceed with the acts requested by the Public Prosecutor or requested by the lawyer or the parties, they must rule, within eight days of receiving the requisitions or the request from the counsel, by reasoned order. The Public Prosecutor, the lawyer, or the concerned parties may appeal this order under the conditions and time limits provided in this chapter. If the investigating judge has not ruled within a period of eight days, the Public Prosecutor, the interested party, or their lawyer may seize the indictment chamber, which rules, under penalty of nullity of the procedure, within the same time limit. Art.97. The disqualification of the investigating judge in favor of another investigating judge from the same jurisdiction or from another jurisdiction can be requested by the Public Prosecutor, ex officio or at the request of the accused or the civil party. The investigating judge rules on any request by order, within a period of eight days. The

investigating judge who requests their disqualification seizes, for the purpose of requisitions, the Public Prosecutor by reasoned order. If within a period of eight days, when the request for disqualification comes from the investigating judge themselves, the Public Prosecutor has not made their requisitions, the Investigating Judge may seize the indictment chamber, which rules within the period of eight days. If, within the same period, when the request for disqualification comes from the Public Prosecutor or any other party, the investigating judge has not issued an order, the accused or the civil party, as well as the Public Prosecutor may seize the indictment chamber, which rules within the period of eight days. Section 1 On the constitution of civil parties Art.98. Any person who claims to be harmed by a crime or offense may, by filing a complaint, constitute themselves as a civil party before the investigating magistrate.

 Art.99. The investigating judge orders communication of the complaint to the Public Prosecutor, who takes requisitions against a named or unnamed person. The Public Prosecutor can only seize the Investigating Judge for requisitions of non-informing if the facts cannot constitute an offense, are amnestied, or are time-barred. If the Investigating Judge disregards this, they rule by reasoned order subject to appeal. Art.100. The constitution of a civil party can occur at any time during the inquiry. It can be contested by the Public Ministry, by the accused, or by another civil party. In this case, the investigating judge rules by reasoned order issued within eight days, after communication for requisitions to the Public Ministry. Art.101. The civil party that initiates public action must, under penalty of inadmissibility of their complaint, pay to the public treasury the amount necessary for the costs of the procedure. This amount is set by order of the investigating judge based on the estimated costs of the procedure. The investigating judge may exempt the civil party from this payment, particularly if it is justified that they are not solvent. Art.102. Any civil party residing outside the seat of the jurisdiction where the inquiry is taking place is required to elect domicile there. Failing this, they cannot oppose the lack of notification of acts that should have been notified to them. Art.103. If the investigating judge believes that there is no need to inform, they issue a reasoned order. The civil party may appeal this order. Art.104. When, after an inquiry opened on the constitution of a civil party, an order of non-place has become definitive, the accused as well as all persons denounced in the complaint may, without prejudice to a prosecution for malicious denunciation, if they do not use the criminal route, request damages in the forms hereinafter stated. The action for damages must be introduced within three months from the day the order of non-place has become definitive. It is introduced by simple request addressed to the president of the correctional court.

 The court is immediately seized

of the case of the information closed by an order of non-suit. The Public Prosecutor summons the parties. The debates take place in chamber of counsel. The parties or their counsel and the Public Prosecutor are heard. The judgment is rendered in public hearing. Opposition and appeal are admissible within the common legal deadlines in criminal matters. The appeal is brought before the chamber of criminal appeals ruling in the same forms as the court. Section 2 - On transports to the scene, reconstructions, searches, and seizures Art.105.- The Investigating Judge may go to the scene, assisted or not by his greffe. In the absence of a greffe, the Investigating Judge designates on-site an ad hoc greffe, to whom he administers the oath of greffes. He notifies the Public Prosecutor of this transport who may move if he deems it necessary. Art.106.- The Investigating Judge may proceed with reconstructions, searches, home visits, or seizures in all places where objects or any other elements useful for the manifestation of the truth may be found. Searches and home visits take place in the presence of the person at whose place they are conducted or of any person they have designated. Failing that, they take place in the presence of two of their relatives or allies or two witnesses previously required by the Investigating Judge. The Investigating Judge must comply with the provisions of Article 53 of this Code. The Investigating Judge alone takes knowledge of the letters and documents to be seized. The seized objects are immediately inventoried and placed under seal. A report is drawn up. Art.107.- Any person claiming to have a right to an object placed under judicial control may request its restitution from the Investigating Judge who rules within eight days, after communication of the request to the Public Prosecutor and notice to the parties. After a decision of non-suit, or the occurrence of any other cause leading to the extinction of the public action, the Investigating Judge remains competent to rule on the restitution of the seized objects. The decision of the Investigating Judge may be referred to the chamber of indictment upon simple request.

 Section 3 - On the hearing of witnesses Art.108.- The Investigating Judge summons to appear before him, by a bailiff or a public force agent, any person whose hearing seems useful for the manifestation of the truth. Witnesses may also be summoned by registered letter, by administrative means, or by any other means leaving a trace. They may appear voluntarily. Art.109.- Any person summoned to appear before the Investigating Judge and who, without legitimate reason, does not comply, is liable to the penalties provided for in Article 274 of the Penal Code relating to protection against obstruction of justice. The same applies to the witness who refuses to take an oath or to testify. Without prejudice to the provisions of the first paragraph of this article, the Investigating Judge may, at the request of the Public Prosecutor, issue a warrant for the arrest of any person to compel them to testify. When it is established by a medical certificate that the witness is unable to appear, the Investigating Judge goes to their home or any other place to take their deposition. He may also issue a rogatory commission for the purpose of hearing. Art.110.- Witnesses are heard separately, in the absence of the accused, by the Investigating Judge, assisted by a Greffe. If the witness does not speak French, their deposition is taken with the assistance of a sworn interpreter designated by the Investigating Judge. The interpreter, who must be of legal age, takes an oath to faithfully translate the words of the person speaking in a different language. Mention of this oath-taking is made in the report. The witness may challenge the interpreter and present another who must be approved by the investigating magistrate. Art.111.- The Investigating Judge asks the witness for their names, first names, age, family situation, profession, residence, and whether they are a domestic, relative, or ally of the parties and to what degree. The witness takes an oath to tell the whole truth, nothing but the truth. The questions and answers are recorded in the hearing report.

 Art.112.- Each page of the deposition report is signed by the Investigating Judge, the greffe, and the witness. If the latter is assisted by an interpreter, the interpreter also signs the report. Corrections and references are approved by the same persons. If not approved, they are null and void. The same applies to the report that is not regularly signed. Art.113.- Minors, up to fifteen years old, are heard without taking an oath. The same applies to the ascendants or descendants of the accused, their brothers, sisters, or allies of the same degree, and the spouse even after divorce. Art.114.- When a witness requests a compensation for appearance, it is set by the Investigating Judge and paid from criminal justice expenses. Section 4 - On interrogations and confrontations Art.115.- At the first appearance, the Investigating Judge verifies the identity of the person referred to in the requisition and informs them of their right to choose a counsel from among the lawyers registered with the National Bar. If they appoint a lawyer and that lawyer is present, he assists them. The interested party is then informed of the facts they are accused of and informed that they are free not to make any statement. If the accused person wishes to make statements, these are immediately received by the Investigating Judge and transcribed by the greffe. The Investigating Judge may, by reasoned order made after requisitions from the Public Prosecutor, decide to place the interested party in pre-trial detention and issue a detention warrant. This order is subject to appeal within ten days. If the accused person is released, they must inform the Investigating Judge of all their address changes and must, in the report of the first appearance, elect domicile in the city where the court is located. Art.116.- The civil party also has the right to be assisted by a counsel during their first hearing. Art.117.- Without prejudice to the provisions of the previous article, the Investigating Judge may immediately proceed to a substantive interrogation and any confrontation if the urgency arises either from the state of a witness in danger of death or from the existence of evidence likely to disappear. The report must mention the causes of urgency.

 Art.118.- The detained accused may, immediately after the first appearance, communicate freely with their lawyer. The Investigating Judge may, for the needs of the investigation, prescribe the prohibition of communication with third parties for a period of eight days, renewable once. Art.119.- The accused and the civil party may, at any time during the investigation, inform the Investigating Judge of the name of the lawyer chosen by them. If there are several, they must indicate which one should receive the summons and communications. Art.120.- The lawyer of the accused or of the civil party attends the interrogations, hearings, and confrontations of their client, unless expressly waived by the latter, as noted in the report. If the lawyer resides at the seat of the investigating jurisdiction, they must be notified either by letter or by notice delivered by the greffe, sent no later than forty-eight hours before the interrogation, of the day and time of the hearing or confrontation. The procedure is made available to the counsel at least twenty-four hours before the interrogation of the accused or the hearing of the civil party. If the lawyer, who requests it, does not reside at the seat of the investigating jurisdiction, the investigating magistrate is obliged to communicate to them through the Public Prosecutor or the Attorney General, as the case may be, a copy of the procedure. This communication is made at the lawyer's expense. Art.121.- The Public Prosecutor may attend interrogations, confrontations, and hearings, at their request, at that of the Investigating Judge or the lawyers of the parties. The Public Prosecutor may request, at any time during the investigation, communication of the file. They must return it to the Investigating Judge within forty-eight hours of its receipt. Art.122.- At the end of the first appearance interrogation, the Public Prosecutor, the lawyer of the accused, or

that of the civil party may, at their request, speak after authorization from the Investigating Judge. The observations of the Public Prosecutor, the lawyer of the accused, or that of the civil party are transcribed in the report. In case of refusal, mention is made in the report. Art.123.- The reports of interrogation, hearing, and confrontation are signed by the Investigating Judge, the greffe, the witness, and the interpreter if applicable. Corrections and references are approved by the same persons.

 Art.124.- The Investigating Judge may, as appropriate, issue a summons warrant, bringing warrant, deposit warrant, or arrest warrant. The summons warrant is a formal notice equivalent to a summons addressed by the Investigating Judge to a person to appear before him at a specific date and time. The bringing warrant is the order given by the Investigating Judge to the public force to immediately bring before him the person against whom it is issued. The deposit warrant is the order given by the Investigating Judge to the head of the penitentiary institution to receive and detain the accused. The arrest warrant is the order given by the Investigating Judge to the public force to search for the accused and bring him to the detention center indicated on the warrant or to the nearest detention center where he will be received and detained. Art.125.- Every warrant specifies the identity of the accused. It includes the name, date, signature, and seal of the magistrate who issued it. The bringing, deposit, and arrest warrants also mention the nature of the accusation and the applicable legal articles. The summons warrant is notified by an agent of the public force or by a person holding a public authority, who delivers a copy to the accused and has him sign the original, which is returned to the Investigating Judge. The bringing or arrest warrants may be disseminated by any means. The essential mentions must be included. The deposit warrant is notified to the accused by the Investigating Judge, who notes it in the interrogation report. Art.126.- The warrants are executable throughout the entire territory. Art.127.- If the person targeted by the summons warrant appears, the investigating magistrate immediately proceeds with his hearing or interrogation. If the person subject to a bringing warrant is presented to the Investigating Judge, his audition or interrogation must take place within a maximum of two days from his arrival at the court. During this period, he may, depending on the necessities, and if he does not provide sufficient guarantees of representation, be placed under a deposit warrant by the Public Prosecutor.

 After this period, he must be released automatically by the Public Prosecutor. If the person sought under a bringing warrant is arrested in a location other than where the Investigating Judge resides, he must be brought without delay before the territorially competent Public Prosecutor who, after verifying his identity, asks him if he consents to be transferred. The Public Prosecutor informs, by any means and urgently, the issuing judge of the accused's response, who orders the transfer or gives a commission rogatory to the judge of the place of execution of the warrant to proceed with the hearing. At the end of the interrogation, the Investigating Judge may issue a deposit warrant if the act attributed to the accused carries a prison sentence. Art.128.- If the accused is on the run or at risk of fleeing, or if his residence is unknown, or if he resides outside the territory, the Investigating Judge, after requisitions from the Public Prosecutor, may issue an arrest warrant if the act carries a prison sentence. In case of arrest, the agent of the public force notifies the arrest warrant to the accused and presents him without delay to the Public Prosecutor. The latter immediately informs the issuing judge and orders the transfer to the detention center. Art.129.- If the accused against whom an arrest warrant has been issued cannot be found, a report of

unsuccessful searches is drawn up. This warrant is then exhibited to the head of the administrative district of the last domicile or residence of the accused and, if this is not known, to the same authorities in the places where the offense was committed or to the Public Prosecutor's office of the competent Public Prosecutor. Art.130.- The Investigating Judge can only issue a deposit warrant after interrogating the accused and if the offense carries a prison sentence. The agent responsible for executing the deposit warrant delivers the accused to the head of the penitentiary institution who must receive him after verifying the existence and regularity of the said warrant and notifying it to the accused. Art.131.- Any warrant issued in violation of the formal and substantive conditions prescribed by this Code is null and void. This violation exposes the magistrate to disciplinary proceedings. Section 6 - On Preventive Detention Art.132.- Preventive detention is an exceptional measure. It can only be ordered or maintained when:

  when it is the only means of preserving evidence, material indices or preventing, either pressure on witnesses or victims, or fraudulent collusion between accused and accomplices; when it is necessary to preserve public order from the disturbance caused by the offense, to put an end to the offense, prevent its renewal or to guarantee the representation of the accused before justice. Art.133.- During the investigation, the Investigating Judge may decide on placement in preventive detention and issue a deposit warrant. The order for preventive detention is subject to appeal within ten days of its notification. If the accused is not assisted by a lawyer, the Investigating Judge rules after having obtained the observations of the Public Ministry and those of the accused. If he is assisted by a lawyer, the Investigating Judge rules in a cabinet hearing, after a contradictory debate during which he hears the Public Ministry, receives the observations of the accused and those of his lawyer. If the accused or his lawyer requests a delay to prepare his defense, the Investigating Judge may, by reasoned decision not subject to appeal, order the provisional incarceration of the accused and issue a deposit warrant for a determined period not to exceed ten days. Within this period, the accused must appear again, whether or not assisted by a lawyer. The procedure is the same as in the previous paragraph. If placement in preventive detention is not ordered, the accused is automatically released. Art.134.- When preventive detention is ordered, the following rules must be observed: 1) In correctional matters, the duration of preventive detention is six months. It may, however, if the maintenance of preventive detention appears necessary for the needs of the investigation, be extended by six months by a reasoned order of the investigating judge, made after requisitions from the Public Prosecutor. The order for extension of preventive detention must be initiated no later than fifteen days before the expiration of the first six-month period. The Public Prosecutor has a period of forty-eight hours for his requisitions. If for the needs of the Procedure, the investigating judge considers that the accused must remain in detention beyond one year, the file is communicated to the chamber of accusation which rules by a reasoned decision made after requisitions from the Attorney General, on a new period whose duration is six months.

 The Attorney General has a period of forty-eight hours for his requisitions. 2) In criminal matters, the duration of preventive detention may not exceed one year. It may, however, be extended by six months by the investigating judge under the conditions and for the reasons specified above. If the investigating judge considers that the accused should remain in preventive detention beyond eighteen months, the file is communicated to the Chamber of Accusation which rules by a reasoned decision made after requisitions from the Attorney General on a last extension that may not

exceed six months. The Attorney General has a period of forty-eight hours for his requisitions. Art.135.- In the cases provided for in Article 134 above, if the Public Prosecutor or the Attorney General does not make his requisitions within the deadlines, the Investigating Judge may either proceed and take his order for extension, or directly seize the chamber of accusation. Art.136.- The decisions of the Investigating Judge and the chamber of accusation must be notified to the accused or his lawyer before the expiration of the legal duration of preventive detention, failing which the accused is automatically released by order of the Public Ministry. At the expiration of the extension granted by the chamber of accusation, the accused is automatically released by order of the Public Ministry, if he is not detained for another cause. In all cases, the order for automatic release, drawn up by the Public Prosecutor and containing all the information about the released person, is communicated to the Investigating Judge. Any head or agent of a penitentiary institution who has received from the Public Ministry the order for release provided for in the preceding paragraphs and who has retained the accused in violation of this order for release, is prosecuted for arbitrary detention and liable to the penalties provided by law. Art.137.- The orders relating to the extension of preventive detention are subject to appeal by the accused, the civil party, the Public Prosecutor, and the Attorney General, in the deadlines and conditions provided for in Articles 171 and 172 of this Code. The decisions of the chamber of accusation ruling on the extension of preventive detention are not subject to any appeal. Art.138.- In all matters, when it is not of right, provisional release may be ordered by the Investigating Judge, upon requisitions from the Public Prosecutor, on the condition that the accused undertakes to appear at all acts of the procedure. The Public Prosecutor may also request it at any time.

 The Investigating Judge must rule within five days from the date of receipt of the prosecutor's requisitions. Art.139. The request for provisional release may be made at any time to the Investigating Judge by the accused or their counsel under the conditions provided for in Article 138 above. The Investigating Judge must notify, within twenty-four hours, the request to the civil party, at their actual residence or, if applicable, at the residence they have chosen. The civil party may, within forty-eight hours, present observations. After this period, the Investigating Judge immediately communicates the procedure to the Prosecutor of the Republic, who must take requisitions within forty-eight hours. The Investigating Judge must rule within five days of receiving the request for provisional release. If they fail to rule within this period, the accused or their lawyer may directly refer the matter to the chamber of accusations. This chamber, upon the requisitions of the Attorney General, rules within five days of its referral. If the chamber of accusations does not rule within this period, the accused is automatically granted provisional release by the Attorney General. The Prosecutor of the Republic may also refer, under the same conditions, to the chamber of accusations. Art.140. If the Investigating Judge considers that the continuation of preventive detention is necessary for the reasons stated in Article 132 above, they issue an order rejecting the request. This order is notified within twenty-four hours by the clerk to the accused and their lawyer. If the request for provisional release is granted, the accused must, in the act of notification made to them within twenty-four hours by the clerk, choose a residence at the location of the Investigating Judge's seat. Art.141. Provisional release may, when it is not a right, be subject to the obligation to provide a surety. This surety, paid against receipt to the Public Treasury, guarantees: 1° the representation of the accused; 2° the payment in the following order: - the costs of justice; - the costs advanced by the civil party; - fines; - restitutions and damages. The order for provisional release with surety determines the amount allocated to each of these two parts of the surety.

 Art.142. If the accused appears at all procedural acts and satisfies the execution of the judgment, the obligations resulting from the surety cease. The first part of the surety is acquired by the State if the accused, without legitimate reason, does not appear at any act of the procedure and for the execution of the judgment. In the event of acquittal, the judgment or order orders the restitution of this part of the surety. Similarly, in the event of a dismissal, the Investigating Judge orders the restitution of the second part of the surety, after deducting the costs of justice. In the event of a conviction, it is allocated to the payment of the costs of justice, including the costs incurred by the investigating clerk, to the payment of the fine, and to restitutions and damages. Any surplus is refunded. Restitutions are made on the certificate of the Prosecutor of the Republic or the Attorney General establishing that the accused has fulfilled their obligations. The court ruling in council chamber or the chamber of accusations is competent in case of dispute. Art.143. Provisional release may also be requested, in any case, by the accused, the defendant, or their lawyer at any stage of the procedure. The trial court, when seized, is competent to rule on provisional release. Before the meeting of the criminal court and during the intervals of criminal sessions, the request for provisional release is ruled upon by the chamber of accusations. In the event of an appeal and until the ruling of the Court of Cassation, the request for provisional release is ruled upon by the jurisdiction that last dealt with the case on the merits. If the appeal is made against a ruling of the criminal court, the chamber of accusations rules on the detention. In the event of a decision of incompetence, and in cases where no jurisdiction is seized, the chamber of accusations hears requests for provisional release. In cases where an accused or defendant is released or placed on provisional release, the Investigating Judge or the competent jurisdiction may assign them a residence from which they must not depart, until a final decision, without the express authorization of the Judge or the jurisdiction. Art.144. After provisional release, if the accused invited to appear does not show up or if new circumstances make their detention necessary, the Investigating Judge or the chamber of accusations seized of the case may issue a new detention warrant. Art.145. The defendant referred to the criminal court is placed under arrest by virtue of the decision or order of referral to the criminal court which issues a body order. However, if they have been provisionally released or have never been detained, the Public Ministry may allow the defendant to surrender themselves the day before the hearing. Section 7 Compensation for preventive detention Art.146. Compensation may be granted to the victim of preventive detention when the procedure has been closed against them by a decision of dismissal, acquittal, or acquittal having acquired the authority of res judicata, and it is established that this detention has caused them manifestly abnormal and particularly serious moral or material harm. A commission composed of the First President of the Court of Cassation, President, a magistrate from the Council of State, and a representative from the Ministry in charge of the Budget, with the Attorney General near the Court of Cassation performing the functions of the Public Ministry, assesses the harm and sets the corresponding compensation. Art.147. The commission is seized by way of a request presented by the person who has been subject to preventive detention. The request must be presented within six months from the date of the decision of dismissal, acquittal, or acquittal having acquired the authority of res judicata or from the date on which the interested party became aware of it. No compensation is

due when this decision is solely based on a subsequent amnesty following the preventive detention or the recognition of their irresponsibility. The debates take place in council chamber. The applicant may be heard personally on their request. The decision rendered by the commission is not motivated. It is not subject to any appeal. Art.148. The compensation referred to in this section is the responsibility of the State, which may, by recourse action, turn

against the malicious denouncers or the false witness whose testimony caused the detention. The compensation is paid on criminal justice costs.

