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THE CIVIL AND CRIMINAL PROCEDURE CODE OF BHUTAN, 2001

དཔལ་ལྡན་འབྲུག་གཞུང་།

Royal Government of Bhutan

"Establish a justice devoid of bias or partiality"
Zhabdrung Ngawang Namgyel

THE CIVIL AND CRIMINAL PROCEDURE CODE OF BHUTAN, 2001

PREAMBLE

We, the People, the *Dratsang,* and the Royal Government of Bhutan, in Order to **'maintain the quality of an unimpaired flowing of heavenly stream of Justice'** and ensure domestic Tranquility to ourselves and our Posterity, do ordain and establish this Civil and Criminal Procedure Code for the Kingdom of Bhutan.

PRELIMINARY

1. **Short Title, Commencement and Extent**

1.1. This Code shall:

(a) be called THE CIVIL AND CRIMINAL PROCEDURE CODE OF BHUTAN, 2001;

(b) come into force in the year of the Female Iron Snake Year, Sixth Month, the Third Day, corresponding to the Twenty-Third day of July, 2001; and

(c) apply to all persons throughout the territory of Bhutan or otherwise within the judicial reach of the Royal Courts of Justice of Bhutan.

1.2. The provisions of *OM, AA* and *HUNG* of the *Thrimzhung Chhenmo*, 1959, are inviolable by this Code.

Amendment

1.3. The provisions of the following sections of law are hereby, amended:

(a) Chapter 11(1) & 11(2) except *Da* 2-12 of the *Thrimzhung Chhenmo*, 1959;

(b) Section *Pa* 5 of the *Thrimzhung Chhenmo*, 1959; and

(c) Sections 13, 19, 27, 28, 29, and 30 of the Bhutan Police Act, 1980.

PART I
GENERAL PROCEDURES

CHAPTER 1
Principles of the Judiciary

The Independence of the Judiciary

2. The Judiciary is separate from the Legislature and Executive and is fully independent in the exercise of its functions.

2.1 The Executive shall have a duty to provide for the execution of judgments of all the Courts.

Equal Justice under Law

3. All persons are equal before the law and are entitled to equal and effective protection of the law without discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3.1 A citizen shall have the right to be tried by the ordinary courts of law and shall not be tried before ad hoc tribunals.

Open Trial

4. Every person is entitled to a fair and public trial by an independent and impartial Court in any proceeding. The Court may in its discretion exclude the press and the public from all or any part of the trial or other proceedings only if there is a compelling need to do so in the interest of:
   (a) public order;
   (b) national security;
   (c) the privacy of the parties;
   (d) protecting the privacy of a juvenile; and
   (e) in any other situation, if in the opinion of the Court publicity would seriously prejudice the interests of justice.

Non-Interference

5. The Courts shall decide matters before it impartially on the basis of fact and in accordance with the rule of law.

Impartiality

6. There shall be no bias or perceived bias in the judicial process.

6.1. A *Drangpon/Rabjam* shall disqualify himself/herself or be disqualified from presiding or dealing with a case where:
   (a) he/she is related to any party to the case;
   (b) circumstances exist which affects or could be construed to affect his/her impartiality; or
   (c) his/her act contravenes the Code of Conduct.

Habeas Corpus

7. A member of a family may on behalf of a person imprisoned on a criminal conviction or a person detained, request the Supreme/High Court to issue an order of Habeas Corpus for the production of the person before the Supreme/High Court.

CHAPTER 2
The Structure of the Courts

The Structure of the Courts

8. The Courts shall be:
   (a) the Supreme Court of Bhutan;
   (b) the High Court;
   (c) the *Dzongkhag* Courts; and
   (d) the *Dungkhag* Courts.

The Supreme Court

9. The Supreme Court shall:
   (a) be established in obedience to *kasho* of His Majesty the *Druk Gyalpo*;
   (b) be presided over by the Chief Justice of Bhutan;
   (c) be the highest Court of Justice in Bhutan with all other Courts within the territory of Bhutan subordinate to it; and
   (d) have such number of *Drangpons* as His Majesty the *Druk Gyalpo* may appoint upon the recommendation of the National Judicial Commission

The High Court

10. The High Court shall:
   (a) be presided over by a Chief Justice of the High Court;
   (b) have such number of *Drangpons* as His Majesty the King shall appoint upon the recommendation of the National Judicial Commission;
   (c) discharge its duties and functions individually or in benches, as the Chief Justice may decide; and
   (d) have such number of benches constituted by the Chief Justice as may be required in the interest of Justice.

The *Dzongkhag* Court

11. A *Dzongkhag* Court shall:
   (a) be established in every *Dzongkhag;*
   (b) be presided over by a *Drangpon;* and
   (c) have such number of benches established from time to time by the Chief Justice of Bhutan.

The *Dungkhag* Court

12. A *Dungkhag* Court shall be presided over by a *Dungkhag Drangpon*.

Appointment of *Drangpons*

13. His Majesty the King shall appoint legally qualified, experienced and competent persons of high integrity as:
    (a) the Chief Justice of Bhutan;
    (b) *Drangpons* of the Supreme Court, upon the recommendation of the National Judicial Commission;
    (c) Chief Justice and *Drangpons* of the High Court, upon the recommendation of the National Judicial Commission; and
    (d) *Drangpons* of the *Dzongkhag* Courts, upon the recommendation of the National Judicial Commission.

13.1. The Chief Justice of Bhutan shall appoint legally qualified, experienced and competent persons of high integrity as *Drangpons* of the *Dungkhag* Court, upon the recommendation of the Judicial Service Council.

Appointment of *Rabjams*

13.2. The Chief Justice of Bhutan shall appoint legally qualified, experienced and competent persons of high integrity as Rabjam.

Oath of Allegiance and Secrecy

13.3. After receiving the warrant of appointment from His Majesty the *Druk Gyalpo*, the Chief Justice shall administer an 'Oath of Allegiance and Secrecy' before a Court and obtain a written pledge as follows:

"I… in the name of the *Triple Gem* and the guardian deities of the Kingdom of Bhutan do solemnly swear and affirm that I will faithfully perform the duties of my office without fear or favour, affection or ill-will and will to the best of my ability, preserve, protect and defend *Tsa-Wa-Sum* with *Tha Damsti* and *Ley Jumdrey."*

The National Judicial Commission

14. His Majesty the King shall appoint qualified, experienced and competent persons of high integrity as members of the National Judicial Commission.

The Chairman of the National Judicial Commission

14.1. The Chief Justice of Bhutan shall be the Chairman of the National Judicial Commission.

Tenure

15. Every *Drangpon* shall:
    (a) enjoy security of tenure, *quamdiu se bene gesserint*; and
    (b) be censured **,** suspended or removed from office only by an order of His Majesty the *Druk Gyalpo* upon the recommendation of the National Judicial Commission for proven misbehavior or incapacity.

CHAPTER 3
Jurisdiction

Jurisdiction of the Supreme Court

16. The jurisdiction of the Supreme Court shall extend to the whole of Bhutan, all persons therein, and all persons with an established legal relationship to Bhutan. The Jurisdiction shall be exercised in accordance with this Code.

Appellate Jurisdiction of the Supreme Court

17. The Supreme Court shall have appellate jurisdiction over cases.

Advisory Jurisdiction

18. Where a question of law or fact is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, His Majesty the King may refer the question to that Court for its consideration. The Court shall hear the reference and submit to His Majesty the King its opinion thereon.

Inherent Powers

19. Where a particular case is not covered or is only partially covered by this or any other law in force, and is not otherwise excluded from adjudication, the Supreme Court/High Court shall have original jurisdiction over it.

Extra-territorial Jurisdiction

20. The Supreme/High Court shall exercise jurisdiction outside Bhutan on the bases of the following principles:
    (a) territorial;
    (b) nationality;
    (c) passive personality;
    (d) protective;
    (e) universality;
    (f) flag jurisdiction; and
    (g) airspace.

Jurisdiction of the High Court

21. The jurisdiction of the High Court shall extend to the whole of Bhutan, all persons therein, and all persons with an established legal relationship to Bhutan. The Jurisdiction shall be exercised in accordance with this Code.

Original Jurisdiction of the High Court

22. The High Court shall have original jurisdiction over cases:
    (a) arising out of or under international treaties, conventions and covenants;
    (b) where the lower Court does not otherwise have original jurisdiction;
    (c) between two or more *Dzongkhags*;
    (d) in which Bhutan or the Government of Bhutan is a party; and
    (e) of right of *Habeas Corpus*.

Appellate Jurisdiction

23. The High Court may exercise appellate jurisdiction over:
    (a) any judicial review on appeal from an administrative adjudication; and
    (b) any order/decision/judgment of a *Dzongkhag* Court.

Original Jurisdiction of *Dzongkhag* Court

24. A *Dzongkhag* Court shall exercise original jurisdiction in all cases where venue exists in its territorial jurisdiction and original jurisdiction of the High Court does not apply.

Appellate Jurisdiction of *Dzongkhag* Court

25. A *Dzongkhag* Court shall exercise appellate jurisdiction over an appeal from an order, decision or judgment of *Dungkhag* Courts subordinate to it.

Original Jurisdiction of *Dungkhag* Court

26. A *Dungkhag* Court shall exercise original jurisdictions in all cases where venue exists in its territorial jurisdiction and the original jurisdiction of the High Court and *Dzongkhag* Court does not apply.

Automatic Enforcement Orders

27. Where a Court of separate jurisdiction issues a warrant, order, decision or judgment which must be carried out within the territorial jurisdiction of another Court, the Issuing Court shall request by Court Order, the Receiving Court to take necessary action.

    27.1. The Receiving Court shall ensure that the Issuing Court's warrant, order, decision or judgment is carried out fully to the best of its ability.

27.2. No line of appeal or judicial review shall vest in the Receiving Court with regard to any such warrant, order, decision or judgment of the Issuing Court.

27.3. Appellate review shall lie with the Issuing Court.

27.4. The line of appeal shall remain with the Court with appellate jurisdiction over the Issuing Court with the appeal filed by the aggrieved party to that Court in accordance with the appeal procedures contained in this Code.

CHAPTER 4
Powers of the Judiciary

Power to Adjudicate

28. When a complaint is properly admitted in accordance with this Code and deemed justiciable, the Court shall:
    (a) preside over all proceedings within its jurisdiction;
    (b) not entertain any petition outside the Court;
    (c) not delegate any power or authority over any element of a case to any other person, institution or body;
    (d) pronounce judgment based on relevant and reliable evidence according to the law; and
    (e) enforce orders, decisions and sentences in accordance with this Code and other laws.

Power to fill Lacuna

28.1. Every Judge shall decide a case in accordance with the provisions of Law. Where any section is ambiguous or there exists lacuna, the decision of the majority Judges of the Supreme Court/High Court shall prevail.

International law

29. The Royal Courts of Justice shall apply International Convention, Covenant, Treaty and Protocol that are duly acceded by the Royal Government of Bhutan and ratified by the National Assembly of Bhutan.

