

ANNEX C

CENTRAL AFRICAN REPUBLIC
Unity – Dignity – Work

Chérubin Laurent Ndobe --
 Magistrate

PRESIDENCY OF THE REPUBLIC

[CAR coat of arms]

ORGANIC LAW No. 95.0011

**TO GOVERN THE ORGANISATION AND FUNCTIONING OF THE COURT OF
 CASSATION**

THE NATIONAL ASSEMBLY HAVING DELIBERATED AND ENACTED;

**THE PRESIDENT OF THE REPUBLIC, HEAD OF STATE, HEREBY PROMULGATES
 THE FOLLOWING LAW:**

Art. 1: A Court of Cassation shall be hereby created, the organisation and functioning of which shall be determined by the present organic law.

PART I

ORGANISATION OF THE COURT OF CASSATION

CHAPTER I

COMPOSITION OF THE COURT OF CASSATION

Art. 2: The Court of Cassation shall comprise three divisions:
 - the Criminal Division
 - the Division for Civil and Commercial Matters
 - the Division for Social and Employment Matters

Art. 3: The Court of Cassation shall be composed of a President [*Premier Président*], three Divisional Presidents [*Présidents de Chambre*] and nine Judges [*Conseillers*].

[illegible] General and three Advocates-General [*Avocats Généraux*].

The Principal Advocate-General shall have the status and prerogatives of a Divisional President.

Art. 4: The members of the bench of the Court of Cassation shall be appointed by decree under the conditions set out by the Law governing the Status of the Judiciary.

Before assuming their duties the members of the bench shall take an oath as follows in a formal hearing of the Court of Cassation presided over by the President of the Republic:

“I swear to perform my duties in a properly, faithfully and impartially in accordance with the Constitution, to preserve the confidentiality of deliberations and votes of the Court, not to assume any public office, and in all things to conduct myself as a worthy and loyal magistrate.”

The members of the Court of Cassation bench shall receive a salary fixed by decree of the Council of Ministers.

They shall wear distinctive robes in court, the appearance of which shall be determined by decree.

CHAPTER II ADMINISTRATION OF THE COURT OF CASSATION

Art. 5: The President and the Principal Public Prosecutor of the Court of Cassation shall be responsible for administration and discipline at the said Court.

The President shall manage the operational budget.

The President may call a general council of the bench of the Court of Cassation to discuss any issues of interest to the whole Court.

Art. 6: The position of Secretary General at the Court of Cassation shall be hereby created.

The Secretary General shall be appointed by decree from among the Judges and Advocates-General.

The duties of the Secretary General shall be established by decree of the Council of Ministers.

Art. 7: The President shall be assisted by an Office composed of the Principal Public Prosecutor, the Divisional Presidents, the Principal Advocate-General and the Secretary General, over which he or she shall preside.

Art. 8: The Rules of Procedure of the Court of Cassation shall be established by the Office and adopted by the general council.

CHAPTER III AUTHORITY TO INSPECT OF THE COURT OF CASSATION

Art. 9: The President of the Court of Cassation and the Principal Public Prosecutor of said Court may, either themselves or through a designated magistrate, conduct an inspection of any court in the judiciary of the Republic.

**PART III
PROCEEDINGS BEFORE THE COURT OF CASSATION**

**CHAPTER I
GENERAL PROVISIONS**

Art. 19: In all matters, the parties may defend themselves before the Court of Cassation by filing briefs.

They may be represented by a lawyer authorised to practice in the Central African Republic or by a duly empowered representative.

Art. 20: The time limit for entering an appeal shall be two months from the service of the decision or judgment either on a person or his or her place of residence.

For the time limit for appeal to start to run, the judgment or decision shall be notified by one of the parties.

With respect to decisions or judgments rendered by default, the time limit shall only start to run from the date on which challenges thereto are no longer admissible.

However, the time limit for appeals concerning alimony or summary judgments shall be reduced by half.

Art. 21: The time limit for appeal and the appeal itself shall be suspensive only in the following cases:

- in matters of personal status;
- where the authenticity of a document has been challenged;
- in land registration matters;
- in criminal matters.

Art. 22: Upon being seized of an appeal, the Court of Cassation may, at the appellant's request and without requiring procedures other than the notification of the application to the opposing parties setting a time limit of eight days for the parties to submit their observations, order in a public hearing, before ruling on the merits of the case, a stay of execution of the impugned decision or judgment, if said execution would cause irreparable harm.

The file for an application for deferral shall include:

- said application for deferral;
- a certified copy of the impugned decision;
- a certified copy of the notice of appeal;
- a record of service on the opposing party;
- true copies of the receipts for the deposit and the fine, where appropriate;
- a copy of the brief in support of the appeal.

Articles 36 to 48 shall govern applications for deferral.

