

THE CRIMINAL PROCEDURE ACT, 1985

ARRANGEMENT OF SECTIONS

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SCHEDULES

- "non-warrant offence" means an offence for which a police officer may arrest without a warrant;
- "officer in charge of a police station" includes any officer superior in rank to an officer in charge of a police station and also includes, when the officer in charge of the police station is absent from the station house or unable from illness or other cause to perform his duties, the police officer present at the station house who is next in rank to that officer and is above the rank of constable or, when the Minister for the time being responsible for home affairs so directs, any police officer so present;
- Cap. 16 "Penal Code" means Chapter 16 of the Laws of Tanzania;
- "police officer" includes any member of the police force and, includes any member of the people's militia when exercising police functions in accordance with the law for the time being in force;
- "public prosecutor" means any person appointed under section 95 and includes the Director of Public Prosecutions, the Attorney-General, the Deputy Attorney-General, a Parliamentary Draftsman, a State Attorney and any other person acting in criminal proceedings under the directions of the Director of Public Prosecutions;
- "subordinate court" means any court other than a court martial, which is subordinate to the High Court;
- "summary trial" means a trial held by a subordinate court under Part VII of this Act;
- Acts, 1984 No. 7 "Village Council" means a Village Council established under section 22 of the Local Government (District Authorities) Act, 1982;
- "warrant Offence" means an offence for which a police officer may not arrest without warrant.
- limitation of applica. tion
Acts, 1984 No. 2
- 3.-(1) Subject to sub-section (2), nothing in this Act shall apply to any primary court or primary court magistrate or to the High Court, a district court or a resident magistrate's in the exercise of their respective appellate, revisional, supervisory, or other jurisdiction and powers under Part III of the Magistrates' Courts Act, 1984.
- (2) Notwithstanding the provisions of sub-section (1)-
- (a) the reference to a court in sections 27, 29, 30 32 and 141 and the reference to a subordinate court in section 242 shall include reference to a primary court;
- (b) the reference to a magistrate in sections 36 and 70 to 88 shall include a reference to a primary court magistrate;
- (c) the Director of Public Prosecutions and any person lawfully authorized by him, may exercise any of the powers conferred on him by section 90 and 91 in respect of proceedings in a primary court proceedings in the High Court or a district court under Part III of the Magistrates' Courts Act, 1984; save that nothing in this paragraph shall be construed as derogating from the provisions of section 29 of the Magistrates' Courts Act, 1984;
- (d) the provisions of sections 137, 138, 129 and 140 shall apply to, and the High Court may exercise jurisdiction under section 148 (3), 402 and 403 in respect of, primary courts.

(3) In this section "primary court" "district court" and "resident magistrate's court" have the meanings respectively assigned to those expressions in the Magistrates' Courts Act, 1984.

4.-(1) All offences under the Penal Code shall be inquired into, tried and otherwise dealt with according to the provisions of this Act. cap. 16

(2) All offences under any other law shall be inquired into, tried and otherwise dealt with according to the provisions of this Act, except where that other law provides differently for the regulation of the manner or place of investigation into, trial or dealing in any other way with those offences. Procedure to be adopted for trial of offences

PART II

PROCEDURE RELATING TO CRIMINAL INVESTIGATIONS

A.-Arrest, Escape and Recapture, Search Warrants and Seizure

(a) Preliminary Provisions

5.-(1) For the purposes of this Act, a person shall be under restraint if he is in the company of a police officer for a purpose connected with the investigation of an offence and the police officer would not allow him to leave if he wished to do so, whether or not the police officer has reasonable grounds for believing that that person has committed an offence, and whether or not he is in lawful custody in respect of the offence. when person is under restraint and in lawful custody

(2) For the purposes of this Act, a person shall be in lawful custody if-

(a) he is under restraint as a result of his having been lawfully arrested; or,

(b) he is under restraint in respect of an offence and the police officer -
(i) believes on reasonable grounds that he has committed the offence and

(ii) would be authorized under section 14 to arrest him for the offence.

(3) A person shall not be under restraint if he is in the company of a police officer by the road side whether or not he is in a vehicle, for a purpose connected with the investigation of an offence, not being a serious offence, arising out of the use of a motor vehicle.

(4) For the purposes of this section, a person shall be deemed to be in the company of a police officer for a purpose connected with the investigation of an offence if the person is waiting at a place at the request of a police officer for such a purpose.

6.-(1) Every police officer shall, in exercising the powers conferred on him, and in performing the duties imposed on him, as a police officer comply with the provisions of this Part. Application of this part to police officers

(2) Where a police officer contravenes or fails to comply with a provision of this Part which is applicable to him, the contravention or failure shall not be punishable as an offence against this Act unless a penalty, is expressly provided in respect of the contravention or failure.

(3) Nothing in this section shall be construed as a contravention of, or a failure to comply with, a provision of this Part by a police officer-

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(a) constituting, under the Police Force Ordinance, a breach of discipline by the police officer for which he may be dealt with under that Ordinance;

(b) constituting grounds for the exclusion of evidence under section 169; or

(c) constituting grounds for the institution of civil proceedings.

Duty to give information on crimes and sudden deaths

7.-(1) Every person who is or becomes aware-

(a) of the commission of or the intention of any other person to commit any offence punishable under the Penal Code; or

(b) of any sudden or unnatural death or death by violence or of any death under suspicious circumstances or of the body of any person being found dead without it being known how that person died,

shall forthwith give information to a police officer or to a person in authority in the locality who shall convey the information to the officer in charge of the nearest police station.

(2) No criminal or civil proceedings shall be entertained by any court against any person for damages resulting from any information given by him in pursuance of sub-section (1).

(3) When any person dies while in the custody of the police or in a mental hospital, leprosarium, home for the disabled or prison, the officer who had the custody of that person or was in charge of that hospital, leprosarium, home for the disabled or prison shall forthwith give information regarding the death to a coroner of the court within whose jurisdiction the body is found and that coroner or person authorized by him shall view the body and hold an inquiry into the cause of death, subject to any law for the time being in force governing such inquiries,

Inquiries into deaths Acts, 1980 No. 17

8. All inquiries into sudden deaths or other deaths reported under section 7 shall be carried out by such person as are authorized under, and in such manner as is provided for by, the Inquests Act, 1980.

Information relating to the commission of an offence to be given orally or in writing

9.-(1) Information relating to the commission of an offence may be given orally or in writing to a police officer or to any other person in authority in the locality concerned.

(2) Any information under sub-section (1) shall be recorded in the manner provided in sub-section (3) of section 10.

(3) Where in pursuance of any information given under this section proceedings are instituted in a magistrate's court, the magistrate shall, if the person giving the information has been named as a witness, cause a

copy of the information and of any statement made under sub-section (3) of section 10 by the person against whom or in respect of whom the accused is alleged to have committed an offence, to be furnished to the accused forthwith.

(4) Any information given under this section by any person may be used in evidence in accordance with the provisions of the law for the time being in force relating to the procedure for the adduction and reception of evidence in relation to the proceedings in respect of the offence concerned.

10.-(1) If from the information received or in any other way a police officer has reason to suspect the commission of an offence or to apprehend a breach of the peace, he shall, where necessary, proceed in person to the spot to investigate the facts and circumstances of the case and to take such measures as may be necessary for the discovery and arrest of the offender where the offence is one for which he may arrest without warrant. Investigation
by police
officers

(2) Any police officer making an investigation may by order in writing require the attendance before himself of any person living within the limits of the station of that police officer or any adjoining station, who, from information given or in any other way appears to be acquainted with the circumstances of the case, and the person shall attend as so required.

(3) Any police officer making an investigation may, subject to the other provisions of this Part, examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined. The whole of the statement, including any question in clarification asked by the police officer and the answer to it, shall be recorded in full in Kiswahili or in English or in any other language in which the person is examined, and the record shall be shown or read over to him or if he does not understand the language in which it is written it shall be interpreted to him in a language he understands and he shall be at liberty to explain or add to his statement. He shall then sign that statement immediately below the last line of the record of that statement and may call upon any person in attendance to sign as a witness to his signature. The police officer recording the statement shall append below each statement recorded by him the following certificate:-

" I _____, hereby declare that I have faithfully and accurately recorded the statement of the above named _____ " .