Power to Make Rules

30. The Supreme Court and the High Court may make rules for the purpose of giving effect to the provisions of this Code.

30.1. The rules made under this Section may:
    (a) be with regard to the use of forms or registers, etc. to be used in the Courts;

(b) be with regard to the amount of compensation or damages to be assessed by the Courts;
(c) with regard to any other matter which is to be or may be prescribed; and
(d) not be inconsistent with the provisions or the intentions of this Code or any other law in force in Bhutan.

CHAPTER 5
Registration

Registration

31. A Case shall be registered with the Registry of the Court.

31.1. The registration may be effected by:
(a) a representative of the State;
(b) a prosecutor or a *Jabmi* hired by the state to prosecute;
(c) the police officer;
(d) a victim or a victim's next-of-kin; or
(e) an aggrieved person or his/her *Jabmi/* next-of-kin.

31.2. A petitioner must have "legal standing" and the petition must involve a concrete case or controversy.

Miscellaneous Matter

32. The Court shall conduct Miscellaneous Hearing expeditiously before a case has been registered with the Registry of the Court.

32.1. During the Miscellaneous Hearing, the Court shall:
(a) make an initial determination whether sufficient legal cause exists to admit the case for proceedings according to the law;
(b) hear the case within the prescribed period; and
(c) give written reasons, if the petition of a party is dismissed.

Jabmi

33. A person may:
(a) plead or defend himself/herself in person; or
(b) be represented by a Bhutanese *Jabmi* of his/her choosing and where this right is waived it must be done competently and intelligently.

Legal Aid

34. Only an indigent Accused shall have Legal Aid provided for one's defence where the interest of justice so requires.

CHAPTER 6
Summons

Scope of the Summons

35. All persons and legal entities may be made to appear and provide evidence or otherwise participate in any legal process or procedure through service of summons.

Power to issue Summons

35.1. Subject to the provisions of this Code, every Court may issue:

(a) service of process to a party in a civil suit;

(b) summons for the appearance of any person whose presence is required in connection with any civil or criminal proceeding or judicial action; and

(c) summons for the production of any document or other material object necessary for the purpose of any civil or criminal proceeding or judicial action.

Subpoena and summons for witness

36. Every party to a case shall be entitled to present evidence in his/her defence, including the right to subpoena relevant witnesses.

36.1. A Court may issue a subpoena or otherwise summon a witness to provide testimony in a civil or criminal matter on:

(a) the request of any party to the suit; or

(b) it's own motion, if the Court, in the pursuit of justice, deems evidence of such witness essential.

36.2. Nothing in this Code shall preclude a plaintiff/prosecutor or a respondent/defendant from presenting additional witnesses during the Court proceedings without a Court Summons.

36.3. A witness so required to testify by a party may appear following sufficient notice to the opposing party as determined by the Court to enable effective cross-examination.

36.4. The witness and physical evidence must be presented within the time period reasonably prescribed by the Court.

36.5. The Court shall grant adequate time to rebut evidence and cross-examine witness of the opposing party.

Summons

37. The Court shall issue summons under the seal of the Court.

37.1. A Summons shall:

(a) state the name of the Court and the title of the case;
(b) order a person to whom it is directed to appear before the Court in person at the time, date and place specified therein;
(c) order a person to whom it is directed to give testimony;
(d) order a person to produce evidence; or
(e) order a person to produce document/other material object on the date and place specified therein.

Service of Summons

38. A Summons shall be served upon a person by delivering, tendering or sending through registered mail to him/her a copy of the Summons.

38.1. Where the person to be served/summoned cannot by the exercise of due diligence be found, the summons may be served by leaving a copy with:

(a) an adult member of his/her family; or
(b) a person living with him/her at the same dwelling.

38.2. The Court may also publish a written proclamation in any media including electronic requiring a person to appear at a specified place and time not less than twenty-one days from the date of publishing such a proclamation, if service in person or by mail is ineffective.

Serving of Summons Outside Jurisdiction

39. When a Court desires that a Summons issued by it be served outside its territorial jurisdiction, it may:

(a) issue the Summons for service directly;
(b) send such a Summons in duplicate to a *Drangpon* within whose territorial jurisdiction the person summoned resides; or
(c) have the process sent by a registered mail.

Return of Service

40. After delivering the service to the litigant, the official who served the process shall file a return of the service of notice with the Court, which issued the Summons.

Failure to Answer a Service of Process or Summons

41. Where a party fails to answer a Court-issued Service of Process or Summons, the Court may issue an order to the police to produce the party before it.

41.1. Subsequent failure to answer the Summons may result in a finding of contempt and the party may be subjected to civil or criminal sanction or fine in accordance with the law.

Payment for Witness

42. The parties to the case shall pay to the witness so summoned:
    (a) reasonable traveling fare; and
    (b) daily allowance at the prevailing rate prescribed by the Minimum Wage Rate.

***Sua Sponte* Summons**

42.1. If the Court summoned the witness *sua sponte*, after considering it necessary, expedient or otherwise in the interest of justice to do so, the Government shall pay reasonable travelling fare and daily allowance at the prevailing rate prescribed by the Minimum Wage Rate.

CHAPTER 7
Discovery

Purpose of Discovery

43. Discovery shall be allowed to:
    (a) avoid unnecessary proceedings as to undisputed facts;
    (b) aid in formulating issues;
    (c) freeze testimony so as to prevent perjury;
    (d) serve to prepare a case for summary Judgment;
    (e) promote settlement of a case outside Courts; and
    (f) preserve evidence of witness who may not be available at the time of the trial.

Scope of Discovery

44. The party may obtain discovery regarding any matter, not privileged, relevant to a specific claim or defence in an action.

Limits of Discovery

45. Discovery shall not be allowed if:
    (a) a suit has not been legally initiated;
    (b) it is unreasonably duplicative;
    (c) information sought is obtainable through other source that is more convenient, less burdensome or less expensive;
    (d) it is unduly burdensome or expensive in the facts and circumstances of the case;
    (e) it is for irrelevant information including facts bearing no relation to the case;

(f) it is to harass or embarrass a party or a witness;
(g) it is privileged information as defined in this Code;
(h) it is to protect the witness in the criminal trial; and
(i) it is against the interest of the national security.

45.1. The party requesting discovery shall show both need and that refusal to allow discovery would prejudice or cause extreme hardship to him or her.

45.2. The discovering party must adequately describe the property to be inspected.

Timing of Discovery

46. The Court may prescribe such terms and conditions as are just, specifying the time, place and manner of making the discovery and inspection.

Failure to Comply with Discovery

47. If a party has failed to comply with a legitimate request for discovery, the Court may:
(a) order such party to permit discovery;
(b) order such party to permit inspection;
(c) grant a continuance until such time as discovery has occurred;
(d) order whatever relief is deemed appropriate; and
(e) order the non-compliance party or legal representative to pay reasonable Court costs, attorney fees or both.

Retention of Evidence

48. A Court shall arrange for retention of any evidence produced before it in any suit to be impounded and
kept in the custody of the Court, for such period and subject to such conditions as the Court deems fit.

48.1. A document admitted in evidence in a suit shall be endorsed with:
(a) the number and title of the suit;
(b) the name of the person producing the documents; and
(c) the date on which it was produced.

48.2. The endorsement shall be signed or initialed by the presiding judge.

CHAPTER 8
Specific Discovery Devices

Affidavit

49. A party may request for an affidavit from a person regarding information relevant to the case at hand.

49.1. An affidavit, which is written or printed declaration, shall be:
- (a) statement of fact made voluntarily;
- (b) confirmed by signed affirmation by the party making it; and
- **(c)** taken before a person having authority to administer such an affirmation, as a Government or a Court official.

Oral Deposition

50. The Court may depose a person with relevant information.

50.1. A deposition shall be taken:
- (a) before an officer legally authorized to take depositions;
- (b) in a foreign country, subject to compliance with that country's laws and rules pertaining to the taking of discovery; and
- (c) in accordance with the prescribed Interrogatories.

50.2. When the testimony is fully transcribed, the deposition shall be:
- (a) read out to the person deposed for verification as to its accuracy;
- (b) corrected, if necessary; and
- (c) signed by the person deposed.

50.3. An illiterate person is entitled to have an official of the Court read the statement to him/her before a literate witness to confirm its accuracy.

50.4. The official of the Court and the witness shall sign the deposition confirming the accuracy of what is written and what was read to the person deposed by the Court official.

Written Interrogatories

51. A party may send a set of relevant questions to the other party to the case.

51.1. A party has the duty to inspect before answering interrogatories to ensure the accuracy of the response.

Impeachment

52. Statement made during discovery is admissible as substantive evidence or impeachment evidence at proceedings to impeach a witness who makes an inconsistent statement in the Court.

Unavailable Witnesses

53. A deposition of an unavailable witness may be introduced into evidence at proceedings.

Retraction or Striking out Evidence

54. The deposed party to a case may request the Court to strike out matters, which he/she considers inadmissible from the deposition or interrogatory.

54.1. The party may seek to retract or strike out portions of discovery pertaining to any witness if so warranted under the law.

CHAPTER 9
Information Privileged from Discovery

Work-Product

55. Work-product is privileged from discovery.

55.1. Work-product shall include:

(a) materials, mental impressions, conclusions, opinions or legal theories of opposing party and his/her legal representative; and

(b) expert evidence given by the expert to the opposing party and his/her legal representative informally.

55.2. Work product privileges cannot be used to hide facts relevant to the case.

Financial Information

56. Discovery of defendant's financial situation is generally not permitted except when punitive damages are sought.

Insurance policy

57. The Court shall not allow discovery of insurance policy limits for trial but may allow it in order to allow the party an opportunity to assess adequately the settlement value of the case.

Protective and Modifying Orders

58. On a sufficient cause being shown, the Court may at any time order that discovery or inspection be denied, restricted, deferred or make such other order as is appropriate.

CHAPTER 10
Attachment

Attachment of Property

59. When a property in dispute is located within the jurisdiction of a Court, that Court at the request of a party to the dispute has the right to adjudicate its status or ownership in accordance with this Code or other laws.

59.1. Jurisdiction over a tangible property is attained by attachment and over an intangible property by garnishment.

59.2. In accordance with this Code, the Court may order attachment of any property:

(a) to obtain *in rem* or *quasi in rem* jurisdiction when the party to a case has not acknowledged process;

(b) to prevent wasting, damaging, disposing or otherwise impairing the value of the whole or any part of the property in dispute that might be used in a case;

(c) to prevent the removal of the whole or any part of the property in dispute from the territorial jurisdiction of the Court; and

(d) in cases of fraud and intentional torts.

59.3. In case property to be attached is found under the jurisdiction of a separate Court, the concerned Court may issue a Court Order requesting that separate Court to attach the disputed property.

59.4. In accordance with this Code, the Receiving Court shall enforce such a Court Order.

59.5. The property to be attached shall be clearly demarcated and relevant to the case.

Grounds and Due Process

60. Request for attachment shall be addressed directly to the Court.

60.1. Attachment procedures shall:

(a) comply with due process of law ;

(b) provide for notice; and

(c) provide an opportunity to be heard.

60.2. The plaintiff must show that sufficient grounds for attachment exist.

60.3. No person executing process of attachment or seizure of moveable property shall enter any dwelling place seven anti-Meridian and five post-Meridian.