The Court of Cassation shall render its decision within one month of the date of registration of the application for deferral at the Registry of the Court of Cassation.

Art. 23: Save where otherwise provided for by law, appeals shall be entered by means of a written application, signed by the appellant, to the registry of the court which rendered the impugned decision. The application shall be entered into a special register.

Art. 24: For the purposes of the appeal, appellants shall provide an address for service in Bangui, failing which all procedural documents may lawfully be notified to the Public Prosecutor's Office at the Bangui *Tribunal de Grande Instance*.

Art. 25: The parties shall submit a brief in support of the appeal either to the registry of the court which rendered the impugned decision, concurrently with the notice of appeal, or to the Registry of the Court of Cassation within one month of the date of the appeal, failing which the appeal shall be inadmissible.

On pain of rejection, the brief shall:

- state the names and places of residence of the parties;
- include a concise statement of the facts, pleas in law and submissions;
- include a certified copy of the impugned judicial decision.

As many true copies of the brief shall be appended as there are parties to the case.

The brief shall be filed within the prescribed time limit, failing which the appeal shall be inadmissible.

Art. 26: Upon filing the brief, the appellant shall pay a deposit of 10 000 CFA francs to the Registry of the Court of Cassation to cover the costs of the proceedings, failing which the appeal shall be inadmissible. The Chief Registrar shall issue a receipt for the deposit and make a note thereof on the brief.

If the deposit is exhausted, the Reporting Judge shall determine by order the additional sum to be paid.

Art. 27: A fine of 20 000 CFA francs shall also be paid to the Treasury, failing which the appeal shall be inadmissible.

Art. 28: Government offices, the Public Prosecutor's Office and persons granted legal assistance shall be exempt from paying the fine and the deposit.

Art. 29: Legal assistance may be granted for disputes before the Court of Cassation. It shall be subject to the general rules governing legal assistance.

Where legal assistance is granted, the appeal shall be considered to have been entered on the date of request for legal assistance.

An application for legal assistance submitted within the time limit for appeal shall be suspensive of said time limit pending a decision on the application.

Art. 30: Within one month of the date on which the appeal was entered, the Chief Registrar of the court which rendered the impugned decision shall prepare the case file, including a certified copy of the impugned decision, records of the trial hearings, documents establishing the appeal and the parties' briefs. Failing this, the President of the Court of Cassation shall issue a non-appealable civil fine of 10 000 CFA francs.

The proceedings shall be sent via the hierarchy to the Principal Public Prosecutor of the Court of Cassation for transmission to the Registry of said Court.

Art. 31: The Chief Registrar of the Court of Cassation shall enter the appeal into the register of appeals and transmit the case file to the President.

Art. 32: The President of the Court of Cassation shall communicate the case file to the President of the competent Division, who shall designate a Reporting Judge to investigate the appeal. The Divisional President may also designate himself or herself as Reporting Judge.

The Reporting Judge shall order the appellant's brief to be notified to the other parties to the case.

Art. 33: The defendant shall be entitled to a time limit of one month from receiving notice of the appeal to file a brief in defence, which shall be notified to the appellant.

If no response is received within the prescribed time limit, the Reporting Judge may issue an order setting a new time limit, not exceeding 15 days, for the defendant to file a brief in defence. Such order shall constitute formal notice and shall be notified to the defendant.

In the brief in defence, the defendant shall state an address for service in Bangui, failing which all procedural documents shall be notified to the Public Prosecutor's Office at the Bangui *Tribunal de Grande Instance*.

Art. 34: The Reporting Judge shall submit the record of the proceedings to the Registry, together with his or her report.

No additional brief may be appended to the report after it has been submitted to the Registry.

The appellant may withdraw the appeal, provided such withdrawal occurs prior to the submission of the report to the Registry.

Art. 35: The Chief Registrar shall forward the case file including the Reporting Judge's report to the President, who shall then transmit it to the Principal Public Prosecutor, who shall designate an Advocate-General to prepare the prosecution's submissions.

The Public Prosecutor shall make his or her submissions independently, in accordance with the law and with his or her conscience.

Art. 36: The case shall be placed on the docket by the President of the Court of Cassation after consultation with the Principal Public Prosecutor.

Art. 37: The docket for each hearing shall be posted in the Registry.

Art. 38: The Principal Public Prosecutor may act for the Public Prosecutor's Office before any court in the Republic. The Principal Advocate-General or one of the Advocates-General may deputise for the Principal Public Prosecutor.

Art. 39: The case shall be called and tried on documentary evidence, save where the parties have formally stated in their briefs their intention to present oral observations, in which case the Chief Registrar shall notify the parties of the date of the hearing.

If the parties fail to appear at the hearing, the judgment shall be deferred. It shall be rendered only after hearing both parties.