(4) It shall be the duty of a police officer before examining a person to inform him that he is bound to answer truly all questions relating to the case put to that person by him and that he may not decline to answer any question on the grounds only that the question has a tendency to expose him to a criminal charge, penalty or forfeiture.

(5) A police officer or person in authority shall not offer or make or cause to be offered or made any inducement, threat, or promise to any person charged with an offence to induce him to make any statement with reference to the charge against him. But no police officer or person in

authority shall prevent or discourage by any caution or in any other way any person from making in the course of any investigation any statement which he may be disposed to make of his own free will.

(6) A statement by any person to a police officer in the course of any investigation may be used in accordance with the provisions of the law for the time being in force relating to the procedure for the adduction and reception of evidence, but not for the purpose of corroborating the testimony of that person in court.

(7) In any proceedings under this Act, the production of a certified copy of the information referred to in section 9 or of any statement recorded under this section shall be prima facie evidence of the fact that the information was given or that the statement was made to the police officer by whom it was recorded; and notwithstanding the provisions of any other written law, it shall not be necessary to call that police officer as a witness solely for the purpose of producing the certified copy.

(b) Arrests and *Warrant of Arrest*

Arrest,
how made

11.-(1) In making an arrest the police officer or other person making the arrest shall actually touch or confine the body of the person being arrested, unless there be a submission to the custody by word or action.

(2) If the person, to be arrested forcibly resists the endeavor to arrest him, or attempts to evade the arrest, the police officer or other person may use all means necessary to effect the arrest.

No unnece-
ssary
restraint

12. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

Warrant
for arrest

13.-(1) Where an information on oath is laid before a Magistrate, Ward Secretary or a Secretary of a Village Council, alleging that there are reasonable grounds for believing that a person has committed an offence-

(a) the Magistrate, the Ward Secretary or the Secretary of a Village Council, as the case may be, if the person is not then under restraint, but subject to sub-section (3), issue a warrant for the arrest of the person and for bringing him before a court specified in the warrant to answer to the information and to be further dealt with according to law; or

(b) the Magistrate, the Ward Secretary or the Secretary of a Village Council, as the case may be, may issue a summons requiring the person to appear before a court to answer to the information.

(2) At any time after a Magistrate, Ward Secretary or Secretary of a Village Council has issued a summons requiring a person to appear before a court to answer to an information under sub-section (1) and before the summons has been duly served on the person, the Magistrate, Ward Secretary or Secretary of the Village Council, as the case may be, may, subject to sub-section (3), issue a warrant for the arrest of the person and for bringing him before a court specified in the warrant to answer to the information and to be further dealt with according to law

- (3) A warrant shall not be issued under subsection (1) or (2) in relation to an information unless-
- (a) an affidavit has been furnished setting out the grounds on which the issue of the warrant is being sought; or
 - (b) the informant or some other person furnishes such further information as the Magistrate, Ward Secretary or Secretary of the Village Council requires concerning the grounds on which the issue of the warrant is being sought; or
 - (c) the Magistrate, Ward Secretary or Secretary of the Village Council is satisfied that there are reasonable grounds for issuing the warrant.
- (4) Where an informant furnishes information to a Magistrate, Ward Secretary or Secretary of the Village Council for the purposes of subsection (3) (b) he shall furnish the information on oath.
- (5) Where the Magistrate, Ward Secretary or Chairman of the Village Council issues a warrant under sub-section (1), he shall state on the affidavit furnished to him in accordance with sub-section (3) which of the grounds (if any) specified in that affidavit and particulars of any other grounds on which he has relied to justify the issue of the warrant.

14. A police officer may without a warrant arrest-

- (a) any person who commits a breach of the peace in his presence;
- (b) any person who wilfully obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody;
- (c) any person in whose possession any thing is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to such thing;
- (d) any person whom he finds lying or loitering in any highway, yard or garden or other place during the night and whom he suspects upon reasonable grounds of having committed or being about to commit an offence or who has in his possession without lawful excuse any offensive weapon or house breaking implement;
- (e) any person for whom he has reasonable cause to believe a warrant of arrest has been issued;
- (f) any person whom he suspects upon reasonable grounds of having been concerned in any act committed at any place out of Tanzania which, if committed in Tanzania, would have been punishable as an offence, and for which he is, under the Fugitive Criminal Surrender ordinance or the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended and detained in Tanzania;
- (g) any person who does any act which is calculated to insult the national emblem or the national flag;
- (h) any person whom he suspects of being a loiterer in contravention of the provisions of the Human Resources Deployment Act, 1983.

Arrest by
police
officer

without
warrant

Cap. 22

Acts, 1933
No. 4

(3) Where a person who has been arrested for an offence in accordance with subsection (1) or (2) is being held under restraint in connection with an investigation of the offence but has not been charged with the offence, it shall be lawful to continue to hold the person under restraint for so long only as the police officer in charge of the investigation believes on reasonable grounds that it is necessary to hold him under restraint for any one or more of the reasons specified in sub-section (1) and (2).

Procedure
when Police
officer
deputes
subordinate
to arrest
without
marrant

15. When any officer in charge of a police station requires any officer subordinate to him to arrest without warrant (otherwise than in such officer's presence) any person who may lawfully be arrested without a warrant under section 14, he shall deliver to the officer required to make the arrest an order in writing specifying the person to be arrested and the offence or other cause for which the arrest is to be made.

Arrest
by private
persons

16.-(1) Any private person may arrest any person who in his presence commits any of the offences referred to in section 14.

(2) Persons found committing any offence involving injury to property may be arrested without a warrant by the owner of the property or his servants or persons authorized by the owner of the property.

Arrest by
magistrate

17. Any magistrate may at any time arrest or issue a warrant directing the arrest of any person whom he reasonably believes has committed an offence within the local limits of his jurisdiction.

Magistrate
may arrest
person for
an offence
committed
in his
presence

18. When any offence is committed in the presence of a magistrate within the local limits of his jurisdiction he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions of this Act relating to the granting of bail, commit the offender to custody.

Right of
entry into
any place
in order
to effect
arrest

19.- (1) If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered in to or is within any house or place, that person or police officer shall demand of the person residing in or being in charge of the house or place admission into that house or place, and the person residing in or in charge of it shall allow him free entrance into and afford all reasonable facilities for a search, within that house or place.

(2) If entrance into that house or place cannot be obtained under the preceding sub-section, it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity to escape, for a police officer, to enter the house or place and search within it, and in order to effect an entrance into the house or place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person or otherwise effect entry into such house or place, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance, subject to subsection (3).

(3) If any such house or place is in an apartment in the actual occupancy of a woman (not the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to the woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

20. Any police officer or other person authorized to make an arrest may break out of any place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained inside the place.

Power to break out of any place for purposes of liberation.

21.-(1) A police officer or other person shall not, in the course of arresting a person, use more force, or subject the person to greater indignity, than is necessary to make the arrest or to prevent the escape of the person after he has been arrested.

Use of force in making arrest

(2) Without limiting the application of sub-section (1), a police officer shall not, in the course of arresting a person, do an act likely to cause the death of that person, unless the police officer believes on reasonable grounds that the doing of that act is necessary to protect life or to prevent serious injury to some other person.

22. Where a person who arrests another person for an offence otherwise than in pursuance of a warrant but in circumstances referred to in section 16, the arrest shall not be taken to be unlawful by reason only that it subsequently appears, or is found by a court, that the other person did not commit the offence.

Certain arrests not to be taken to be unlawful

21.-(1) A person who arrests another person shall at the time of the arrest, inform that other person of the offence for which he is arrested.

Person to be informed of grounds of arrest

(2) A person who arrests another person shall be taken to have complied with sub-section (1) if he informs the other person of the substance of the offence for which he is arrested, and it is not necessary for him to do so in a language of a precise or technical nature.