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www.droit-afrique.com Gabon Code of Criminal Procedure 33 Section 8 – Letters rogatory Art.149.– The Investigating Judge may delegate, by letters rogatory, any other Investigating Judge or any judicial police officer from the jurisdiction of their court to carry out any information act they deem necessary in the areas under their jurisdiction. The letters rogatory indicate the nature of the offense subject to prosecution. They specify the mission and the delegated acts. They are dated, signed by the magistrate who issues them, and bear their seal. Art.150.– The Investigating Judges or the judicial police officers assigned exercise, within the limits of the letters rogatory, all the powers of the Investigating Judge. Only the Judge assigned by letters rogatory may issue a justice warrant. The reports drawn up by the judicial police officer assigned by letters rogatory must be transmitted to the Investigating Judge within eight days of the end of the operations. Section 9 – Expert assessments Art.151.– Any Investigating Judge may, either ex officio or at the request of the Public Ministry, the accused, or the civil party, order an expert assessment. The expert executes their mission under the control of the Investigating Judge or the magistrate assigned for this purpose by the jurisdiction ordering the expert assessment. When the Investigating Judge considers that they must reject a request for expert assessment presented by the Public Ministry, they rule by reasoned order. Art.152.– Experts are chosen from a list of qualified individuals established each year on the proposal of the general assembly of the Court of Appeal. Experts take an oath before the Court of Appeal of their jurisdiction to carry out their mission, to make their report, and to give their opinion in their honor and conscience. They do not renew their oath each time they are assigned. Jurisdictions may, however, by reasoned decision, choose an expert not listed. This expert must take an oath before the jurisdiction that designated them. Art.153.– At the end of their mission, the expert submits their report within the time limit imposed to the clerk of the investigating cabinet that ordered the expert assessment. This time limit may be extended by a reasoned decision made by the Investigating Judge who appointed the expert.

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www.droit-afrique.com Gabon Code of Criminal Procedure 34 The accused and the civil party are informed by the Investigating Judge of the submission of the expert report. They are made aware of the conclusions of said report. The parties may present their observations and, if necessary, request an additional expert opinion or a counter-expertise at their own expense. They may be called to the operations of expertise or counter-expertise. Art.154.– Experts whose intervention has been requested during the investigation may, if necessary, be heard at the hearing. The President may, either on his own initiative or at the request of the Public Prosecutor, the parties, or their counsel, ask them all questions related to their mission. Section 10 – On the nullities of the information Art.155.– In all matters, the indictment chamber may, during the investigation, be seized for the purpose of annulling an act or a piece of the procedure by the Investigating Judge, by the Public Prosecutor, or by the parties. Art.156.– There is nullity when the disregard of a substantial formality provided for by a provision of this Code or any other provision of criminal procedure has harmed the interests of the party concerned. If the Investigating Judge finds that an act or a piece of the procedure is susceptible to nullity, he seizes the indictment chamber for annulment after having taken the opinion of the Public Prosecutor and informed the parties. The party against whom a substantial formality has been disregarded may waive its right to invoke it and thus regularize the procedure. This waiver must be express. It can only be given in the presence of the lawyer or the latter duly called if necessary. Art.157.– When the Public Prosecutor believes that there is nullity, he requests the

Investigating Judge to communicate the procedure and presents the request to the indictment chamber for annulment. If one of the parties or the assisted witness believes that there is nullity, they seize the indictment chamber by reasoned request, of which they send a copy to the Investigating Judge who transmits the case file to the president of the indictment chamber. Art.158. The request must, under penalty of inadmissibility, be the subject of a declaration to the registry of the indictment chamber. It is recorded and dated by the clerk who signs it, as well as the applicant or his lawyer. If the applicant cannot sign, this is mentioned by the clerk.

 When the applicant or his lawyer does not reside within the jurisdiction of the competent court, the declaration to the registry may be made by means of a registered letter with acknowledgment of receipt. When the person under investigation is detained, the request may also be made by means of a declaration to the head of the penitentiary establishment. This declaration is recorded and dated by the head of the penitentiary establishment who signs it, as well as the applicant. If the latter cannot sign, this is mentioned by the head of the establishment. This document is sent without delay, in original or copy and by any means, to the Registry of the indictment chamber. Art.159. The indictment chamber decides whether the annulment should be limited to the defective act or piece or whether it extends to all or part of the subsequent procedure. The annulled acts are removed from the information file and filed in the Registry of the indictment chamber. Art.160. The correctional courts have the authority to pronounce the nullities provided for in this section. Subject to the right of evocation of the competent Court of Appeal, the procedure is referred to the Public Prosecutor to be required by him what is appropriate. However, the correctional courts do not have the authority to pronounce the annulment of investigation procedures when they have been referred to them by the indictment chamber. If a party wishes to invoke a nullity, it must raise it before the trial court before any defense on the merits. Section 11 On the orders of settlement Art.161. When the procedure is ready and before communication to the Public Prosecutor for his requisitions, the Investigating Judge must, under penalty of nullity, inform the lawyer(s) of the parties that his investigation seems to him to be completed and grant them a period of five days to present any request or observation they deem useful. Art.162. At the end of the period, the Investigating Judge communicates the procedure to the Public Prosecutor. The Public Prosecutor is required to send his requisitions within fifteen days. At the expiration of this period and in the absence of requisitions, the Investigating Judge may proceed and render his order of settlement.

 Art.163. If the Investigating Judge believes that the facts do not constitute a crime, offense, or contravention, or if the author remains unknown or if there is no charge against the accused, he declares by order that there is no reason to prosecute. The accused held in preventive detention are released if they are not detained for another reason. The Investigating Judge rules on the restitution of seized objects. He settles the costs and orders the civil party to pay the legal fees if the information was opened following its constitution. The civil party acting in good faith may be relieved of all or part of the costs by a specially motivated order. Partial orders of non-suit may occur during the investigation and at its conclusion. Art.164. If the Investigating Judge believes that the facts constitute a contravention, he refers the accused to the court sitting in matters of simple police and orders his release if he is not detained for another reason. Art.165. If the Investigating Judge believes that the facts constitute an offense, he refers the accused to the Correctional Tribunal. The investigating judge rules in the same order on the continued detention of the accused until his appearance before the trial court, without prejudice to the application of the provisions of Article

143 of this Code. Art.166. If the Investigating Judge believes that the facts are of a nature to be punished by a criminal penalty, he orders that the case file and a list of the pieces of evidence be transmitted without delay by the Public Prosecutor to the Attorney General. The arrest or detention warrant issued against the accused retains its enforceable force until the indictment chamber has ruled on the referral to the criminal court, without prejudice to the provisions of Article 143, paragraph 3 of this Code. Art.167. The lawyers of the accused and the civil party receive, within forty-eight hours, notification by the clerk of all jurisdictional orders. This notification is made by any means. It must be recorded in a report or by mention made in the margin of the notified act bearing the date and the method of notification. The orders of settlement are notified to the accused and his counsel in the same forms and deadlines. The orders against which the accused or the civil party may appeal are notified by the clerk within forty-eight hours of their signature. Art.168. Within the same period, the Public Prosecutor receives notification from the clerk of all orders issued by the Investigating Judge.

 However, orders that are not in accordance with the requisitions must be notified on the same day they are issued, under penalty for the clerk of a disciplinary sanction pronounced by the President of the court. Art.169. The closure orders of the Investigating Judge contain the names, first names, age, place of birth, address, and profession of the accused, the presentation of the facts, their legal qualification, and the declaration that there are or are not sufficient charges. Art.170. The Investigating Judge is required to send every month to the Public Prosecutor for transmission to the Attorney General, an identification sheet of any new information procedure. This sheet is filed with the General Prosecutor's Office. Every two months, the Investigating Judge must send to the Public Prosecutor for transmission to the Attorney General, a sheet of the investigative acts for each procedure in his office. After control by the Attorney General, this sheet is returned to the Investigating Judge, with observations if necessary. If an investigation has been open for more than six months, the Investigating Judge must mention, on the sheet of investigative acts, all the circumstances that have been of a nature to delay the closure of the investigation. In case of non-compliance with the above provisions, the Investigating Judge is liable to disciplinary sanctions provided for by the applicable texts. Section 12 On appeals against the orders of the Investigating Judge Art.171. The Public Prosecutor has the right to appeal before the indictment chamber against any order of the Investigating Judge. The appeal must be filed at the registry of the investigating office within forty-eight hours from the day of notification of the order. The same right belongs to the Attorney General. The appeal must be filed at the registry of the indictment chamber within five days of receipt of the order at the General Prosecutor's Office. The accused remains in detention until a decision has been made on the appeal by the Public Prosecutor or the Attorney General and, in any case, until the expiration of the appeal period. Art.172. The right of appeal also belongs to the accused and his lawyer against orders that are detrimental to their interests. The civil party may also appeal against orders of non-suit and any other order that is detrimental to its interests.

 In all cases, the provision of the order pronouncing the release of the accused is provisionally executed. Art.173. The appeal of the accused and the civil party is filed with the clerk of the investigating chamber within forty-eight hours of the notification made to them, either by declaration or by registered letter. The clerk is required to register the appeal on the same day as the declaration or the receipt of the letter. If the accused is detained, his letter of appeal is transmitted to the investigating judge within twenty-four hours through the director of the detention center, the date on the

appellant's letter serving as proof under penalty for the negligent director of legal action for obstruction of justice. The file of the investigation and the appeal report are sent by the Public Prosecutor to the Attorney General near the competent Court of Appeal, within eight days from the date of receipt of the file at the public prosecutor's office. Art.174. When an appeal is filed against an order other than a ruling, the Investigating Judge may continue his investigation, unless otherwise decided by the chamber of accusation. This decision is not subject to appeal. Section 13 On the resumption of the investigation on new charges Art.175. The accused who has benefited from a decision of non-suit cannot be sought or prosecuted in connection with the same facts unless new charges arise. Art.176. New charges are considered to be the statements of witnesses, evidence, reports that, having not been submitted to the examination of the Investigating Judge, are nevertheless of a nature to either strengthen charges that would have been found too weak, or to provide new developments useful for the manifestation of the truth. Art.177. It is solely the responsibility of the Public Ministry to decide, within the limits of the prescription of public action, whether to request the reopening of the investigation on new charges. Chapter 2 On the chamber of accusation Art.178. The Court of Appeal comprises one or more chambers of accusation.

 The chamber of accusation is composed of a President appointed by the Superior Council of the Judiciary and at least two Counselors designated by order of the First President of the Court of Appeal. The appointment of the President of the chamber of accusation by the Superior Council of the Judiciary is subject to a decree from the President of the Republic. Art.179. The functions of the Public Ministry before the chamber of accusation are exercised by the Attorney General or his Deputies, those of the clerk by a clerk of the Court of Appeal. Art.180. The chamber of accusation meets at the invitation of its President or at the request of the Attorney General. Art.181. The chamber of accusation is the second-degree investigative jurisdiction. It hears appeals filed against the jurisdictional orders of the Investigating Judge. Art.182. The Attorney General puts the case in order within forty-eight hours of receiving the procedure in matters of preventive detention and within fifteen days in any other matter. He transmits the case, with his requisitions, to the chamber of accusation. The chamber of accusation, in matters of preventive detention, must rule no later than seven days after receiving the file, failing which the accused is automatically granted provisional release by the Attorney General, if he is not detained for another reason. Art.183. In cases before the correctional court and until the opening of debates before the court, the Attorney General, if he believes that the facts are susceptible to a criminal qualification, requests the communication of the procedure, puts it in order, and transmits it with his requisitions to the chamber of accusation. The same applies when the Attorney General receives, after a non-suit ruling from the chamber of accusation, documents that he believes contain new charges. Pending the hearing of the chamber of accusation, the President of this jurisdiction may, upon requisitions from the Attorney General, issue a warrant for detention or arrest against the person involved. Art.184. The Attorney General notifies, by administrative means, each party or their lawyer that the file is submitted to the chamber of accusation. The notice to the detained accused is delivered to him by the head of the penitentiary institution who promptly sends the original or a copy of the notice receipt dated and signed by the accused to the Attorney General.

 The notice to any non-detained accused or to the civil party is delivered to the last known address as long as the Investigating Judge has not closed his investigation. During the time limits set in Article 182 above, the parties

and their lawyers are allowed to submit any memorandum, which they must communicate to the Public Ministry as well as to the other parties. These memoranda are filed with the clerk of the chamber of accusation and marked by the clerk with the indication of the day and hour of the filing. Art.185. The hearing before the chamber of accusation takes place in a council chamber. The examination of the case occurs on documents after a report from one of the chamber's members. The accused and the civil party as well as their lawyers do not appear. The chamber of accusation may order the personal appearance of the parties as well as the production of evidence. The Attorney General may present observations. He then withdraws along with the clerk. Art.186. The chamber of accusation deliberates and rules within seven days. Art.187. The chamber of accusation may, in all cases, at the request of the Attorney General, done party or even office, order any act of information supplementary that it deems useful. It may also, with the Public Ministry heard, issue any warrant or order the release of the accused. Art.188. The chamber of accusation may, ex officio or upon requisitions from the Attorney General, order that it be informed, regarding the accused referred to it, on all main or related offenses resulting from the file that were not mentioned in the order of the Investigating Judge or that were removed by an order of partial non-suit, disjunction or referral to the court. It may rule directly, without further investigation, if the charges referred to in the previous paragraph were included in the accusations pronounced by the Investigating Judge. Art.189. Offenses are related either when they are committed at the same time by several people gathered together, or when they have been committed by different people, even at different times and in various places, but as a result of a pre-arranged concert among them, or when the authors committed one to obtain the means to commit the others, to facilitate, to consume the execution, or to ensure impunity, or when the things removed, diverted or obtained with the help of a crime or offense have been, in whole or in part, concealed.

 Art.190. The chamber of accusation may, concerning the offenses referred to in the procedure, order the indictment, under the conditions provided for in Article 191 below, of persons who have not been referred to it unless they have been the subject of a non-suit order that has become final. This decision is not subject to appeal. Art.191. Additional information is carried out in accordance with the provisions relating to the preliminary investigation, either by one of the members of the chamber of accusation, or by an Investigating Judge that it delegates for this purpose. After the execution of the additional information, the file is communicated au the Attorney General who must notify the parties and take his requisitions within fifteen days of receipt. Art.192. The chamber of accusation examines the regularity of the procedures submitted to it. If it discovers a cause of nullity, it pronounces the nullity of the act that is tainted and, if necessary, of all or part of the subsequent procedure. After annulment, it may either evoke or proceed under the conditions provided by Articles 187, 188 and 191 of this Code, or refer the file back to the same Investigating Judge or to another to continue the investigation. Art.193. When the chamber of accusation has ruled on the appeal filed against an order of the Investigating Judge in matters of preventive detention, whether it has confirmed the order, or whether, overturning it, it has ordered a release or maintained detention or issued a warrant for detention or arrest, the Attorney General promptly returns the file to the Investigating Judge, after ensuring the execution of the ruling. In the case of an appeal filed against an order for release, the chamber of accusation may at the hearing and before the closure of the debates, immediately take up any request for release on which the Investigating Judge has not yet ruled. It then rules in the same ruling on the appeal and on the request for release. Art.194. When, in any matter other than preventive detention, the chamber of accusation overturns an order of the Investigating Judge, it may either evoke and proceed under the conditions provided in Articles 185 and following of this

Code, or refer the file back to the same Investigating Judge or to another, in order to continue the investigation. The order of the Investigating Judge subject to appeal takes full effect if confirmed by the chamber of accusation. Art.195. The chamber of accusation examines whether there are sufficient charges against the accused.

 If it considers that the facts do not constitute a crime, offense, or contravention, or if the author remains unknown or if there are not sufficient charges, it declares that there is no need to proceed. The accused who is held in preventive detention is released if he is not detained for another reason. The order of non-suit rules, if applicable, on the restitution of seized objects, the chamber of indictment remaining competent, subsequently to the order, to rule possibly on this restitution. Art.196. If the chamber of indictment considers that the facts constitute a contravention or an offense, it orders the referral to the competent court. It orders, if necessary, the release of the accused. Release is a right when only a contravention is referred to the court. Art.197. If the facts charged against the accused constitute an offense classified as a crime by law, the chamber of indictment orders the indictment, issues a body order and orders his referral to the criminal court. It seizes this jurisdiction of related offenses. The referral order contains, under penalty of nullity, the identity of the accused, the exposition and qualification of the facts subject to the indictment. Art.198. The orders of the chamber of indictment are signed by the President and the clerk, no later than three days after their pronouncement. It mentions, under penalty of nullity, the names of the Judges, the deposit of documents and briefs, the requisitions of the Public Prosecutor and, if applicable, the hearing of the parties or their lawyers. The chamber of indictment reserves the costs if its order does not extinguish the public action of which it has had to know. Conversely, as well as in matters of release, it settles the costs and condemns the losing party to pay the costs. However, the civil party acting in good faith may be relieved of all or part of the costs, by a separate reasoned decision. Art.199. Except in the cases provided for in article 183 paragraphs 2 and 3 above, the orders of the chamber of indictment are notified to the lawyers of the parties by administrative means at the request of the Attorney General and this, within three days of the receipt of the copies. In the same forms and deadlines, the orders of non-suit and referral to the court are notified to the accused and the civil parties.

 The orders against which the accused and the civil parties may file an appeal to the Court of Cassation are notified to them at the diligence of the Attorney General, in the same forms and deadlines. Art.200. The provisions of the section relating to the nullities of the information are applicable to this chapter. The regularity of the orders of the chamber of indictment and that of the previous procedure, when this chamber has ruled on the regulation of a procedure, fall under the sole control of the Court of Cassation, whether the appeal is immediately admissible or whether it can only be examined with the order on the merits. Section 1 The specific powers of the President of the chamber of indictment Art.201. The President of the chamber of indictment ensures the proper functioning of the investigation offices within the jurisdiction of the Court of Appeal. He particularly ensures compliance with the legality of the procedures followed before the investigation offices and works to ensure that they do not suffer any unjustified delay. Art.202. The President of the chamber of indictment periodically visits the penitentiary institutions within the jurisdiction of the Judicial Court of Appeal and verifies the situation of the accused in preventive detention. Art.203. The President of the chamber of indictment may convene the chamber of indictment so that it rules, after requisitions from the Attorney General, on the continued detention of an accused. Section 2 Control of the activity of judicial police officers Art.204. The chamber of

indictment exercises control over the activity of judicial police officers within its jurisdiction, excluding governors, prefects and sub-prefects, mayors and their deputies. The chamber of indictment is seized by the Attorney General or seizes itself ex officio on the occasion of the examination of a procedure submitted to it. Once seized, the chamber of indictment conducts an investigation. It hears the Attorney General and the Judicial Police Officer involved. The Judicial Police Officer must, beforehand, have been able to review the file. He may be assisted by a lawyer.

 Art.205. The chamber of indictment may, without prejudice to the disciplinary sanctions that may be imposed on the Judicial Police Officer by his hierarchical superiors, send him observations. Art.206. If the chamber of indictment considers that the Judicial Police Officer has committed a violation of criminal law, it orders the transmission of the file to the Attorney General for any necessary action. Art.207. The observations of the chamber of indictment made to the Judicial Police Officer are notified, at the diligence of the Attorney General, to the authorities to which he depends for execution. Art.208. The provisions of this section apply to all sworn agents to whom the law grants the status of Judicial Police Officer. Book 3 Courts of judgment Title 1 Of the criminal court Chapter 1 Of the jurisdiction of the criminal court Art.209. The criminal court has full jurisdiction to judge the persons referred to it by the decision of indictment made in application of articles 67, 70 paragraph 2 and 197 of this Code. It cannot know of any other accusation. The criminal court holds its sessions at the seat of the Judicial Court of Appeal. When circumstances require, it may move to the seat of a court of jurisdiction. Chapter 2 Of the organization and procedure Section 1 Of the organization Art.210. Each session of the criminal court is set every three months of the judicial year by order of the President of the Judicial Court of Appeal, on the proposal of the Attorney General. This order also sets the opening date of the session. In case of necessity, the criminal court may sit in an extraordinary session set under the same conditions.

