

FREQUENTLY ASKED QUESTIONS IN CRIMINAL MATTERS

Question: Where can a criminal complaint be lodged?

Answer: At the police station, at the gendarmerie units, at the State Counsel's Chambers, before the examining magistrate.

Question; Do I have to pay for filing a complaint?

Answer. Generally, no. However, if you write your complaint directly to the examining magistrate you will have to pay a deposit determined by the examining magistrate. In this case if the alleged offence against the defendant is not proven, the defendant can bring an action against you for malicious prosecution.

Question: When a criminal complaint is lodged, must the matter end up in court?

Answer: Not necessarily. If the matter is investigated and no offence is found, the matter shall be closed.

Question: For how long should a suspect be kept in police custody?

Answer: 48 hours renewable once and exceptionally twice by the state counsel (total 144 hours). However this period can be extended having regard to the distance between the place of arrest and the police station or gendarmerie unit where suspect is to be remanded.

Question: For how long can an examining magistrate remand into prison custody?

Answer: maximum of 18 months for felonies and 12 months for misdemeanours.

Question: While a person is remanded in police custody or prison custody, does he have a right to be visited by his counsel, family and friends?

Answer: yes

Question: When a suspect is in police custody, is he forced to make a statement?

Answer: No, it is at his discretion

Question: If I am the victim of an offence, can I file a criminal action in court directly without the matter been investigated?

Answer: Yes if the alleged offence is a misdemeanour or a simple offence you can seize the court of First instance directly by way of direct summons. Note that if the charge against the accused is not proven, the latter can institute an action against you for malicious prosecution.

Question: When a criminal matter is in court, how do I get compensation for the injury caused by the offence?

Answer: You can attach a civil claim to the criminal action.

Question: Must my civil claim be in writing?

Answer: It could be in writing or it could be made orally at the time of the trial.

Question: Is attaching a civil claim to a criminal action the only way I can get compensation as the victim of an offence?

Answer: No, you can initiate a separate civil action but will you have to pay a deposit for the matter to be heard.

Question: Must an accused person be present in court before his matter can be heard?

Answer: No, if the accused has been served whether by substituted service or personal service, the matter can go on in his absence.

Question: When I am summoned as a witness, am I obliged to appear and give evidence?

Answer: Yes. If you do not appear, the law provides that you be arrested.

Question: Who can defend a child at a trial?

Answer: A lawyer or any person specialized in the protection of childrens' rights.

Question: What happens when the court sentences an accused to pay a fine and costs of the proceedings but he does not have money to pay?

Answer: The amount of costs and fines shall be transformed into imprisonment terms and the person imprisoned. However, the court may grant bail if the convict produces a surety who undertakes that the fine and costs shall be paid within 2 months from date of the sentence. Persons below 18 years and persons above 60 years shall however not be imprisoned because they are unable to pay fines and costs. The Legal department can attach their property to make good these sums.

Question: If I am not satisfied with the judgment of a court how much time do I have to go on appeal?

Answer: 10 days.

Question: Must an arrest be done on the bases of an arrest warrant?

Answer: Yes. However the following are exceptions: offences (felonies and misdemeanours) committed flagrante delicto.

Question: When can a warrant of arrest be executed?

Answer: At any time including Sundays and public holidays. However, a judicial police officer shall not enter any residence between 6 p.m and 6 a.m to effect an arrest.

Question: When should a search be carried out in a residence?

Answer: Between 6 a.m and 6pm, but a search begun before 6pm can continue beyond 6pm on the authorization of the state counsel or examining magistrate.

Question: Should the officer executing a search warrant be searched before he begins search at a premises?

Answer: Yes

Question: Can a search be carried out without a warrant?

Answer: Searches must be carried out with a warrant. But a search can be done without a warrant where the offence is committed flagrante delicto, or where the offence is not committed flagrante delicto but the owner of the place to be searched or the person in possession of the articles to be searched consents in writing.

Question: How much does bail cost?

Answer: bail is free. Even when a suspect or accused is required to deposit a sum of money for bail, this sum is refundable. However, if he is found guilty and is required to pay a fine and costs of the proceedings, such sums shall be deducted from the money deposited for bail.

Question: Can bail be granted to an accused after conviction by the court?

Answer: Yes, where the imprisonment term is less than one year and the convict has indicated his intention to lodge an appeal.

Question: Can I refuse a particular magistrate from hearing my case?

Answer: Yes you can challenge a magistrate of the bench and only for the reasons set out in section 591 of the Criminal Procedure code (C.P.C). A magistrate of the legal department cannot be challenged.

Question: Should I pay money to gendarme and police officers as fixed fines for simple offences?

Answer: The C.P.C provides for the payment of such fines and the issuance of a receipt (this will only go operational when officers in charge take oath and are given initialed receipt booklets)