(3) Sub-section (1) does not apply to or in, relation to the arrest of a person-

- (a) if, by reason of the circumstances in which he is arrested, that person ought to know the substance of the offence for which he is arrested; or
- (b) if by reason of his actions the person arrested make sit impracticable for the person effecting the arrest to inform him of the offence for which he is arrested.

24. Whenever a person is arrested-

- (a) by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail; or
- (b) without warrant, or by a private person under a warrant, and the person arrested cannot legally be admitted to bail or cannot furnish bail,

Search of arrested person

the police officer making the arrest or, when the arrest is made by a private person, the police officer to whom that private person makes over the person arrested, may search such person and place in safe custody all articles, other than necessary wearing apparel, found upon him.

Power of the police to detain and search vehicles

25.-(1) Subject to the provisions of sections 50 and 51 of this Act any police officer may do any or ail of the following things namely, stop, search and detain:-

- (a) any vessel, boat, aircraft or vehicle in or upon which there is reasonable cause to suspect that there are-
 - (i) any stolen goods;
 - (ii) any things used or intended to be used in the commission of an offence;
 - (iii) without lawful excuse, any offensive weapons, an article of disguise or any article prohibited under any law;
- (b) any person who is reasonably suspected of having or conveying in any manner any of the articles mentioned in paragraph (a).

(2) Subject to the provisions of subsection (3), if at the expiry of the time referred to in section 50, for interviewing a person no application for extension of time is made or if the application is made and refused, the vessel, boat, aircraft, vehicle, or the person, as the case may be, shall be released and in the case of the latter, any goods seized from him shall be restored to him.

(3) Where the time for interviewing a person is extended pursuance to an, appropriate application referred to in sub-section (2), a magistrate shall, where it is necessary, order that any vessel, boat, aircraft or vehicle be detained in order to facilitate further investigation or for use as exhibits in any court proceedings.

Made of searching women

26. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

Power to seize offensive weapons

27. The officer or other person making an arrest may take from the person arrested any offensive weapons which he has about his person, and shall deliver to the court or officer before which or whom the officer or person making the arrest is required by law to produce the person arrested all weapons taken.

Arrest of vagabonds, habitual robbers, etc-

28. Any officer in charge of a police station may in like manner arrest or cause to be arrested:-

- (a) any person found taking precautions to conceal his presence within the limits of such station under circumstances which afford reason to believe that he is taking such precautions with a view of committing an arrestable offence
- (b) any person within the limits of such station who has no ostensible means of subsistence or who cannot give satisfactory account of himself;
- (c) any person who is by repute an habitual robber, housebreaker, or thief or an habitual receiver of stolen property knowing it to be stolen, or who by repute liabitually commits extortion or in order to commit extortion habitually puts or attempts to put persons in fear of injury.

29.-(1) When any person who in the presence of a police officer has committed or has been accused of committing a warrant offence refuses on the demand of such officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

Refusal to
give name
and
residence

(2) When the true name and residence of such person have been ascertained he shall be released on his executing a bond, with or without sureties, to appear before a court if so required; save that if such person is not resident in Tanzania the bond shall be secured by a surety or sureties resident in Tanzania.

(3) Should the true name and residence of that person not be ascertained within twenty-four hours from the time of arrest, or should he fail to execute the bond or, if so required, to furnish sufficient sureties, he shall forthwith be taken to a court having jurisdiction.

30. A police officer making an arrest without a warrant shall, Without bail take or send the person arrested before a court having jurisdiction in the area of the police station.

Disposal of
persons
arrested by
Police
officer

31.-(1) Any private person arresting any person without a warrant shall without unnecessary delay hand over the person so arrested to a police officer or in the absence of a police officer, shall take such person to the nearest police station.

Disposal of
persons,
arrested by
private
persons

(2) If there is no reason to believe that such person comes under the provisions of section 14, a police officer shall re-arrest him.

(3) If there is reason to believe that he has committed a warrant offence, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 29. If there is no sufficient reason to believe that he has committed any offence he shall be at once released.

32.-(1) When any person has been taken into custody without a warrant for an offence other than an offence punishable with death, the officer in charge of the police station to which such person is brought may in any case and shall if it does not appear practicable to bring such person before an appropriate court within twenty-four hours after he was so taken into custody, inquire into the case and, unless the offence appears to that officer to be of a serious nature release the person on his executing a bond which or without sureties, for a reasonable amount to appear before a court at a time and place to be named in the bond; but where such person is retained in custody he shall be brought before a court as soon as practicable.

Detention of
Persons
arrested

(2) Where any person has been taken into custody without a warrant for an offence punishable with death, he shall be brought before a court as soon as practicable.

(3) Where any person is arrested under a warrant of arrest he shall be brought before a court as soon as practicable.

(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), an officer in charge of a police station may release a person arrested on suspicion of committing any offence if after due police inquiry insufficient evidence is, in his opinion disclosed on which to proceed with the charge.

Police to report apprehensions

33. Officers in charge of police stations shall report to the nearest magistrate, within twenty-four hours or as soon as practicable, the cases of all persons arrested without warrant within the limits of their respective stations, whether or not such persons have been admitted to bail.

(c) *Escape and Retaking*

Recapture of persons escaping

34. If a person in lawful custody escapes or is rescued, the person from whose custody he escapes or is rescued may immediately pursue and arrest him in any place in Tanzania.

Provision sections 19 and 20 apply to arrest under section 34

35. The provisions of sections 19 and 20 shall apply to arrests under the last preceding section, although the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest.

Duty to assist magistrate or police officer in prevention of escape of arrested person

36. Every person is bound to assist a magistrate or police officer reasonably demanding his aid-

- (a) in taking or preventing the escape of any person whom such magistrate or police officer is authorized to arrest;
- (b) in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any railway, canal, telegraph or other public property.

Compensation for injuries losses or death resulting from assisting police, etc.

37.-(1) Where any person suffers material loss or personal injury, or dies in consequence of taking step or in the cause of assisting a magistrate, a police officer, or any other officer of the law to stop the commission of an offence or in arresting a person who has or is reasonably suspected to have committed an offence, such person shall be entitled to receive compensation for such loss or injury and where such person dies, his dependants or legal representative shall be entitled to receive the compensation that person would have received had he not died.

(2) The amount of compensation to be paid under sub-section (1) shall be assessed, and all other matters regarding the payment of compensation shall be dealt with, in accordance with the provisions of the law for the time being in force regarding the payment of compensation to victims of crime.

(3) Any compensation to be paid under this section shall be paid in such manner and out of such funds as may be prescribed by the law referred to in sub-section (2).

(d) *Search Warrants and Seizure*

Power to issue search warrant or authorize search

38.-(1) If a police officer in charge of a police station is satisfied that there is reasonable ground for suspecting that there is in any building, vessel, carriage, box, receptacle or place-

- (i) anything with respect to which any offence has been committed;
- (ii) anything in respect of which there are reasonable grounds to believe that it will afford evidence as to the commission of any offence;

- (iii) anything in respect of which there are reasonable grounds to believe that it is intended to be used for the purpose of committing any offence,

and the officer is satisfied that any delay would result in the removal or destruction of that thing, or would endanger life or property, he may search or issue a written authority to any police officer under him to search the building, vessel, carriage, box, receptacle or place as the case may be.

(2) When any authority referred to in sub-section (1) is issued, the police officer concerned shall, as soon as practicable, report the issue of the authority, the grounds on which it was issued and the result of any search made under it to a magistrate.

(3) Where anything is seized in pursuance of the powers conferred by sub-section (1), the officer seizing the thing shall issue a receipt acknowledging the seizure of that thing, bearing the signature of the owner of the premises and those of witnesses to the search, if any.

(4) No prosecution resulting from the exercise of powers under this section shall be commenced without the consent of the Director of Public Prosecution.

39. For the purpose of this Part-

- (a) anything with respect to which an offence has been or is purported on reasonable grounds to have been committed;
- (b) anything as to which there are reasonable grounds for believing that it will afford evidence of the commission of any offence and
- (c) anything as to which there are reasonable grounds for believing that it is intended to be used for the purpose of committing any offence,
- shall be deemed to be a thing connected with the offence.