***Ex-parte* Attachment**

61. Under extraordinary circumstances, attachment may be granted ex-parte.

61.1. When attachment is issued *ex-parte*, the Court issuing such order shall give an opportunity to the absent party to show cause against the order within forty-nine days from the date of the order.

Claims of Third Parties

62. A person not a party to the litigation having a legal interest in the property attached may make a claim to the Court which issued the attachment order within hundred and eight days of the date of attachment.

Requests for Attachment

63. In determining whether to grant a request for an attachment, the Court may consider:

(a) the merit and legality of the request;
(b) the availability of an alternative adequate legal remedy;
(c) the difficulty of administering and enforcing the order;
(d) the likelihood that the injunction or order will be effective; or
(e) the possibility of an irreparable harm occurring without such attachment.

Preliminary Injunction

64. A Court may issue a preliminary injunction, if the respondent/ defendant is acting in a way that would irreparably affect the plaintiff's claim or would render the final judgment in the action ineffectual.

64.1. Since preliminary injunction may cause serious injury to the respondent/defendant and since it is granted prior to adjudication on the merits of the case, the Court shall utilise this remedy only under extraordinary circumstances where the plaintiff has demonstrated that he/she cannot be protected by less drastic measures.

64.2. An opposing party may contest the preliminary injunction prior to trial or during the course of the trial.

64.3. Attachment under preliminary injunction shall not generally extend beyond the final settlement of the case.

Temporary Restraining Order

65. A temporary restraining order can be granted upon showing that immediate irreparable harm will occur.

    65.1. A Court shall, upon the request of the plaintiff/defendant immediately serve the temporary restraining order.

    65.2. The Plaintiff shall make a good faith effort to give notice to the Defendant/Respondent of the temporary restraining order hearing.

    65.3. If the temporary restraining order is *ex-parte* or due notice has not been given to all the parties, the duration of the temporary restraining order should not exceed one hundred and eight days.

Interlocutory Order

66. The Court may issue an interlocutory order during the course of a trial to prevent an injury that may be suffered by the petitioner owing to any action or inaction of a person or authority in case a preliminary injunction or temporary restraining order is not issued.

    66.1. An interlocutory order may at the discretion of the Court issuing it be modified, vacated or annulled, if it finds that:
    (a) the party is misusing the process;
    (b) the party is unnecessarily delaying the course of justice; or
    (c) there are other sufficient legal grounds for doing so.

    66.2. Attachment under interlocutory order shall not generally extend beyond the final settlement of the case.

    66.3. An Appellate Court may pass an interlocutory order to a subordinate Court if:
    (a) its proceedings are irregular;
    (b) there is an undue delays;
    (c) there is an unreasonably frequent adjournments; or
    (d) there is a miscarriage of justice.

Injunction

67. A Court may issue an injunction against a party restraining from specified action or specified use of property not in accordance with the judgment rendered.

    67.1. The Court shall specify the duration of the injunction in its order.

Retention and Interim Delivery of Attached Property

68. A Court shall arrange for retention or interim delivery of any property attached by it.

    68.1. In such a case, the persons to whom the property is delivered shall be made to furnish a bond by which they agree to produce the property before the Court as and when required.

Receiver

69. The Court may appoint a receiver when there is substantial danger that the property will be lost, damaged or removed from its jurisdiction.

    69.1. The receiver's sole allegiance and legal responsibility is to the Court.

Claims and Objections to Attachment

70. Any claim or objection to the attachment of any property may be made within hundred and eight days from the date of such attachment, by any person other than the proclaimed person.

    70.1. In the event of the death of the claimant or objector, the claimant’s legal representative may continue any claim or objection made within the period allowed by this Code.

    70.2. A person whose claim or objection has been disallowed in whole or in part by an order under this Code may, within a period of hundred and eight days from the date of such order, institute a suit to establish the right, which he/she claims in respect of the property in dispute.

Release, Restoration and Sale of Attached Property

71. Following the judgment and any appeal, if no injunction is granted, the tenure of all previous attachments shall cease.

    71.1. If the proclaimed person does not appear within the time specified in the proclamation, the property under the attachment shall be at the disposal of the Government.

    71.2. The property shall not be sold until the expiration of hundred and eight days from the date of the attachment and until any claim preferred or objection made has been disposed off under this Code. However, the Court may cause it to be sold if:
    (a) such property is perishable in nature; or
    (b) otherwise beneficial to the owner.

71.3. If, within one hundred and eight days from the date of the termination of the attachment order, any person whose property is or has been held by the Court or its receiver appears, such property, or if the same has been sold, the net proceeds of the sale, or if part only thereof has been sold, the net proceeds of the sale and the residual of the property shall, after satisfying therefrom all costs incurred in consequence to the attachment, be delivered to him/her.

71.4. Failing this, the Court in its discretion may order the property to be sold and provide the proceeds from the sale to the Government.

CHAPTER 11
Judicial Process

Assignment of a case

72. A case shall be assigned to a Bench in an order of precedence.

Conflict of Interest

73. A case shall not be assigned to a *Drangpon* who may have or be reasonably construed to have conflict of interests in the matter at hand.

Order of Case Precedence

74. The Court shall hear the cases in an order of chronological precedence.

Out-of-turn Case

74.1. The Court may hear a case out-of-turn, if:

(a) there is an imminent danger of loss or destruction of document/evidence/goods;

(b) it is characterised by the rapid deterioration of health of a critical party or witness in the dispute; or

(c) there is a severe and augmenting monetary implications to the parties.

Expeditious Proceedings

75. All inquiries and proceedings shall be:

(a) conducted as expeditiously as possible; and

(b) continued uninterrupted until the case is completed, unless the Court grants an adjournment or stay of proceedings in accordance with this Code.

Adjournment and Stay of Proceedings

76. A Court shall not consider a motion for adjournment or stay of proceedings *sine die*.

76.1. The Court may grant a motion for adjournment or stay of proceedings:

(a) for three to twenty one days, in the absence of a crucial witness summoned by the Court;

(b) for a maximum of three days, if an opposing party requires time to study/consider Court admissible evidence not previously available which may have an impact on his/her legal strategy or plea ;

(c) for a maximum of three days, if a party needs time to prepare for the cross-examination of a new witness of the opposing party not previously scheduled to appear in the proceedings;

(d) for a maximum of three days, if a respondent/defendant wishes to change his/her plea;

(e) for a maximum of seven days, if the witness or party in the suit, excluding an imprisoned defendant has to attend another Court provided that the Summons from that Court was issued earlier to the institution of this suit;

(f) for a maximum of seven days, if the parties jointly agree to pursue an out-of-Court settlement in accordance with this Code;

(g) for a maximum of sixty days, if a party is sick or mentally unsound and furnishes a medical certificate;

(h) for a maximum of seven days, if a member of the family of either party is critically ill;

(i) for a maximum of fifty days, if there has been a death in the family of either party;

(j) for a maximum of thirty days, if the participation of a litigant in farm activities during planting or harvesting seasons is necessary;

(k) if a national emergency has arisen directly affecting the parties or other key parties to the suit; or

(l) for any other judicially valid reasons or purposes as may be determined by the Court.

76.2. The Court shall by necessity exercise heightened scrutiny of a request for adjournment or stay of proceedings where the non-requesting party is incarcerated.

76.3. The prescribed time for adjournment shall be so stated at the time of the Court's order on a motion to adjourn or a motion to stay.

76.4. While granting adjournment at the request of a party, the Court may impose such terms and conditions as it considers just and proper.

Production before Court Regularly

77. Every person in a trial shall be regularly produced before a Court of Justice.

Unauthorised Person

78. Nothing in this Code shall be deemed to authorise any person on behalf of another to address the Court or to examine witnesses, except where authorised by the Court.

Hearing Calendar

79. The Court shall establish a hearing calendar.

Show cause Order

80. The Court may issue a show cause order on the motion of the opposing party.

80.1. Where the person so ordered fails to appear or to give sufficient reasons, the Court may take appropriate action.

Hearing

81. Hearing shall be conducted in accordance with this Code.

Preliminary Hearing

81.1. The purpose of Preliminary Hearing is to enable the Court to:

(a) entertain challenges to pleadings based on cause, procedure and jurisdiction; and

(b) clarify substantive or procedural legal issues.

Timing

81.2. The Court shall convene a preliminary hearing within:

(a) ten days of registration in criminal cases; and

(b) one hundred and eight days of registration in civil cases.

Opening Statement

82. Opening statements shall entail each party's version of the facts.

Rebuttal

83. The Court shall allow the parties to a case or their *Jabmi* for rebuttal.

Evidence

84. The Court shall grant opportunity to present evidence including the right to subpoena witness and to compel the production of physical evidence on his/her behalf.

84.1. Evidence may include physical exhibits, the testimony of witnesses or expert opinion in accordance with this Code.

Independent Testimony

85. If necessary, the Court may hear and take an independent testimony of party to the case.

Witness

86. If necessary and available, the Court shall hear witness of the parties to the case.

Exhibit

87. If available and necessary, the relevant exhibits shall be examined by the Court and the parties to the case.

Judicial Investigation

88. After the submission of evidence and hearing of witness, the concerned Court may conduct judicial investigation, if necessary.

88.1. The Court may conduct a judicial investigation to:

(a) inspect or inquire into any matter before it;
(b) take additional evidence and hear additional arguments;
(c) make inquiry or inspection relevant to the case on the spot;
(d) give an opportunity to the parties to present and cross-examine additional witnesses on the spot;
(e) clarify the cause for inconsistency in statements made before and after the spot inspection; and
(f) make a written report of the spot inspection or inquiry.

Judicial Enquiry Committee

89. In any proceeding, the Court may appoint a Judicial Enquiry Committee to:

(a) examine any person;
(b) make a local investigation;
(c) examine or adjust accounts;
(d) hold a scientific, technical or expert investigation;
(e) conduct a sale of property which is in the custody of the Court; or
(f) perform any other functions, which are legally justified by the case and supported by the law.

Cross-examination

90. In the determination of any case, the parties to a case shall be entitled to examine or have cross-examined the opposing witness.

90.1. The Court may, subsequent to the cross-examination, if the party who calls the witness so desires allow re-examination.

90.2. The parties or their *Jabmis* may postpone their cross-examinations until a later moment during the hearing, if the right to cross-examine is not utilised immediately following presentation by the opposing party.

90.3. The Court, at its discretion and in pursuit of Justice and equity, may choose to cross-examine the witnesses of either party.

Execution of *Bah*

91. In every proceeding, the Court shall execute *Bah,* if the parties to the case so request.

Closing Argument

92. The closing argument shall give opportunity to the parties or their *Jabmis* to summarise the case and evidence.

Court Deliberation

93. Following the closing arguments, the Court shall adjourn and deliberate over the case at hand.

Confidentiality

94. Professional secrecy and confidentiality concerning the case and Court deliberation shall bind the Court and all of its officers.

94.1. The Court and its officers shall not discuss, publicise or testify on the case, Court deliberation or related matters.

94.2. The Court record and judgment shall serve as the complete record and testimony of the case and the Court deliberations.