At the hearing, the parties may not advance any new grounds in law nor rely on any new document.

Art. 40: At the hearing, the case shall be set out by the Reporting Judge.

The parties who initially entered the appeal shall then address the bench.

The Public Prosecutor's Office shall then make its submissions.

The bench shall deliberate *in camera*. Decisions shall be taken by a majority of the bench.

Art. 41: The Chief Registrar shall be responsible for making a record for all hearings. He or she shall keep records of decisions and shall issue certified copies thereof. A registrar may deputise for the Chief Registrar.

Art. 42: Hearings shall be public.

However, where a public hearing may be a threat to public order or morality, the Court of Cassation may provisionally decide to conduct the proceedings in closed session.

Persons who attend the hearings shall be bareheaded, respectful and silent. Any order from the President for the purposes of maintaining order in the courtroom shall be promptly implemented. If a person (or persons) breaks the silence, indicates approval or disapproval in respect of the parties' submissions, speeches by the bench, judgments or orders rendered, or acts in a disruptive manner and, following a warning, does not resume orderly behaviour, he or she shall be instructed to leave the courtroom. Any person who refuses to heed such instruction shall be arrested and immediately

incarcerated for 24 hours without appeal. He or she shall be gaoled upon production of a warrant issued by the President.

Art. 43: If the disturbance is caused by an individual who holds office at the Court of Cassation, in addition to the penalty set out under the preceding article, he or she shall be brought before the Disciplinary Board.

Art. 44: Any person who commits an offence at the hearing will be arrested and immediately incarcerated in accordance with the provisions of the Code of Criminal Procedure governing the prosecution of serious criminal offences [*crimes*], lesser offences [*délits*] and petty offences [*contraventions*].

Art. 45: All judgments rendered by the Court of Cassation shall be reasoned. They shall be made in accordance with the legal instruments and shall cite the exact provisions being applied. They shall mention:

- the surname, first name, capacity, profession and place of residence of each of the parties;
- the briefs filed by the parties and a statement of the arguments raised and the parties' pleadings;
- the names of the judges who rendered the judgment, specifying the name of the Reporting Judge;
- the name of the representative of the Public Prosecutor's Office and the registrar;
- the reading of the report of the Public Prosecutor's Office and the Prosecutor's oral submissions;
- the oral submissions of counsel for the parties, where applicable.

It shall be recorded that the judgment was rendered in a public hearing.

The record of the judgment shall be signed by the President, the bench and the registrar. It shall be then registered and filed at the Registry.

The party which loses the appeal shall be ordered to pay the court costs. Decisions of the Court of Cassation shall be notified to the parties by the Chief Registrar as soon as practicable via the official channels or by registered letter.

Art. 46: The Court of Cassation may by a provisional decision adopt any measures which might enlighten it.

Art. 47: Decisions of the Court of Cassation shall not be open to appeal save under the following conditions:

- The right to retract an appeal may be exercised:
 - against decisions rendered on the basis of false documents;
 - where the party was convicted for failing to account for a conclusive document in the opposing party's possession;
 - where the decision was rendered without meeting the requirements regarding the constitution of the bench, the public delivery of the decision and the contents of the decision;

- The right to rectify an appeal may be exercised against decisions containing a substantive error which may have influenced the determination of the case.

Art. 48: Appeals falling under article 47(1) and 47(2) shall be entered by means of an application to the Registry of the Court of Cassation.

Articles 23 *et seq.* shall govern applications to retract an appeal.

Art. 49: All procedural time limits set out herein shall be composed of clear days.

Where the final day of a time limit falls on a public holiday, the time limit shall be extended until the next working day following the holiday.

Art. 50: If the appeal is dismissed, the impugned decision shall enter into full effect.

If an appeal is dismissed, the appellant shall pay all court costs. If the appellant is the Public Prosecutor's Office, the costs shall be borne by the Public Treasury.

If the fine was paid, it shall be retained by the Public Treasury which receives notice thereof by means of a [illegible].

Art. 51: If the appeal is dismissed, the appellant may not enter further appeals in the same case, under any pretext or grounds whatsoever.

Art. 52: Court decisions may only be set aside for:

- a breach of legal documentation requirements;
- an error of law or erroneous application of the law;
- lack of jurisdiction or *ultra vires*;
- failure to decide a point raised in the submissions;
- conflicting judgments;
- absence, insufficiency or lack of clarity of evidence.

Art. 53: If the appeal is admitted, the Court of Cassation shall set aside and annul the impugned decision. The fine shall be returned to the appellant upon production of a certificate from the Chief Registrar, with the authorisation of the Principal Public Prosecutor of the Court of Cassation.