40. Every search warrant may be issued and executed on any day (including Sunday) and may be executed between the hours of sunrise and sunset but the court may, upon application by a police officer or other person to whom it is addressed permit him to execute it at any hour.

41. A police officer may search the person of the clothing that is being worn by or property in the immediate control of, a person and may seize any thing relating to an offence that is found in the course of the search, if the search and seizure is made by the police officer-

- (a) in pursuance of a warrant issued under this Part;
- (b) in accordance with section 24 upon taking the person into lawful custody in respect of an offence;
- (c) upon stopping the person in accordance with subsection (2) of section 42;
- (d) in pursuance of an order made by a court.

42.-(1) A police officer may-

- (a) search a person suspected by him to be carrying anything concerned with an offence, or

(b) enter upon any land, or into any premises vessel or vehicle, an or in which he believes on reasonable grounds that anything connected with an offence is situated,

and may seize any such thing that he finds in the course of that search, or upon the land or in the premises, vessel or vehicle as the case may be-

(i) if the police officer believes on reasonable grounds that it is necessary to do so in order to prevent the loss or destruction of anything connected with an offence; and

(ii) the search or entry is made under circumstances of such seriousness and urgency as to require and justify immediate search or entry without the authority of an order of a court or of a warrant issued under this Part.

(2) A police officer who believes on reasonable grounds that a person is carrying an offensive weapon or anything connected with an offence may stop that person and seize any such weapon or thing that is found on the person.

(3) A police officer who believes on reasonable grounds that an offensive weapon, or anything connected with an offence is being carried in a vessel or vehicle, may stop and seize any such weapon or thing found in the vessel or vehicle.

Persons in charge of closed place to allow ingress thereto and egress there from

43.-(1) Whenever any building or other place liable to search is closed, any person residing in or being in charge of such building or place shall, on demand of the police officer or other person executing the search warrant, and on production of the warrant, allow him free ingress into, afford all reasonable facilities for a search inside and allow him free egress from it.

(2) If ingress into or egress from such building or other place cannot be so obtained, the police officer or other person executing the search warrant may proceed in the manner prescribed by section 19 or section 20.

(3) Where any person in or at out such building or such place is reasonably suspected of concealing about his person any article for which search should be or is being made, such person may be searched. If that person is a woman, the provisions of section 26 shall be complied with.

Detention of property seized

44.-(1) When any article is seized and is brought before a court it may, subject to section 353 be detained until the conclusion of the case or the investigation, reasonable care being taken for its preservation.

(2) If any appeal is made, or if any person is committed for trial, the court may order the article to be further detained for the purpose of the appeal or the trial.

(3) If no appeal is made, or if no person is committed for trial, the court shall direct such article to be restored to the person from whom it was taken, unless the court sees fit or is authorized or required by law to dispose of it in any other manner.

Provisions applicable to search warrants

45.-(1) The provisions of sections 112(1) and (3), 114, 116, 119, 120 and 121 shall, so far as may be, apply to all search warrants issued under section 38.

(2) Every search warrant shall be returned to the court, with an endorsement in it showing the time and manner of its execution and what has been done under it.

B. Powers and Duties of Police Officers when Investigating Offences

(a) Preliminary Provisions

46.-(1) Where a police officer believes on reasonable grounds that a person whose name and address is unknown to him may be able to assist him in his inquiries in connection with an offence that has been, may have been, or may be committed, the police officer may request the person to furnish to him his name and address.

Require-
ment to
furnish
names and
address

(2) Where a police officer requests a person, under sub-section (1), to furnish his name and address and informs the person of his reason for the request, the person-

- (a) shall not refuse or fail to comply with the request;
- (b) shall not furnish to the police officer a name or address that is false in any material particular; and
- (c) may request the police officer to furnish to him his name, rank and ordinary place of duty.

(3) Where a police officer who makes a request of a person under subsection (1) is requested by the person, pursuant to sub-section (2) (c), to furnish to the person his name, rank, and place of duty the police officer-

- (a) shall not refuse or fail to comply with the request;
- (b) shall not furnish to the person a name or rank that is false in a material particular; and
- (c) shall not furnish to the person as his place of duty an address other than the full and correct address of, the place that is his ordinary Place of duty.

(4) Any person who contravenes this section is guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding six months or to a fine not exceeding two thousand shillings or to both such fine and imprisonment.

47. Every police officer may intervene for the purpose of preventing, and shall to the best of his ability prevent, a breach of the peace or the commission of any arrestable offence.

Police to
prevent
breaches of
the peace
or arrestable
offence

(b) Duration of custodial investigation by police

48.-(1) Where a person is, or has been, under restraint in respect of an offence, a police officer may-

- (a) ask the person questions; or
- (b) take other investigative action,

in connection with the investigation of the offence, during a period available for interviewing the person but not otherwise

(2) The provisions of this Act relating to a period available for interviewing a person shall not be taken -

Restricting
on questioning
persons, ect.

- (a) to make lawful the holding of the person under restraint during any period during which it would, but for those provisions, be unlawful to hold him under restraint; or
- (b) to authorize the asking of any questions or the taking of other investigative action in relation to the person during a period during which it would, but for those provisions, be unlawful to hold him under restraint.

When person not to be taken under restraint

49. A police officer shall not take under restraint in respect of any offence a person who has previously been under restraint in respect of the offence-

- (a) unless he does so in consequence of matters that have come to the knowledge of the police officer in charge of investigation of the offence only after the person last ceased to be under restraint; or
- (b) unless a reasonable period has elapsed since the person last ceased to be under restraint.

Periods available for interviewing person.

50.-(1) For the purposes of this Act, the period available for interviewing the person who is in restraint in respect of an offence is-

- (a) subject to paragraph (b), the basic period available for interviewing the person, that is to say, the period of four hours commencing at the time when he was taken under restraint in respect of the offence;
- (b) if the basic period available for interviewing the person is extended under section 51 the basic period as so extended.

(2) In calculating a period available for interviewing a person who is under restraint in respect of an offence, there shall not be reckoned as part of that period any time while the police officer investigating the offence refrains from interviewing the person, or causing the person to do any act connected with the investigation of the offence-

- (a) while the person is, after being taken under restraint, being conveyed to a police station or other place for any purpose connected with the investigation;
- (b) for the purpose
 - (i) of enabling the person to arrange, or attempt to arrange, for the attendance of a lawyer;
 - (ii) of enabling the police officer to communicate, or attempt to communicate with any person whom he is required by section 54 to communicate in connection with the investigation of the offence;
 - (iii) of enabling the person to communicate, or attempt to communicate, with any person with whom he is, under this Act, entitled to communicate; or
 - (iv) of arranging, or attempting to arrange, for the attendance of a person who, under the provision of this Act is required to be present during an interview with the person under restraint or while the person under restraint is doing an act in connection with the investigation;

- (c) while awaiting the arrival of a person referred to in paragraph (b) (iv); or
- (d) while the person under restraint is consulting with a lawyer.

51.-(1) Where a person is in lawful custody in respect of an offence during the basic period available for interviewing a person, but has not been charged with the offence, and it appears to the police officer in charge of investigating the offence, for reasonable cause, that it is necessary that the person be further interviewed, he may-

Where
custodial
investigation
cannot be
completed
within four
hours

- (a) extend the interview for a period not exceeding eight hours, and inform the person concerned accordingly; or
- (b) either before the expiration of the original period or that of the extended period, make application to a magistrate for a further extension of that period.

(2) A police officer shall not frivolously or vexatiously extend the basic period available for interviewing a person, but any person in respect of whose interview the basic period is extended pursuant to sub-section (1) (a), may petition for damages or compensation against frivolous or vexatious extension of the basic period, the burden of proof of which shall lie upon him.