94.3. The Court deliberations shall not exceed ten days whenever reasonably possible.

Court Deliberation by a Bench

95. If a case is heard by more than one *Drangpon:*
    (a) the decision of the majority shall prevail;
    (b) the judgment shall not be signed by a *Drangpon* who was not present during the hearing of the case; and
    (c) the dissenting *Drangpon* may give his/her reasons of dissent in the judicial opinion following the opinion of the majority.

CHAPTER 12
Judgment

Judgment

96. Following its deliberations, the Court shall reconvene and in the presence of the parties pronounce its written judgment.

Burden of proof in Civil Case

96.1. Finding of liability against one or more of the parties can only be given when proof by a preponderance of the evidence has been demonstrated by the plaintiff/appellant.

Burden of proof in Criminal Case

96.2. Finding of guilt against one or more of the parties can only be given when the prosecution to the full satisfaction of the Court has established a proof beyond reasonable doubt.

96.3. Judgment shall be:

(a) in conformity with *"Yig Kur Namzhag"*;
(b) in writing;
(c) reasoned;
(d) dated;
(e) sealed;
(f) signed; and
(g) placed in the Court record.

96.4. The judgment of the Court shall be final once rendered.

96.5. If no appeal is recorded within ten days from the registration of the judgment in the Court record, it shall be enforced.

Award and Sentence

96.6. In the case of a finding of guilt or liability against one of the parties, the Court may directly pronounce sentence or Judgment or allow a further recess to finalise its deliberations on the matter.

CHAPTER 13
Costs

Costs of Litigation

97. It shall be at the discretion of the Appellate Court based on the outcome of a case to determine an appropriate assignment of costs and other expenses related to the suit.

97.1. The Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid and to give all necessary directions for the purposes and so state in its judgment order.

Costs for Causing Delay

98. The Court may order a defaulting party to pay costs to the attending party calculated at the rate prescribed under the Minimum Wage Rate.

CHAPTER 14
Judicial Sale

Judicial Sale

99. Where a judgment debtor is unable to pay the Judgement debt/ the financial penalty awarded by a Court, the Court shall sell the judgment debtor's property at a judicial sale and apply the proceeds for the repayment of the judgment debt in accordance with this Code and other laws.

99.1. A judgment creditor may request the Court to summon relevant person to testify as to the whereabouts of the debtor's property.

99.2. Designated property should be turned over to the Court. If that property cannot be found, the Court may levy on the debtor's other real and personal property within its jurisdiction.

99.3. When such property is insufficient to satisfy the judgment, the Court may levy on the debtor's other real and personal property located in a separate jurisdiction by issuing Court Order to that Court having jurisdiction over that real and personal property.

99.4. Where a Court holds property and more persons than one have made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the property, after deducting the costs of realisation, shall be distributed *pro-rata*.

99.5. If the price is grossly inadequate, the Court may withhold a sale or postpone sale for a minimum of three times or three months, which ever is less.

99.6. The Court shall exempt from sale:

(a) essential wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his/her spouse and children and dependants, and religious articles;
(b) artisan tools used to earn an income;
(c) agricultural land to the extent of minimum acre ceiling prescribed by the Land Act, 1980;
(d) books of account; and
(e) any other property which the Court may consider necessary for the minimum reasonable livelihood or subsistence of the judgment-debtor and his/her family.

Enforcement of Liability of Surety

100. Where any person has furnished security or given a guarantee, a decree or order may be executed in the manner herein provided for the execution of decrees if he/she has rendered himself/herself personally liable against him/her for:

(a) the performance of any decree or any part thereof;
(b) the restitution of any property, taken in execution of a decree; or
(c) the payment of any money or for the fulfilment of any condition imposed on any person, under an order of the Court in any suit or proceeding consequent thereon.

CHAPTER 15
Professional Conduct of *Jabmis*

Professional Conduct

101. A *Jabmi* is an officer of the legal system, a representative of clients and a public citizen having special responsibility for the quality of justice.

101.1. In all professional functions, a *Jabmi* shall:

(a) at all times uphold the honour, and maintain the dignity and integrity of the profession and to improve not only the law but the administration of justice;
(b) faithfully conduct himself/herself in a manner befitting to or worthy of belonging to the noble fraternity of *Jabmis*;
(c) assist the Court in expediting the case to ensure the just, fair and prompt dispensation of justice by being punctual in attending court hearing, conferences and depositions and being concise and direct in the trial and disposition of the causes;

(d) adhere to the principles of honesty, moral, ethics and good conduct befitting to the dignity of the legal profession;
(e) not resort to fraudulent means;
(f) not advance a claim, defense, position, or argument that misstates a material fact or is false, deceptive, unwarranted, obstructionist, or frivolous, in light of the law and the facts involved;
(g) maintain professional norms of courtesy between them;
(h) not attribute the loss of the case to the incompetence, bias, or other effect of a judge/to countenance a client's suggestion to the same effect;
(i) not abuse the process of the court on behalf of his/her client in order to injure the opponent or use unfair methods against the opponent or to benefit himself/herself;
(j) not utilise litigation or any other course of conduct to harass the opposing party;
(k) represent a client zealously within the bounds of the law at all stages and deal with the case honestly and carefully in accordance with instructions;
(l) preserve the confidences and secrets of a client unless required by law or by the standards of the legal profession;
(m) avoid conflict of interest, impropriety, and the appearance of impropriety;
(n) provide competent representation that includes appropriate legal knowledge, skill, thoroughness, diligence, preparation, and promptness;
(o) not, because of professional duties, be identified with a client or a cause of a client;
(p) not acquire or use any information or evidence obtained by unlawful or unethical means;
(q) not initiate, continue, or participate in any criminal case or any civil case that is not supported by adequate cause; and
(r) be courteous and civil, both in oral and written communications.

Punishment of *Jabmis* for Professional or other Misconduct

101.2. Where a Jabmi engages in professional or other misconduct, the Court may:
(a) admonish/reprimand the *Jabmi*; or
(b) suspend the *Jabmi* from appearing before a Court for such period as it may deem fit.

101.3. Where a Jabmi engages in professional or other misconduct, the High Court may:
(a) admonish/reprimand the *Jabmi*;

(b) suspend the *Jabmi* from appearing before a Court for such period as it may deem fit; or
(c) bar the *Jabmi* from practice, if convicted of a cognizable offence or otherwise.

CHAPTER 16
Contempt and Associated Offences

Contempt of Court

102. A person showing disrespect to the Court during Court proceedings may be subjected to civil or criminal sanction in accordance with the laws of contempt.

102.1. A person may be subjected to civil or criminal sanction in accordance with the laws of contempt for:
(a) interfering with a case, either orally or in writing;
(b) failing to comply appropriately to the judicial order; or
(c) otherwise obstructing the course of justice.

Failure to Adhere to Hearing Schedule

103. Failure of a party to a case to adhere to the hearing schedule may result in a finding of contempt and may be subjected to civil or criminal sanction.

Non-compliance with Judicial Orders

104. Non-compliance with judicial orders may result in a finding of contempt and subject to civil or criminal sanction.

Failure to Appear

105. Where a person summoned fails to appear or present evidence at the order of the Court, he/she may be found in contempt of court and may be subjected to civil or criminal sanction.

Absence without leave

106. Once the hearing of a case has begun, if the litigant or other person summoned by the Court takes leave of absence without the permission of the Court, he or she may be subjected to civil or criminal sanction for contempt.

Civil Contempt

107. An aggrieved party may initiate civil contempt proceedings.

107.1. Finding of civil contempt shall result in fine/imprisonment until the civil order has been complied with.

Corporations and Unincorporated Associations

108. In addition to any fine or injunction, the Court may order a charter of a corporation after due process to be forfeited, the certificate of any association revoked or dissolved upon finding that the Board of Directors or a high managerial agent acting on behalf of the corporation/ association has, in conducting the corporation/association's affairs, purposely engaged in a persistent course of criminal conduct.

    108.1. The Board of Directors, agent or employee of a corporation/ an unincorporated association may be prosecuted and sentenced to fines and/or imprisonment for any criminal conduct where warranted.

CHAPTER 17
Appeal, Review and Decision Procedure

Appeal

109. A party to a case may file an appeal to a higher Court against a judgment of the subordinate Court.

    109.1. An appeal shall be permitted only:
        (a) from the final judgment;
        (b) if it has been filed in the registry of the appellate Court; and
        (c) if it is preferred within ten days of the Judgment.

    109.2. While the appeal is pending, all awards for damages and other settlements related to the Court's decisions shall be held in abeyance and any injunctions or temporary restraining order shall be maintained.

    109.3. The Court, under appropriate circumstances, may order the appellant to furnish a bond as a precondition to an appeal in order to secure the Plaintiff's Judgment against disbursement pending appeal and discourage frivolous delay.

    109.4. Once a case is appealed to a higher Court, there shall be no recourse to a lower Court except on remand by the higher Court.

Appellate Review

110. The Appellate Court shall:
    (a) determine whether there was error; and
    (b) if so whether such error warrants either a remand or full or partial reversal.

110.1. Appellate Courts may review only those decisions upon which there are properly preserved records.

110.2. The Court, the appellant and his/her *Jabmi* must therefore, ensure that any challenge or objection to a decision of the Court is properly recorded.

110.3. The appellant in his/her appeal must present to the Appellate Court only that portion of the Judgment and his/her challenge to that portion.

110.4. The Party cannot introduce fresh evidence on appeal or rely on evidence not introduced during proceedings in the lower Court.

Decision on Appeal

111. The Appellate Court may:
   (a) dismiss the appeal;
   (b) reverse all or part of the Judgment awarded by the lower Court after due process of law;
   (c) remand the case to the lower Court with instructions;
   (d) order a new proceeding; or
   (e) charge reasonable costs to be paid by the party submitting the appeal, if the appeal is dismissed.

111.1. Costs may include travel expenses, hire charges and daily wages.

Appeal to His Majesty the *Druk Gyalpo*

112. Any party having fully exhausted the judicial appeal processes and still aggrieved by the decision of the Court may appeal to His Majesty the *Druk Gyalpo*.

Time

113. Any reference to time specified in this Code within which an act must be performed or omitted shall exclude the period of journey and the Government holidays.

Finality of Judgment

114. No person shall amend or alter a Judgment rendered by a competent Court except His Majesty the Druk Gyalpo.

Res-judicata

115. Person shall not be entitled to file a subsequent suit if the cause of action or claims involved in it are same as prior suit on which there was a valid and final Judgemnt on that cause of action based on the merits.

PART II
CIVIL PROCEDURE

CHAPTER 18
Institution of Civil Suits

Institution of a suit

116. A suit may be initiated in accordance with the Code by:
    (a) a litigant himself/herself;
    (b) a member of his/her joint family; or
    (c) a *Jabmi* of his/her choice.

    116.1. Every suit shall be instituted:
        (a) by presenting a Petition of Complaint to a Court with jurisdiction by the pleader or his/her member of the family/ *Jabmi*; and
        (b) in good faith and not for harassment.

Minor or Person of Unsound Mind

117. When a person entitled to sue or be sued is a minor or of unsound mind or otherwise unable to present his/her case, the suit may be brought in his/ her name by member of joint family through a legal guardian/*Jabmi*.