 The role of the session is established by the President of the Court of Appeal on the proposal of the Attorney General. Art.211. The criminal court is composed of three magistrates, four jurors, and a clerk. The Public Prosecutor's Office is ensured by the Attorney General or by one of his general attorneys or deputy general attorneys. Art.212. The functions of the Public Prosecutor's Office are exercised under the conditions set forth in articles 34 and 35 of this Code. However, the Attorney General may delegate to a criminal court a magistrate of the Public Prosecutor's Office from the jurisdiction of the Court of Appeal. Art.213. The criminal court is, at the hearing, assisted by a clerk. At the seat of the Judicial Court of Appeal, the functions of clerk are exercised by the Chief Clerk or a clerk of the Judicial Court of Appeal. During field hearings, the functions of clerk are exercised by the Chief Clerk or a clerk of the court of jurisdiction where the criminal court sits. Art.214. The criminal court in judgment formation includes a President and two assessors assisted by four jurors. The President and the assessors are designated by order of the First President of the Court of Appeal for each session. Art.215. The preparatory acts for holding the sessions of the criminal court are carried out by the First President of the Court of Appeal or by the designated Chamber President for this purpose. In case of an impediment occurring before the opening of the session, the President of the criminal session is replaced by order of the First President of the Judicial Court of Appeal. If an impediment occurs during the session, the President of the criminal session is replaced by the oldest assessor in the highest rank. Art.216. At the seat of the Judicial Court of Appeal, the magistrates composing the judgment formations

are designated by the First President, for the presidency, among the Chamber Presidents of the Court, for the assessors, among the Chamber Presidents or the advisors of the Court of Appeal or, exceptionally, among the magistrates of the seat of the courts of jurisdiction. When the criminal court moves to the seat of a court of jurisdiction, the assessors are designated, either among the Chamber Presidents or the advisors of the Judicial Court of Appeal, or among the magistrates of the seat of that court or, exceptionally, among the magistrates of another court of jurisdiction. The assessors are designated by the First President of the Court of Appeal for the duration of the session in the same forms as the President. Art.217. In case of an impediment occurring before the opening of the session, these magistrates are replaced by order of the First President of the Court of Appeal. In case of an impediment occurring during the session, the president of the formation is replaced by the oldest Chamber president or advisor of the Court of Appeal. The other magistrates are replaced by their colleagues of the same rank. Art.218. Magistrates who, in the case submitted to the Court, have either taken an act of prosecution or investigation, or participated in the order of referral of the accused, cannot be part of the criminal court as president or assessors. Art.219. The four jurors who complete each formation of the criminal court are designated in accordance with the provisions of articles 230 to 237 of this Code. Art.220. At the beginning of each judicial year, the Public Prosecutors establish each a list of fifty names of citizens living in their jurisdiction and susceptible of being designated as jurors. The lists established by the Public Prosecutors of the Republic contain all the necessary information about these persons, who must be at least thirty-five years old and at most seventy-five years old. They must be able to speak and write French and be of good moral character. These lists are sent to the Judicial Court of Appeal of the

jurisdiction which, after deliberating in a general assembly, retains twenty-five names per list and for each jurisdiction of the court. The jurors are designated in each jurisdiction of the court by drawing lots under the conditions set forth in this Code. Art.221. The following are incapable of being jurors: Individuals who have been sentenced to a term of imprisonment for a crime or offense and not legally or judicially rehabilitated, except for those convicted for unintentional offenses; Those who are in a state of arrest, under a detention or arrest warrant; Public agents dismissed from their duties; Dismissed ministerial officers; The insane, interdicted or interned individuals, as well as individuals placed under judicial protection; Bankrupts not rehabilitated whose bankruptcy has been declared either by a Gabonese judgment, or by a judgment rendered abroad, but enforceable in Gabon; Those for whom the functions of juror have been prohibited by a court decision;

  parents or relatives, to any degree, of the accused, the victim, or parties with an interest in the case; the Ministers of worship. Art.222. The functions of a juror are also incompatible with those listed below: a member of the Government or a parliamentary assembly; Secretary General of the Government or a ministry, director or chief of staff of a member of the Government, magistrate of the judicial, administrative, or financial order in active service; an active military member or on detached service. No one can be a juror in a case where they have performed an act of judicial police or investigation or in which they are a witness, interpreter, informant, expert, complainant, or civil party. Section 2 Procedure Subsection 1 Preparatory Procedure Art.223. As soon as the order or decision of referral from the Attorney General has been notified to him, the accused, if detained, is transferred to the prison of the place where the criminal court will sit. Art.224. If the case cannot be judged at the seat of the Court of Appeal, the case file is transmitted by the Attorney General to the Public Prosecutor near the Court of First Instance where the criminal court sits. Art.225. Under penalty of nullity, the Public Prosecutor notifies the

accused of the date on which he must appear before the criminal court, at least fifteen days before the opening date of the session. At least fifteen days before the opening date of the session, the Public Prosecutor notifies the concerned persons that they are on the annual juror list. This notification contains a summons to appear on the day, hours, and place indicated for the opening of each hearing of the session. Art.226. The First President of the Judicial Court of Appeal or the magistrate he delegates interrogates the accused at least eight days before the opening of the criminal session. In accordance with the provisions of this Code and if the accused is in preventive detention, the President interrogates him about his identity and ensures that he has received notification of the order or decision of referral. When the accused has not chosen a defender, one is appointed for him by the President, on the proposal of the Bar Association or its representative, from among the lawyers registered with the National Bar.

 If the accused is free and does not respond to the summons sent to him by the President for interrogation, the Public Prosecutor executes the order for taking him into custody. He is interrogated after his arrest. Art.227. The debates cannot open less than eight days after the interrogation of the accused by the First President of the Judicial Court of Appeal or the delegated magistrate. The accused communicates freely with his counsel. The latter may request communication of all the documents in the file, without this communication delaying the continuation of the procedure. Art.228. The Public Prosecutor notifies the accused and, if applicable, the civil party, at least three days before the opening of the debates, of the list of persons he wishes to hear as witnesses. Citations made at the request of the parties are at their expense, as are the fees of the cited witnesses, if the latter request to be compensated. Art.229. Accused persons incarcerated in the prison of the seat of the criminal court after the opening of the criminal session can only be judged during that session if they consent. Art.230. At the place, day, and time set for each of the cases listed for the criminal session, the court clerk proceeds to the calling, for the drawing of lots, of the twenty-five jurors registered on the annual list. The President disposes, one by one, in a ballot box after having read them aloud and clearly, the ballots bearing the names of each of the present jurors. Art.231. The drawing of lots takes place, under penalty of nullity, at the beginning of each hearing, in the presence of the Public Prosecutor, all the jurors registered on the annual list, the accused and their counsels, and, if applicable, the interpreters who must take the oath provided for in Article 110 of this Code. Art.232. The accused or his counsel first, then the Public Prosecutor, challenge such jurors as they deem appropriate as their names are drawn from the ballot box. The accused, his counsel, and the Public Prosecutor do not have to disclose the reasons for their challenges. The accused cannot challenge more than three jurors, the Public Prosecutor more than two. If there are several accused, they can consult to exercise their challenges. They can also exercise them separately. In either case, they cannot exceed the number of challenges determined for a single accused. Art.233. The Jury is constituted when the President has drawn the names of the four regular jurors and two alternate jurors who assist the Court in all debates.

 Art.234. In case of impediment during the judgment of the case, the regular jurors are replaced by the alternates. The replacement is done in the order of the drawing of lots. Art.235. At the beginning of each hearing, after the drawing of lots and before taking their functions, the regular jurors and the alternate jurors take the following oath, read by the President: "You swear and promise before God and before men, to examine with the most scrupulous attention the case of the Public Prosecutor against X, not to listen to hatred, malice, fear, or affection, to decide only based on

the charges, the means of defense, and the provisions of the laws, according to your conscience and your intimate conviction, with the impartiality and firmness that befits an honest and free man, and to keep the deliberations secret even after your functions have ceased". Each of the jurors standing, called individually by the President, responds by raising their bare right hand: "I swear". Art.236. After the oath is taken, the Public Prosecutor heard, the jurors are installed and the President declares the criminal court definitively constituted. Art.237. Any person registered on the annual juror list who, without legitimate reason, has not complied with the summons made to them under the conditions of this Code is sentenced by the criminal court to a fine of at least 20,000 FCFA. Any juror who withdraws before the expiration of their functions, without an excuse deemed valid by the criminal court, is liable to a fine of at least 50,000 FCFA. Subsection 2 Debates Art.238. The procedure in correctional matters is applicable before the criminal court, subject to the following provisions. Art.239. Except in cases of refusal to be assisted, the presence of a defender with the accused is mandatory before the criminal court. If the chosen or designated defender does not appear, the President appoints another ex officio. The accused appears without hindrance and only accompanied by guards to prevent his escape. Art.240. The President orders the clerk to read the list of witnesses and experts called by the Public Prosecutor, by the accused, and, if applicable, by the civil party.

 Art.241. The witnesses and experts having withdrawn to the chamber designated for them, the President invites the accused to listen attentively to the reading of the order of referral. He orders the Clerk to read this order aloud and clearly. Art.242. The President of the criminal court is vested with discretionary power under which he can, in his soul and conscience, take all measures he deems useful for the manifestation of the truth. He can, during the debates, call, if necessary by warrant, and hear any person or submit any new document he deems useful for the manifestation of the truth. Witnesses called in this manner do not take an oath and their statements are recorded only as simple information. Art.243. The President interrogates the accused and receives his statements. The witnesses testify separately from one another in the order established by the President. At the request of the President, they must state their names, first names, profession, residence, and whether they are relatives or allies of the accused or the civil party. Before their testimony, the witnesses take an oath to speak without hatred and without fear, to tell the whole truth, nothing but the truth. The magistrates, members of the Court, and the jurors may ask questions to the accused and the witnesses through the President of the criminal court. They are obliged not to express their opinion. Art.244. The President ensures the order of the hearing and the direction of the debates. The Public Prosecutor may, with the agreement of the President, directly ask questions to the accused, witnesses, civil parties, experts, and any person likely to contribute to the manifestation of the truth. The accused, the civil party, or their counsels may ask questions to the other persons mentioned above through the President. Art.245. The Public Prosecutor may make oral or written requisitions during the debates on which the Court composed solely of professional magistrates rules immediately. If the Court does not grant the requisitions, the instruction at the hearing continues. The orders rendered on incidents, after the Public Prosecutor, the parties, or their counsels have been heard beforehand, cannot be challenged by means of an appeal in cassation except at the same time as the order on the merits.

 At the end of the instruction at the hearing, the civil party or their counsel, the Public Prosecutor in their requisitions, and the counsel for the accused are heard successively. The accused always has the last word. The

debates cannot be interrupted. They must continue until the judgment of the criminal court is pronounced. However, they may be suspended for the time necessary for the rest of the Judges and the accused. Art.246. Once the debates are concluded, the President must pronounce their closure before the magistrates of the Court and the jurors retire to the deliberation room. They may only leave after they have made their decision. Sub-section 3 On the judgment Art.247. The jurors have deliberative voice on guilt and the application of the penalty. The conviction is pronounced by a majority of votes. The professional magistrates rule alone on questions of jurisdiction, legal incidents, and procedure. Art.248. When the criminal court pronounces a correctional penalty, it may, by reasoned decision and in accordance with the provisions of the Penal Code, order that the execution of the penalty be suspended. The criminal court also deliberates on accessory or complementary penalties. Art.249. If the act charged against the accused is not or is no longer punishable by criminal law, or if the accused is declared not guilty, the criminal court pronounces their acquittal. If the accused benefits from an absolute excuse, the criminal court pronounces their absolution. The acquitted or absolved accused is immediately released, unless they are detained for another reason. No acquitted person can be retried or accused for the same facts, even under a different qualification. Art.250. If it results from the debates that the act has a legal qualification other than that given by the order of referral, the criminal court rules on the new qualification. Art.251. After pronouncing the judgment, the President informs the convicted person of their right to appeal to the Court of Cassation. They inform them that they have a period of five clear days after the judgment is pronounced to appeal, and that after this period, their appeal is no longer admissible.

 Art.252. After ruling on the public action, the criminal court composed solely of magistrates rules on the claims for damages requested by the civil party against the accused, the parties, and the Public Prosecutor having been heard. Art.253. The civil party, in the case of acquittal as in that of absolution, may seek compensation for the damage resulting from the fault of the accused, as it results from the facts subject to the order of referral. Art.254. The criminal court may order ex officio the restitution of objects placed under judicial custody. In the event of a conviction, this restitution only occurs after the beneficiary has justified that the convicted person has allowed the time to appeal to the Court of Cassation to pass or, if they have appealed, that the case has been definitively judged. When the decision of the criminal court has become final, the indictment chamber is competent to order, if necessary, the restitution of objects placed under judicial custody. Art.255. Every judgment of the criminal court must be reasoned. Art.256. The minute of the judgment rendered by the criminal court is signed by the President and the clerk. The minutes of the judgments rendered by the criminal court are gathered and deposited in the registry of the Court of Appeal. Sub-section 4 On absentees Art.257. When, after a referral order, the accused could not be seized under the order for taking into custody or if they do not appear following the notification made to their home, they are judged in absentia, without the participation of the jurors, by the professional magistrates. Art.258. If the convicted person surrenders or is arrested before the expiration of the statute of limitations for the offense, the judgment of conviction in absentia is automatically annulled. New debates are held in the ordinary form. Art.259. In the case provided for in this sub-section, if for any reason the summoned witnesses cannot be present at the debates, their written depositions and, if necessary, the written responses of other accused persons of the same crime are read at the hearing. The same applies to all other documents deemed useful for the manifestation of the truth. Art.260. The absentee who, after presenting themselves, obtains their referral from the facts of the prosecution is condemned to pay the costs incurred by the default procedure, unless they are exempted by the criminal court.

www.droit-afrique.com Gabon Code of Criminal Procedure 53 Art.261. The appeal to the Court of Cassation against judgments rendered in absentia by the criminal court is only open to the Attorney General and to the civil party, as far as it is concerned. Title 2 On the Correctional Court and the Court of Appeal Chapter 1 On the Correctional Court Section 1 On the jurisdiction and referral of the Correctional Court Sub-section 1 General provisions Art.262. The correctional chamber of the Court of First Instance is called the correctional court. Subject to the jurisdiction of specialized formations, it hears misdemeanors and simple police offenses. Art.263. Misdemeanors and offenses are defined in Articles 3 and 4 of the Penal Code. Art.264. The correctional court of the place of the offense, that of the residence of the accused, or that of the place of arrest of the latter, even when this arrest was made for another reason, is competent. The court of the place of detention of an accused is only competent under the conditions provided for in the provisions relating to the referral from one court to another. Art.265. The jurisdiction regarding an accused or an offender extends to all co-authors and accomplices. Art.266. The court, seized of the public action, is competent to rule on all exceptions raised by the accused for their defense, except regarding the prejudicial exceptions provided by law or arising from a real estate right. Exceptions based on the nullity of either the citation or the prior procedure must, under penalty of inadmissibility, be raised before any defense on the merits. Nullity can only be pronounced under the conditions provided for in Article 427 below. Art.267. The prejudicial exception must be raised before any defense on the merits. It is only admissible if it is likely to remove from the fact serving as the basis for the prosecution the character of an offense. It is only accepted if it is based on facts or titles providing a basis for the prosecution.

www.droit-afrique.com Gabon Code of Criminal Procedure 54 If the prejudicial exception is accepted, the court sets a deadline within which the accused must seize the competent jurisdiction. If the accused fails to introduce the proceedings within this deadline and justify their diligence, the exception is disregarded. If the exception is not accepted, the debates continue. Art.268. When the court is seized of several proceedings concerning related facts, it may order their joinder ex officio, upon requisition of the Public Prosecutor or at the request of one of the parties. Art.269. The correctional court is seized either: by order of referral from the Investigating Judge; in application of the procedure for flagrant offenses; on citation issued by the Public Prosecutor; on citation issued directly to the accused and to the civilly liable party for the offense by the civil party; by the appearance of the parties under the conditions set out in Article 270 below. Art.270. The warning is delivered, by any means, by the Public Prosecutor. It dispenses with citation if it is followed by the voluntary appearance of the person to whom it is addressed. It indicates the offense pursued and cites the legal text that punishes it. Art.271. The citation is delivered within the deadlines and forms provided by this Code. Art.272. Any person who has filed a complaint must be notified by the prosecution of the date of the hearing. Art.273. The civil party that directly cites an accused before the correctional court must, in the citation act, elect domicile at the seat of the seized court, unless they are domiciled there. At the time of filing the document with the prosecution's secretariat for enrollment, the civil party must present the receipt attesting to the payment into the hands of the Chief Secretary of the Prosecution of the provision whose amount is set by regulatory means. Sub-section 2 On fixed fines and arbitral orders Art.274. Subject to contrary provisions provided by law, offenses may give rise to the payment of a fixed fine either to the officer who issued the citation or to the officer of the public treasury. Art.275. The amount of the fixed fine is set at 10,000 FCFA. It may be revised by regulatory means. The payment of this fine

extinguishes the public action.

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www.droit-afrique.com Gabon Code of Criminal Procedure 55 The enforcement officer is required to issue a receipt to the offender detached from a booklet with stubs conforming to the regulatory model. Art.276. Payment of a fixed fine cannot occur: if the offense committed exposes its author, either to the repair of damages caused to persons or property, or to penalties associated with recidivism; if the offense is connected to a misdemeanor or a crime; if the offense is provided for and punished by forestry legislation or by the Labor Code, as well as in cases where specific legislation has excluded the procedure for the fixed fine; if the offender opposes it. Art.277. Except in the case of effective payment of the fixed fine, the enforcement officer drafts a report in the legal forms. This report is transmitted to the competent Public Prosecutor. Art.278. The report establishing the offense is submitted to the President of the Court of First Instance or to the magistrate who substitutes for him. If there is a need to prosecute and if the Judge believes that a monetary sanction is insufficient, he refers the Public Ministry to take further action and the offender is judged according to the ordinary procedure. If the Judge believes that only the fine should be imposed, he issues an order citing the texts that provide for and punish the offense, sets the amount of the fine as well as the deadline within which the order must be notified. Art.279. The order issued without costs is notified by administrative means to the offender who is free to acquiesce or declare his opposition, which is then noted on the document confirming the notification. If the offender declares opposition, he is brought before the court according to the ordinary procedure. Art.280. If the offender acquiesces, he immediately pays the amount of the fine directly to the public treasury officer, or if there is none in the locality, to the officer who made the notification. In all cases, a receipt confirming the payment is issued to the offender. A copy of the receipt is sent along with the order to the Judge who issued it, for filing in the registry. When the acquiescing offender is unable to pay the amount of the fine, immediately or within the time limits set, the order has enforceable force and is referred to the magistrate of the Public Ministry for enforcement by imprisonment. Art.281. Those deprived of the right to oppose the arbitral order include:

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www.droit-afrique.com Gabon Code of Criminal Procedure 56 offenders absent at the address indicated by them in the report who, when summoned, do not appear within the time limit of one month; offenders who have provided an incorrect address. In both cases, the order has enforceable force and is collected in accordance with the provisions of this Code. Art.282. When issued by the officer notifying the orders, the receipts are detached from a stub register that is signed and initialed before any use by the public treasury officer. This register is submitted during the first five days of each month, with the visa of the public treasury officer, and the payment of receipts is made at the same time. Art.283. A special register of arbitral orders is kept at the registry of each court, where for each offender, the nature and date of the decision, the amount of the fine imposed, and, if applicable, the recovery made under the aforementioned conditions are recorded. The accepted and executed arbitral decision is taken into account for the application of recidivism rules. Sub-section 3 On flagrant offenses Art.284. An individual arrested in the act of a flagrant offense as defined in article 51 of this Code, for an act punishable by correctional penalties, is immediately brought before the Public Prosecutor who interrogates him and may place him under pretrial detention pending his appearance before the court. Art.285. The Public Prosecutor informs him of his right to request a delay to prepare his defense. Mentions of the notice and the response are made in the interrogation report. If the accused requests a delay, the Public Prosecutor sets the hearing

within a minimum delay of three days to a maximum of fifteen days. If the accused waives this right, he is brought before the court at the next hearing, which cannot occur later than seven days. The provisions of this article are prescribed under penalty of nullity. Art.286. Witnesses are summoned by any means by any Judicial Police Officer or public force agent. This is noted in the report. Witnesses are required to appear under penalty of the sanctions provided for in article 109 of this Code. Art.287. If he believes that the case is not ready for judgment, the court orders the case to be postponed to one of its next hearings for further information and, if necessary, releases the accused provisionally.

 Art.288. The accused is judged no later than thirty days from the first hearing even in the absence of a criminal record, otherwise, the case is referred to the ordinary hearing and the accused is released automatically, if he is not detained for another reason. Section 2 On the composition of the court and the holding of hearings Sub-section 1 On the composition Art.289. The correctional court sits in a collegiate formation of three members. It is presided over by the President or Vice-President of the Court of First Instance or by one of the Judges of the court. The functions of the Public Ministry are exercised by the Public Prosecutor near the court, the Deputy Public Prosecutors, or by the substitutes. The functions of the clerk are exercised by the Chief Clerk or by one of the clerks of the Court. When several hearings have been devoted to the same case, the Judges who have participated in the decision are presumed to have attended all these hearings. Art.290. The correctional court may sit with a single Judge if, due to a duly established impediment, it cannot constitute itself in a collegiate formation. Sub-section 2 On the hearings Art.291. The number of correctional hearings is determined by the President of the Court of First Instance who sets, at the beginning of the judicial year, after the opinion of the general assembly, the dates and times of the hearings that will be held periodically. In case of necessity, the number of hearings may be modified under the same conditions during the year. Art.292. The simple police hearing may be distinct from the correctional hearing. If it is distinct from the correctional hearing, it may be held on the same day. Sub-section 3 On field hearings Art.293. The presidents of the courts of first instance or the magistrates of the bench they designate may hold field hearings within the jurisdiction of their respective courts.

 A schedule of field hearings is drawn up at the beginning of the judicial year by the President of the Court of First Instance, after the opinion of the general assembly. This schedule indicates the locations and dates of these hearings. If the needs of service require it, other field hearings may be held outside those determined by the schedule mentioned above. Art.294. In case of impediment of the clerk, he is replaced by an ad hoc clerk who takes the oath of the clerks. Art.295. If the case is not ready for judgment, the provisions of this Code are applicable. Art.296. Judgments rendered in field hearings are transcribed without delay by the clerk in a special register that contains the ordinary statements of the parties' declarations and the depositions of witnesses. Art.297. As an exception, the First President of the Judicial Court of Appeal may, at the request of the Attorney General, designate by order, a magistrate from a court of first instance to hold field hearings outside the jurisdiction of that court, in place of the normally competent magistrate. This magistrate proceeds in the forms and conditions established above. The judgments rendered are immediately transmitted to the registry of the jurisdiction to which the locality where the field hearing was held belongs. They are classified in the rank of minutes by the clerk who notes it in the register of field hearings. Sub-section 4 On publicity and order of the hearing Art.298. Hearings are public, under penalty of nullity. Nevertheless, the court may, if it

considers the publicity dangerous for public order or morals, order that the debates take place in camera. The judgment on the merits must always be pronounced in a public hearing. Art.299. The President ensures the order of the hearing and the direction of the debates. Art.300. The President may prohibit access to the courtroom to minors or to certain of them. Art.301. From the opening of the hearing, the use of any sound recording device, camera, television or cinema, photographic devices, and any communication device is prohibited, except by express authorization of the President of the court or the Court of Appeal.