Art. 54: Having set aside the impugned decision or judgment, the Court of Cassation shall refer the case to the appropriate court for redetermination.

If the Court of Cassation admits an appeal on grounds of lack of jurisdiction, it shall refer the case before the competent court for redetermination.

If the Court of Cassation sets aside an appeal for any of the other aforementioned reasons, it shall state which legal provisions were violated and refer the case for redetermination either to a varied bench of the original court or to another court of the same order, degree and nature.

The Court of Cassation may set aside an appeal without a remittal for redetermination where reversal of the impugned decision does not require a fresh ruling on the merits.

Where the Court sets aside an appeal and does not refer the case for redetermination, it may also settle the dispute where it is able to apply the appropriate rule of law on the basis of the facts as assessed and adjudged by the court below.

Where sub-paragraphs (4) and (5) above apply, the Court shall rule on the cost of the proceedings before the court below. The Court's decision shall be enforceable.

Art. 55: Where, having set aside one decision or judgment, a second decision or judgment rendered in the same case between the same parties acting in the same capacity is challenged on the same grounds in law as the first, the Division to which the case was assigned shall refer the matter to the plenary of judges by a referral decision.

The plenary may also be seized by order of the President of the Court of Cassation or by written application of the Principal Public Prosecutor of the Court.

A judge belonging to a Division other than that which rendered the referral decision shall be instructed by the President to report to the plenary.

Art. 56: If the second decision or judgment is set aside for the same reasons as the first, the court to which the case is referred for redetermination shall comply with the decision of the plenary of the Court of Cassation on the point of law as determined by the Court.

Art. 57: The terms of decisions rendered by the Court of Cassation shall be recorded in the official registers of the courts whose decisions or judgments were set aside.

CHAPTER II SPECIAL PROVISIONS FOR APPEALS IN CRIMINAL MATTERS

SECTION I APPEALABLE DECISIONS AND CONDITIONS OF APPEAL

Art. 58: Decisions rendered by an Indictments Chamber and final decisions or judgments rendered by a criminal court, lower criminal court or police court may be set aside on grounds of lack of jurisdiction or an error of law on application by the Public Prosecutor's Office or the party adversely affected.

Art. 59: The Public Prosecutor's Office and all parties to the case may enter an appeal within three days from the date of the impugned decision.

However, for the following parties, the time limit for appeal shall only start to run after the judgment or the decision has been notified:

- a party which, following adversarial proceedings, was not present or represented at the hearing at which the decision was pronounced if that party had not been informed of the date on which the decision would be rendered;
- a defendant who asked to be tried *in absentia* or against whom a decision is taken [illegible];
- a defendant who was tried by default or who, having submitted a brief in defence, repeatedly failed to appear.

Art. 60: For the defendant, the time limit for appeal shall only begin to run as from the date on which the impugned decision or judgment may no longer be challenged. Until such time, appeals shall be inadmissible.

For the Public Prosecutor's Office and the civil party, the time limit shall start to run once the time limit of five days following the notification of the impugned decision has expired.

In criminal matters, the party in default may not enter an appeal.

Art. 61: For all the parties, with the exception of the Public Prosecutor's Office, the time limit for challenging appealable decisions rendered by an Indictments Chamber shall only run from the date on which the parties receive notice of the decision at the request of the Principal Public Prosecutor of the Appeals Court.

However, a decision by an Indictments Chamber committing the defendant for trial before a lower criminal court or a court ruling on summary matters may only be challenged before the Court of Cassation where it has made a ruling on jurisdiction, either *proprio motu* or following an objection from the parties, or where the court seized of the prevention lacks the power to amend a final ruling.

Art. 62: The Public Prosecutor's Office shall be entitled to challenge decisions to dismiss the charges rendered by an Indictments Chamber.

Art. 63: A civil party may challenge decisions rendered by an Indictments Chamber only if an appeal has been entered by the Public Prosecutor's Office. In such case, the civil party shall then enter its appeal within two days of receiving notice of the appeal entered by the Public Prosecutor's Office.

However, the civil party's challenge shall only be admissible in the following cases:

- where an Indictment Chambers has found no grounds to open an investigation;
- where an Indictments Chamber has found the civil complaint inadmissible;
- where an Indictments Chamber has declared the prosecution to be time-barred;

- where an Indictments Chamber has declared, either *proprio motu* or following an objection from the parties, that the court seized of the matter lacks jurisdiction;
- where an Indictments Chamber has failed to decide a charge;
- where the decision contains a basic formal defect which renders it void in law.

Art. 64: Whilst the time limits for appeal continue to run, the execution of the impugned decision shall be stayed. If an appeal has been entered before the Court of Cassation, the stay shall remain in effect until the Court of Cassation renders its decision.

At all times, properly issued custody or arrest warrants shall continue to have effect, notwithstanding an appeal.