Substitution by Legal Representative and Successor

118. If a party to a civil case dies during the suit, or becomes physically or mentally incapacitated, the Court shall order:
    (a) substitution of such party by legal representative;
    (b) successor of that party representing his/her estate; and
    (c) to receive, if damages are awarded from the other party.

Breach of Trust and Fiduciary Duties

119. In the case of any alleged breach of any express or constructive trust created for public purpose, or where the direction of the Court is deemed necessary for the administration of any such trust, one or more persons having a clear legal interest in the trust, may institute a suit or may pursue a Court decree to:
    (a) remove any trustee;
    (b) appoint a new trustee;
    (c) direct a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his/her possession to the person entitled to the possession of such property;
    (d) direct accounts and inquiries;
    (e) declare what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorise the whole or any part of the trust property to be let, sold, mortgaged or exchanged;
(g) settle a scheme; or
(h) grant such further or other relief as the nature of the case may require.

Court Venue

120. A petition relating to any civil suit for any relief shall be instituted in the Court with jurisdiction.

120.1. Site of proceedings shall be:
(a) where the cause of action arose;
(b) where a principal plaintiff/defendant resides;
(c) where the property is situated;
(d) where an agreement is signed or entered into; or
(e) in actions by/against any agent/agency of the Government where the Government authority is located.

***In-Situ* Proceedings**

121. The Court may hold proceedings or conduct hearings at any site other than the place where the Court is situated, whenever it considers that it is necessary, expedient or otherwise in the interest of justice to do so.

121.1. The Court shall record the reasons in writing when it holds and conducts such hearings at any place or area other than where such Court is situated.

***In Personam* Jurisdiction**

122. The Court may adjudicate a claim against a respondent/defendant, if the respondent/defendant while physically within the Court's territorial limits is personally served with process.

***In rem* Jurisdiction**

123. The Court may assert *in rem* jurisdiction to determine rights in property found within its jurisdictional territory.

Q*uasi in rem* Jurisdiction

124. The Court may attach property owned by the respondent/defendant that is found within its territorial jurisdiction and entertain action against that respondent/defendant, even if the dispute was unrelated to the property attached.

Ancillary Jurisdiction

125. Subject to the provisions of this Code, once jurisdiction has been exercised by a particular Court, claims related to the primary controversy may be adjudicated by that Court even though they do not by themselves fall within the jurisdiction of the Court.

Challenge

126. A defendant may challenge the jurisdiction of the Court over his/her person or property.

126.1. This challenge must be raised by:

(a) a special appearance of the defendant; or

(b) an objection to in *personam*, in *rem or quasi in rem* jurisdiction asserted in the Answer to the Complaint.

Pending Suit

127. The Court shall not hear any suit or issue in a suit, which is pending before any other competent Court.

CHAPTER 19
Service of Process

Service of Process

128. Once the Court has found a complaint to be legally admissible, the Court may issue Service of Process.

Reasonable Notice

129. Except as otherwise provided in this Code, the Court shall ensure that reasonable notice and opportunity to be heard are afforded to the defendant in a suit before
any type of jurisdiction over his/her person and property or the property to which he/she has a claim is exercised.

Date of Response

130. The Service of Process shall indicate the date by which the defendant must submit his/her answer to the Court within twenty-one days of its service.

130.1. The Answer shall include:

(a) an affirmative defence;

(b) a partial affirmation;

(c) a general denial;

(d) a counter-claim; or

(e) a cross-claim.

Suit by or against an Agency

131. When a suit is filed against any agency, corporation or company for a civil matter, process shall be served through its management, principal, director or any principal executive officer.

131.1. Any agency, corporation, or company may also file a suit against any person or entity by having process served on such person or on its management, principal, director or any principal executive officer as the case may be.

CHAPTER 20
Petition of Complaint and the Answer

Petition of Complaint

132. The petition of complaint is the plaintiff's statement of claims against the respondent/defendant.

132.1. The Petition of Complaint must:

(a) allege sufficient information to establish a right of relief;
(b) state the basis of the Court's jurisdiction; and
(c) contain a prayer for relief.

132.2. The Petition of Complaint shall bear necessary legal stamp and be signed by the petitioner or his/her member of the family/legal guardian or *Jabmi*.

132.3. Every Civil suit filed shall bear a Court fee unless waived by the Court in the case of an indigent Plaintiff.

Answer by the Defendant

133. The Answer shall include respondent/defendant's defence.

133.1. The defendant may submit:

(a) a challenge to the Court's jurisdiction;
(b) an affirmative defence;
(c) a partial affirmation;
(d) cross-claims;
(e) counter-claims;
(f) third party claims; or
(g) a general denial.

133.2. The Answer shall bear necessary legal stamp and be signed by the defendant/respondent or his/her member of the family/legal guardian or *Jabmi*.

133.3. The Answer by the defendant shall reply the complaint in accordance with this Code.

133.4. An allegation that is not denied or is denied improperly may be deemed admitted.

133.5. An evasive or incomplete answer may be deemed admitted.

Specific Denial

134. An Answer may set-forth specific denial wherein the respondent/ defendant responds to a complaint paragraph by paragraph denying only those matters legitimately controverted and thereby, admitting all allegations known to be true.

Affirmative Defence and Response by Plaintiff

135. If the defendant wishes to add new facts constituting one or more defence to the plaintiff's complaint, they must be affirmatively pleaded in the Answer.

135.1. If an answer contains an affirmative defence, the plaintiff shall respond by:
(a) admitting or denying the allegations; or
(b) adding new allegations to avoid the defence.

Answer to New Claim

136. Party against whom a counter-claim, cross-claim or third party claim is asserted shall file an answer to such pleading and in such time in accordance with this Code.

136.1. An answer to new claims shall bear necessary legal stamp and be signed by the respondent himself/herself, or his/her member of the family/legal guardian or *Jabmi.*

CHAPTER 21
Pleadings

Purpose of Pleadings

137. The Purpose of the Pleading process is to:
(a) eliminate legally defective contentions;
(b) give notice to opposing party; and
(c) identify the issues in the law suit.

Types of Pleading

137.1. The following types of Pleading are admissible, if prepared in accordance with this Code:-

(a) **Complaint**
Plaintiff's statement of claims against defendant.

(b) **Answer**
Defendant's denial of any untrue allegation and defendant's own allegation against the plaintiff.

(c) **Counterclaim**
A counterclaim sets forth claims that defendant has against plaintiff.

(d) **Cross-claim**
A cross-claim sets forth claims among co-parties.

(e) **A third party claim**
A third party claim is filed by defendant against a third party who allegedly must indemnify the defendant if found guilty.

General Pleading

138. The pleading must:

(a) set forth the basis of the Court's subject matter jurisdiction;
(b) allege a statement of facts setting forth a cause of action or defence in ordinary and concise language;
(c) inform the opposing party as to the legal nature of the claim or defence;
(d) state the name, description and place of residence of the plaintiff and respondent/defendant, so far as they can be ascertained; and
(e) be signed and bear necessary legal stamp to be valid.

Motion for more Definite Statement

138.1. If a pleading is adequate to inform the opposing party but is vague in content, the opposing party may move for a more definite statement.

Restrictions on Pleading

138.2. A party is not permitted to plead evidence.

Improper Pleading

139. The Court may ignore improper allegation.

139.1. Pleading must be in good faith, not for harassment, delay, or tactical advantage.

139.2. The Court shall not issue a service of process, if the complaint is not in accordance with the provision of this Code.

Purpose of Joinder of Claims

140. Joinder of claims ensures that all related claims can be heard and adjudicated in the same action and as a result lessen the burden on the Court from multiple cases and ensures that the case can be resolved in an equitable manner.

140.1. Once a party is joined, he/she may assert a claim wherein:
(a) the party's interests are closely related to the action; and
(b) the claims arise from the same transaction in dispute in the litigation.

140.2. The Court may allow additional claims where the inclusion of such claims into the suit promotes greater judicial efficiency or equity.

Counter-Claim

141. A counter-claim sets forth any additional claim the defendant/respondent may have against the plaintiff/appellant, which can be reasonably litigated in the same suit.

141.1. A respondent/defendant can make a counter-claim, which is a claim for relief against the plaintiff, if the counter-claim is logically related to the original claim contained in the Petition of Complaint from the plaintiff.

141.2. The Court may allow additional counter-claim where the inclusion of such claims into the suit promotes greater judicial efficiency or equity.

Cross-Claim

142. A respondent/defendant/plaintiff may assert a claim against a co-respondent/defendant/co-plaintiff.

Third party Claim

143. A third party claim may be filed by respondent/defendant against a third party who allegedly must indemnify the respondent/defendant, if found liable.

143.1. In a case where such claim is made, the proceeding may proceed only after all cause of action has been reviewed in pre-hearing in accordance with this Code.

Claim as original Complaint

144. For pleading purposes, counter-claim, cross-claim and third party claim are treated as if they were original complaints resulting in the Service of Process and an Answer by the respondent/defendant.

144.1. In cases where such claims are made, the proceedings may proceed only after all causes of actions have been reviewed in pre-hearings in accordance with this Code.

Interpleader

145. A person holding property that is subjected to inconsistent claims can join all claimants in a single action, if he/she can show fear of multiple liability or litigation and thereby, place his/her property under the Court's control.

145.1. The claims of the various claimants shall then be levied against a single fund and be mutually exclusive.

145.2. Any respondent/defendant who is threatened with multiple liability may assert an interpleader by way of counter-claim, cross-claim, or third party claim.

CHAPTER 22
Joinder of Parties

Joinder of Parties

146. The purpose of joining parties is to ensure that all parties with an interest or liability associated with a legal action are incorporated as parties to a case.

146.1. Joinder of parties shall be allowed to ensure that all parties whose presence is required to fully litigate a suit are present. As a result, the Court avoids repetition of claims on the same matter between various parties and ensures that the case can be resolved in an equitable and final manner.

146.2. When considering joinder of parties, the Court must determine whether:

(a) an action is being brought by all real parties in interest; or
(b) the parties to the action have the capacity to sue or be sued.

Real Party in Interest

147. The real parties in interest are those with the legal right to enforce a claim.

147.1. If a Court finds that the real parties in interest have not been joined, it shall allow for an amendment to the Petition of Complaint.

147.2. Where all real parties in interest cannot be feasibly joined, the Court shall take whatever action is legally possible to ensure some limited measure of relief to legitimate claimants.

Capacity to Sue or be sued

148. A person lacking in capacity to sue or be sued is one who has a direct stake in the outcome of the litigation but is unable to prosecute or defend an action due to mental or physical incapacity, being a minor or absent:

148.1. Such person shall be, in the case of a juvenile, be represented by the parents/family member/guardian/*Jabmi.*

148.2. Such person shall, in the case of person with a mental or physical incapacity, or otherwise physically absent who is not a minor, be represented by an individual with power of attorney over his/her business affairs or by a *Jabmi.*

148.3. The burden of proof is on the asserting party or his/her parents/family member/legal representative/guardian/*Jabmi* to prove lack of physical or mental capacity or minor.