 The introduction of weapons of any kind is also prohibited, except for those held by authorized security and escort agents. Art.302. When, at the hearing, the accused, the civil party, the witness, or the public disturbs, in any way, the serenity of the debates, the President orders their expulsion from the courtroom. If during the execution of this measure, there is resistance to this order or tumult is caused, the expelled person or persons are immediately placed under a detention order, judged, and punished with imprisonment of up to three months, without prejudice to the penalties provided for in the Penal Code against those who commit insults and violence against magistrates. Art.303. When expelled from the courtroom, the accused, even if free, is kept at the disposal of the court by public force until the end of the debates. They are then returned to the courtroom where the judgment is pronounced in their presence. Section 3 Debates Sub-section 1 Appearance of the accused Art.304. The President verifies the identity of the accused and informs them of the act that has brought the case before the court. They also verify, if necessary, the presence or absence of the civilly responsible person, the civil party, witnesses, and possibly experts and interpreters. Art.305. When the accused does not speak sufficiently in French or if it is necessary to translate a document submitted to the debates, the President designates an interpreter ex officio, who has already reached legal age, and has them take the oath provided for in Article 110, paragraph 3 of this Code. The Public Prosecutor, the accused, and the civil party may challenge the interpreter by providing reasons for their challenge. The court decides on this challenge, and its decision is not subject to appeal. The interpreter cannot, even with the consent of the accused or the Public Prosecutor, be chosen from among the judges composing the court, the clerk who takes notes at the hearing, the parties, and the witnesses. Art.306. If the accused is deaf-mute and cannot write, the President designates ex officio, as an interpreter, a person known to have the habit of conversing with them. The other provisions of the above article apply to the deaf-mute accused.

 In the case where the deaf-mute accused can write, the clerk writes down the questions or observations made to them. These are handed to the accused, who provides their written responses, with everything being read by the clerk. Art.307. On the day indicated for the appearance at the hearing, the accused in detention is brought there by public force or penitentiary security agents. Art.308. The accused regularly summoned in person must appear unless they justify their absence with an excuse accepted by the court. The accused has the same obligation when it is established that, although not summoned in person, they were aware of the regular summons concerning them, in the case provided for by the provisions of Article 439 of this Code. If the conditions are met, the judgment is deemed contradictory with respect to the accused. Art.309. The accused summoned for an offense punishable by a fine or a prison sentence of less than two years may, by letter addressed to the President and which will be attached to the case file, request to be judged in their absence. In their absence, they may be represented by their counsel. However, if the court deems the appearance of the accused in person necessary, a new summons is issued, at the

request of the Public Prosecutor, for a hearing date set by the court. The judgment is deemed contradictory with respect to the accused who does not respond to this summons. The same applies in the case provided for in the first paragraph of this article. Art.310. Judgments deemed contradictory must be served in person to start the appeal period. Art.311. If the summons has not been delivered to the person of the accused and it is not established that they were aware of the summons, the decision, in the event of the accused's non-appearance, is rendered by default. Art.312. The provisions relating to the civil interests of the victim apply whenever the substantive debate on the prevention is not addressed and especially when the debate only concerns civil interests. Art.313. The civilly responsible person may always be represented by counsel. The judgment is then contradictory with respect to them. Art.314. If the accused cannot appear before the court due to their health condition and there are serious reasons not to delay the judgment, the court orders, by special and reasoned decision, that the accused, possibly assisted by their counsel, will be heard at their home, in a healthcare facility, or in prison if they are detained, by a magistrate appointed for this purpose, accompanied by a clerk. A record of this interrogation is drawn up. The debate resumes after a new summons of the accused, and the provisions relating to the interests of the victim apply, regardless of the penalty incurred. In all cases, the judgment is contradictory with respect to the accused. Art.315. The parties summoned to appear may themselves ensure their own defense, just as they have the option to be assisted by counsel. Counsel may only be chosen from among lawyers registered with the National Bar. Lawyers registered with other bars may plead before Gabonese courts if the State of which they are from is linked to Gabon by a reciprocity agreement. The assistance of counsel is mandatory if the accused has a disability that may compromise their defense or when they are a minor. If the accused does not choose, counsel is appointed ex officio by the Bar Association or in accordance with the legislation on minors. Sub-section 2 Constitution of civil party and its effects Art.316. Any person who, in accordance with the provisions of Articles 11 and following of this Code, claims to have been harmed by a crime, may, if they have not already done so, constitute themselves as a civil party for the compensation of the harm caused to them. Art.317. At the hearing, the constitution of a civil party may be made either by declaration recorded by the clerk or by the

submission of conclusions. It must, under penalty of inadmissibility, occur before the Public Prosecutor's requisitions on the merits. The person who has constituted themselves as a civil party cannot be heard as a witness. Art.318. The court decides on the admissibility of the constitution of a civil party. The inadmissibility of the constitution of a civil party may be raised in limine litis by the Public Prosecutor, the accused, the civilly responsible person, or another civil party. In this case, the court decides before any substantive debate. Art.319. The civil party may always be represented by a lawyer. In this case, the judgment is contradictory with respect to them. Art.320. The civil party, regularly summoned or notified, who does not appear, is not represented at the hearing or does not provide a valid excuse, is considered to have withdrawn from their constitution.

 In this case, if the civil action has only been initiated by the direct summons delivered at the request of the civil party, the court only rules on said action if required by the Public Prosecutor, except for the accused to claim damages for abusive proceedings. In all cases, the civil party may be ordered to pay the costs of the proceedings. Art.321. The withdrawal of the civil party does not prevent the exercise of civil action before the competent jurisdiction. Sub-section 3 Administration of evidence Art.322. Unless otherwise provided by law, guilt may be established by any means of proof and the judge decides according to their intimate conviction. The court can base its decision only on evidence

presented to it during the debates and discussed contradictorily before it. The confession, like any element of proof, is left to the free appreciation of the Judges. Art.323. Any report or document has probative value only if it is regular in form, if its author acted in the exercise of their functions and reported on a matter within their competence what they heard or personally observed. Art.324. The reports and documents of judicial police officers and agents are presumed to be true until proven otherwise by written evidence or testimony. The administration of evidence is left to the appreciation of the judge. Art.325. If the court deems that an expert opinion is necessary, it proceeds as provided for by the provisions of Articles 151 to 154 of this Code. Art.326. Witnesses are summoned in accordance with the provisions of this Code. Art.327. After verifying the identities of the parties, the President orders the witnesses to withdraw to the room designated for them. They only leave to testify. The President takes, if necessary, all useful measures to prevent the witnesses from conferring with each other before their testimonies. Art.328. Any person summoned to be heard as a witness is obliged to appear, take an oath, and testify. Minors under the age of fifteen are heard without taking an oath.

 Art.329. A witness who fails to appear or who refuses, either to take an oath or to make their statement, may, upon the requisitions of the Public Prosecutor, be sentenced by the court to the penalty provided for in Article 274 of the Penal Code. Art.330. If the witness does not appear and has not provided a recognized valid and legitimate excuse, the court may, upon the requisitions of the Public Prosecutor or even on its own initiative, order that this witness be immediately brought before it by the public force to be heard or postpone the case to a next hearing. All costs of citation, travel, witnesses, and any other expenses aimed at having the case judged, shall then be borne by the absent witness. Upon the requisitions of the Public Prosecutor, the judgment ordering the postponement of the debates condemns the absent witness, if necessary, to be compelled by body constraint, to pay these costs. If it is established that the non-appearing witness did not receive citation or warning in time, due to the negligence or fault of their employer, the latter shall be liable for the payment of the costs referred to in the previous paragraph. Art.331. The witness, condemned for non-appearance, may, no later than five days from the notification of this decision made to them personally or at their domicile, file an opposition. The appeal route is only open to them on the judgment rendered on this opposition. Art.332. The witness who has been condemned for refusing to take an oath or to testify may appeal. Art.333. Before proceeding to hear the witnesses separately, the President questions the accused and receives their statements. The Public Prosecutor may, with the authorization of the President, directly ask questions of the accused, the civil party, and the witnesses, as well as any other person. The accused, the civil party, or their counsel may ask questions through the President. Art.334. The provisions of this Code relating to the deaf-mute witness or who does not sufficiently express themselves in French are applicable before the specialized formations of the Court of First Instance and the Court of Appeal. Art.335. Witnesses cited on the proposal of the prosecuting parties are heard first, unless the President decides otherwise. Persons proposed by the parties and present at the opening of the debates may also be authorized by the President to testify without having been regularly cited.

 Art.336. Witnesses must, at the request of the President, disclose their name, first name, profession, and domicile, if they are relatives or allies of the accused, of the person civilly responsible or of the civil party or if they are in their service. Art.337. The statements of ascendants or descendants of the accused, siblings or allies of the same degree, of the wife or husband, even after divorce, are only received

as information. Art.338. The witness who has taken an oath is not required to renew it if they are heard for a second time during the debates. The President reminds them, if necessary, of the oath they have taken. Art.339. A person who, acting under a legal obligation or on their own initiative, has brought the facts pursued to the attention of justice, may be heard as a witness. The President informs the court. Art.340. Witnesses testify orally. However, they may exceptionally use documents with the authorization of the President. Art.341. The clerk notes in the hearing record the course of the debates and, mainly, the observations of the President and the representative of the Public Prosecutor as well as the statements of the parties and witnesses. The record is signed by the clerk. It is approved by the President no later than three days following each hearing. Art.342. After each testimony, the President asks the witness the questions he deems necessary and, if applicable, those proposed by the assessors and possibly by the parties, the Public Prosecutor, and the lawyers. The witness may leave after their testimony, unless the President decides otherwise. The Public Prosecutor, the civil party, and the accused may always request, and the President may always order, that a witness temporarily leave the courtroom after their testimony. This witness may be called and heard again, after the testimonies of other witnesses, with or without confrontation. Art.343. During the debates and if necessary, the President presents to the accused, the witnesses, and the experts, the pieces of evidence and receives their observations. Art.344. The court, either on its own initiative or at the request of the Public Prosecutor, the civil party, or the accused, may order all useful transports in view of the manifestation of the truth. The parties and their counsel are called to attend. A report of these operations is drawn up, signed by the President, the clerk, and the present parties.

 Art.345. If, based on the debates, the testimony of a witness appears false, the President, either on his own initiative or at the request of the Public Prosecutor or a party, has the precise statements of the witness recorded in the hearing record. He may order this witness to remain at the disposal of the court, which may hear them again, if necessary. If the judgment is to be rendered on the same day, the President may also have this witness guarded by the public force in or out of the courtroom. After reading the judgment on the merits, the court draws up a report of the facts or statements from which false testimony may result. The court orders, if necessary, the witness to be brought before the Public Prosecutor with the report and the copy of the hearing record. Sub-section 4 Of the discussion by the parties Art.346. The Public Prosecutor takes in the name of the law, the written or oral requisitions that he deems compliant with the law. The court is obliged to respond in its judgment to the written requisitions that are filed. Art.347. The accused, the other parties and their counsel may file conclusions. These are approved by the President. The clerk mentions in the record their submission to the debates. The court is obliged to respond to the conclusions thus regularly filed. To this end, it must join the incidents and exceptions of which it is seized and rule on them by a single judgment, first ruling on the exception and then on the merits. Art.348. Once the hearing is concluded, the civil party heard, the Public Prosecutor takes his requisitions. The accused, if applicable, the civilly responsible party and their counsel present their defenses. The civil party and the Public Prosecutor may reply. The accused and their counsel will always have the last word. Art.349. If the debates cannot be concluded during the same hearing, the court sets and has recorded in the hearing record, the day on which they will be continued. The parties and the witnesses not heard as well as those who have been invited to remain at the disposal of the court, are required to appear, without further citation, at the adjourned hearing.

 Section 4 : Of the judgment Sub-section 1 : Of offenses and contraventions Art.350. The judgment is rendered either at the hearing where the debates took place, or at a later date within a period not exceeding thirty days. The President informs the present parties of the date on which the judgment will be pronounced. Art.351. If it is necessary to proceed with a supplementary investigation, the court appoints by judgment one of its members, who has the powers granted to Judicial Police Officers in matters of rogatory commissions in accordance with the provisions of this Code. The supplementary investigation follows the rules set out in this Code. The Public Prosecutor may obtain, au if necessary on requisitions, the communication of the case file at any time, on the condition that it is returned within forty-eight hours of its receipt. Art.352. If the court finds that the act constitutes an offense or a contravention, it rules on the penalty. It rules, if applicable, by the same judgment on civil interests. If it cannot rule at that time on the claim for damages, the court may grant the civil party a provision notwithstanding opposition or appeal. Art.353. If the act is of a nature to deserve a correctional penalty, the court pronounces it. If the penalty pronounced is less than eight months of imprisonment without suspension, the court may issue a detention order or an arrest warrant. The issuance by the court of the detention order or the arrest warrant is of right, when the penalty pronounced is equal to or greater than eight months of imprisonment. The warrant issued by the court continues to have effect even if the court on opposition, or the Court of Appeal on appeal, reduces the penalty. However, the court on opposition, or the Court of Appeal on appeal, has the option by special and reasoned decision, to order the lifting of the warrant. In case of opposition to the judgment under the conditions provided for in this Code, the case must be called before the court at the first useful hearing and no later than within eight days of the day of the opposition.

 Art.354. If the court, regularly seized of a fact qualified as an offense by law, considers, in light of the debates, that this fact constitutes only a contravention, it rules on the penalty and decides, if necessary, on the civil action. If the fact constitutes a contravention related to an offense, the court rules by a single judgment, subject to appeal on the whole. Art.355. If the defendant benefits from a cause of irresponsibility, the court declares their irresponsibility and rules, if necessary, on the civil action. Art.356. If the fact referred to the court under the qualification of an offense constitutes a crime, the court declares itself incompetent and refers the Public Prosecutor to better provide. It may, by the same decision, after hearing the Public Prosecutor, issue a detention or arrest warrant, which will remain in effect until a jurisdiction is seized. If no jurisdiction is seized within fifteen days of the decision, the defendant is automatically released. If the defendant appeared in a state of detention, the court's incompetence does not automatically lead to their release. The defendant may request provisional release from the court, which rules on everything by a single judgment. If the court rejects the request, the provisions of paragraph 3 of this article shall then apply. Art.357. If the court considers that the pursued fact does not constitute any offense under criminal law or that the fact is not established or is not attributable to the defendant, it dismisses the defendant from the prosecution. Art.358. Notwithstanding any means of appeal, the detained defendant who has been acquitted, declared irresponsible, or sentenced either to imprisonment with suspension or to a fine is immediately released, if they are not detained for another reason. The same applies to the defendant sentenced to a term of imprisonment as soon as the duration of the detention already served has reached that of the sentence pronounced. In the event of an appeal by the Public Prosecutor following a decision of acquittal or a sentence of imprisonment with suspension, the defendant is kept in detention until a decision has been made on the appeal, and in all cases until the expiration of the appeal period, unless a judgment of release has been rendered on the corresponding requisitions of the

Public Prosecutor. In all cases, the defendant has the right to appeal. Art.359. The defendant who has paid the costs of prosecution may seek damages from the civil party that initiated the public action, the court ruling by the same judgment on the claim for damages made by the acquitted person against the civil party for abuse of civil party constitution.

 Art.360. Any judgment of conviction rendered against the defendant and, where applicable, against the civilly responsible party, condemns them to the costs and expenses towards the State. Art.361. In the case of acquittal, the defendant cannot be condemned to the costs of the trial. Art.362. The civil party that loses is liable for the payment of costs. However, if the prosecution was initiated by the Public Prosecutor, the bona fide civil party that lost may be relieved of all or part of the costs. Art.363. The costs and expenses are liquidated by the judgment. Art.364. The defendant, the civil party, or the civilly responsible party may request from the court seized of the prosecution the restitution of objects placed under judicial custody. The court may, after hearing the Public Prosecutor if necessary, order this restitution ex officio. Art.365. Any person, other than the defendant, the civil party, and the civilly responsible party, who claims to have a right to the objects placed under judicial custody, may also request their restitution from the court seized of the prosecution. Only the reports relating to the seizure of the objects may be communicated to them. The court rules by the same judgment or by a separate judgment, after hearing the parties. Art.366. If the court grants the restitution, it may take any precautionary measure to ensure, until the final decision on the merits, the representation of the returned objects. If the court considers that the objects placed under judicial custody are useful for the manifestation of the truth or likely to be confiscated, it postpones restitution until its decision on the merits. The decision to postpone is not subject to any appeal. Art.367. The judgment that rejects a request for restitution is subject to appeal by the person who made the request. The judgment that grants restitution is subject to appeal by the Public Prosecutor, the defendant, the civilly responsible party, or the civil party to whom the decision is prejudicial. In the event of an appeal by the Public Prosecutor, the execution of the judgment granting restitution is suspended. The Court of Appeal cannot rule before the decision of the court on the merits. Art.368. The court that has dealt with the case remains competent to order the restitution of objects placed under judicial custody, if no means of appeal has been exercised against the judgment on the merits.

 The court rules on the request of any person who claims to have a right to the seized objects or at the request of the Public Prosecutor. The costs are borne by the public treasury. The decision may be referred to the Court of Appeal. Art.369. The Court of Appeal seized of the merits of the case is competent to rule on restitutions. Art.370. Every judgment must contain the facts, the reasons, and a dispositif. The reasons constitute the basis of the decision. The dispositif states the facts for which the cited persons are declared guilty or not guilty, responsible, and rules on the penalty and, where applicable, on civil convictions. Art.371. The minute of the judgment is dated and mentions the names of the magistrates who rendered it. The presence of the Public Prosecutor at the hearing must be noted. After being signed by the President and the clerk, the minute is filed with the court registry within eight days at the latest from the pronouncement of the judgment. This filing is noted in the special register kept at the registry for this purpose. Art.372. The Public Prosecutors receive monthly communications of the minutes of judgments from the Chief Clerk, under the cover of the President of the court. Art.373. The Chief Clerk establishes a monthly report of the judgments rendered during the month. This report is transmitted to the Attorney General, under the cover of the Public Prosecutor. Sub-section 2 On the judgment of minors

Art.374. Minors aged thirteen to eighteen years who are charged with an offense classified as a crime or misdemeanor are referred to juvenile courts. The competence, organization, and functioning of juvenile courts are established by legislation concerning the judicial protection regime for minors. Art.375. Minors under the age of thirteen who have committed acts classified as crimes or misdemeanors cannot be placed under a detention order. They are referred to the President of the Court who may order either the return of the child to their parents, guardian, the person who had custody, or a trustworthy person, or their placement in an institution or public or private educational or vocational training establishment, or in a medical establishment. These measures may be revoked or modified in the same forms.

 Section 5 On default judgment and opposition Sub-section 1 On default judgment Art.376. Except in cases provided for in the provisions of articles 308, 309, 313, 314, 319, and 320 of this Code, any person regularly summoned who does not appear on the day and at the time set by the summons is judged by default. Art.377. The judgment pronounced by default is notified by an act of a bailiff or enforcement agent, in accordance with the provisions of this Code. The default judgment may also be notified following a report drawn up by a Judicial Police Officer. Sub-section 2 On opposition Art.378. If the defendant opposes its execution, the default judgment is null and void in all its provisions, except concerning the execution of the arrest warrant which remains enforceable. The defendant may, however, limit their opposition to the civil provisions of the judgment. Art.379. The opposition is notified by all means to the Public Prosecutor, with the latter being responsible for informing the civil party. In the case where the opposition is limited to the civil provisions of the judgment, the defendant must send the notification to both the civil party and the Public Prosecutor. Art.380. If the notification of the judgment has been made to the person of the defendant, the opposition must be made within the following deadlines which run from this notification: ten days if the defendant resides in the territory of the Gabonese Republic; two months in other cases. Art.381. The civilly responsible party and the civil party may oppose any default judgment rendered against them, within the deadlines set in article 380 above, which run from the notification of the judgment. Art.382. As soon as the opposition is notified to it, the Public Prosecutor must issue new summonses to appear to the opponent and the other parties within eight days from the notification. Sub-section 3 On iterative default Art.383. The opposition is null and void if the opponent does not appear on the date set for them by the new summons.

 Art.384. In all cases, the costs of serving the judgment by default and of opposition may be borne by the opposing party. Sub-section 4 On the appearance for a plea of guilty Art.385. For all offenses, except for press offenses, of involuntary manslaughter, of voluntary and involuntary attacks on the integrity of persons, of sexual aggressions and offenses falling under the jurisdiction of specialized criminal courts, the Public Prosecutor may, either ex officio or at the request of the interested party or their lawyer, resort to the procedure of appearance for a plea of guilty as provided for in this Code with respect to any person summoned for this purpose or brought before him, when that person acknowledges the facts attributed to them. Art.386. When, in the presence of their lawyer, the person accepts the penalty or penalties proposed by the Prosecutor, they are immediately presented before the President of the Court of First Instance or the judge delegated by him within a period of one month or less. The President or the judge delegated by him hears the person and their lawyer. After verifying the reality of the facts and their legal qualification, he may decide to homologate the penalties proposed by the Public Prosecutor. He

rules the same day by reasoned order on the acknowledgment of the facts, on the acceptance of the penalty or penalties proposed by the Public Prosecutor, and on the finding that these penalties are justified in light of the circumstances of the offense and the personality of its author. The procedure for appearance provided for in this article takes place in a public hearing. The order has the effects of a conviction judgment and is immediately enforceable. When the homologated penalty is a firm prison sentence, the person is immediately incarcerated. The conviction order is subject to appeal. When the person declares that they do not accept the proposed penalty or penalties, or when the President or his delegate issues an order of refusal to homologate, the Public Prosecutor refers the matter to the correctional court or requests the opening of an investigation. Art.387.□ When the victim of the offense is identified, they are informed without delay, by any means, of this procedure. They are invited to appear at the same time as the perpetrator before the President of the Court or the judge delegated by him and to seek compensation for their damages. They may appeal, under the same conditions as the perpetrator, against the order issued.