(3) Where a magistrate to whom application has been made by a police officer under sub-section (1), after having afforded the person, or a lawyer acting on his behalf, an opportunity to make submissions in relation to the application, is satisfied-

- (a) that the person is in lawful custody;
- (b) that the investigation of the offence by the police officer has been, and is being carried out as expeditious as possible; and
- (c) that it would be proper in all circumstances to extend the relevant period,

the magistrate may extend that period for such further period as he may deem reasonable.

(c) Duties when Interviewing Suspects

52.-(1) Where a police officer suspects that a person may have committed a serious offence, or believes that information has been received by the police that may implicate a person in the commission of a serious offence, but that that suspicion or belief is not such as would, under section 14, justify the arrest of the person without warrant, the police officer shall not ask him any questions, unless he has first informed him that he may refuse to answer any questions put to him by the police officer.

Questioning
suspect
persons

(2) A police officer who informs a person as provided under sub-section (1) shall ask him to sign or thumb print an acknowledgement, in accordance with a prescribed form, of the fact that he has been so informed and of the date on which, and the time at which, he is so informed.

(3) Where it is necessary for a court, in any proceedings, to determine whether a police officer has informed a person as required by section (1), and an acknowledgement referred to in subsection (2) and signed by the person is not produced in evidence, the court shall assume, unless the contrary is proved, that the person was not so informed.

(4) Notwithstanding the preceding provisions of this section, where a police officer in the course of interrogating any person under this section, believes that there is sufficient evidence to warrant that person being charged with offence, he shall proceed to charge him accordingly and to caution him in writing and if practicable orally in the prescribed manner, and to inform him that an inference adverse to him may be drawn from his failure or refusal to answer any question or from his failure or refusal to disclose what stage any matter which may be material to the charge.

Persons
under
restraint
to be
informed
of rights

53. Where a person is under restraint, a police officer shall not ask him any questions, or ask him to do anything, for a purpose connected with the investigation of an offence, unless-

- (a) the police officer has told him his name and rank;
- (b) the person has been informed by a police officer, in a language in which he is fluent, in writing and, if practicable orally, of the fact that he is under restraint and of the offence in respect of which he is under restraint; and
- (c) the person has been cautioned by a police officer in the following manner, namely, by informing him, or causing him to be informed, in a language in which he is fluent, in writing in accordance with the prescribed form and, if practicable, orally-
 - (i) that he is not obliged to answer any question asked of him by a police officer, other than a question seeking particulars of his name and address; and
 - (ii) that, subject to this Act, he may communicate with a relative or a friend.

Communica-
tion with
lawyer
relative or
friend

54.-(1) Subject to sub-section (2), a police officer shall, upon request by a person who is under restraint cause reasonable facilities to be provided to enable the person to communicate with lawyer, a relative or friend of his choice.

(2) A police officer may refuse a request under sub-section (1) for the provision of facilities for communicating with a person being a relative or friend of a person under restraint, if the police officer believes on reasonable grounds that it is necessary to prevent the person under restraint from communicating with the person for the purpose of preventing-

- (a) the escape of an accomplice of the person under restraint; or
- (b) the loss, destruction or fabrication of evidence relating to the offence

Treatment
of persons
under
restraint

55.-(1) A person shall, while under restraint, be treated with humanity and with respect for human dignity

(2) No person shall, while under restraint be subjected to cruel, inhuman or degrading treatment.

(3) Where a person under restraint-

- (a) makes a request to a police officer to be provided with medical treatment, advice or assistance in respect of an illness or an injury; or
- (b) appears to the police officer to require medical treatment, advice or assistance in respect of illness or injury,

the police officer shall forthwith take such reasonable action as is necessary to ensure that the person is provided with medical treatment, advice or assistance.

56.-(1) A police officer in charge of investigating an offence in respect of which a child is under restraint shall, forthwith after the child becomes under restraint, cause a parent or guardian of the child to be informed that he is under restraint and of the offence for which he is under restraint.

Special
duties when
interviewing
children

(2) In this section "child" means a person who has not attained the age of sixteen years.

(d) *Recording of Interview*

57.-(1) A police officer who interviews a person for the purpose of ascertaining whether the person has committed an offence shall, unless it is in all circumstances impracticable to do so, cause the interview to be recorded.

Records
of inter-
viewing

(2) Where a person who is being interviewed by a police officer for the purpose of ascertaining whether he has committed an offence makes, during the interview, either orally or in writing, a confession relating to an offence, the police officer shall make, or cause to be made, while the interview is being held or as soon as practicable, after the interview is completed, a record in writing, setting out-

- (a) so far as it is practicable to do so, the questions asked of the person during the interview and the answers given by the person to those questions;
- (b) particulars of any statement made by the person orally during the interview otherwise than in answer to a question;
- (c) whether the person wrote out any statement during the interview and, if so, the times when he commenced to write out the statement;
- (d) whether a caution was given to the person before he made the confession and, if so, the terms in which the caution was given, the time when it was given and any response made by the person to the caution;
- (e) the times when interview was commenced completed;
- (f) if the interview was interrupted, the time when it was interrupted and recommenced.

(3) A police officer who makes a record of an interview with a person in accordance with sub-section (2) shall write, or cause to be written, at the end of the record a form of certificate in accordance with a prescribed form and shall then, unless the person is unable to read-

- (a) show the record to the person and ask him-
 - (i) to read the record and make any alteration or correction to it he wishes to make and add to it any further statement that he wishes to make;
 - (ii) to sign the certificate set out at the end of the record; and
 - (iii) if the record extends over more than one page, to initial each page that is not signed by him; and
- (b) if the person refuses, fails or appears to fail to comply with that request, certify on the record under his hand what he has done and in respect of what matters the person refused, failed or appeared to fail to comply with the request.

(4) Where the person who is interviewed by a police officer is unable to read the record or the interview or refuses to read, or appears to the police officer not to read the record when it is shown to him in accordance with subsection (3) the police officer shall-

- (a) read the record to him, or cause the record to be read to him;
- (b) ask him whether he would like to correct or add anything to the record;
- (c) permit him to correct, alter or add to the record, or make any corrections, alterations or additions to the record that he requests the police officer to make;
- (d) ask him to sign the certificate at the end of the record; and
- (e) certify under his hand, at the end of the record, what he has done in pursuance of this subsection.

Statement
by suspects

58.-(1) Where a person under restraint informs a police officer that he wishes to write out a statement the police officer-

- (a) shall cause him to be furnished with any writing materials he requires for writing out the statement; and
- (b) shall ask him, if he has been cautioned as required by paragraph (c) of subsection (1) of section 53, to set out at the commencement of the statement the terms of the caution given to him, so far as he recalls them.

(2) Where a person under restraint furnishes to the police officer a statement that he has written out, the police officer shall write, or cause to be written, at the end of the statement a form of certificate in accordance with the prescribed form, and shall then-

- (a) show the statement to the person and ask him-
 - (i) to read the statement and make any alteration or correction to it that he wishes to make and add to it any further statement that he wishes to make;
 - (ii) to sign the certificate set out at the end of the certificate; and
 - (iii) if the statement extend to more than out page, to initial each page that is not signed by him; and
- (b) if the person refuses, fails or appears to fail to comply with that request, certify, under his hand, on the statement what he has done and in respect of what matters the person refused, failed or appeared to fail to comply with the request.

(3) Where a person under restraint refuses to read, or appears to the police officer not to read a statement when it is shown to him in accordance with sub-section (2), the police officer shall-

- (a) read the statement to him, or cause the statement to be read to him;
- (b) ask him whether he would like to correct or add anything to the statement;
- (p) permit him to correct, alter or add to the statement, or make any corrections, alterations or additions to the statement that he requests the police officer to make;
- (d) ask him to sip the certificate at the end of the statement; and

- (c) certify under his hand, at the end of the statement, what he has done in pursuance of this sub-section.

(e) *Other Investigative Actions*

59.-(1) Any police officer in charge of a police station or any police officer investigating an offence may take or cause to be taken measurement of prints of the hand, fingers, feet or toes of, or recordings of the voice or, photographs of, or samples of the handwriting of any person who is charged with an offence, whether such person is in lawful custody of the police or otherwise where such measurements, prints, recordings, photographs or samples, as the case may be, are reasonably believed to be necessary for the identification of the person with respect to, or for affording evidence as to the commission of an offence for which he is in custody or charged.