Defendants who are discharged, acquitted or sentenced to a suspended prison term or to pay a fine shall be immediately released upon such decision, notwithstanding the lodging of any appeal.

The same shall apply to defendants in detention pursuant to a prison sentence once they have served the sentence.

Art. 65: Acquittals by a Criminal Court may only be challenged in the sole interest of the law, without prejudice to the acquitted person.

PART II PROCEDURES FOR APPEAL

Art. 66: Appeals in criminal matters shall be notified to the other parties to the case by the Public Prosecutor's Office.

Art. 67: The following persons shall be exempt from payment of the sums set out at articles 26 and 27:

- persons convicted in criminal matters;
- persons sentenced to imprisonment by lower criminal courts or courts ruling on summary matters;
- persons receiving legal assistance;
- minors aged less than 18 years.

Art. 68: Persons sentenced to pay a fine shall be exempt only from paying the deposit set out at article 26.

Art. 69: Persons who receive a custodial sentence of more than six months and are not in custody shall forfeit their right of appeal unless the law grants them an exemption or if they are not granted interim release with or without bail.

The entry concerning that person on the register of detained persons or the decision granting an exemption shall be produced before the Court of Cassation by the time that the case is called.

For the appeal to be admissible, the appellant shall simply demonstrate that he or she surrendered to the prison either at the location where the sentence was pronounced or at the seat of the Court of Cassation. The relevant Prison Superintendent shall receive the person on the order of the Principal Public Prosecutor of the Court of Cassation or the Principal Public Prosecutor of the court which rendered the judgment.

Art. 70: The appeal shall be entered by means of a notice of appeal filed with the registry of the court which rendered the impugned decision or judgment.

However, with respect to decisions rendered by the Appeals Court, the notice of appeal may be filed with the registry of the *Tribunal de Grande Instance* in the appellant's place of residence, for parties who are not in custody, or to the prison office for detained parties.

The notice of appeal shall be signed by the registrar and the appellant (in person), or by a lawyer or individual granted special power of attorney. If the appellant is unable to sign the notice of appeal, the registrar shall make a note thereof.

The registrar shall inform the appellant that he or she is required to present the pleas in law in support of the appeal within 15 days.

The registrar shall notify the sentenced person's appeal to the civil party and the party civilly responsible within three days, where it is not limited to a criminal sentence.

The notice of appeal shall be entered into a public register of appeals of which any person is entitled to receive a copy.

In cases provided for under sub-paragraph (2) of the present article, the registrar who receives the notice of appeal shall immediately send an authenticated copy thereof to the Chief Registrar of the Court of Cassation, who shall enter it into the Court's register.

Art. 71: In criminal matters, it shall be not compulsory to file a brief in support of the appeal.

However, if the appellant intends to file a brief, he or she shall do so with the Registry of the Court of Cassation within one month of receiving notice of the impugned decision. The brief, carrying the appellant's signature, shall cite the pleas in law in support of the appeal and the legal texts which have allegedly been breached. The registrar shall acknowledge receipt of the brief.

The time limit shall be respected, failing which the brief and the pleas in law it contains shall be inadmissible.

Art. 72: The other parties may use the provisions of the preceding article to their advantage.

In any event, the brief shall be accompanied by true copies for all the parties to the case.

Art. 73: The chief registrar of the court or tribunal which rendered the impugned decision or judgment shall, within a maximum time limit of one month, initial and assign reference numbers to all the documents in the case file, to which authenticated copies of the impugned decision, the notice of appeal, the record of the proceedings and any brief submitted by the appellant are appended, failing which he or she shall be fined 10,000 CFA francs by the President of the Court of Cassation. The registrar shall make an inventory of all the documents at no cost.

The Chief Registrar shall forward the updated case file to the Prosecutor of the Public Prosecutor's Office, who shall immediately send it to the Principal Public Prosecutor of the Court of Cassation; the Principal Public Prosecutor who, in turn, transmits the file to the President, who shall forward it to the Registry to be processed in accordance with articles 31 *et seq.*

Art. 74: In criminal cases, the Court of Cassation may rule on the appeal immediately after the expiration of the time limits set out in the present section.

SECTION III GROUNDS OF APPEAL

Art. 75: Where the Indictments Chamber is seized of an investigation, any pleas in law as to the nullity of the investigation must be filed, failing which such pleas cannot subsequently be advanced.

Art. 76: In criminal matters, the Investigating Judge's order for committal for trial or, if an appeal has been entered, the Indictments Chamber's final retrial decision, shall define the jurisdiction of the *Cour Criminelle* and remedy any defects in prior proceedings.

Art. 77: Where the sentence handed down is identical to that provided in the applicable law for the offence in question, no application to annul the decision may be filed on the pretext that the incorrect legal text was applied.