Class Action Suit

149. A suit may be brought by or against large numbers of individual whose interests are closely related provided:

(a) the general outlines of a group are recognisable at the outset of the litigation;

(b) common questions of law or fact exist among all of the class members; and

(c) the representatives are members of the class and are capable of representing the interests of the absent class members.

CHAPTER 23
Adjudication without Proceedings

Negotiated Settlement

150. At any stage of the proceedings, it shall be open to the parties to take the help of a *Chimi, Gup, Chipon, Mang-mi or Barmi* as mediators for mutual settlement of a civil case in accordance with the requirements of this Code.

150.1. Efforts to achieve negotiated settlement in all civil cases may at the discretion of each party proceed with or without the assistance of a *Jabmi.*

150.2. The parties may request the Court for an adjournment in accordance with this Code in order to pursue this settlement.

150.3. The settlement must be by voluntary consent and signed by the parties and the mediators in their presence and executed without erasure or alterations.

150.4. The settlement agreement must bear a proper legal stamp and conform to the laws.

150.5. Any subsequent modification of the settlement agreement shall require attestation, signature of the concerned parties, their witnesses, bear a proper legal stamp and conformity with laws.

150.6. The party must raise objection to the validity of such settlement agreement within ten days of the agreement.

150.7. In case, more than one agreement regarding the same subject matter is executed between the parties, the latest agreement in point of time shall be treated as valid in law and be so sanctioned by the Court.

150.8. If the agreement dehors existing laws or a valid objection to its legality is raised by one of the parties, the Court may declare such agreement null and void and resume hearing.

Summary Judgment

151. The party to the suit can request for a summary judgment to dispose off a case when no real legal or factual dispute exists.

CHAPTER 24
Default Judgment

Default Judgment

152. The Court may pronounce a default judgment, if one of the parties fails to appear at the trial or in his or her answer:
   (a) fails to answer;
   (b) gives an evasive reply; or
   (c) otherwise fails to follow a Court's order thereby, severely prejudicing the Court's capacity to hear the case.

Withdrawal and Adjustment of Suits

153. At any time after the institution of a suit, a plaintiff may, as against all or any of the defendants abandon his/her suit or a part of his/her claim.

153.1. The party may be liable for such costs as the Court may award calculated in accordance with the Minimum Wage Rate.

Criminal Prosecution

154. Completion of a civil suit shall not preclude the plaintiff from exercising his/her right to prosecute the same defendant for crimes.

Estoppel

155. A party is prevented by his/her own act from claiming a right to the detriment of other party who was entitled to rely on such conduct and has acted accordingly.

Deferred

156. Upon a finding of circumstantial evidence not amounting to proof beyond reasonable doubt, the case may be deferred.

Collection of Judgment Debt

157. The Court may order a Judgment debtor to deliver money or property to the Court who shall deliver the Judgment debt to the awarded party within reasonable time.

157.1. A Judgment creditor may have an execution issued under which the debtor's property may be levied upon or sold by an appropriate official.

PART III
CRIMINAL PROCEDURE

CHAPTER 25
Arrest of persons

Arbitrary Arrest

158. No person shall be subjected to arrest or detention, except in accordance with this Code.

Restraint

159. A person arrested shall not be subjected to more restraint than is reasonably necessary to prevent his/her escape.

Torture or Threat

160. A person shall not be subjected to torture/cruelty/inhumane/degrading treatment/punishment.

160.1. A person suspected of carrying out such activity shall be subjected to criminal prosecution.

160.2. A statement/pleading/testimony given under such circumstances shall be inadmissible.

CHAPTER 26
Pre-Arrest

Duties of Police

161. It shall be the duty of every police personnel to promptly detect and apprehend all persons, for whose apprehension sufficient ground exists and to bring offenders to justice.

Report of an Offence

161.1. A person may make a Criminal Complaint to the police or in the absence of police, to any appropriate public authority, when he/she or a member of his/her family has been the victim of a crime, has witnessed a crime or has prior knowledge of a crime which may occur or the intention to commit a crime.

161.2. If a complaint is lodged with a public authority other than the police, such public authority, upon receipt of the Criminal Complaint, shall submit it to the police expediently and without delay.

Police Investigation

161.3. The police shall place the Criminal Complaint in writing, if the complaint has not already been
submitted in writing and make efforts to verify the accuracy of the complaint expeditiously by carrying out preliminary investigation.

161.4. The police or the person making the statement and the person providing any record or evidence shall sign all statements and records emanating from the investigation.

161.5. The police shall also make a record of the description of the suspect as first given to them by potential witnesses.

161.6. It is mandatory for the investigating Officer to get statement of a material witness questioned during the course of investigation.

Police Crime Report

162. Based on the information collected, the police shall prepare a crime report for warrant of arrest with the name of the suspect and the nature of the crime and other elements justifying probable cause for arrest.

CHAPTER 27
Arrest by Warrant

Warrant of Arrest

163. A Court is empowered to issue a warrant of arrest upon request by the police for criminal offence in accordance with this Code or other laws.

163.1. The Court upon receipt of the crime report may direct the police to carry out additional investigation, if reasonable cause of guilt has not been satisfactorily established.

163.2. The warrant shall empower the police to arrest a person in lawful manner.

Form and Duration of Arrest Warrant

164. The warrant of arrest shall state:
- (a) the name and address of the accused;
- (b) the crime with which he/she is charged;
- (c) the name of the Issuing Court; and
- (d) bear the seal of the Court.

164.1. The warrant shall remain valid until it is executed or cancelled by the Issuing Court.

Jurisdictional Reach of Arrest Warrant

164.2. Arrest warrants may be executed within Bhutan, beyond the jurisdictional boundary of the Issuing Court.

164.3. If a warrant of arrest is to be enforced outside the territorial jurisdiction of the Issuing Court, the police shall:
- (a) obtain an endorsement from the Court having territorial jurisdiction; or
- (b) upon arrest, inform the Court having territorial jurisdiction.

164.4. No line of appeal or judicial review shall vest in the Receiving Court with regard to any warrant from an Issuing Court.

164.5. The right to assert a motion for improper arrest or improper issuance of a warrant shall vest directly with the suspect and his/her *Jabmi*.

Service of Warrant through Extradition

164.6. A warrant may be served by the intervention of a foreign state, where the suspect to be served is outside Bhutan and in a country with which the right of an extradition has been established by treaty, convention or mutual agreement.

Free Ingress

164.7. If a police officer acting under an arrest warrant has reason to believe that the person to be arrested has entered into or is within any place, any person being in charge of such place shall allow the arresting officer free ingress thereto, and afford all reasonable facility to effect the arrest.

CHAPTER 28
Arrest without Warrant

Cognisable Offences

165. A police officer may arrest without a warrant in a public place, if any person is reasonably believed to be:

(a) abusing or physically assaulting another person;
(b) attempting to forcibly dishonour a female;
(c) suspected of dealing in illegal business;
(d) in possession of illegal arms/ammunition etc.;
(e) using false weights and measures;
(f) dealing in harmful drugs;
(g) causing harm to public property such as telephone lines, lamp posts, roads, water pipes, etc.
(h) wanted criminals;
(i) a deserter from the uniformed services;
(j) fishing and hunting on prohibited days and months under the Laws of Bhutan;
(k) a receiver of stolen property;
(l) obstructing a police in the execution of lawful duties;
(m) willfully and indecently exposing one's person or disgracing or committing nuisance, or exposing a contagious disease to the general public or contaminating drinking water; or
(n) neglecting to fence in or duly protect any dangerous tank or other dangerous place or structure.

165.1. The power of the arresting Police officer to enter a private dwelling to effect an arrest without warrant is limited to instances of immediate necessity or other exigent circumstances such as waiting for the suspect to exit the private dwelling is not appropriate.

Stop and Frisk

166. Upon a reasonable suspicion of involvement in a criminal offence, a police officer/an authorised person may stop, question and frisk:
   (a) a person moving about at odd hours in a public place; and
   (b) a person who cannot give satisfactory account of himself/herself.

166.1. The police officer/authorised person may subsequently arrest a suspect, if during the stop, question and frisk, he has reason to believe that there is a probable cause for doing so.

166.2. The police officer may detain a person arrested without a warrant pending police investigation in accordance with this Code.

Arrest by Citizen

167. A citizen may arrest or cause to be arrested any person whom he/she reasonably believes:
   (a) has committed or intends to commit a criminal offence; or
   (b) is wanted by the law for the commission of an offence.

167.1. A person so arrested shall be handed over to the police or in the absence of police, relevant public official without delay.

167.2. If a suspect is handed over to a public official other than the police, that official shall record a statement from the arresting individual justifying the arrest and expediently transfer the suspect to the police.

167.3. At the time of handing over the suspect to the police, the arresting individual, or the public official given control over the person by the arresting individual, shall make or present a statement to the police justifying the arrest.

167.4. Upon receipt of the suspect, the police shall:
   (a) ensure that the suspect is not improperly treated;
   (b) carry out all necessary inspections; and
   (c) carry out medical examination to search for evidence, if there exists a probable cause for such a search.

CHAPTER 29
Search by Warrant

Search Warrants

168. A Court may issue a search warrant to the police to conduct a search for criminal evidence.

168.1. Search warrant shall only be issued upon showing a probable cause of criminal offence to the Court.

168.2. The police requesting a search warrant shall present to the Court:
- (a) the name of the accused and address;
- (b) the suspected criminal offence;
- (c) the place of search; and
- (d) the facts establishing probable cause for the search.

Stale Information

169. The information in the affidavit and Police Crime Report shall have sufficient reasons to allow the Court to reasonably believe that the items have not yet been removed from the premises to be searched.

169.1. All search warrants shall be executed within twenty-one days of their issuance, unless the Issuing Court has granted an extension.

Jurisdictional Reach of Search Warrant

170. Search warrant may be executed within Bhutan, beyond the jurisdictional boundary of the Issuing Court.

170.1. If a search warrant is to be enforced outside the territorial jurisdiction of the Issuing Court, the police shall:
- (a) obtain an endorsement from the Court having territorial jurisdiction; or
- (b) upon search, inform the Court having territorial jurisdiction.

170.2. In accordance with this Code, the Receiving Court shall ensure that the search warrant from the Issuing Court is enforced.

170.3. The Receiving Court shall not impede the search or remove any of the resulting evidence from the search. It shall, however, receive a copy of the list of articles seized during the search to be provided to the Issuing Court and to the owner or person in occupation of the premises searched in accordance with this Code.

170.4. No line of appeal or judicial review shall vest in the Receiving Court with regard to any such search warrant from the issuing Court.

170.5. The right to assert a motion for improper search or improper issuance of a warrant shall rest directly with the suspect or other affected parties and their *Jabmi*.

Procedure for a Warranted Search

171. A search shall be made in the presence of *Chimi/Gup/Chipon/* member of *Dzongkhag and Geog Yargye Tshokchung/*witness.

171.1. A police executing the warrant shall:
(a) announce that he/she is a police; and
(b) show a search warrant.

171.2. Where there is a danger of destruction of evidence and/or the distances from the Court to the places to be searched are substantial, police on the scene may conduct the search without having search warrant.