Power to take fingerprints, photos, ect of suspects

(2) Any police officer in charge of a police station or any police officer investigating an offence may, take or cause to be taken measurements, prints of the hands, fingers, feet or toes of recordings of the voice, photographs of or samples of the handwriting, of any person who is not charged with any crime where such measurements, prints, recordings, photographs or samples, as the case may be, are reasonably believed to be necessary for facilitating the investigation of any crime

(3) No person who is charged or who is not with any crime charged; shall be entitled to refuse or object to having his measurements, prints, recordings, photographs or samples taken, and where he so refuses or objects, the police officer concerned may take such reasonable steps, including the use of reasonable force, as may be necessary to secure that the measurements, prints, recordings, photographs or samples as the case may be, are taken.

(4) Any person who refuses to have his measurements, prints, recordings, photographs or samples taken as required under sub-section (1) and (2) is guilty of an offence and shall be liable on conviction to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding twenty-four months or to both such fine and imprisonment.

(5) Subject to the provisions of subsection (10), a person having the custody of measurements, prints, recordings, photographs or samples and each person having the custody of copies of measurements, prints, recordings, photographs or samples shall destroy them-

- (a) in the case of a person who is in lawful custody upon a charge of committing an offence-
- (i) if the prosecution of that person is not proceeded with; or
 - (ii) where the prosecution is proceeded with, but he is acquitted;
- (b) in the case of a person referred to in subsection (2), if those measurements, prints, recordings, photographs or samples, as the case may be, are no longer required for the purpose of facilitating the investigation,
- (6) There shall be established at a place to be approved by the Minister responsible for criminal investigations, an office to be known as the Criminal Records Office for the preservation, comparison and indexing of fingerprint or forms.

(7) The Criminal Records office shall, subject to the general supervision of the Inspector-General of Police, be under the control of a senior police officer, expert in comparison of fingerprints who shall be appointed from time to time by the Attorney-General by notice published in the *Gazette*.

(8) Completed finger-prints forms shall be sent to and preserved at the Criminal Records Office.

(9) All finger print forms shall be of the prescribed pattern.

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(10) Notwithstanding the provisions of sub-section (5) it shall be lawful to retain all records obtained pursuant to sub-sections (1) and (2) of this section in respect of any person with regard to whom a removal order under the Township (Removal of Undesirable Persons Ordinance) or an expulsion order under the (Expulsion of Undesirable Persons Ordinance) has been made and has been cancelled or rescinded.

Identifi-
cation
parades

60.-(1) Any police officer in charge of a police station or any police officer investigating an offence may hold an identification parade for the purpose of ascertaining whether a witness can identify a person suspected of the commission of an offence.

(2) Any police officer in charge of a police station or any police officer investigating an offence may require any person whose participation is necessary for the investigation of an offence to attend and participate in an identification parade.

(3) No person who is required under sub-section (2) to attend and participate in an identification parade shall be entitled to refuse or object to attend and participate in an identification parade.

(4) Any person who without just cause, or who unreasonably refuses to attend and participate in an identification parade is guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Persons
convicted
on
mistaken
identity
to be
compensa-
ted

61.-(1) Where it is established on evidence that a person has been convicted on a mistaken identification as a result of which he is prosecuted, punished or he suffers any loss or injury, such person or his legal representative if that person dies shall be entitled to such reasonable compensation as if he were a victim of crime.

(2) The compensation payable under this section and all other matters regarding the amount of compensation, its assessment and manner of payment shall be governed by section 37.

Minister
to make
Regula-
tions to
provide for
on holding
identifica-
tion
parades
etc

62. The Minister shall make regulations providing for the procedure to be followed in the conduct of identification parades, and the taking of finger-prints and photographs of suspect or accused persons.

Medical
examina-
ties

63.-(1) A magistrate may, on the application of a police officer, allow a Medical Officer to examine the person of a person in lawful custody in respect of an offence or may allow a medical officer to take and analyze

any specimen from such a person if he has reasonable grounds for believing that the examination or analysis would provide evidence relating to the offence.

(2) After the Medical Officer has made the examination and analysis as provided under sub-section (1) he shall submit a written report on it to the court.

(3) In any proceedings, a court may order that any person who is a party to or a witness in the proceedings submits himself for medical examination and that person shall so submit himself.

(4) The Medical Officer shall, after examining a person in respect of whom the court has ordered that he submit himself for medical examination in accordance with the provisions of sub-section (3) transmit to the court ordering the examination a written report pertaining to the examination

(f) *Release and Bail*

64.- (1) Without prejudice to the provisions of any other written law for the time being in force relating to the grant of bail by police officers, a person brought under the custody of a police officer on reasonable suspicion of having committed an offence shall be released immediately, where-

Police bail
of suspect
if deficient

- (a) the police officer who arrested him believes that that person has in fact committed no offence; or that the police officer has no reasonable grounds on which to continue holding that person in custody;
- (h) the police officer who arrested him believes that he arrested the wrong person;
- (c) after twenty-four hours after the person was arrested, no formal charge has been laid against that person unless the police officer in question reasonably believes that the offence suspected to have been committed is a serious one.

(2) Where a formal charge has been laid against any person under the custody of the police, it police officer in charge of a police station may, upon that person executing a bond, with or without sureties, to appear before a court if so required, release the person where-

- (a) the person, though subject to prosecution, was arrested without warrant;
- (b) after due inquiry, insufficient evidence is in his opinion disclosed upon which to proceed with the charge
- (c) the offence, though arrestable, is not of a serious nature; or
- (d) it appears that further inquiries must be carried out and they cannot be completed within a reasonably short time.

(3) Where the person arrested is under the age of fifteen years, that person may be released after his parent, guardian, relative or any other filial person has entered into a recognizance on his behalf.

(4) Notwithstanding any other written law for the time being in force relating to the grant of bail by police officers, no fee or duty shall be chargeable upon bail bonds in criminal cases, recognizance to prosecute or give evidence or recognizance for personal appearance or otherwise issued or taken by a police officer.

(5) Every police officer arresting a person reasonably suspected of committing any offence shall inform that person of his right to bail under this section.

Criteria for granting police bail

65. Matters relevant to the granting of bail by a police officer to a person charged with an offence are-

- (a) matters related to the probability of the person appearing in court in respect of the offence if granted bail, that is to say-
 - (i) the background and community ties of the residence, employment and family situation and to his police record, if known and
 - (ii) the circumstance in which the offence was committed, the nature and seriousness of the offence, the strength of the evidence against the person and other information relevant to the likelihood of his absconding;
- (b) matters related to the interests of the person, that is to say-
 - (i) the period that the person may be obliged to spend in custody if bail is refused, and the conditions under which he would be held in custody;
 - (ii) the needs of the person to be free to prepare for his appearance before the court to obtain legal advice and for other purposes; or
 - (iii) the need of the person for physical protection, whether the need arises because he is incapacitated by intoxication, injury or the use of drugs or arises from other causes; and,
- (c) matters related to the protection of the community, that is to say, the likelihood of the person interfering with evidence through intimidating witnesses or hindering police inquiries in any other way.

Conditions of police bail

66. A person shall be entitled to be granted police bail if-
- (a) he undertakes in writing to appear before a specified court at a specified time and place, or at such other time and place as is notified to him by a police officer;
 - (b) he undertakes in writing to observe specified requirements as to his conduct while released on bail, not being requirements with respect to the giving of security, the depositing of money or the forfeiture of money;

- (c) another person acceptable to the police officer acknowledges in writing, that he is acquainted with the person charged and regards him as a responsible person who is likely to appear in court to answer the charge;
- (d) the person charged, or another person acceptable to the police officer, enters into an agreement, without security, to forfeit a specified sum of money if the person charged fails to appear in court to answer the charge;
- (c) the person charged, or another person acceptable to the police officer, enters into agreement, and gives security acceptable to the police officer, to forfeit a specified sum of money if the person charged fails to appear in court to answer the charge;
- (f) the person charged, or another person acceptable to the police officer, deposits with the police officer, a specified sum of money to be forfeited if the person charged fails to appear in court to answer the charge.