 Chapter 2 □ On the Court of Appeal Section 1 □ On the exercise of the right of appeal Art.388.□ In contraventional matter, the judgments pronouncing a sentence of imprisonment or a fine exceeding 5,000 FCFA may be appealed. Judgments rendered in correctional matters may be challenged by way of appeal. However, an appeal cannot be raised against a judgment before it is decided unless it is made at the same time as the appeal against the judgment on the merits. Judgments rendered in cases where public agents are involved in the prosecution are subject to appeal, at the request of all parties. Art.389.□ In cases where the law does not allow for an appeal, the court clerk is required, within twenty-four hours, to draw up a report of the refusal of admissibility of the request. The parties are allowed to file an appeal against the clerk's refusal, within forty-eight hours, before the President of the court. The latter rules by reasoned order subject to appeal. Art.390.□ The appeal is brought before the Court of Appeal. The right to appeal belongs to: □□ the accused; □□ the civilly liable party; □□ the civil party, even in the case of acquittal and failing that to any other appellant, regarding their civil interests only; □□ the insurer regarding their interests only; □□ the Public Prosecutor; □□ the administrations, in cases where they participate in the exercise of public action; □□ the Attorney General at the Court of Appeal. The victim of the offense as well as the civilly liable party and the insurer always have the right to appeal, even if they were not called in the first instance. Art.391.□ The appeal must be lodged within ten days from the pronouncement of the contradictory judgment and in other cases, from the notification of the decision, regardless of the mode. However, the appeal period only begins from the notification of the decision:

 □□ for the civil party who, after contradictory debate, was not present or represented at the hearing where the decision was pronounced for not having been informed of the date of the deliberation; □□ for the accused who, after contradictory debate, was not present or represented at the hearing where the decision was pronounced for not having been informed of the date of the deliberation; □□ for the accused or the civil party who did not appear. Art.392.□ If the decision was rendered by default or by iterative default, the appeal period only begins from the notification made to the person, at home, at the town hall or at the public prosecutor's office. However, if the notification was not made to the person and it does not result from any act that the accused was aware of the judgment, the appeal period is ten days if the accused resides in the national territory, and two months if they reside outside the national territory. Art.393.□ In the event of an appeal by

one party within the above deadlines, the other parties have an additional period of five days to appeal. Art.394. An appeal against a decision of the court ruling on a request for provisional release, in accordance with the provisions of this Code, must be lodged within twenty-four hours. The accused is kept in detention until the appeal of the Public Prosecutor is ruled upon and, in all cases, until the expiration of the appeal period. The Court of Appeal must rule within two months following the declaration of appeal, failing which the accused is released by the Public Prosecutor, if they are not detained for another reason. If the request for automatic release is presented at the hearing of the correctional chamber or if it finds that the above deadline has been exceeded, it refers the Public Prosecutor to comply with the provisions of the preceding paragraph. Art.395. The appeal is formed at the registry of the court that rendered the decision, by a declaration signed by the clerk and the appellant themselves, or by any person they have mandated for this purpose or by a lawyer who must justify that they act on behalf of the appellant. It can be made by registered letter with a certain date and signature addressed to the clerk of the jurisdiction. The clerk draws up a report of receipt of the appeal. The clerk sends to the Public Prosecutor at the court that ruled a copy of this report, to which he attaches the original of the registered letter if applicable. The declaration of appeal is recorded in a special register. The parties may obtain a copy of it.

 Art.396. When the appellant is detained, they may also appeal by letter which they submit to the prison director. The latter issues a receipt to them and certifies on the letter the date of submission. This document is immediately transmitted to the registry of the court that rendered the contested decision. The clerk transcribes the appeal in the special register provided for in the previous article and attaches the act he has drawn up. Art.397. A request containing the grounds for appeal may be submitted within the deadlines provided for the declaration of appeal to the registry of the court by the appellant or their counsel. It is attached to the case file. Art.398. The Attorney General files his appeal at the registry of the Court. This appeal must be notified to the accused. The appeal period for the Attorney General is two months from the pronouncement of the decision. In the event of an appeal by one of the parties, this period runs from the day of receipt of the case file at the Attorney General's Office. Art.399. During the appeal periods, except for the period provided for in the previous article and during the appeal proceedings, the execution of the judgment is suspended, subject to the provisions of this Code. Art.400. The case file must be transmitted by the Public Prosecutor to the Attorney General within one month of the first instance decision. The case is assigned to the Court of Appeal within the limits set by the appeal act and by the quality of the appellant, in accordance with the provisions of articles 389 and 396 of this Code. If the convicted person is detained, the Court of Appeal must rule within two months of the declaration of appeal, failing which the accused is provisionally released by order of the Public Prosecutor. Section 2 On the composition of the correctional chamber of the Court of Appeal Art.401. The Judicial Court of Appeal ruling in contraventional matters as well as in correctional matters is called the correctional chamber. It is composed of a chamber president and two or more advisors. The functions of the Public Prosecutor are exercised by the Attorney General, one of his deputies or one of his substitutes; those of the registry are exercised by the Chief Clerk, one of his deputies or a clerk of the Court of Appeal.

 Art.402. The number of correctional hearings is determined, after consultation with the general assembly, by the Chief Justice of the Court of Appeal for the judicial year. It may be modified under the same conditions during the year, according to the needs of the service. Section 3 Procedure before the

correctional chamber of the Court of Appeal Art.403. The procedural rules established for the correctional court are applicable before the correctional chamber of the Judicial Court of Appeal, subject to the provisions below. Art.404. Defendants who are not in detention at the penitentiary institution of the Court of Appeal's seat, whether they are appellants or respondents, are judged based on documents, unless the Court deems their presence necessary. They are notified of the hearing date at least fifteen days in advance and have the option to be represented by a lawyer or to submit a brief. The ruling, deemed contradictory against them, is notified to them in all cases. Art.405. The appeal is judged at the hearing based on the report of a Counselor. The present defendant is questioned. The parties summoned to appear may defend themselves or be represented by counsel. They may plead based on a brief if they are not domiciled at the Court's seat. Witnesses are only heard if the Court has ordered their appearance. The appealing parties are heard before the responding parties. If there are multiple appellants or respondents, they are heard in the order set by the President. The defendant or their counsel always has the last word. Art.406. The provisions of this Code regarding the procedure before the correctional court are applicable before the correctional chamber of the Court of Appeal. Art.407. If the Court deems the appeal to be late or irregular, the appeal is declared inadmissible. If it finds that the appeal, although admissible, is unfounded, it confirms the contested judgment. If the appellant, although regularly summoned, does not appear and does not submit a brief, the Court confirms the judgment.

 In all cases, the Court condemns the unsuccessful appellant to costs, unless the appeal comes from the Public Prosecutor. The costs are then borne by the public treasury. Art.408. The Court may, upon the appeal of the Public Prosecutor, either confirm the judgment or overturn it in whole or in part. Art.409. On the sole appeal of the civil party, the civilly responsible party, or the insurer of the defendant, the Court cannot modify the judgment in a manner adverse to them. The civil party that has already asserted its rights before the Court of First Instance cannot, in the appeal, make any new request. However, it may request an increase in damages for the harm suffered since the first instance decision. When the civil party is the appellant under the provisions of this Code, even if it was not summoned in the first instance, it may request the Court of Appeal either to refer the examination of its interests to the Court of First Instance or to rule directly on its action by way of evocation. The civilly responsible party and the insurer appealing in the circumstances provided for in the same article have the same choice. Art.410. If the Court of Appeal imposes a prison sentence, it issues a warrant for deposit or arrest against the defendant. These warrants take effect notwithstanding an appeal to the Supreme Court. Art.411. If the judgment is reformed on the grounds that the Court finds there is no crime, no offense, or no contravention, or that the fact is not established or not attributable to the defendant, it dismisses the defendant from prosecution. Art.412. If the acquitted defendant requests damages, their request is examined directly before the Court of Appeal in the forms provided by the provisions of this Code. Art.413. If the judgment is annulled on the grounds that the fact is of a nature to entail a criminal penalty, the Court of Appeal declares itself incompetent. It refers the Public Prosecutor to take further action. It may, after hearing the Public Prosecutor, issue a warrant for deposit or arrest against the defendant by the same decision. Art.414. If the judgment is annulled for violation or unremedied omission of the formalities prescribed by law under penalty of nullity, the Court hears and rules on the merits. Art.415. In matters of default, the provisions of this Code are applicable before the Court of Appeal.

 Title 3 Various Provisions

Chapter 1 Citations and Notifications Art.416. Citations and notifications, unless otherwise provided by laws and regulations, are made by the act of a bailiff or enforcement officer. Notifications are made by administrative means. The bailiff or enforcement officer cannot act for themselves, for their spouse, for their parents and relatives and those of their spouse, in direct line, nor for their collateral relatives, up to the degree of cousin included. The citation or notification act contains the designation of the applicant, the date, the names, first names, and address of the bailiff or enforcement officer as well as the names, first names, profession, and address of the recipient. The person receiving a copy of the act signs the original. If they do not want to or cannot sign, this is noted by the bailiff or enforcement officer. Art.417. The citation act is delivered at the request of the Public Prosecutor, the civil party, or any administration legally authorized to do so. The bailiff or enforcement officer must comply without delay with their request. The act states the fact pursued and cites the legal text that punishes it. It indicates the court seized, the place, time, and date of the hearing and specifies the status of the defendant, the civilly responsible party, or the witness of the person cited. If it is delivered to a witness, the act must also mention that non-appearance, refusal to testify, and false testimony are punishable by law. Art.418. The period between the day the citation act is delivered and the day set for the appearance before the court is at least eight clear days if the cited party resides in the city where the court is located. Art.419. If the cited party does not reside in the city where the court is located, this period is one month. When the cited party is domiciled in the Republic of Congo, the Republic of Cameroon, the Republic of Equatorial Guinea, the Republic of Chad, the Central African Republic, the Democratic Republic of the Congo, the Republic of São Tomé and Príncipe, or the Republic of Angola, this period is two months. When the cited party is domiciled in another African country or in France, this period is three months.

 When the cited party is domiciled in Europe, except for France, or in any other country in the world, the period is four months. Art.420. If the deadlines prescribed in the above articles have not been respected, the following rules apply: The citation is declared null by the court if the cited party does not appear; The citation is not declared null, but the court, at the request of the cited party, orders the postponement to a later hearing if the cited party has appeared. This request must be made before any defense on the merits in accordance with the provisions of this Code. Art.421. The notification of decisions, in cases where it is necessary, is made at the request of the Public Prosecutor or any other interested party. Art.422. The bailiff or enforcement officer must make all efforts to deliver their act to the person concerned and provide them with a copy. If the person to be cited is absent from their home, a copy of the act is delivered against acknowledgment to a relative, ally, employee, or a person residing at that home or to a neighbor. The bailiff or enforcement officer indicates in the act the status declared by the person to whom this delivery is made. Art.423. If the bailiff or enforcement officer finds no one at the recipient's home, they immediately verify the accuracy of the address. When the indicated address is indeed that of the interested party, the bailiff or enforcement officer notes in the act their efforts and observations, then delivers a copy of this act to the mayor, or failing that, to the head of the administrative district or the village chief. Art.424. If the person to be cited has no known home or residence, the bailiff or enforcement officer delivers a copy of the act to the public prosecutor of the court seized. Art.425. When the act has not been delivered to anyone, a Judicial Police Officer may be requested by the Public Prosecutor to conduct searches to locate the interested party. In case of discovery, the Judicial Police Officer informs the searched person of the act, which then produces the same effects as if it had been delivered to anyone. Art.426. Persons living abroad are cited at the public prosecutor's office of the court seized, which cites the original. A copy of the act is sent to the General Prosecutor's Office.

 The Public Prosecutor's Office ensures the transmission of a copy of the document, either in application of judicial assistance agreements or through diplomatic channels. Art.427. In all cases, the bailiff or enforcement agent must mention on the original document and in the form of a report his efforts as well as the responses made to his various inquiries. The Public Prosecutor may instruct the bailiff or enforcement agent to conduct further searches if he deems the previous ones incomplete. The original document must be sent within twenty-four hours to the person at whose request it was issued. If the document was delivered to the Public Prosecutor, a copy of the document must also be attached to the original. Art.428. Bailiffs or enforcement agents are required to indicate at the bottom of the original and the copy of the document the cost thereof, under penalty of a civil fine of 2,000 to 10,000 FCFA; this fine is imposed by the President of the court seized of the case. Art.429. The nullity of the document can only be pronounced when it has had the effect of harming the interests of the person concerned, subject to the provisions of this Code regarding citation deadlines. Art.430. If a document is declared null due to the actions of the bailiff or enforcement agent, he may be ordered to pay the costs of the document and the annulled procedure and, possibly, damages to the party who has been harmed. The court that declares the nullity has jurisdiction to impose these penalties. Chapter 2 On Nullities Art.431. Except for nullities that directly affect individual freedom, no cause for nullity may be admitted unless it is expressly provided for by law, raised by the parties, and of a nature to have harmed the party raising it. All grounds for nullity against the same act must be raised jointly. These provisions apply to all acts of criminal procedure. Art.432. The trial courts, correctional court, correctional chamber of the Court of Appeal, and criminal court examine the regularity of the procedures submitted to them. The Court of Appeal hears all cases.

 If the criminal court discovers a cause for nullity that seriously harms the rights of the defense or constitutes a violation of fundamental rules of criminal law, it pronounces the nullity of the act that is tainted and, if necessary, of all or part of the subsequent procedure. After annulment of the act, it must refer the case file back to the same Investigating Judge or to another designated by it for the continuation of the investigation. Title 4 On Specialized Chambers of the Court of First Instance and the Court of Appeal Competent for Certain Offenses Art.433. Specialized chambers are established within the Court of First Instance of Libreville and the Court of Appeal of Libreville to hear the offenses listed in Article 435 below. Art.434. The organization, composition, and rules of operation of the specialized chambers of the Court of First Instance and the Court of Appeal of Libreville are set out in the organic law establishing the organization, composition, jurisdiction, and operation of the judicial order. Art.435. The following offenses fall under the exclusive jurisdiction of the aforementioned specialized chambers: Murder committed for the purpose of organ harvesting or any other element or product of the human body as provided in Article 355 of the Penal Code; Organ harvesting from a living person without authorization or medical justification and trafficking in human organs as provided in Article 356 of the Penal Code; Attacks on the fundamental interests of the Nation, the State, and public order as provided in Articles 174 to 193 of the Penal Code; Crimes and offenses constituting acts of terrorism as provided in Articles 194 to 211 of the Penal Code; Crimes of destruction, degradation, and deterioration of public or private property committed in an organized group as provided in Articles 479 to 485 of the Penal Code; Crimes related to counterfeiting as provided in Articles 230, 231, and 232 of the Penal Code; Crimes of genocide, crimes against humanity, and war crimes as provided in Articles 331 to 340 of the Penal Code; Aggravated

crimes and offenses of human trafficking as provided in Articles 341 to 349 of the Penal Code; Crimes and offenses of kidnapping and sequestration as provided in Article 395 of the Penal Code; Crimes of piracy of aircraft, ships, or other means of transport as well as fixed platforms as provided in Articles 396 and 397 of the Penal Code; Crimes and offenses against computerized data processing systems as provided in Articles 492 to 500 of the Penal Code;

  Crimes and offenses of extortion, passive corruption, passive influence trafficking, illegal taking of interests, favoritism, and embezzlement of public funds as provided in Articles 501 to 507, 510, and 511 of the Penal Code; Offenses of active corruption and active influence trafficking committed by an individual, as provided in Articles 508 to 510 of the Penal Code; Offenses of money laundering as provided in Articles 561 to 564 of the Penal Code; Crimes and offenses of ivory trafficking as provided in Articles 579 to 587 of the Penal Code; Crimes of organized poaching as provided in Articles 623 to 627 of the Penal Code; Crimes and offenses of illegal exploitation in organized groups of fishery resources as provided in Article 634 of the Penal Code; Crimes and offenses of trafficking in plant species in organized groups as provided in Articles 613 to 617 of the Penal Code; Crimes and offenses of drug trafficking and money laundering from drug trafficking as provided in Articles 597 to 603 of the Penal Code; Offenses of conspiracy as provided in Article 288 of the Penal Code when they involve one of the offenses mentioned in this article; Crimes of trafficking in raw materials and other mineral substances as provided in Articles 604 to 612 of the Penal Code. Art.436. The investigation, instruction, and judgment of cases falling under the jurisdiction of the aforementioned specialized chambers of the Court of First Instance or the Court of Appeal of Libreville are conducted according to the common law rules in criminal and tort matters, subject to the specific provisions set out in the following articles. Art.437. Judicial Police Officers, and under their authority, judicial police agents, after informing the Public Prosecutor at the Court of First Instance of Libreville or one of his specialized deputies and unless opposed by this magistrate, may extend surveillance to the entire national territory of persons suspected of having committed one of the crimes and offenses falling under the scope of Article 435 above or the surveillance of the transport of objects, goods, or products derived from the commission of these offenses or used to commit them. The Public Prosecutor at the Court of First Instance in whose jurisdiction the operations are likely to begin or take place is notified. Art.438. When the necessities of the investigation or instruction justify it, the Public Prosecutor at the Court of First Instance of Libreville or one of his specialized deputies or, after consultation with this magistrate, the specialized investigating judge seized, may authorize that an infiltration operation be carried out under their respective control. Infiltration consists of a police officer or authorized judicial police agent monitoring persons suspected of having committed a crime or offense, associating with them by posing as one of their co-authors, accomplices, or receivers. The officer or judicial police agent is authorized to use a false identity for this purpose. Infiltration is subject to a report that includes only the strictly necessary elements for the detection of the offenses and does not endanger the safety of the infiltrated agent. The real identity of the officer or judicial police agent who carried out the infiltration under a false identity must not appear at any stage of the procedure. The revelation of the identity of this officer or agent is punishable by imprisonment for up to five years. The Judicial Police Officer under whose responsibility the infiltration operation takes place may be heard solely as a witness regarding the operation. His hearing must not directly or indirectly reveal his true identity. Art.439. If the necessities of the investigation or instruction related to one of the offenses falling under the jurisdiction of the specialized court require it, the detention of a person may, exceptionally,

be subject to two additional extensions of forty-eight hours each. These extensions are authorized by a written and reasoned decision of the Public Prosecutor at the Court of First Instance of Libreville or by one of his specialized deputies. The detained person is examined by a doctor designated by the Public Prosecutor at this Court or one of his specialized deputies. The doctor issues a medical certificate in which he must notably express his opinion on the fitness for detention, which is added to the file. By way of derogation from the provisions of Articles 59 and 61 of this Code on detention, the right to inform family or relatives is suspended. Similarly, the intervention of a lawyer may be deferred due to compelling reasons related to the particular circumstances of the investigation or instruction, either to allow for the preservation of evidence or to prevent harm to individuals, for a maximum duration of forty-eight hours or, in the case of a crime or offense of drug trafficking or crimes and offenses constituting acts of terrorism, for a maximum duration of seventy-two hours. Art.440. If the necessities of the flagrant investigation require it, the Public Prosecutor at the Court of First Instance of Libreville or one of his specialized deputies may authorize that searches, home visits, and seizures of evidence be carried out outside the hours provided for in Article 53 of this Code.