171.3. A police may use reasonable force to break into premises, if the police is refused entry after identification as an agent of the law.

171.4. The police may frisk a person on the scene, if he/she may appear to be dangerous.

171.5. Whenever, it is necessary for a woman to be searched, another woman shall make the search with strict regard to decency.

171.6. If there is reasonable cause to arrest a person who is on the premises, the police may do so.

CHAPTER 30
Scope of the Search Warrant

Search Warrant

172. The search warrant shall be specific with regard to the premises to be searched.

Search of an Apartment

173. A search warrant for the search of an apartment building or other multi-family dwelling shall contain the name of the occupant or the number of the particular apartment.

Search of a Person

174. The warrant for a search of a person shall state the person's name or at least provide a description so complete that it is unlikely to apply to anyone except the suspect.

Search of Vehicle/Aircraft/Vessel/Conveyance

175. Where a warrant is required for the search of a vehicle/aircraft/vessel/ conveyance, the warrant shall contain either the vehicle/aircraft/vessel's registration number or its description and the name of its owner.

CHAPTER 31
Search without Warrant

Basic Principle

176. A police officer has, upon arrest of a suspect without a warrant, the right to search the area under the suspect's immediate control/ possession.

176.1. A police officer making any arrest shall seize from the person arrested any weapon, contraband or any other evidence of an offence carried on his/her person.

Hot Pursuit

177. If the police is in hot pursuit of a felony suspect and have reason to believe that the suspect has entered a particular private premise, the police may enter the premise to search for him/her. While searching, the police may also search for weapons that the felony suspect may have and seize them.

177.1. While engaging in the hot pursuit of a felony suspect and searching and seizing of any weapon he/she may possess, the police may seize any other evidence of criminal behaviour, which he/she may discover coincident to their search for the suspect.

177.2. A police may for the purpose of arresting with/without warrant a person whom he/she is authorised to arrest, pursue such person into any place in the country.

Search of Vehicle/Aircraft/Vessel/ Conveyance

178. A vehicle/aircraft/vessel/conveyance may be searched where reasonable cause exists or upon the arrest of the driver/pilot/passenger.

178.1. If the vehicle/aircraft/vessel/conveyance itself is being subjected to a valid warranted search, closed containers found in the vehicle/aircraft/vessel/conveyance may be searched without a warrant.

Consent by Third Person to Search

179. A search without a warrant is authorised when an individual of legal age with joint authority over the property, grants the police permission to enter and search.

179.1. The entry may not be forced and the search must be confined to common areas where the person allowing this search normally exercises the right of entry.

Consent by Parent/Guardian

179.2. When the suspect is a minor or mentally incompetent and living with his/her parent/guardian, the parent/guardian may consent to a search of the minor suspect's room.

Consent by Landlord

179.3. A landlord may not consent to a search of his/her tenant's apartment/ room, even if he/she has the power to enter them for cleaning or maintenance.

179.4. A landlord may consent to a search of the areas of common usage, such as hallways and common dining areas.

Guest House/Hotel Guests

179.5. Guest House/Hotel Management may not consent to a search of a guest's room in his/her absence.

179.6. After a guest has checked out permanently, a hotel employee may consent to a search for item left behind.

Employer's Consent

179.7. An employer can consent to a search of his/her employee's work area, if the search is for items related to the job.

Employee's Consent

179.8. An employee may consent to a search of his/her employer's premises, if he/she is in a position of substantial authority.

School Official

179.9. School official may search the person and property of a student without a warrant.

Additional Discovery Methods in Criminal Cases

179.10. In criminal cases, in addition to the established evidentiary procedures and methods, the police may use search warrant, arrest warrant and conduct search in the manner defined within this Code to obtain additional evidence of criminal action, intention or omission.

CHAPTER 32
Seizure of Article

Scope

180. A police officer may seize any property, which may be alleged or suspected to have been stolen or which
may be found under circumstances, which create suspicion of the commission of an offence.

Seizure

181. The police shall prepare a list of all the articles taken into possession at the time of search and the copy shall be given to the owner or the person in occupation of the premise, as the case may be.

181.1. The list shall be signed and dated by the officer making the search, the owner of the premise or person in occupation of the premise and by a witness present at the time of search.

181.2. When an article discovered is of such a nature that its immediate destruction is necessary for public safety, it shall be lawful for the police officer making the search to destroy or have the same destroyed.

181.3. A police officer making a search shall turn over all evidence to the police station with labelling where it shall be maintained until required by the Court with jurisdiction over the case.

Return of Items

181.4. If the police, prosecutor or the Court deems that
specific item is irrelevant to a case, the item shall be returned to the owner without delay.

181.5. Where the ownership of specific item is in dispute, the Court may return it to the person in whose possession it was found at the time of the search or, retain the item and advise the party concerned to litigate the matter in a separate case.

CHAPTER 33
Search of Mail and Wiretapping

Opening of Mail/Parcel

182. Mail/parcel may be intercepted and opened by a responsible authority specifically authorised by the Government without a warrant, if there is reasonable cause to suspect that the mail/parcel contains narcotic/other contraband/information harmful to public health/security in accordance with this Code and other laws.

182.1. Any mail/parcel intercepted and opened by any authority without a warrant, shall be produced before the Court within twenty four hours, if
there is reasonable cause to suspect that the mail/parcel contains narcotic/other contraband/information harmful to public health/security.

Wiretapping

183. Wiretapping is permissible only, if authorised by a warrant of Court in accordance with this Code and other laws.

183.1. A Court may authorise to intercept only, if it finds that:

(a) there is reasonable cause to believe that a specific individual has committed or may attempt to commit a heinous crime;

(b) there is reasonable cause to believe that such interception will furnish evidence about the crime or the attempt or will provide information to foil it;

(c) normal procedures for inspection have been tried and have failed or reasonably appear likely to fail or to be dangerous; and

(d) there is reasonable cause to believe that the facility from which or the place where the interception is to be made, is
or will be used in connection with the offence or is linked to the individual under suspicion.

183.2. The warrant may not be for any period longer than is necessary to achieve the objective of the authorisation, and in any event not for duration longer than forty-nine days.

183.3. The Court may grant extension to the warrant on sufficient cause being shown for the same. However, the efforts made during the first period, and results of such efforts must also be disclosed while seeking extension.

Exceptions

183.4. An interception without prior judicial authorisation is permitted when an emergency situation exists with respect to an attempt or commission of a heinous crime.

183.5. Only the Chief of Police may make the decision to intercept without prior judicial authorisation. However, the judicial order must be obtained within twenty-four hours of the commencement of the interception.

CHAPTER 34
Post Arrest

Cause for Arrest

184. Immediately following arrest, an arrested person shall be informed of the charge for which he/she is being arrested.

Notice

184.1. Subsequent to arrest, the police shall make reasonable attempt to inform the parent, guardian or member of the family of the person so arrested and detained as soon as possible.

Interrogation

184.2. Any statement made to police by the suspect, to retain its evidentiary value in Courts, must be voluntary in nature, include a statement to that effect and carry the signature of the suspect.

184.3. The interrogation of suspect shall be permitted provided the person charged has been informed of his/her right to consult a *Jabmi* before any such interrogation.

Samples

185. The police and other investigator may take a sample from the body of the suspect relevant to the offence for which the person is being held.

185.1. Due discretion should be exercised for invasive procedures (i.e. bodily fluids) including reasonable notice and the right to have a *Jabmi* present, if so requested by the suspect, to ensure the admissibility of resulting evidence in Court.

Remand Order

186. The Court may order an accused to be remanded to Police/judicial custody, if there exists reasonable cause that he/she has perpetrated a crime.

CHAPTER 35
Charge

Scope

187. The charge shall contain such particulars as are reasonably sufficient to give the accused notice of the matter with which the accused is charged.

Contents of the charge

187.1. A charge in accordance with this code shall state the offence with which the accused is charged:

(a) if the law which creates the offence does not give it any specific name, definition/description of the offence must be stated so as to give the accused notice of the matter with which he/she is charged;

(b) the charge shall state the law and section of the law against which offence is said to have committed;

(c) charge must be written in the language of the Court; and

(d) if the accused is liable to enhanced punishment, by reason of previous conviction, the facts, date and place of the previous conviction must be stated in the charge.

Particulars as to time, place and person

187.2. The charge shall contain such particulars as to time and place of the alleged offence and the
person (if any) against whom or the thing (if any) in respect of which, it was committed.

Additional Charge

187.3. A Court may to meet the ends of justice, alter or add to any charge before the judgment is pronounced.

CHAPTER 36
Criminal Trial

Defence

188. A defendant shall be entitled to a speedy trial. This right shall not limit the capacity of the accused to adequately prepare his/her defence.

Production before a Judge

188.1. Any person arrested and detained with/without warrant shall be produced before a Court within twenty-four hours of the arrest exclusive of the time necessary for the journey from the place of arrest and the Government holidays.

188.2. A person arrested and detained for bailable offence may be released on bail, provided:

(a) he/she makes available to the police as and when required during the course of the investigation; and

(b) remain within the limits of any particular area as prescribed in the bail order.

CHAPTER 37
Court Venue and *Sub-Judice*

Determination of Court Venue

189. Jurisdiction of a Court to conduct trial in a criminal matter shall be where the crime occurred.

Sub-Judice

189.1. No Court shall proceed with the trial of any defendant while a same criminal charge is currently being prosecuted in any other competent Court in Bhutan.

189.2. The Defendant may be tried in different Courts for separate offences.

CHAPTER 38
Pre-Trial Procedures

Preliminary Hearing

190. A Court shall conduct a Preliminary Hearing of a case within ten days of registering it in the Registry of the Court.

190.1. Based upon its review, the Court shall determine whether sufficient cause exists to proceed with a criminal prosecution and if so, whether the suspect should be detained or released on bail in accordance with this Code.

190.2. During the Preliminary Hearing, the Court shall ask the accused for his/her pleading.

190.3. If the accused enters a plea of guilt, or not guilty or *Nolo Contendere*, the provisions of this Code shall apply.

Investigation

191. Whenever a police investigation cannot be completed in time to enable a Preliminary Hearing in accordance with the provisions herein, the police making the investigation shall produce the accused person before the Court.

191.1. The Court, prior to the Preliminary Hearing, may authorise the detention of the accused for an additional period not exceeding:

(a) forty-nine days, if satisfied that adequate grounds exist for doing so; or

(b) one hundred and eight days, where the investigation relates to a heinous crime.

Separate Charge

192. For every distinct offence, there shall be a separate charge presented in the Preliminary Hearing.

192.1. Where a case proceeds to trial, every charge shall be considered separately.

Joinder of charge

193. If a person in a series of acts so connected to form a part of the same transaction commits more than one offence, the person may be charged with and tried at one trial for every such offence.

Person who may be Charged and Tried Together

194. Persons accused of the same offence or any offence that can be reasonably construed to have been committed during the same criminal transaction may

be charged and presented together in the Preliminary Hearing except juvenile.