Art. 78: In matters determined by the lower courts, the defendant may not argue any nullities from the initial trial as grounds for cassation if he or she did not challenge them before the Appeals Court, save in the event of nullity for lack of jurisdiction where an appeal was entered by the Public Prosecutor's Office.

Art. 79: In no circumstances may the violation of or failure to apply the rules established in order to defend a person being prosecuted be relied on against him or her.

Art. 80: The Court of Cassation shall, on its own motion, raise grounds for setting aside the decision.

SECTION IV
DECISIONS RENDERED BY THE COURT OF CASSATION IN CRIMINAL MATTERS

Art. 81: If the Court of Cassation sets aside and annuls a decision in criminal matters, it shall apply the provisions of articles 53 and 54 of the present law.

However, if the impugned decision in a criminal case is set aside based solely on civil interests, the case shall be remitted to the Appeals Court.

SECTION V
APPLICATIONS FOR REVIEW

Art. 82: Reviews may be requested in both criminal matters and matters before the lower courts, regardless of which court rendered the decision or the sentence that was pronounced:

- Where, following a conviction for homicide, materials are tendered which cast sufficient doubt on the existence of the alleged homicide victim;
- Where, following a conviction for a serious or lesser indictable offence, a new decision or judgment convicts another accused person or defendant of the same offence and the two convictions are incompatible – their incompatibility shall serve as proof of the innocence of either of the sentenced persons.
- Where, following a conviction, a witness who testified in the case is tried and convicted of bearing false witness against the accused or the defendant, the convicted witness may not testify at the retrial.
- Where, following a conviction, new evidence or materials of a nature to establish the convicted person's innocence are presented.

Art. 83: Where the first, second and third sub-paragraphs of the preceding article apply, the following persons are entitled to submit an application for review:

- the Minister of Justice;
- the convicted person or, where he or she is unable to do so, his or her legal representative;
- following the death or confirmed absence of the sentenced person, his or her spouse, children, family members, sole legatees, or any person specifically empowered to do so by the convicted person.

The Court of Cassation shall be seized by its Principal Public Prosecutor, either *proprio motu*, upon instruction from the Minister of Justice or at the parties' request, on the grounds of the first, second and third sub-paragraphs of the preceding article.

If the sentencing decision or judgment has not been enforced, its enforcement shall be automatically stayed upon transmission of the application of the Minister of Justice.

If the convicted person is in detention, the enforcement of the sentence may be stayed by order of the Minister of Justice until the Court of Cassation renders its decision and thereafter, if appropriate, by a decision of the Court on the admissibility of the review.

Art. 84: Where an application for review is admissible but the case has not been prepared, the Court of Cassation shall take any appropriate investigative measures either directly or via a rogatory commission for the purposes of establishing the truth.

Where the case has been prepared, if the Court of Cassation recognises that new adversarial proceedings are appropriate, it shall annul the judgments and decisions and any other rulings impeding the review and shall determine which questions may be put at trial and shall commit the accused persons or defendants, as the case may be, for trial either before the original court, with a varied bench, or before another court of the same order.

For cases which are to be brought before a *Cour Criminelle*, the Principal Public Prosecutor of the retrial court shall inform the *Cour Criminelle* of the circumstances of the referral.

Where it is not possible to hold fresh *inter partes* hearings, particularly in the event of the death, absence or exoneration of one of the parties, if the legal action or the sentence is time-bound, and having duly noted the impossibility of holding fresh hearings, the Court of Cassation shall make a substantive ruling without prior cassation or remittal, in the presence of any civil parties at the trial stage and any trustees it shall have appointed to represent deceased parties, in which case the Court shall only annul unlawful convictions and posthumously exonerate any deceased party.

If a decision concerning a convicted person who is still alive is annulled, leaving no other serious or lesser indictable offences at issue, the case shall not be remitted.

Art. 85: A decision or judgment on review which exonerates a convicted person may, upon his or her application, award that person damages for any harm caused by the conviction.

If the victim of the judicial error is deceased, the victim's spouse, ascendants or descendants shall be entitled to seek damages, subject to the same conditions.

More distantly related family members may be entitled to seek damages only to the extent they are able to justify having sustained material harm resulting from the conviction.

Applications seeking damages are admissible at any stage of the review proceedings.

The cost of any damages awarded shall be borne by the State, save where appellate proceedings are brought against the civil party, plaintiff or false witness who caused the person to be convicted. Damages shall be paid as criminal justice expenses.

The cost of the review proceedings shall be advanced by the applicant until the decision on admissibility is rendered; any costs subsequent to that decision shall be advanced by the State.

If the final decision or judgment of the review contains a conviction, the convicted person shall be responsible for reimbursing the costs to the State and, as the case may be, to the appellants who sought the review.