 For the same needs of preliminary investigation, the same operations may be carried out outside the hours provided for in Article 53 of this Code, when these operations do not concern residential premises. Art.441. If the needs of the flagrant offense investigation or the preliminary investigation require it, the Prosecutor of the Republic near the Court of First Instance of Libreville or one of his specialized deputies may authorize the interception, the recording, and the transcription of correspondence sent by means of telecommunication for a maximum duration of two months, renewable once. Art.442. When the needs of information require it, the specialized Investigating Judge may, after consulting the Prosecutor of the Republic near the Court of First Instance of Libreville or one of his specialized deputies, authorize by reasoned order the officers and agents of the judicial police assigned on a commission rogatory to set up a technical device aimed at, without the consent of the interested parties, the capturing, fixing, transmitting, and recording of words spoken by one or more persons in a private or confidential capacity in places or any means of private or public transport, or the image of one or more persons located in a private place. These operations are carried out under the authority and control of the specialized Investigating Judge. In view of the implementation of the technical device, including outside the hours provided for in Article 53 of this Code, the special authorization of the specialized Investigating Judge lifts the legal restriction relating to the protection of private life and private residence. The fact that the operations provided for in this article reveal offenses other than those mentioned in the decision of the specialized Investigating Judge does not constitute a cause for nullity of the incidental procedures. Art.443. When the needs of information require it, the specialized Investigating Judge may, after consulting the Prosecutor of the Republic near the Court of First Instance of Libreville or one of his specialized deputies, authorize by reasoned order the officers and agents of the judicial police assigned on a commission rogatory to set up a technical device aimed at, without the consent of the interested parties, accessing, in all places, to computer data, recording, storing, and transmitting them, such as they appear on a screen for the user of an automated data processing system or as he inputs them by character entry. These operations are carried out under the authority and control of the specialized Investigating Judge. The recordings of computer data are placed under sealed custody. The specialized Investigating Judge or the Judicial Police Officer assigned by him describes or transcribes in a report that is added to the file, the data that are useful to the manifestation of the truth. No sequence relating to private life foreign to the offenses mentioned in the decision authorizing the measure may be retained in the file of the procedure.

www.droit-afrique.com Gabon Code of Criminal Procedure 84 The recordings of computer data are destroyed, at the request of the Prosecutor of the Republic near the Court of First Instance of Libreville or the Attorney General near the Court of Appeal, upon the expiration of the statute of limitations for public prosecution. A report of the destruction operation is drawn up. Art.444. The appearance before the special jurisdiction and the deadlines for citation are governed by the rules of common law. Art.445. The procedure for hearings and debates before the specialized formations of the Court of First Instance and the Court of Appeal, both in matters of offenses and in criminal matters, are governed by the provisions of common law. Title 5 Of exceptional criminal jurisdictions Section 1 Of the State Security Court Art.446. The jurisdiction, organization, and functioning of the State Security Court are established by law n°22/63 of May 31, 1963, creating the State Security Court. Section 2 Of the Armed Forces jurisdictions Art.447. The jurisdiction, organization, and functioning of the Military Special Court and the Prévôt Courts are established by law n°7/73 of December 20, 1973, bearing the Military Justice Code. Book 4 Of extraordinary remedies Title 1 Of the appeal in cassation Chapter 1 Of the decisions that can be challenged and the conditions of the appeal Art.448. The rulings of the indictment chamber as well as the rulings and judgments rendered in last resort in criminal, correctional, and simple police matters can be annulled in case of violation of the law, on appeal in cassation filed by the Public Prosecutor or by the party to whom it is prejudicial. The appeal is brought before the Court of Cassation.

www.droit-afrique.com Gabon Code of Criminal Procedure 85 Art.449. The Public Prosecutor and all parties have five clear days from the day the decision was rendered to file an appeal in cassation. However, the appeal period only runs from the notification of the decision: for the party who, present during the debates, was not present or represented at the hearing where the decision was pronounced or was not informed of the day the decision is rendered; for the accused who requested to be tried in his absence under the conditions provided for in Article 309 above; for the accused who did not appear in the case provided for in Article 308 above; for the accused who was tried under the conditions set out in Article 423 of this Code. Art.450. The appeal period against the rulings or judgments rendered by default does not run: for the accused, except from the day they are no longer subject to opposition; for the Public Prosecutor, only from the expiration of the ten-day period following the notification; for the civil party, only from the expiration of the deadlines set in Articles 391 and 392 of this Code. Art.451. The appeal in cassation is not suspensive. During the periods of the appeal in cassation, and if there has been an appeal, until the pronouncement of the ruling of the Court of Cassation, the execution of the ruling of the Judicial Court of Appeal is not suspended. Notwithstanding the appeal, the accused detained who has been acquitted or sentenced either to imprisonment with suspension or to a fine is released immediately after the ruling. It is the same for the detained accused whose sentence to a term of imprisonment is covered by the duration of detention. The same applies to the accused, sentenced to a term of imprisonment as soon as the duration of detention reaches that of the sentence pronounced. Art.452. When the court or the Judicial Court of Appeal rules by judgment or by ruling distinct from the decision on the merits, the appeal in cassation is immediately admissible if this decision ends the proceedings. Art.453. In all other cases, the appeal in cassation against judgments or rulings distinct from the judgment or ruling on the merits is only received after the final judgment or ruling on the merits. The procedure continues, notwithstanding the appeal declaration. Art.454. The acquittal rulings pronounced by the criminal court can only be appealed by the Public Prosecutor in the interest of the law. The acquitted party, however, retains the benefit of the

provisions of the ruling, notably regarding his release, until the appeal is decided.

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www.droit-afrique.com Gabon Code of Criminal Procedure 86 Art.455. However, the rulings pronounced by the criminal court after acquittal under the conditions provided for in this Code may be subject to an appeal in cassation by the parties to whom they are prejudicial. The same applies to the rulings deciding on restitutions, in accordance with Article 254 of this Code. Art.456. The ruling of the indictment chamber ordering the referral of the accused to the correctional court can only be appealed in cassation when it rules on a question of jurisdiction or presents definitive provisions that the court, seized of the prevention, does not have the power to modify. Art.457. The Public Prosecutor may appeal against the non-lieu rulings rendered by the indictment chamber. Art.458. The civil party cannot appeal in cassation against the rulings of the indictment chamber unless there is an appeal by the Public Prosecutor. The appeal of the civil party is admissible when the indictment chamber has rendered: an order of non-lieu to inform; an order declaring the civil party's action inadmissible; an order declaring the public action prescribed; an order pronouncing incompetence; an order that has failed to rule on a count of indictment. Chapter 2 Of the forms of the appeal Art.459. The declaration of appeal is made at the registry of the jurisdiction that has rendered the challenged decision or at the registry of the jurisdiction of residence of the appellant in cassation. The declaration of appeal is recorded in a special register. Any interested person may obtain a copy. It must be signed by the clerk and the appellant in cassation himself, by a lawyer, or by any person mandated for this purpose. The mandate is attached to the act drawn up by the clerk. If the declarant cannot sign, the clerk notes this in the register provided for in the second paragraph above. In the case where the appeal is received at the registry of the jurisdiction of residence of the appellant, the clerk who has drawn up the act transmits it without delay to the registry of the jurisdiction that has ruled as well as, if applicable, the amount of the security provided for in Article 462 below, less the shipping costs. Art.460. When the appellant in cassation is detained, the appeal may be made by a declaration to the person in charge of the penitentiary establishment.

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www.droit-afrique.com Gabon Code of Criminal Procedure 87 This declaration is recorded, dated, and signed by the head of the penitentiary institution and by the applicant. If the latter cannot sign, this is noted by the head of the penitentiary institution. This document is sent without delay, in original and copy, to the registry of the court that made the contested decision. It is transcribed in the special register and attached to the act drawn up by the clerk. Art.461. Under penalty of a civil fine of 5,000 FCFA imposed by the court of cassation, the clerk of the court that ruled notifies the appeal within three days to the Public Prosecutor as well as to the other parties. The party who has not received notification has the right to oppose the ruling made in cassation if they did not intervene in the instance. Art.462. Under penalty of forfeiture, the applicant in cassation is required, within one month from the declaration of the appeal, to deposit with the registry of the court receiving the appeal a sum of 30,000 FCFA. The clerk who receives the deposit is required to transfer it to the Public Treasury. Exempt from deposit are: the Public Prosecutor; the State Judicial Agency; public administrations and organizations; authorized agents of the administrations for matters directly concerning them; persons who attach to their request a certificate of non-taxation or who are admitted to benefit from legal aid; minors under eighteen years of age; those convicted of a criminal sentence. Art.463. The applicant in cassation, either when making their declaration or within the following thirty days, must file with the registry of the court that made the contested decision a memorandum signed by them or their counsel, containing their grounds for cassation, accompanied by as many

copies as there are parties involved. The clerk acknowledges receipt and provides them with a copy. Art.464. Under penalty of a civil fine of 5,000 FCFA imposed by the court of cassation, the clerk of the court that made the contested decision must, within a maximum period of forty days from the declaration of the appeal, number and initial the documents in the file, to which is attached a copy of the contested decision and, if applicable, the applicant's memorandum and the receipt from the authorized body for receiving the deposit. In any case, the clerk of the court that made the contested decision prepares an inventory.

 Art.465. When the file is ready, the clerk sends it to the Public Prosecutor of the court that ruled. The latter immediately forwards it to the Attorney General at the Court of Cassation. The file is then registered at the General Prosecutor's Office in a special register. Art.466. When the applicant in cassation has not produced a memorandum, under the conditions set out in Article 463 above, the Attorney General at the Court of Cassation sets a one-month deadline for the applicant to produce their memorandum containing their grounds for cassation and accompanied by as many copies as there are parties involved. Art.467. If the applicant in cassation has not produced a memorandum within the deadline set in Article 466 above, the Attorney General takes written requisitions for the forfeiture of the appeal and sends the file to the registry of the Court of Cassation. Art.468. As soon as the memorandum presented by the applicant in cassation is received by the Attorney General, the latter sends a copy to the other parties involved. They have a period of two months to respond. Art.469. As soon as the supplementary and responsive memoranda are filed at the General Prosecutor's Office at the Court of Cassation, the latter takes written requisitions and sends the file in order to the registry. Chapter 3 Cases of opening to cassation Art.470. The rulings of the indictment chamber as well as the rulings and judgments rendered in last resort in criminal, correctional, and simple police matters, when they are in the forms prescribed by law, can only be overturned for violation of the law. Art.471. The following decisions are declared null: those not rendered by the number of judges set by law; those rendered by judges who did not attend all the hearings of the case; those rendered without the Public Prosecutor having been heard; those, subject to exceptions provided by law, that were not rendered or whose debates did not take place in public hearing. When several hearings have been dedicated to the same case, the judges who contributed to the decision are presumed to have attended all these hearings. Art.472. The rulings of the indictment chamber as well as the rulings and judgments rendered in last resort are annulled when: they do not contain reasons; their reasons are insufficient; there is a contradiction between the reasons;

  there is a contradiction between the reasons and the operative part; there has been an omission or refusal to rule either on one or more requests from the parties, or on one or more requisitions from the Public Prosecutor; they do not allow the Court of Cassation to exercise its control and verify whether the law has been respected in the operative part. Art.473. In criminal matters, the ruling of referral from the indictment chamber that has become definitive fixes the jurisdiction of the criminal court and covers, if any, the defects of the previous procedure. When the indictment chamber is seized of an investigation procedure, any means taken for the nullity of the information must be raised before the end of the examination of the file. Art.474. In criminal matters, and in the case where the accused has been convicted, if the ruling has pronounced a penalty other than that applied by law to the nature of the crime, the annulment of the ruling may be pursued both by the Public Prosecutor and by the convicted party. The same action belongs to the Public Prosecutor against acquittal rulings rendered in absentia when the

decision was made based on a penal law that was not in force. Art.475. When the penalty pronounced is in accordance with the provisions of the law, the annulment of the ruling cannot be pursued solely on the basis of an error in the citation of the applied text. Art.476. In correctional matters, the defendant is not admissible to present as a ground for cassation the nullities committed in first instance, if they did not oppose them before the Court of Appeal, except for the nullity for lack of jurisdiction, when there has been an appeal by the Public Prosecutor. Art.477. No one can, in any case, invoke against the prosecuted party the violation or omission of the rules established to ensure their defense. Chapter 4 Rulings rendered by the Court of Cassation Art.478. The rules concerning publicity, order, and discipline of hearings must be observed before the Court of Cassation. A counselor presents the report of the case. The parties or their lawyers are heard in their observations, and if necessary, on their memoranda. The Public Prosecutor briefly presents the written requisitions he has taken in the file.

 Art.479. The Court of Cassation, in any criminal, correctional, or simple police matter, may rule on the appeal as soon as a period of ten days has expired from the receipt of the file at the registry. It must rule as a priority and in any case before the expiration of a period of three months from the receipt of the file when the appeal is made against a ruling of referral before the criminal court. The rulings of the Court of Cassation mention the names and surnames of the President, the reporting judge, the counselors, the Attorney General, as well as the names, surnames, profession, and domicile of the parties and the grounds produced. Art.480. The Court of Cassation, before ruling on the merits, examines whether the appeal has been regularly formed. If it finds that the legal conditions are not met, it renders, depending on the case, a ruling of inadmissibility or a ruling of forfeiture. It condemns, if applicable, the applicant to costs. Art.481. The Court of Cassation renders a ruling of no jurisdiction if the appeal has become moot. If the applicant in cassation withdraws their appeal, it acknowledges their withdrawal. Unless an exception provided by law, the applicant is condemned to costs. Art.482. When the appeal is admissible, the Court of Cassation, if it finds it unfounded, renders a ruling of rejection and condemns the applicant to costs. Art.483. When the Court of Cassation annuls a ruling or judgment rendered in correctional or simple police matters, it refers the case and the parties before a Court of Appeal or a tribunal of the same degree as the court that rendered the contested ruling or judgment or before the same court otherwise composed. If the ruling and the procedure are annulled for lack of jurisdiction, the Court of Cassation refers the case to the competent jurisdiction it designates. Art.484. When the Court of Cassation annuls a ruling rendered in criminal matters, it orders the referral of the case as follows: before the indictment chamber of another Court of Appeal, if the ruling is annulled for one of the causes provided for in Articles 471 and 472 of this Code; before a criminal court sitting in another Court of Appeal, if the ruling is annulled for reasons of nullity committed by the criminal court. Art.485. If the ruling has been annulled for pronouncing a penalty other than that applied by law to the nature of the crime, the criminal court to which the case has been referred rules on the penalty based on the declaration of guilt made by the first criminal court.

 If the ruling has been annulled for another reason, new debates are held before the criminal court to which the trial has been referred. The Court of Cassation only annuls part of the contested ruling when the nullity does not invalidate only one or a few of its provisions. Art.486. The accused whose conviction has been annulled is brought before the referring criminal court, either in custody or in execution of

the order for taking into custody. When the ruling has been annulled, the amount deposited in accordance with Article 462 above is returned without delay, regardless of the terms of the cassation ruling and even if it has omitted to order the restitution. Art.487. The civil party that loses its appeal is fined 10,000 FCFA and is liable for costs towards the acquitted or referred party. Art.488. A copy of the ruling that received the appeal, annulled the decision, and ordered the referral to a new jurisdiction is sent, within eight days, by the registry with the file to the Attorney General at the Court of Cassation. The Court of Cassation, after sending the copy of the ruling to the Public Prosecutor at the jurisdiction that rendered the annulled decision, forwards the file to the Public Prosecutor at the referring jurisdiction. The latter, upon receipt, notifies the ruling of the Court of Cassation to the parties. Art.489. A copy of the ruling that rejected the cassation request is delivered within eight days by the registry to the Attorney General at the Court of Cassation. He notifies it to the parties and informs the Public Prosecutor at the jurisdiction that rendered the contested decision. When a cassation appeal has been rejected, the party that filed it can no longer appeal in cassation against the same ruling or judgment. Art.490. When, after the cassation of a first ruling or judgment rendered in last resort, the second ruling or judgment rendered in the same case between the same parties is contested by the same means, the First President of the Court of Cassation refers the matter to the Plenary Assembly by order of referral. A counselor sitting in the Plenary Assembly and not belonging to the section that ruled on the first appeal is responsible for the report. If the second ruling or judgment is subject to cassation for the same reasons as the first, the Plenary Assembly may, if the findings and assessments it contains allow it, rule without referral, except when it comes to pronouncing on a public action.

 When the referral is ordered, the seized jurisdiction must comply with the decision of the joined chambers on the points of law judged by this assembly. Chapter 5 Of the appeal in the interest of the law Art.491. When, upon the formal order given to him by the Minister in charge of Justice, the Attorney General at the Court of Cassation denounces to it judicial acts, rulings, or judgments contrary to the law, these acts, rulings, and judgments may be annulled. Art.492. When a ruling or judgment has been rendered by a Judicial Court of Appeal, a criminal court, or a correctional or police tribunal in last resort, subject to cassation and against which none of the parties has appealed within the determined time, the Attorney General at the Court of Cassation may, ex officio and notwithstanding the expiration of the time, appeal, but solely in the interest of the law, against said ruling or judgment. The Court of Cassation rules on the admissibility and merits of this appeal. If the appeal is accepted, the cassation is pronounced, without the parties being able to invoke it and oppose the execution of the annulled decision. Title 2 Of requests for revision Art.493. The revision of a final criminal decision may be requested for the benefit of any person recognized as the author of a crime or offense: when, after a conviction for homicide, evidence is presented that creates sufficient indications regarding the existence of the alleged homicide victim; when, after a conviction for a crime or offense, a new ruling or judgment has convicted another accused or defendant for the same act and that, the two convictions cannot be reconciled, their contradiction is the evidence of one or the other convicted person's innocence; when one of the witnesses heard has been, after the conviction, prosecuted and convicted for false testimony against the accused or defendant; the witness thus convicted cannot be heard in the new debates; when, after a conviction, a new fact or an element unknown to the jurisdiction at the time of the trial occurs or is revealed, likely to create doubt about the guilt of the convicted person or when unknown documents to the jurisdiction during the debates and likely to establish the innocence of the convicted person are presented. Art.494. The right to request a revision belongs in the first three cases of Article 493 above:

 □□ to the Minister in charge of Justice; □□ to the convicted person, or in case of incapacity, to his legal representative; □□ after the death or declared absence of the convicted person, to his spouse, his children, his parents, his universal legatees, his legatees by universal title, or those who have received an express mandate from him. The Court of Cassation is seized by the Attorney General by virtue of the express order that the Minister in charge of Justice has given either ex officio or upon the request of the parties. In the fourth case referred to in Article 493 above, the right to request a revision belongs solely to the Minister in charge of Justice, who decides after having conducted all necessary investigations and verifications and after consulting the Court of Appeal assembled in a general assembly of magistrates. If the request for revision seems to him to be admissible, the Minister forwards the file of the procedure to the Attorney General at the Court of Cassation. Art.495.□ If the ruling or judgment of conviction has not been executed, its execution is suspended by operation of law from the moment the request is made by the Minister in charge of Justice to the Attorney General at the Court of Cassation. Before the Court of Cassation is seized by the Attorney General at said jurisdiction, if the convicted person is in detention, execution may be suspended by order of the Minister in charge of Justice. From the moment the Court of Cassation is seized, the suspension of detention may be pronounced by ruling of the Court of Cassation. Art.496.□ If the case is not ready, the Court of Cassation rules on the admissibility of the request in form and proceeds directly or by rogatory commission to all investigations on the merits, confrontations, identity recognitions, and means to bring the truth to light. When the case is ready, the Court examines it on the merits. It rejects the request if it considers it unfounded. If, on the contrary, it considers it well-founded, it annuls the conviction pronounced. It apprises whether it is possible to proceed o new contradictory debates. If so, it refers the accused or defendants before a jurisdiction of the same order and same degree, but different from that which issued the annulled decision. If it is impossible to proceed to new debates, notably in cases of death, dementia, failure of one or more convicted persons, criminal irresponsibility or excuse, in cases of prescription of public action or penalty, the Court of Cassation, after having expressly established it, rules on the merits in the presence of the civil parties if any in the trial and of the curators appointed by it in memory of the deceased.

 In this case, it annuls those convictions that it considers unjustified and discharges, if applicable, the memory of the deceased. If the impossibility of proceeding to new debates only becomes apparent after the ruling of the Court of Cassation annulling the ruling or judgment of conviction and ordering the referral, the Court of Cassation, upon requisitions from the Attorney General, revokes the designation made by it of the referring jurisdiction and rules as stated in the previous paragraph. If the annulment of the judgment or ruling concerning a living convicted person leaves nothing remaining to his charge that can be qualified as a crime or offense, no referral is pronounced. Art.497.□ The decision resulting in the innocence of a convicted person may, at his request, award him damages due to the harm caused by the conviction. If the victim of the judicial error has died, the right to request damages belongs, under the same conditions, to his spouse, his ascendants, and descendants. The right to request damages belongs to relatives of a more distant degree as far as they prove material harm resulting from the conviction. The request is admissible at any stage of the revision procedure. The damages awarded are charged to the State, except for its recourse against the civil party, the denouncer, or the false witness due to whose fault the conviction was pronounced. They are paid from criminal justice costs. If the definitive ruling or judgment of revision pronounces a conviction, the decision places the costs

on the convicted person or, if applicable, on the applicants for revision, for the costs that the State may claim reimbursement for. Art.498. The applicant for revision who loses in his instance is condemned to all costs. The ruling or judgment of revision resulting in the innocence of a convicted person is posted in the city where the conviction was pronounced, in the one where the revision jurisdiction sits, in the municipality or administrative district head of the place where the crime or offense was committed, in that of the domicile of the victim of the judicial error, if she has died. It is inserted ex officio in the Official Journal and its publication in a legal announcement newspaper is also ordered, if requested. The costs of the publicity provided above are charged to the public treasury.

 Book 5 - Of some particular procedures Title 1 - Of forgery Art.499.- When it is brought to the attention of the Public Prosecutor that a piece alleged to be forged is in a public deposit or has been established in a public deposit, the Public Prosecutor may go to this deposit to carry out all necessary examinations and verifications. The Public Prosecutor may, in case of urgency, order the transport to the registry of the suspected documents. Art.500.- In any information for forgery in writing, the Investigating Judge, as soon as the piece alleged to be forged has been produced before him or has been placed under the hand of justice, orders its deposit in the registry. He signs it along with the clerk, who draws up a descriptive report of the state of the piece handed over. Before the deposit in the registry, the Investigating Judge may also order that the piece be reproduced by photocopy or by any other means and included in the case file. Art.501.- The Investigating Judge may have all comparison pieces handed over to him by whoever it may concern. These will be signed by him and by the clerk who deposits them in the registry as stated in article 500 above. Art.502.- Any public custodian of pieces alleged to be forged or having served to establish forgeries is required, upon order of the Investigating Judge, to hand them over to him and to provide, if necessary, the comparison pieces that are in his possession. If the pieces thus handed over by a public officer or seized from him have the character of authentic acts, he may request that a certified copy be left to him by the clerk or a reproduction by photocopy or by any other means. The said copy or reproduction is placed among the minutes of the office until the original piece is returned. Art.503.- The remainder of the investigation on forgery is conducted as for other crimes and offenses. Art.504.- If during a hearing of a court or tribunal, a piece of the procedure or a piece produced is alleged to be forged, the jurisdiction decides, after having received the observations of the Public Ministry and the parties, whether or not to stay proceedings until a ruling has been made on the forgery by the competent jurisdiction.