CHAPTER 39
Full or Partial Pleas of Guilty or *Nolo* Contendere

***Nolo Contendere* or Plea of Guilty**

195. Before confirming a plea of guilty or *Nolo Contendere*, the Court must address the defendant and determine that the defendant appears mentally competent and understands:

(a) the nature of the charge to which the plea is offered;

(b) the mandatory minimum and maximum penalties provided by law, if any;

(c) that the Court may also order the defendant to make restitution to any victim of the offence; and

(d) that if the defendant accepts a plea of guilty or *Nolo Contendere* he/she waives his/her right to a trial.

195.1. In the case of juvenile, his/her parents/member of family/legal guardian/*Jabmi* may make a plea of guilty or *Nolo Contendere* only in the best interest of the juvenile.

195.2. The Court may order the defendant to furnish an explanation, if the defendant pleads guilty to all the offences charged.

195.3. If the Court is satisfied that the accused has admitted his/her guilt voluntarily and the admission appears to be true, the Court may convict him/her and pass sentence in accordance with law.

195.4. A plea of *Nolo Contendere* shall be accepted by the Court only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.

195.5. If the plea of *Nolo Contendere* is accepted, the Court may proceed to award Judgment and sentencing according to the law.

Full or Partial Plea of not Guilty

196. If the defendant pleads not guilty to one or more of the charges levelled, the Court shall set a date for trial granting sufficient time as required to enable the prosecution and defence to prepare adequately.

196.1. The Court following the completion of the full trial shall pronounce sentence on an element, to which the suspect pleads guilty or *Nolo Contendere*.

CHAPTER 40
Plea Bargain

Plea Bargain

197. With agreement to provide information to the prosecution and in lieu of a full criminal trial, a suspect may choose to plead guilty to an offence lesser than the offence charged and be sentenced accordingly.

197.1. The prosecution may consider a plea bargain in exchange of evidence deemed critical for prosecution against other criminal suspect.

197.2. Discretion as to whether or not to consider a plea bargain rests fully with the prosecution which shall amongst other factors consider:
(a) the nature of the offence;
(b) the circumstances under which the crime was committed;
(c) the person's prior criminal record and status; and
(d) whether it is voluntary in nature.

197.3. Before confirming a plea bargain, the prosecution shall determine whether the defendant is mentally competent and is a juvenile, and if so is represented by parent/member of a family/legal guardian/ *Jabmi*, and understands:
(a) the nature of the charges emanating from the plea bargain;
(b) the mandatory minimum and maximum penalties provided by law, if any;
(c) that a plea bargain may be made as well during the course of the Criminal trial; and
(d) that if the prosecution accepts the plea bargain, the defendant waives his/her right to a trial.

Discretion of Courts

198. The Court shall still have the power to order the defendant to make restitution and pay compensation to a victim.

CHAPTER 41
Bail and Bond

Bail and Bond

199. Where a suspect other than a person accused of non-bailable offence in the Preliminary Hearing submits that he/she is not guilty and subject to the conditions stated in this Code, the Court may decide to release him/her on bail upon execution of a bond for such sum of money by one or more sureties.

199.1. Where a defendant is indigent or the charge is not a serious threat to public safety, a Court may release the defendant without posting a bond based on a promise to return and other conditions set by the Court.

Bailable Offence

199.2. In making the determination of whether to grant bail and the bail amounts, the Court shall consider the:
(a) severity of the charges;
(b) suspect's past criminal record;
(c) likelihood of flight;
(d) potential threat posed to civil society;

(e) suspect's age and physical/mental health condition; and
(f) views of the victim or aggrieved person.

199.3. The Court, after an inquiry and recording the reasons, may refuse to accept a surety offered on the grounds that such surety is an unfit person for the purposes of the bond.

199.4. A person released on bail shall be required to:
(a) make himself/herself available to the police/Court as and when required during the course of the investigation/trial;
(b) remain within the limits of any particular area as prescribed in the bail order; and
(c) abstain from making any inducement, threat or promise, directly or indirectly to a person acquainted with the facts of the case so as to dissuade the person from disclosing such facts to the Court/police.

199.5. A person shall be released once the bond has been executed and the Court admitting the person to bail has issued an order of release to the police.

199.6. Where a sufficient cause is established, a surety for the attendance and appearance of the person released on bail may apply to the Court to discharge the bond.

199.7. If a surety applies to the Court to discharge the bond, the Court shall issue a warrant of arrest directing that the person so released is brought before the Court.

199.8. On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Court shall direct the bond to be discharged and
require such person to find other suitable sureties, and if he/she fails to do so, may commit the person to jail.

Bond for keeping the peace and good behaviour

200. If there are reasonable grounds to believe that a person is likely to commit a breach of peace, disturb public tranquillity or any wrongful act, the Court after giving the person concerned opportunity to show cause, may order such person to execute a bond with or without sureties for keeping the peace for a period not exceeding 108 days.

200.1. The bond to be executed shall bind the person to keep the peace or to be in good behaviour, and therefore shall be liable as per the undertaking for any breach of the bond.

200.2. If a person fails to give security as required, the person shall be committed to prison until such period expires or until such period he/she gives the security to the Court that made the order requiring it.

Bond amount

201. The amount of bond shall be fixed at ten to thirty percent of the income of the surety.

CHAPTER 42
Withdrawal from Prosecution

Withdrawal from Prosecution

202. If following the accumulation and review of evidences, the police and the prosecutor believes that there is an insufficient legal basis to make a compelling case to prove a suspect's guilt beyond a reasonable doubt, the police/prosecutor may request the Court to allow the prosecution to be withdrawn.

Termination of Bail

202.1. The effect of withdrawal of prosecution shall be dismissal of the case and termination of conditions of bail.

202.2. If the accused is in custody, he/she shall be immediately released.

Release

203. A Court may release the suspect or defendant, terminate bail/dismiss a case, if the prosecution repeatedly fails to produce sufficient evidence or witness to substantiate the charge against the suspect

Acquittal in a Case of Innocence

204. Where guilt *beyond reasonable doubt* has not been established to the Court's satisfaction for the charge, the defendant shall be acquitted and released and have the conditions of his/her bail terminated.

Motion for new Trials

205. The prosecution may motion the Courts for new trials based on newly discovered evidence or on other grounds.

Double Jeopardy

206. Defendant acquitted/convicted of a specific offence may not be penalised for the second time.

206.1. Double jeopardy protection shall not apply to an associated offence and the part of the same set of operative facts was not known to the prosecution.

206.2. Double Jeopardy does not protect the defendant from civil litigation.

CHAPTER 43
Sentencing

Sentencing

207. Sentencing may be passed only with regard to the element of the charge where guilt *beyond reasonable doubt* has been proven to the full satisfaction of the Court.

Types of Sentencing

208. A defendant found guilty of a crime may be:
   (a) awarded capital punishment;
   (b) imprisoned;
   (c) released on probation;
   (d) fined; or
   (e) ordered to pay compensation or damages and make restitution to the victim or his/her legal heir.

Additional Criminal Penalties

209. The Court may also decree a forfeiture of property/a judicial sale of property/a financial penalty/cancellation of license/impose any other penalty deemed fit.

Concurrent or Consecutive Sentence of Imprisonment

210. The Court may direct that any sentence of imprisonment awarded by it shall run concurrently or
   run consecutively with the sentences awarded either in the same trial or with a sentence that the accused is already undergoing for any other offence.

Detention prior to sentence

211. When a defendant who is sentenced to imprisonment has previously been detained in any prison following his/her arrest for the crime for which such sentence is prescribed, such period of detention shall be deducted from the term of his/her sentence.

Criminal Trial does not Bar Civil Suit

212. Completion of a criminal trial shall not preclude the right of a victim or person otherwise harmed by the defendant from filing a civil suit against the same defendant and associated parties.

CHAPTER 44
Juvenile

Juvenile

213. A Juvenile arrested on a criminal charge shall :

(a) be informed promptly and directly of the charge against him/her through his/her parents/member of family/legal guardian;

(b) be accompanied by a parent/member of family/legal guardian during trial unless it is considered not to be in the best interest of the child, in particular, taking into account his/her age or situation;

(c) have the opportunity to be represented by a *Jabmi;*

(d) have legal or other appropriate assistance in the preparation and presentation of his/her defence; and

(e) have his/her privacy fully respected at all stage of the proceedings.

Disposition of a Convicted Juvenile

213.1. In making the determination to allow a Juvenile to go home after advice/admonition or release the Juvenile on probation, the Court shall consider the:

(a) severity of the charges;

(b) juvenile's past criminal record;

(c) likelihood of flight;

(d) juvenile's age and physical/mental health condition; and

(e) potential threat posed to civil society.

Preceding Sentencing

213.2. A Court shall take into consideration the following factors in making orders concerning juvenile:-

(a) age of the juvenile;

(b) physical and mental health;

(c) circumstances in which the juvenile was living;

(d) reports made by the police; and

(e) other circumstances as are, in the opinion of the Court, required to be taken into consideration in the best interest and welfare of the Juvenile.

Authoritative Text

214. The original text of this Code is the text as passed by the National Assembly in *Dzongkha*. The *Dzongkha* text and the English translation are equally authoritative, except that, in any instance of a difference in meaning between the two texts, the *Dzongkha* text shall prevail.

215. *Drangpons* of the:
   (a) *Dzongkhag* Court shall be addressed as Judges in English;
   (b) High Court shall be addressed as Justices; and
   (c) Supreme Court shall be addressed as Justices.

DEFINITIONS

215.1. "*Druk Gyalpo*" means His Majesty the King of Bhutan.

215.2. *"Dungkhag Court"* means Court at sub-divisional level.

215.3. "*Dzongkhag Court"* means district court.

215.4. "Government" means the Royal Government of Bhutan and its instruments.

215.5. "Law" means the laws of the Kingdom of Bhutan.

215.6. "National Judicial Commission" means commission appointed under this Code for the purposes of appointment and removal of *Drangpons.*

215.7. "Offence" means any act or omission in contradiction to any law in force committed within or outside the territory of the Kingdom of Bhutan.

215.8. "Person" includes an individual, partnership, corporation, organisation, enterprise, agency, department, subdivision, or other legal entity whether public or private and successor, representative, or agent of one of them.

215.9. "Prosecutor" or "Prosecution" means a person who has been directed by the Government to appear and conduct a criminal case on behalf of the Government.

215.10. "Public" means all classes of the society or any community.

215.11. "Receiver" means any person so appointed under this Code.

215.12. "*Drangpon*" means Justice or Judge or Presiding Judicial Officer of a Court.

215.13. *"Rabjam"* means any person so designated by any relevant rules or regulations or statute.

215.14. *"Thrimzhung Chhenmo"* means The Supreme Law of 1959.

215.15. *"TSA-WA-SUM"* means His Majesty the King, Country and People of Bhutan.

215.16. *"Bah"* means a legal undertaking or bond.

215.17. *Jabmi* " means a Bhutanese legal counsel who has been licensed to practice.

215.18. The Royal Courts of Justice means Courts of law in Bhutan.

215.19. Words, offences and expressions not defined herein but defined in other Laws have the same meanings respectively assigned to them. Words not defined in this Act or in any other Law will be defined and incorporated into to this Code by the High Court/Supreme Court as the case may be.