If the appellant who sought the review loses the appeal, all the costs shall be awarded against him or her.

A decision or judgment in a review which exonerates a convicted person shall be publicly displayed in the city where the conviction was handed down; in the city where the reviewing court has its seat; in the village, community or administrative headquarters of the place where the crime or offence was committed; and in the birthplace and place of residence of the victim of the judicial error if he or she is deceased. The decision or judgment shall be automatically published in the Official Gazette and in one or more newspapers of the appellant's choice at his or her request.

The cost of the aforementioned publication shall be borne by the State.

CHAPTER III SPECIAL PROVISIONS PERTAINING TO LABOUR MATTERS

Art. 86: Appeals in individual disputes and industrial accidents shall be entered within one month from the date of notification of the impugned decision to the person or at his or her place of residence, by means of a signed notice of appeal to the registry of the court which rendered the decision. The registrar shall be responsible for notifying the decision.

The notice of appeal shall be entered into a special register. It shall be signed by the registrar, the appellant (in person), a lawyer, a trade union representative or an attorney duly appointed in writing from among the approved persons listed in the Labour Code. If the appellant is unable to sign the notice of appeal, the registrar shall so note.

The registrar shall notify the appeal to the defendant within two days.

No later than one month after notifying the defendant, the registrar of the court which rendered the decision shall prepare the case file and transmit it via the proper channels to the Registry of the Court of Cassation.

The Chief Registrar of the Court of Cassation shall record the date of receipt of the file at the registry and inform the appellant thereof.

If the appellant files a brief in support of the appeal, the Chief Registrar shall notify it within 15 days to the defendant or his duly appointed lawyer, who shall file a defence brief, accompanied by a certified true copy for each appellant, within one month. The defence brief shall be notified to the appellant by the Chief Registrar under the same conditions as the appellant's brief.

If the appellant does not submit a brief, the case shall be heard two months after the receipt of the case file at the Registry of the Court of Cassation.

If the Court of Cassation notes an error in law in the impugned decision which has not been cited, it shall raise it automatically.

Art. 87: There shall be no costs for proceedings in labour matters.

CHAPTER IV SPECIAL PROCEDURES

SECTION I APPLICATIONS TO TRANSFER A CASE FROM ONE COURT TO ANOTHER ON GROUNDS OF BIAS

Art. 88: Applications to transfer a case from one court to another on grounds of bias shall be entered by means of a request addressed to the President of the Court of Cassation under the conditions set out in Part III, Chapter I of the present organic law.

If the Court of Cassation considers that there are no grounds for transfer, it shall render a reasoned dismissal decision without waiting for the case to be prepared.

If the Court considers the reverse, the responsible Division shall order the suspension of all the trials and proceedings before the bench of the impugned court.

Following the preliminary investigation, the Court shall then try the case. The time limits in this regard set out in Part III, Chapter I of the present organic law shall be reduced by half.

If the Court of Cassation determines that there is bias, it shall, in consultation with the Public Prosecutor's Office, commit the case for trial before any court of its choosing.

Applications for transfer on grounds of bias shall not be admissible against the Constitutional Court, the Court of Cassation, the State Council, the High Court of Justice or any of their respective divisions.

SECTION II
APPLICATIONS FOR TRANSFER OF A CASE TO ANOTHER COURT ON GROUNDS
OF PUBLIC SECURITY

Art. 89: Only the Minister of Justice, via the Principal Public Prosecutor, shall be empowered to enter applications for transfer of a case to another court on grounds of public security to the Court of Cassation.

The Civil and Commercial Matters Division shall rule on such applications within eight days.

SECTION III
CONFLICTS OF JURISDICTION

Art. 90: The procedure for appeals on grounds of conflicting jurisdictions shall be the same as the procedure for transfer of a case to another court on grounds of bias.

SECTION IV
RECUSAL

Art. 91: The Presidents and Judges of the Civil and Commercial Matters Division and of the Labour Matters Division of the Court of Cassation may be recused subject to the conditions of admissibility and form established by the Code of Civil Procedure of the Central African Republic.

The President and Judges of the Criminal Division may also be recused subject to the conditions for admissibility established by the Code of Criminal Procedure, in the forms set out in the Code of Civil Procedure of the Central African Republic.

Art. 92: Upon communication of the recusal to the Judge in question, he or she shall abstain until a decision on the recusal is rendered.

In urgent cases, the President of the Division dealing with the matter shall designate another Judge to perform the necessary functions.

Where the recusal is brought against the President of the Division dealing with the matter, a replacement shall be designated by the President of the Court of Cassation.

Art. 93: Within eight days of the communication of the recusal, the recused judge shall either stand down or provide the grounds for his or her decision not to do so in a written statement.