 If the public action is extinguished or cannot be exercised due to forgery, and if it does not appear that the one who produced the piece knowingly used a forgery, the tribunal or the Court seized of the main action rules incidentally on the nature of the piece tainted by forgery. Title 2 - Of the procedure in case of disappearance of pieces of a procedure Art.505.- When, due to an extraordinary cause, minutes of judgments or judgments not yet executed, or ongoing procedures and their copies have been destroyed, removed or are lost, and it has not been possible to restore them, the procedure is carried out in accordance with the provisions of this title. Art.506.- If there exists an authentic copy or expedition of the piece, it is considered as a minute and handed over by its custodian to the registry of the jurisdiction that rendered the decision on the order given to him by the President of that jurisdiction. This order serves as a discharge. Art.507.- When there is no longer an expedition or authentic copy of the judgment or ruling, a new judgment or ruling is

pronounced based on the mentions in the hearing record. Art.508.- When the mentions in the hearing record are insufficient or can no longer be represented, the investigation is restarted from the point where the pieces are missing. Title 3 - Of the depositions of members of the Government and of representatives of foreign powers Art.509.- The Prime Minister and other members of the Government can only appear as witnesses after authorization from the Council of Ministers, based on the report of the Minister in charge of Justice. This authorization is given by decree. Art.510.- When the appearance takes place under the authorization provided in article 509 above, the deposition is received in the ordinary forms. Art.511.- When the appearance has not been requested or authorized, the deposition is received in writing at the witness's residence by the First President of the Court of Appeal or by the magistrate he delegates. If the witness resides outside the seat of the Court of Appeal, the deposition is received in writing by the President of the court of his residence.

 For this purpose, a report of the facts as well as a list of requests and questions on which the testimony is required is sent by the jurisdiction seized of the case to the above-mentioned magistrate. Art.512.- The deposition thus received is immediately handed over to the registry or sent, sealed and stamped, to that of the requesting jurisdiction and communicated without delay to the Public Ministry as well as to the interested parties. At the criminal court, it is read publicly and submitted to debate. Art.513.- The written deposition of a representative of a foreign power is requested through the Ministry in charge of Foreign Affairs. If the request is granted, this deposition is received by the First President of the Court of Appeal or by the magistrate he delegates. It is then processed in the same manner as provided in articles 511 and 512 above. Title 4 - Of the regulations of Judges Art.514.- When two Investigating Judges belonging to two different courts are simultaneously seized of the same offense, the most diligent Public Ministry must, in the interest of good administration of Justice, request one of the Judges to withdraw in favor of the other. The withdrawal only takes place if both Judges agree. If the conflict of competence persists, it is resolved by Judges in accordance with articles 515 to 519 below. If the Investigating Judges belong to the same court, it is processed as stated in article 97 of this Code. Art.515.- When two correctional courts or two Investigating Judges belonging to the same Court of Appeal district are simultaneously seized of the same offense, it is resolved by the chamber of accusations which rules on a request presented by the Public Ministry, the accused or the civil party. This decision is not subject to an appeal in cassation. Art.516.- When, after referral ordered by the Investigating Judge to the correctional court, the latter has declared itself incompetent by a decision that has become final, it is resolved by the chamber of accusations. This decision is not subject to an appeal in cassation. Art.517.- Except for the cases provided for in articles 514 and 515 above, any conflict of competence is brought before the Court of Cassation seized by request from the Public Ministry, the accused or the civil party.

 Art.518.- The request for regulation of judges is notified to all interested parties who have a period of thirty days to submit a memorandum to the registry of the jurisdiction charged with regulating judges. The presentation of the request has no suspensive effect, unless otherwise ordered by the jurisdiction charged with regulating judges. This jurisdiction may prescribe the submission of all useful procedures on all acts done by the jurisdiction it withdraws. Art.519.- The ruling that decides on a request for regulation of judges must be notified to the magistrate in charge of the Public Ministry near the court where the withdrawn Judge sits, to the accused, to the defendant and to the civil party, if there is one. Title 5 - Of the referrals from one court to another Art.520.-

In criminal or correctional matters, the Court of Cassation may withdraw any jurisdiction of instruction or judgment and refer the knowledge of the case to another jurisdiction of the same order: when the normally competent jurisdiction cannot be legally composed; when the course of justice is otherwise interrupted; when there is a challenge or legitimate suspicion. The request for referral may be presented by: the Attorney General near the Court of Cassation; the Public Ministry near the seized jurisdiction; the accused; the civil party. The request must be notified to all interested parties who have a period of thirty days to submit a memorandum to the registry of the Court of Cassation. The presentation of the request has no suspensive effect, unless otherwise ordered by the Court of Cassation. In case of rejection of a request for referral due to a challenge, the Court of Cassation may nevertheless order the referral in the interest of better administration of justice. Art.521.- When a person sentenced to a custodial sentence is detained at the seat of the jurisdiction that pronounced this sentence, the Public Prosecutor, the Investigating Judge, the court of the place of detention have jurisdiction, outside the rules prescribed by articles 42, 89 and 264 paragraph 1 above, to know of all the offenses attributed to him. Art.522.- When a person sentenced to a custodial sentence is detained outside the case provided for in article 521 above, it is processed as in the case of a challenge, at the request of the Public Ministry only, for the referral of the procedure from the seized jurisdiction to that of the place of detention.

 Art.523.- The referral may also be ordered for reasons of public safety by the Court of Cassation, at the request of the Attorney General. Art.524.- Any ruling that has ruled on a request for referral is notified to the interested parties at the diligence of the Attorney General near the Court of Cassation. Art.525.- The ruling that rejected a request for referral for reasons of public safety does not exclude a new request for referral based on new facts. Title 6 - Of the recusal and challenge Art.526.- The provisions of the Code of Civil Procedure relating to recusal are applicable before criminal jurisdictions. Art.527.- The provisions of the Code of Civil Procedure relating to the challenge of judges, members of the Public Ministry and Judicial Police Officers are applicable before criminal jurisdictions. Title 7 - Of the judgment of offenses committed at the hearing Art.528.- Offenses committed at the hearing are judged ex officio or upon requisitions of the Public Ministry, subject to the provisions of this Code relating to testimonies of witnesses whose falsity is established at the hearing and without prejudice to the special rules of competence or procedure. Art.529.- If a police offense is committed during the hearing, the tribunal or the Court draws up a report of the facts, hears the accused, the witnesses, the Public Ministry and, if necessary, the defender. It applies without delay the penalties provided by law. Art.530.- If the act committed during the hearing of a tribunal or a Court is a misdemeanor, it is processed in accordance with the provisions of articles 528 and 529 above. In this case, if the penalty imposed is greater than one month of imprisonment, a detention warrant may be issued. Art.531.- If the act committed is a crime, the tribunal or the Court arrests the perpetrator and interrogates him, after having drawn up a report of the facts. This jurisdiction transmits the pieces and orders his immediate conduct before the Public Prosecutor who requests the opening of an investigation or applies the procedure for flagrant crime.

 Title 8 Crimes and Offenses Committed by Magistrates, Police Officers, and Members of the Defense and Security Forces Art.532. Any act likely to lead to criminal prosecution against a magistrate falls under the jurisdiction of the Court of Cassation, except in cases of flagrant crime or flagrant offense. In this regard, prosecutions are subject to a special investigation entrusted, upon instructions from the

Minister responsible for Justice, to the General Inspectorate of Judicial Services. The reports and minutes established under the provisions above serve as a preliminary investigation prior to the exercise of public action. Art.533. Outside cases of flagrant crime or flagrant offense, the arrest, custody, or preventive detention of a magistrate can only occur with the authorization of the President of the Republic, in his capacity as the guarantor of the independence of the judiciary, after consulting the Superior Council of the Judiciary. Art.534. The reports and minutes resulting from the special investigation are transmitted to the Minister responsible for Justice, who, if necessary, refers the matter to the Attorney General at the Court of Cassation for the purpose of opening an inquiry. Art.535. The instruction of the case is ensured by a chamber president of the Court of Cassation designated for this purpose by order of the First President of the said Court. The instruction is conducted in accordance with the provisions of this Code relating to investigative jurisdictions. At the end of the inquiry, the chamber president in charge of instructing the facts attributed to the magistrate renders, after having communicated the file to the Public Prosecutor who requested the opening of the inquiry, either an order of non-suit or an order of referral to the trial formation. Art.536. The formation of the united chambers of the Court of Cassation is the trial formation. It must rule within three months from the date of its referral. The rules of this Code relating to the appearance of the parties and the conduct of the hearing are applicable. Art.537. The decisions rendered by the formation of the united chambers of the Court of Cassation may be subject to a request for revision or retraction within one month from the pronouncement of the decision or its notification. Art.538. Any prosecution exercised before the common law jurisdiction against a member of the security or defense forces gives rise to immediate communication of a copy of the procedure to the Minister responsible for Public Security or to the one responsible for Defense.

 When the act likely to lead to criminal prosecution has been committed by a Police Officer in the jurisdiction where he is territorially competent, outside or in the exercise of his functions, except in cases of flagrant crime or flagrant offense, he is referred without delay by the competent Public Prosecutor to the Attorney General at the Judicial Court of Appeal of the jurisdiction, who designates within eight days the jurisdiction responsible for the instruction or judgment. When the jurisdiction of the seized Public Prosecutor is within the same limits as that of the Attorney General at the Judicial Court of Appeal, the latter transmits the procedure to the Attorney General of the neighboring Judicial Court of Appeal who designates within the same deadlines as above the jurisdiction responsible for the instruction or judgment. Until the designation of the competent jurisdiction, the procedure is followed in accordance with the rules of common law. Art.539. In all cases, the instruction, judgment, and avenues of appeal are ensured and exercised in accordance with the rules of common law. Title 9 Crimes and Offenses Committed Abroad Art.540. Any Gabonese citizen who, outside the territory of the Gabonese Republic, has committed an act classified as a crime or offense by Gabonese law, may be prosecuted and judged in Gabon, if the act is punishable by the legislation of the country where it was committed. The provisions of the first paragraph above apply to the author of the act who acquired Gabonese nationality only after the commission of the crime or offense. However, whether it is a crime or an offense, no prosecution shall take place if the author of the act justifies that he has been definitively judged abroad and, in case of conviction, that he has served his sentence or obtained a pardon, or that the sentence is time-barred. In the case of an offense committed against a Gabonese or foreign individual, prosecution can only be initiated at the request of the Public Prosecutor. It must be preceded by a complaint from the injured party or an official denunciation to the Gabonese authority by the authority of the country where the offense was committed. No prosecution can be initiated before the return of the author of the act to Gabon. Art.541. Prosecution is initiated at the

request of the Public Prosecutor of the place where the author of the act resides or where he was found. However, the Court of Cassation may, at the request of the Public Prosecutor or the parties, refer the case to the court or tribunal closest to the place of the crime or offense. Art.542. Without prejudice to the provisions of international conventions to which Gabon is a party, any foreigner who, outside the territory of the Gabonese Republic, has become the author, accomplice, or instigator of a crime against the security of the Gabonese state, a crime of counterfeiting the seals of the state or banknotes having legal tender in Gabon, or a crime against a person of Gabonese nationality, may be prosecuted and judged according to the provisions of Gabonese laws, if he is arrested in Gabon or if the Government obtains his extradition. Prosecution can only be exercised at the request of the Public Prosecutor. It must, for the victim of Gabonese nationality, be preceded by his complaint, that of his rights holders, or an official denunciation by the authority of the country where the act was committed. However, no prosecution can be directed against a foreigner for a crime committed abroad, if the author, accomplice, or instigator of the act justifies that he has been definitively judged abroad for the same acts and in case of conviction, that the sentence has been served, time-barred, or that he has obtained a pardon. The competent jurisdiction to hear the case is that of the place where the accused resides, that of the residence of the victim, or, if the offense was committed on

board an aircraft or a ship, that of the place of landing or docking of the latter. When the provisions of the fourth paragraph above cannot be applied, the competent jurisdiction is that of Libreville, unless the case is referred to another jurisdiction by the Court of Cassation ruling at the request of the Public Prosecutor or at the request of the parties. Book 6 Execution Procedures Title 1 Execution of Criminal Sanctions Chapter 1 Execution by the Parties Art.543. The Public Prosecutor and the parties pursue the execution of the sentence, each concerning themselves. In all cases, actions for the recovery of fines and confiscations are made in the name of the Public Prosecutor by the Public Treasury. Art.544. Execution at the request of the Public Prosecutor takes place when the decision has become final. The Public Prosecutor and the Attorney General have the right to request the assistance of public force to ensure this execution.

 However, the appeal period granted to the Attorney General by Article 398 paragraph 2 of this Code does not prevent the execution of the sentence. Chapter 2 Settlement of Execution Incidents Art.545. Any contentious incident related to execution is brought before the tribunal or court that pronounced the decision, which jurisdiction may also proceed to rectify purely material errors contained in its decisions. By exception, the chamber of accusation knows of rectifications and execution incidents that may arise from the decisions of the criminal court. Art.546. In matters of incident, the tribunal or court, at the request of the Public Prosecutor or the interested party, rules in a council chamber after having heard the Public Prosecutor, the counsel of the party if he requests it, and, if necessary, the party itself, subject to the application of Article 547 below, if applicable. The execution of the decision in dispute is suspended if the tribunal or court orders it. The judgment on the incident is notified at the request of the Public Prosecutor to the interested parties. Art.547. In all cases where it appears necessary to hear a convicted person who is detained, the seized jurisdiction may issue a rogatory commission to the President of the tribunal of the place of detention. This magistrate may delegate one of the judges of the tribunal who proceeds to the hearing of the detained person on record. Chapter 3 Adjustment of Sentences Art.548. Custodial sentences may be subject of adjustments in accordance with the provisions of the existing texts. Title 2 Detention Regime Chapter 1 Preventive Detention Regime Art.549. The accused, defendants, and accused persons subject to preventive

detention execute it in a penitentiary establishment in accordance with the texts governing the penitentiary regime. Art.550. The Investigating Judge, the President of the chamber of accusation, the President of the criminal court, the Public Prosecutor, and the Attorney General at the Judicial Court of Appeal may give, for the needs of the instruction or for...

 The execution of the judgment, any necessary order regarding the detention regime in the penitentiary establishment. Art.551. Preventive detainees are separated from convicted detainees. They are also separated from detainees for offenses of voluntary homicide or for any of the offenses falling under specialized criminal formations. The quarters of the penitentiary establishment are divided into sub-quarters for men, for women, and for minors so that there can be no communication between them. Art.552. Any communication and any facility compatible with the requirements of discipline and security of the penitentiary establishment are granted to the accused, preventive detainees, and defendants for the exercise of their defense. Art.553. Preventive detainees are not subject to work or vocational training, unless they expressly request it. In no case may they be employed in work or trained outside of the penitentiary establishment. Chapter 2 On the regime of deprivation of liberty penalties Art.554. Those sentenced to imprisonment serve their sentence in a penitentiary establishment and are subject to the regime of collective imprisonment. They are distributed in different quarters according to their sex, age, criminal category, health status, and personality. Art.555. Any convicted detainee who uses threats, insults, or violence or commits an infraction of discipline may be isolated in a cell arranged for this purpose or be subject to coercive measures, in case of rage or serious violence, without prejudice to the prosecutions that may be brought against him. Art.556. Those sentenced to deprivation of liberty for acts qualified as crimes or common law offenses are required to perform penal work. Art.557. The organization of penitentiary services and the penitentiary regime are set by law. Art.558. The Investigating Judge, once a quarter, the President of the Chamber of Indictment, the Public Prosecutor, and the Attorney General at the Court of Appeal, every time they deem necessary, visit the penitentiary establishments. The President of the criminal court visits the accused detained in the penitentiary establishment of the seat of the Court.

 Art.559. Upon receipt of an order or a judgment of conviction, of a body order, a detention warrant, or an arrest warrant, when it must be followed by a provisional incarceration, the head of the penitentiary establishment is required to register in the detention register, with the identity and all useful information about the detainee or convict, the title under which the detention is ordered. In the case of voluntary execution of the sentence, the head of the penitentiary establishment transcribes in the register the extract of the order or judgment of conviction that has been transmitted to him by the Attorney General at the Court of Appeal or by the Public Prosecutor. In all cases, notice of the detention is given by the head of the penitentiary establishment to the Attorney General at the Court of Appeal or to the Public Prosecutor. The detention register also contains, regarding the act of release, the date of the detainee's exit as well as, if applicable, the text of the applicable law or the decision justifying the release. Art.560. No agent of the penitentiary services may, under penalty of being prosecuted for arbitrary detention, receive or retain a person, except by virtue of an order or a judgment of conviction, a body order, a detention warrant, or an arrest warrant, when it must be followed by a provisional incarceration. Art.561. The provisions of Article 555 above are applicable to the preventive detainee. Book 7 On conditional release, pardon, and amnesty Title 1 On conditional release Art.562. Conditional release aims at the reintegration of convicts and the prevention of recidivism. Any

convict sentenced to a definitive deprivation of liberty, if the remaining sentence to be served is equal to or less than three years of imprisonment, may be admitted to the benefit of conditional release, when he has, during his incarceration, shown, through his good behavior, certain signs of amendment. Art.563. The request for conditional release is admissible whenever the convict has served half of the sentence he must effectively serve, taking into account the reductions he may have benefited from.

 However, if there is a legal recidivism, the convict must have served six months of imprisonment if the sentence is less than nine months and two-thirds of the sentence, in the other case. The request may be renewed twice. The rejection decision that occurs following the second renewal is final. After each rejection, a new request cannot be submitted before the expiration of a period of six months from the date of notification of the rejection decision. Requests for conditional release submitted by convicts whose remaining sentence to be served is less than three months are not admissible. Art.564. Any request for conditional release, whether or not presented by the convict, is addressed to the head of the penitentiary establishment. He constitutes a file containing an extract from the detention register, a record of disciplinary penalties accompanied by a certificate of accommodation provided by the applicant for conditional release. Art.565. The file constituted by the head of the penitentiary establishment is transmitted to the Minister in charge of Justice by the Public Prosecutor at the court or the Court that pronounced the conviction. Art.566. Conditional release is granted by order of the Minister in charge of Justice, after the opinion of the head of the penitentiary establishment and the opinion of the Public Prosecutor. Art.567. The measure of conditional release may be revoked in case of duly noted repeated misconduct or in case of violation of the specific conditions set in the release decision. The occurrence of a new conviction before the normal expiration of the sentence entails by law the revocation of the measure of conditional release. If the revocation does not occur before the normal expiration of the sentence, the release is definitive and the sentence considered as executed. Art.568. The revocation decision is made by the authority that granted the release, after the opinion of the Public Prosecutor and the administrative authority of the residence of the released person. Art.569. The arrest of the conditionally released person may be provisionally ordered by the administrative or judicial authority of the place where he is located, with the obligation to inform, in twenty-four hours, the Minister in charge of Justice who makes the necessary decision. The effect of the revocation dates back to the day of the arrest.

 Art.570. Reintegration into a penitentiary establishment occurs for the entire duration of the unexecuted sentence at the time of conditional release. Title 2 On pardon Art.571. The President of the Republic, in accordance with the provisions of Article 23 of the Constitution, has the right to grant pardon to any person convicted by a Gabonese court, regardless of the penalty pronounced definitively. Art.572. The decision granting the pardon is subject to a decree from the President of the Republic taken after the opinion of the Minister in charge of Justice. Upon receipt of the pardon request, the Minister in charge of Justice has the representative of the Public Ministry at the court that ruled, prepare the file, which is transmitted through the hierarchical channel, accompanied by a complete investigation on the appeal and the behavior in detention of the convict. The pardon request may be renewed twice. The rejection decision that occurs following the third request is final. The decision granting or rejecting the pardon must, in all cases, be notified by the Minister of Justice and, if there are monetary convictions, to the administration responsible for recovery. When the pardon is granted, notification must also be made to the Public Prosecutor at the court

of conviction so that all useful mentions can be made. Art.573. The pardon may be total, partial, or conditional. It is in principle limited to the execution of the main sentence. However, it may also apply to accessory and complementary penalties listed in the decree. If the pardon is total, it interrupts the execution of the main sentence as well as that of the accessory and complementary penalties when specified. If the pardon is partial, it commutes the sentence to a lesser penalty. The conviction subject to a pardon decision remains in all cases. It continues to appear on the criminal record for recidivism and obstructs the granting of suspension. The disqualifications or incapacities resulting from the conviction also remain. Art.574. The pardon shall not prejudice the rights of third parties. It does not affect the rights of the Treasury regarding the recovery of legal costs.