Art. 94: If the recused judge accepts the challenge, a replacement shall be immediately designated by the President of the Division in question.

If the recusal is brought against the President of the Division dealing with the matter, a replacement shall be designated by the President of the Court of Cassation.

- Art. 95:** If the recused judge declines to stand down or fails to respond, the recusal shall be immediately determined in private session by the Plenary Assembly of the Court of Cassation after hearing the submissions of the Public Prosecutor's Office.
- Art. 96:** The Registrar shall communicate the recusal and the recused judge's response or failure to respond to the President of the Court of Cassation.
- Art. 97:** The case shall be examined without needing to call the parties or the recused judge.
- The Registrar shall send a copy of the decision to the recused judge and to the parties.
- Art. 98:** If the recusal is accepted, the same decision shall also appoint the judge's replacement.
- Art. 99:** If the recusal is dismissed, the person lodging it may be ordered to pay a civil fine of 5,000 to 500,000 francs, in addition to any damages that might be sought.
- Art. 100:** Any procedural documents drawn up by the recused judge before he or she was aware of the recusal shall not be called into question.
- Art. 101:** Recusals against more than one judge shall be lodged in a single document, unless a ground for recusal is subsequently brought to light, failing which the recusal shall be inadmissible.
- The matter shall then be treated as an application for transfer on grounds of bias even if such transfer is not requested.

SECTION V ACTION AGAINST A JUDGE

- Art. 102:** Action against members of the Court of Appeal, the *Cours Criminelles* or against an entire court shall be brought before the Court of Cassation.
- A Division of the Court of Cassation shall be designated by the President shall rule on the admissibility of such actions.
- Action against a judge shall be adjudicated by the Civil and Commercial Matters Division.
- The State shall be civilly responsible for any damages awarded as a result of the facts which gave rise to the action against a judge, save where the action is initiated by the State.

SECTION VI CONFLICTING JUDGMENTS

- Art. 103:** Where it is impossible to reconcile final decisions rendered by different courts that have adjudicated between the same parties concerning the same matter and on the same facts, the conflict between the decisions shall open the matter to appeal.
- Art. 104:** The applicable procedure is set out in Part III, Chapter I of the present organic law.

However, the appeal shall be not subject to time limits.

SECTION VII VERIFICATION OF HANDWRITING AND CHALLENGES TO THE AUTHENTICITY OF DOCUMENTS

- Art. 105:** Challenges against documents produced before the Court of Cassation shall be submitted to the President.

The challenge shall only be examined upon payment of a fine of 20,000 francs to the Treasury.

The President shall render either a dismissal order or an order granting leave to challenge the document.

- Art. 106:** Both the order granting leave to challenge the document and the challenge itself shall be notified to the defendant within 15 days, giving notice to the defendant that he or she shall state whether or not he or she intends to rely on the challenged document.

The defendant shall respond within 15 days, failing which the document shall be excluded from the trial.

If the response is negative, the document shall be excluded and withdrawn from the case file.

If the response is positive, it shall be brought to the challenger's attention within 15 days.

The President shall then direct the parties to appeal the matter before a court designated by the President to rule on the authenticity of the document, in accordance with the law.

SECTION VIII CHALLENGE TO CONSTITUTIONALITY

- Art. 107:** Where the resolution of a dispute brought before the Court of Cassation rests on an assessment of whether or not the provisions of a law comply with the Constitution, the court shall refer the challenge to constitutionality to the Constitutional Court and stay its own ruling until the Constitutional Court

renders its decision. The Constitutional Court shall render its decision within one month of the date of referral. If it finds that the provision brought before it is at variance with the Constitution, that provision shall no longer be applied.

SECTION IX
PROCEEDINGS INSTITUTED AGAINST MEMBERS OF THE COURT

Art. 108: Where a serious criminal offence or a lesser offence is committed by a member of a bench or prosecutor, the Court of Cassation, having been seized by the Ministry of Justice, shall designate a court to investigate and try the case.

In no circumstances shall the designated court be one to which the accused judge or prosecutor belongs.

Any co-perpetrators and accomplices shall also be brought before the designated court.

PART IV
SINGLE CHAPTER
TRANSITIONAL AND FINAL PROVISIONS

Art. 109: Cases pending before the Supreme Court which fall within the jurisdiction of the Court of Cassation when the present organic law comes into force shall be transferred to the Court of Cassation.

Art. 110: Where necessary, subsequent texts shall supplement the provisions of the present organic law or establish procedures for its application.

Art. 111: The present organic law repeals all previous provisions repugnant hereto. It shall be registered and published in the Official Gazette and enforced as a law of the State.

Done at Bangui this 23 DEC. 1995

[signed]

Ange-Félix Patassé