 In all cases, the rights of the civil parties remain reserved and the avenues for appeal as well as the means of enforcement remain open to said parties regarding civil interests. Title 3 On Amnesty Art.575. Amnesty is granted by a law. Art.576. Amnesty applies to: specified categories of accused or convicted individuals; specified categories of crimes, offenses, or contraventions; disciplinary sanctions incurred by agents of public administrations or public establishments, either solely due to a service fault or following a criminal conviction when that conviction is erased by the amnesty law. Amnesty only applies to convictions incurred and served on the territory of the Gabonese Republic. Art.577. Repeat offenders may be excluded from the benefit of amnesty. Art.578. Offenses under the jurisdiction of Special Military Courts may benefit from amnesty laws enacted under this law. Art.579. Disputes regarding the application of amnesty are judged by the penal court that pronounced the conviction or by the one before which the case is pending, in the same procedural forms and with the same possibilities for appeal as in ordinary proceedings. Art.580. Amnesty entails, without ever giving rise to restitution, the remission of all main, accessory, and complementary penalties, as well as all disqualifications and incapacities resulting from the conviction, subject to the application of Article 583 below relating to measures pronounced against minors and Article 584 below relating to the rights of third parties. Art.581. In the case of a conviction for multiple offenses, the convicted person is amnestied if the offense amnestied by law carries the heaviest penalty or, in the case of a penalty equal to that provided for the other offenses pursued, even if the Judges, after granting mitigating circumstances for this offense, would have sanctioned it with a punitive provision providing for a lesser penalty. Art.582. Amnesty does not entail reinstatement in public functions or jobs, public offices, or ministerial positions.

 However, the beneficiary of amnesty may, upon request and by decree, be reinstated in said jobs or functions without being able to claim in any case a career reconstruction or compensation. Art.583. The measures of placement, custody, and supervision pronounced against amnestied minors are maintained. Art.584. Amnesty shall not prejudice third parties. It does not affect the rights of the public treasury regarding the recovery of legal costs, which may be pursued by legal means. In all cases, the rights of civil parties remain preserved and the avenues for appeal as well as the means of enforcement remain open to said parties regarding civil interests. Art.585. When penal courts are seized of public action on the date of promulgation of an amnesty law, they note the extinction of public action and rule on the requests of the civil parties, who retain the right to intervene until the judgment on the interests in question is pronounced. In the case of prosecutions for multiple offenses, the extinction of public action is noted if the amnestied offense carries the heaviest penalty or a penalty equal to that provided for the other offenses.

Art.586. Amnesty cannot obstruct an action for revision before the competent jurisdiction in order to establish the innocence of the convicted person. Art.587. It is prohibited for all magistrates and other public agents holding state authority to recall or allow to remain in any file or document the convictions, disqualifications, or incapacities erased by amnesty, under penalty of disciplinary sanctions. However, the minutes of the judgments and rulings filed in the registries are maintained, with the clerk required to mention, under penalty of the above sanctions, the measure of amnesty that the convicted person benefited from. Art.588. The destruction of bulletin no. 1 of the criminal record and duplicates of said bulletins is carried out under the supervision of the public prosecutors by those who are the custodians, under penalty of the application of the sanctions provided for in Article 587 above. Art.589. Amnesty may occur individually by decree of the President of the Republic granting amnesty. Art.590. To benefit from the amnesty grace, the interested party must submit a request. Before making a decision, the President of the Republic consults the file of the criminal case and takes the opinion of the Public Prosecutor near the jurisdiction that ruled or is called to rule in first instance or on appeal as the case may be.

 If the interested party is in preventive detention or serving a sentence, the Public Prosecutor attaches to his opinion a report from the head of the penitentiary establishment on the conduct of the applicant in detention. Art.591. The effects and consequences of the amnesty grace are the same as those of amnesty, including the application of sanctions to those who have violated the provisions of Articles 598 and 599 below. Book 8 On the recognition of the identity of convicts, the prescription of the sentence, the criminal record, the rehabilitation of convicts, and legal costs Title 1 On the recognition of the identity of convicts Art.592. When, after an escape followed by recapture, or in any other circumstance, the identity of a convict is contested, this is resolved in a public hearing by the jurisdiction that ruled. If this contest arises during a new prosecution, it is also resolved by the jurisdiction seized of the prosecution. Title 2 On the prescription of the sentence Art.593. Sentences pronounced by a ruling made in criminal matters are prescribed by twenty full years, starting from the date when that ruling became final. However, the convicted person remains subject by right to the prohibition of residence in the place where either the person against whom the crime was committed resided, or his direct heirs. The provisions relating to the prohibition of residence are applicable to the prescription indicated in the first paragraph above. Art.594. Sentences pronounced by a ruling or judgment in correctional matters are prescribed by five full years from the date when that ruling or judgment became final. Art.595. Sentences pronounced by a ruling or judgment in matters of simple police are prescribed by two full years from the date when that ruling or judgment became final. However, sentences pronounced for a contravention related to a felony are prescribed in accordance with Article 594 above.

 Art.596. Convicts in default whose sentence is prescribed cannot be presented to serve the sentence pronounced. Art.597. Civil convictions pronounced by rulings or judgments rendered in criminal, correctional, or simple police matters that have become irrevocable are prescribed according to the rules established by the Civil Code. Title 3 On the criminal record Art.598. The central criminal record is maintained under the authority of the Minister in charge of Justice. The central criminal record receives, for individuals born in Gabon, after verification of their identity in the civil registry, bulletin no. 1 mentioning: contradictory convictions and default convictions not subject to opposition, pronounced for crime or offense by any penal jurisdiction, including

convictions with suspension; decisions pronounced under the legal and regulatory provisions relating to delinquent minors; disciplinary decisions pronounced by the judicial authority or by an administrative authority when they entail or impose incapacities; judgments concerning judicial recovery or liquidation of assets; expulsion orders taken against foreigners; j all judgments pronouncing the disqualification of parental authority or the withdrawal of all or part of the rights attached thereto. It also receives the records and bulletin no. 1 concerning individuals born abroad and those whose birth certificate is not found or whose identity is doubtful. A copy of each bulletin no. 1 mentioning a conviction to a custodial sentence pronounced for crime or offense is sent by the judicial jurisdictions or through international judicial cooperation to the central criminal record. The same copy of bulletin no. 1 is sent by the central criminal record to the technical police file maintained by the Minister in charge of the Interior. Consultation of this file is exclusively reserved for judicial authorities, defense, and security forces. Convictions erased by an amnesty or by rehabilitation of right or judicial cease to appear on bulletin no. 1. Art.599. Bulletin no. 1 also mentions: sentences or waivers of sentences pronounced after postponement of the pronouncement of the sentence;

  grants, commutations, or reductions of sentences; decisions that suspend or order the execution of a first conviction; decisions on parole and revocation; decisions on suspension of sentence and rehabilitation; decisions that revoke expulsion orders as well as the date of expiration of the sentence and payment of the fine. Convictions erased by amnesty or reformed in accordance with a decision to rectify the criminal record are removed from bulletin no. 1. Except for convictions pronounced for imprescriptible acts, convictions pronounced more than forty years ago that have not been followed by a new conviction to a criminal or correctional sentence are also removed from bulletin no. 1. Art.600. The criminal record kept in each court concerns individuals born in the administrative districts under its jurisdiction. Art.601. The removal of the criminal record, of the file concerning the conviction decision of the minor is governed by the provisions relating to juvenile delinquency. The removal of bulletin no. 1 relating to the conviction pronounced for acts committed by individuals whose age is between the age of criminal majority and civil majority may also, if the reintegration of the convicted person seems assured, be pronounced at the expiration of a period of three years from the conviction. However, this removal can only occur after the custodial sentences have been served and the fines have been paid, and if additional sentences have been pronounced for a determined duration, after the expiration of that duration. In the case provided for in the preceding paragraph, the removal of the criminal record from bulletin no. 1 confirming the conviction is requested by application in accordance with the rules of competence and procedure set by article 606 of this Code. Art.602. In the event of a conviction pronounced against an individual subject to military service in the army, air force, or navy, the military authorities are notified by sending a duplicate of bulletin no. 1 by the Minister in charge of Justice to the Minister of National Defense. The same military authorities are also notified of any modifications made to bulletin no. 1 of the criminal record. A duplicate of each bulletin no. 1 confirming a decision resulting in the deprivation of electoral rights is sent by the Minister of Justice to the Minister in charge of the Interior.

 Art.603. The complete record of bulletins no. 1 concerning the same person is recorded on a bulletin called bulletin no. 2. Bulletin no. 2 is issued to: the magistrates of the prosecution, instruction, and execution of sentences as well as the judicial courts of judgment; the Presidents of the courts to be attached to the procedures of judicial recovery and liquidation of assets; the military authorities for conscripts and maritime registration as well as for young people who wish to enter into a

commitment; the leaders of legal public or private entities engaged in cultural, educational, or social activities with minors or protected adults, solely for the needs related to the recruitment of their personnel. It is also issued: to the competent jurisdiction for the judgment of a dispute regarding registration on the electoral lists; to the state administrations handling requests for public employment, proposals relating to honorary distinctions, or submissions for public works or contracts, or for disciplinary proceedings or the opening of a private educational or training institution. However, the mention of decisions pronounced under the articles of the Penal Code relating to juvenile delinquency is only made on the bulletins issued to magistrates, excluding any public authority or administration. The bulletin no. 2 requested by state administrations for the exercise of political rights includes only decisions resulting in incapacities provided for by laws relating to the exercise of political rights. Art.604. Bulletin no. 3 is the record of convictions pronounced for crimes or offenses when they are not excluded from bulletin no. 2. Bulletin no. 3 includes convictions: for custodial sentences of more than two years that are not suspended or that must be served in full due to the revocation of the suspension; for custodial sentences of the nature referred to in the preceding paragraph and of a duration of two years or less, if the jurisdiction has ordered the mention; for prohibitions, disqualifications, or incapacities pronounced without suspension, during the duration of the prohibitions, disqualifications, or incapacities. Art.605. Bulletin no. 3 can be requested by the person it concerns. In the absence of a conviction to be included in bulletin no. 3, it contains only a crossbar or the mention "None".

 Bulletin no. 3 is issued either by the competent jurisdiction or by the central criminal record. It is valid for six months. Art.606. A person who wishes to rectify an entry in their criminal record submits their request to the President of the court or the President of the Court of Appeal that rendered the decision. If it was rendered by a criminal court or by an exceptional jurisdiction, the request is submitted to the President of the Court of Appeal. The President of the Court or the Court of Appeal communicates the request to the Public Prosecutor and forwards it to the jurisdiction for the execution of sentences for a report. The Court or the Court of Appeal may order the appearance of the person subject to the conviction. The debates take place and the decision is rendered in chambers. If the request is accepted, the costs are borne by the one who caused the erroneous entry, if they were called to the instance. Otherwise, or in the case of their insolvency, they are borne by the public treasury. The Public Prosecutor has the right to act in the same manner for the rectification of the criminal record. Mention of the decision is made in the margin of the judgment or ruling referred to in the rectification request. The same procedure applies in the case of a dispute regarding rehabilitation by right or in the case of difficulties raised by the interpretation of an amnesty law. Art.607. Anyone who has taken the name of a third party, in circumstances that have determined or could have determined the entry of a conviction in the criminal record of that third party, is punished with up to five years of imprisonment, without prejudice to prosecutions for the crime or offense of forgery, if applicable. The same penalty applies to anyone who, through false statements regarding the civil status of an accused, has knowingly caused the entry of a conviction in the criminal record of someone other than that accused. Art.608. Anyone who, by taking a false name or false title, has obtained an extract from the criminal record of a third party, is punished with up to one year of imprisonment. Title 4 On the rehabilitation of convicts Art.609. Any person convicted by a Gabonese jurisdiction to a criminal or correctional sentence may be rehabilitated. Rehabilitation erases the conviction and ceases all incapacities and prohibitions resulting from it for the future. Rehabilitation is either acquired by right or granted by a ruling of the chamber of accusation.

 Art.610. Rehabilitation is acquired by right for the convict who has not suffered any new conviction to imprisonment or a more severe penalty for crime or offense within the time limits and conditions set by the provisions of the Penal Code: for convictions to fines, after a period of three years from the day of payment of the fine or the expiration of the constraint by body or the acquired prescription; for the unique conviction to a sentence of imprisonment not exceeding one year, after a period of five years from either the expiration of the executed sentence or the acquired prescription; for the unique conviction to imprisonment not exceeding two years or for multiple convictions whose total does not exceed one year, after a period of ten years counted as stated in the previous paragraph; for the unique conviction to a sentence exceeding two years of imprisonment or for multiple convictions whose total does not exceed two years, after a period of fifteen years counted in the same manner; for the conviction accompanied by suspension, after the expiration of the period provided for by the provisions of the Penal Code relating to suspension. Convictions for which confusion has been ordered are considered for the application of the provisions of this article as constituting a unique conviction. The total or partial remission of a sentence by way of grace is equivalent to its total or partial execution. Art.611. Rehabilitation can only be requested in court during the lifetime of the convict by the convict themselves, or if they are incapacitated, by their legal representative. In the event of death and if the legal conditions are met, the request may be followed or introduced by the spouse or by their ascendants or descendants within one year from the date of death. In all cases, the request must concern all convictions pronounced that have not been erased either by a previous rehabilitation or by amnesty. Art.612. The request for rehabilitation can only be made after a period of five years for convicts in criminal matters and three years for convicts in correctional matters. This period runs from the day of definitive release for convicts to a custodial sentence and from the day the conviction became irrevocable for convicts to a fine. Art.613. Convicts who are in a state of legal recidivism, those who, after obtaining their rehabilitation, have incurred a new conviction, those who, convicted contradictorily or by default to a criminal sentence, have benefited from the prescription of the sentence, are only admitted to request their rehabilitation after a period of ten years has elapsed since their release or since the prescription.

 However, repeat offenders who have not served any criminal sentence, and rehabilitated individuals who have only received a correctional sentence, are allowed to apply for rehabilitation after a period of six full years since their release. Art.614. The convicted person must prove the payment of court fees, fines, and damages or the waiver granted to them. In the absence of this justification, they must establish that they have served the time of coercion determined by law or that the injured party has waived this means of execution. If convicted of fraudulent bankruptcy, they must prove the payment of the bankruptcy liabilities in principal, interest, and costs or the waiver granted to them. However, if the convicted person proves that they are unable to pay the court fees, they may be rehabilitated even if these fees have not been paid or have only been partially paid. In the case of joint liability, the court determines the share of court fees, damages, or liabilities that must be paid by the applicant. If the injured party cannot be found or refuses to accept the amount due, it is paid to the Public Treasury. If the party does not appear within five years to claim the deposited amount, this amount is returned to the depositor upon simple request. Art.615. If since the offense, the convicted person has, at the risk of their life, rendered eminent services to the country, the application for rehabilitation is not subject to any time condition, nor execution of sentence. In this case, the Court of Appeal may grant the rehabilitation, even if the fees, fines, and damages have not been paid. Art.616. The application for rehabilitation is addressed to the Public Prosecutor near the Court of First Instance of the

applicant's current residence. This application specifies the date, the jurisdiction of conviction, and the places where the convicted person has resided since their release. Art.617. The Public Prosecutor collects all useful information about the convicted person in the various places where the individual may have stayed. Art.618. The Public Prosecutor obtains: an expeditious copy of the judgments and convictions; an extract from the prison register of the penal institution(s) where the sentence was served; a bulletin No. 2 of the criminal record. He transmits the documents with his opinion to the Attorney General near the Judicial Court of Appeal of the jurisdiction.

 Art.619. Within one month of receiving the documents and the opinion provided for in Article 618 above, the Attorney General submits the case to the indictment chamber. The applicant may directly submit any useful document to the Court. The indictment chamber rules within one month on the requisitions of the Attorney General, the party, or their counsel heard or duly summoned. In the absence of a ruling within the period provided by the previous paragraph, the indictment chamber is deemed to have accepted the request. Art.620. The ruling of the indictment chamber may be appealed to the Court of Cassation in the forms provided by this Code. Art.621. In case of rejection, a new application cannot be made before the expiration of a period of one year. Art.622. Mention of the ruling granting rehabilitation is made in the margin of the judgments and convictions and in the criminal record. In this case, bulletin No. 3 of the criminal record must not mention the conviction. The rehabilitated person who requests it may obtain, free of charge, an expeditious copy of the rehabilitation ruling and an extract from the criminal record. Title 5 On court fees Art.623. A law determines the costs of criminal justice. It determines the modalities of payment, collection, avenues for appeal, and sets the conditions that the parties to the proceedings must fulfill. Book 9 On international judicial cooperation Title 1 On extradition Art.624. In the absence of a contrary international convention or in its silence, the procedure and effects of extradition are determined by this Code.

 Chapter 1 Conditions for extradition Art.625. No surrender may be made to a foreign government of persons who have not been the subject of prosecution or conviction for an offense provided for in this title. Art.626. The Gabonese government may surrender, upon their request, to foreign governments, any person who does not hold Gabonese nationality and who, being the subject of a prosecution initiated in the name of the requesting State or a conviction pronounced by its courts, is found on the territory of the Republic. However, extradition is granted only if the offense that is the cause of the request is committed: on the territory of the requesting State by a national of that State or by a foreigner; outside its territory by a national of that State; outside its territory by a foreign person, when the offense is among those for which Gabonese law allows prosecution in Gabon, even if they were committed by a foreigner abroad. Art.627. The facts that may give rise to extradition, whether to request or grant it, are: the acts punishable by criminal penalties under the law of the requesting State; the acts punishable by correctional penalties under the law of the requesting State when the maximum penalty incurred, under this law, is equal to or greater than two years or, if it concerns a convicted person, when the penalty pronounced by the requesting State is equal to or greater than two months of imprisonment; extradition is granted by the Gabonese government when the act is punishable by Gabonese law with a criminal or correctional penalty. The acts constituting an attempt or complicity are subject to the rules of this article, provided they are punishable by the law of the requesting State and that of the requested State. If the request

concerns several offenses committed by the requested person and which have not yet been judged, extradition is granted only if the maximum penalty incurred, according to the law of the requesting State for all these offenses, is equal to or greater than two years of imprisonment. Art.628. Extradition is not granted when: the requested person is of Gabonese nationality, this being assessed at the time of the offense for which extradition is requested; the crime or offense has a political character or when it results from circumstances that the extradition is requested for political purposes; the crimes or offenses were committed on the territory of the Gabonese Republic;

  the crimes or offenses, although committed outside the territory of the Republic, have been prosecuted and definitively judged there; with regard to the law of the requesting State or Gabonese law, the statute of limitations for the offense has expired prior to the extradition request, or the statute of limitations for the penalty has expired prior to the arrest of the requested person and, generally, whenever the public action of the requesting State is extinguished; the act for which extradition has been requested is punishable by the legislation of the requesting State with a penalty contrary to Gabonese public order; the requested person would be tried in the requesting State by a court that does not guarantee the fundamental rights of procedure and defense. Art.629. Extradition is granted only on the condition that the extradited person will neither be prosecuted nor convicted for an offense other than that which motivated the extradition and prior to the surrender. Art.630. In the case where a requested person is prosecuted or has been convicted in Gabon, and where their extradition is requested from the Gabonese government due to a different offense, the surrender is only made after the prosecution is completed and, in case of conviction, after the penalty has been served. However, this provision does not prevent the requested person from being temporarily sent to appear before the courts of the requesting State, on the express condition that they will be returned as soon as Gabonese justice has ruled. Chapter 2 On the extradition procedure Art.631. Any request for extradition is addressed to the Gabonese government by diplomatic means and accompanied either by a judgment or a conviction ruling, even by default, or by a procedural act formally decreeing or automatically operating the referral of the prosecuted person before the criminal jurisdiction, or by an arrest warrant or any other act having the same force and issued by the judicial authority, provided that these latter acts contain the precise indication of the fact for which they are issued and the date of this fact. The documents thus mentioned must be produced in original or certified true copies. The requesting Government must simultaneously produce a copy of the applicable legal texts for the incriminated fact. It may attach a statement of the facts of the case. Art.632. The request for extradition is, after verification of the documents, transmitted, with the file, by the Minister responsible for Foreign Affairs to the Minister responsible for Justice who, after ensuring the regularity of the request, addresses it to the Attorney General near the Judicial Court of Appeal of Libreville.

 Art. 633. Any person apprehended following a request for extradition must be brought before the Attorney General at the Judicial Court of Appeal in Libreville within forty‐eight hours. The provisions relating to police custody apply during this period. After verifying the identity of the requested person, the Attorney General informs them in a language they understand about the existence and content of the extradition request against them and advises them that they may be assisted by a lawyer of their choice or, failing that, by a court-appointed lawyer, who will then be informed without delay and by any means and with whom they can communicate immediately. Mention of this

information is made, under penalty of nullity of the procedure, in the minutes. The lawyer may consult the file immediately and communicate freely with the requested person. The Attorney General also informs the requested person that they have the option to consent to or oppose their extradition and indicates the consequences if they consent. He receives the statements of the requested person and, if necessary, their counsel, of which a record is drawn up. Following this notification, the requested person may be released or detained under extradition warrant. Art. 634. When the requested person has declared their consent to extradition, the chamber of indictment of the Judicial Court of Appeal in Libreville is immediately seized of the procedure. The requested person appears before it within five working days from the date of their presentation to the Attorney General. The hearing is public. The chamber of indictment rules by a decision rendered in a council chamber, with the Public Prosecutor and the requested person heard. Art. 635. Upon their appearance, if the requested person declares their consent to be extradited and that the legal conditions for extradition are met, the chamber of indictment acknowledges this. This decision is not subject to appeal. When the requested person has declared to the Attorney General or to the chamber of indictment that they do not consent to their extradition, the chamber of indictment rules within ten working days from the date of presentation to the Attorney General. The chamber of indictment issues an unfavorable opinion when it finds that the legal conditions are not met or that there is an obvious error.