67.-(1) Where a police officer refuses to grant bail he shall record in writing the reasons for so refusing.

Refusal to
grant
police bail

(2) Where a police officer refuses, under section 64, to grant bail to a person charged with an offence or grants bail to such a person but the person is unable or unwilling to comply or arrange for another person to comply, with any of the conditions subject to which bail was granted, the person shall be brought before a magistrate to be dealt with according to law as soon as it is practicable to do so and not later than the first sitting of a court at a place to which it is practicable to take the person for that purpose.

(3) A person who is waiting in custody to be brought before a magistrate in accordance with subsection (1) may, at any time, request a police officer for facilities to make an application to magistrate for bail and, if he does so, the police officer shall, within twenty four hours, or within such reasonable time as it is practicable after he makes the requests, bring him before a magistrate.

68. Where a prescribed police officer believes on reasonable grounds that a person who has been released on bail granted under section 64-

Revocation
of
Police bail

(a) is absconding; or

(b) has failed to comply with, or is about or likely to fail to comply with an undertaking given by him as a condition of his release. the police officer may revoke the bail, and the person may then be arrested by a police officer.

69.-(1) Subject to sub-sections (2) and (3), where the person who has been released on bail granted by a police officer wilfully and unreasonably fails to comply with an undertaking given by him as a condition of his release, the person is guilty of an offence and shall be liable, on conviction, to a penalty not exceeding the maximum penalty that could be imposed on him upon conviction for the offence in respect of which he was arrested and then released on bail.

Breaches
of condition
of bail

(2) Where a person who has been released on bail granted by a police officer in respect of two or more offences wilfully and unreasonably fails to comply with an undertaking given by him as a condition of his release, sub-section (1) shall apply as if the reference to the offence in respect of which he was released on bail was a reference to the offence in relation to which he failed to comply with the undertaking or if he has failed to comply with the undertaking in relation to two or more offences, to the more or most serious of those offences.

(3) A court shall not impose on a person who is convicted of an offence under sub-section (1) a fine in excess of one thousand shillings or a period of imprisonment in excess of six months.

PART III

PREVENTION ON OF OFFENCES

(a) Security for Keeping the Peace and for Goods Behaviors

Powers of
magistrate
to require
persons to
execute
bonds

70.-(1) Whenever a magistrate is informed on oath that any person is likely to commit a breach of the peace or disturb the public tranquility, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility the magistrate may, in the manner provided in this Part, require that person to show cause why he should not be ordered to execute a bond with or without sureties, for keeping the peace for such period, not exceeding one year, as the magistrate deems fit.

(2) Proceedings shall not be taken under this section unless either the person informed against, or the place where the breach of the peace or disturbance is apprehended, is within the local limits of the magistrate's jurisdiction.

Security
for good
behaviour
from
persons
disseminating
seditious
matter

71. Whenever a magistrate is informed on oath that a person is within the limits of his jurisdiction and that that person, within or without those limits either orally or in writing, or in any other manner, is disseminating or attempting to disseminate, or in any way abetting the dissemination of-

- (a) any seditious matter, that is to say, any matter the publication of which is punishable under section 32 of the Newspapers Act, 1976;
- (b) any matter concerning a judge which amounts to libel under the Penal code

Acts, 1976
No. 6

that magistrate may, in the manner provided in this part, require that person to show cause why he should not be ordered to execute a bond with or without sureties for his good behaviour for such period, not exceeding one year, as the magistrate deems fit to fix.

Security
for good
behavior
from
suspected
persons

72. Whenever a magistrate is informed on oath that any person is taking precautions to conceal his presence within the local limits of such magistrate's jurisdiction, and that there is reason to believe

that such person is taking such Precautions with a view to committing any offence, such magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding one year, as the magistrate deems fit.

73. Whenever a magistrate is informed on oath that any person within the local limits of his jurisdiction-

- (a) is by habit a robber, housebreaker or thief, or
- (b) is by habit a receiver of stolen property, knowing the same to have been stolen; or
- (c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property; or
- (d) habitually commits or attempts to commit, or aids or abets in the commission of, any offence punishable under Chapters Xxx, XXXIII or XXXIV of the Penal Code ; or
- (e) habitually commits or attempts to commit or aids or abets in the commission of, offences involving a breach of the peace; or
- (f) is a loiterer or vagabond in terms of the Human Resources Deployment Act, 1983; or
- (g) is so desperate and dangerous as to render his being at large without security hazardous to the community,

Security
for good
behaviour
from
habitual
offenders

Acts, 1983
No. 6

that magistrate may, in the manner in this Part provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the magistrate deems fit.

74. When a magistrate acting under section 70, 71, 72 or 73 of this Act deems it necessary to require any person to show cause under such section, he shall make an order in writing setting forth-

- (a) the substance of the information received
- (b) the amount of the bond to be executed;
- (c) the term for which it is to be in force; and
- (d) the number, character and class of sureties if any, required.

Order to be
made

75. If the person in respect of whom the order is made is Present in court, it shall be read over to him or, if he so desires, the substance of it shall be explained to him.

Procedure
in respect
of person
present
in court

76.-(1) Subject to sub-section (2), if that person is not present in court, the magistrate shall issue a summons requiring him to appear or, when such person is in custody, a warrant directing, the officer in whose custody he is to bring him before the court.

Procedure
in respect
of persons
not present
in court

(2) Whenever it appears to the magistrate, upon the report of a police officer or upon other information given on oath (the substance of which report or information shall be recorded by the by the magistrate), that there is

reason to apprehend the commission of a breach of the peace, and that such breach of the peace cannot be prevented in any way other than by the immediate arrest of that person, the magistrate may at any time issue a warrant for his arrest.

Copy of
Order to
accompany
summons
or warrant

77. Every summons or warrant issued under section 76 shall be accompanied by a copy of the order made under section 74, and that copy shall be delivered by the officer serving or executing the summons or warrant UP the person served with or arrested under it.

Power to
dispense with
personal
attendance

78. A magistrate other than a primary court magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by an advocate.

Inquiry as
to truth of
information

79.-(1) When an order under section 74 has been read or explained under section 75 to a person present in court, or when any person appears or is brought before a magistrate in compliance with or in execution of a summons or warrant issued under section 76, the magistrate shall proceed to inquire into the truth of the information upon which the action has been taken, and to take such further evidence as may appear necessary.

(2) such inquiry shall be made, as nearly as may be practicable, in the manner prescribed by or under this Act, or the Magistrates Courts Act, 1984 for conducting trials and recording evidence in trials before subordinate courts or primary courts.

(3) For the purposes of this section the fact that a person comes within the provisions of section 73 may be proved by evidence of general repute or otherwise.

(4) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the magistrate thinks just.

Order to
give
security

80.-(1) if upon such inquiry it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the magistrate shall make an order accordingly, save that-

- (a) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than that specified in the order made under section 74;
- (b) the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;
- (c) when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

(2) Any person ordered to give security for keeping the peace or maintaining good behaviour under this section may appeal to the High Court or the District Court, and the provisions of Part X of this Act (relating to appeals) or Part III of the Magistrates Courts Act, 1984, as *the case may be shall* apply to every such appeal.

81. If on an inquiry under section 79, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the magistrate shall make an entry on the record to that effect, and if such person is in custody only for the purposes of the inquiry, shall release him, or if such person is not in custody, shall discharge him.

Discharge of person informed against

(b) Proceedings Subsequent to order to Furnish Security

82.-(1) If the person in respect of whom an order requiring security is made under section 74 or section 80 is, at the time the order is made, sentenced to or undergoing a sentence of imprisonment, the period for which the security is required shall commence on the expiration of the sentence.

Commencement of period for which security is required

(2) In other cases the period shall commence on the date of the order unless the magistrate for a sufficient reason fixes a latter date.

83. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit or the aiding, abetting, counseling or procuring the commission of any offence punishable with imprisonment, wherever it may be committed, shall be a breach of the bond.

Contents of bond

84. A magistrate may refuse to accept any surety offered under any of the preceding sections on the ground that, for reasons to be recorded by the magistrate, that surety is an unfit person.

Power to reject sureties

85.-(1) If any person ordered to give security as aforesaid does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case mentioned in the next succeeding subsection, be committed to prison or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the court or magistrate who made the order requiring it.

Procedure on failure to give security

(2) When such person has been ordered by a magistrate to give security for a period exceeding one year, such magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the District Court or the High Court, as the case may be and the proceedings shall within one month be laid as soon as conveniently may be before such court.

(3) The district court or High Court as the case may be, after examining such proceedings and requiring from the magistrate any further information or evidence which it thinks necessary may make such order in the case as it thinks fit.

(4) The period, if any, for which any person is imprisoned for failure to give security shall not exceed three years.

(5) If the security is tendered to the officer in charge of the prison, he shall forthwith refer the matter to the court or magistrate who made the order and shall await the orders of such court or magistrate.

Power to release persons imprisoned for failure to give security

86. Whenever a district magistrate is of opinion that any person imprisoned for failure to give security may be released without hazard to the community, he shall make an immediate report of the case for the orders of the High Court, and such court may, if it thinks fit, order such person to be discharged.

Power of High court to cancel bond

87. The High Court may, at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under any of the preceding sections by order of any court.

Discharge of sureties

88.-(1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a magistrate to cancel any bond executed under any of the preceding sections within the local limits of his jurisdiction.

(2) On such application being made, the magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

(3) When such person appears or is brought before the magistrate such magistrate shall cancel the bond and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall for the purposes of sections 83, 84, 85 and 86 be deemed to be an order made under section 80.

PART IV

CONTROL OF CRIMINAL PROCEEDING

(a) *The Director of Public Prosecutions*

Director of Public Prosecution

89.-(1) There shall be a Director of Public Prosecutions for the United Republic who shall be a public officer in the Government of the United Republic, and who shall be appointed by the President.

(2) A person shall not be qualified for appointment to hold or to act in the office of Director of Public Prosecutions unless he is qualified to practice as an advocate of the High Court of the United Republic and has been so qualified for not less than five years.

Powers of the Director of Public Prosecutions

90.(1) The Director of Public Prosecutions shall have powers in any case in which he considers it desirable so to do-

- (a) to institute and undertake criminal proceedings against any person before any court (other than a court-martial) in respect of any offence alleged to have been committed by that person;
- (b) to take over and continued any such criminal proceedings that have been instituted or undertaken by any other person or authority and
- (c) to discontinue any such criminal proceedings instituted or undertaken by him or any other authority or person.

(2) The powers of the Director of Public Prosecutions under sub-section (1) of this section may be exercised by him in person or through officers of his department acting in accordance with his general or special instruction.

(3) The powers conferred on the Director of Public Prosecution by paragraphs (a) and (b) of sub-section (1) shall be vested in him to the exclusion of any other person or authority, save that where any other person or authority has instituted criminal proceedings, nothing in this sub-section shall prevent the withdraw of those proceedings by or at the instance of that person or authority and with the leave of the Court.

(3) In the exercise of his powers under this Act the Director of Public Prosecutions shall have regard to the public interest, the interests of justice and the need to prevent abuse of the legal process.

(4) For the purposes of this section, any appeal from any judgment in any criminal proceedings before any court or any question of law reserved for the purpose of any such proceedings to any other court in Tanzania shall be deemed to be part of the proceedings; save that the power conferred upon the Director of Public Prosecutions by paragraph (c) of sub-section (1) of this section shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any question of law reserved at the instance of such person.

(5) In the exercise of the powers conferred on him by this section, the Director of Public Prosecutions shall have and exercise his own discretion and shall not be subject to the directions or control of any person except the President.

91- (1) In any criminal case and at any stage thereof before verdict or judgment, as the case may be, the Director of Public Prosecutions may enter a *nolle prosequi*, either by standing in court or by informing the court concerned in writing on behalf of the Republic that the proceedings shall not continue, and thereupon the accused shall at once be discharged in respect of the charge for which the *nolle prosequi* is entered, and if he has been committed to prison shall be released, or if on bail his recognizances shall be discharged; but such discharge of an accused person shall not operate as a bar to any subsequent proceedings against him on account of the same facts.

Power of the Director of Public Prosecutions to enter *nolle prosequi*

(2) If the accused shall not be before the court when such *nolle prosequi* is entered, the registrar or clerk of such court shall forthwith cause notice in writing of the entry of such *nolle prosequi* to be given to the keeper of the prison in which such accused person may be detained, and also, if the accused person has been committed for trial, to the subordinate court by which he was so committed, and such subordinate court shall forthwith cause a similar notice in writing to be given to any witnesses bound over to give evidence and to their sureties (if any) and also to the accused and his sureties in case he shall have been admitted to bail.

92. The Director of Public Prosecutions may order in writing that all or any of the powers vested in him by the last two preceding sections and by Part VII of this Act may be exercised also by the Law Officers, a State Attorney or a Parliamentary Draftsman and the exercise of these powers by the Law officers, a State Attorney or a Parliamentary Draftsman shall then operate as if they had been exercised by the Director of Public Prosecutions, save that the Director of Public Prosecutions may, in writing, revoke any order made by him under this section.

Delegation of power by Director of Public Prosecutions

93.-(1) Notwithstanding anything in this Act contained, the Director of Public Prosecutions may, with the previous sanction of the President, exhibit to the High Court, against persons subject to the jurisdiction of the High Court informations for all purposes for which the Director of Public Prosecutions may exhibit information on behalf of the Republic in the High Court in Tanzania has instituted criminal proceedings, nothing in this sub-section shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the Court.

Criminal informations by DPP

(2) Such proceedings may be taken upon every such information exhibited by the Director of Public Prosecutions.

(3) The High Court may make rules for carrying into effect the provisions of this section.

Offence by foreigners committed within territorial waters to be prosecuted only with leave of the DPP

94. (1) Proceedings for the trial of any person, who is not a citizen of the United Republic, for an offence committed on the open sea within two hundred nautical miles of the coast of the United Republic measured from the low-water mark, shall not be instituted in any court except with the leave of the Director of Public Prosecutions and upon his certificate that it is expedient that such proceedings should be instituted.

(2) This section is subject to the following Provisions-

(a) Proceedings before a subordinate court previous to the committal of an accused person for trial or to the determination of the court that the offender is to be put upon his trial shall not be deemed proceedings for the trial of the offence committed by such offender for the purposes of the said consent and certificate under this section;

(b) it shall not be necessary to aver in any charge or information that the consent or certificate of the Director of Public Prosecutions required by this section has been given, and that fact of the same having been given shall be presumed unless disputed by the accused person at the trial. The production of a document purporting to be signed by the Director of Public Prosecutions and containing such consent and certificate shall be sufficient evidence for all the purposes of this section of the consent and certificate required by this section;

(c) this section shall not prejudice or affect the trial of any act of piracy as defined by the Law of Nations.

(3) The term "offence" as used in this section means an act, neglect or default of such a description as would, if committed on any part of the territory of the United Republic, be punishable on indictment according to the law of Tanzania for the time being in force.

(b) Appointment of Public Prosecutors and Conduct of Prosecutions

Power to appoint public prosecutors

95.-(1) The Director of Public Prosecutions may, by notice published in the Gazette, appoint public prosecutors for Tanzania or for any specified area of Tanzania, and either generally or for any specified case or category of cases.

(2) The Director of Public Prosecutions may, by writing under his hand, appoint any advocate of the High Court or person employed in the public service to be a public prosecutor for the purposes of any Proceedings instituted on behalf of the Republic.

(3) Every public prosecutor shall be subject to the express directions of the Director of Public Prosecutions.

Certain offences may be prosecuted by public officers

96. In any prosecution for an offence under any law other than the Penal Code, the court may permit, either generally or in relation to any particular case, a public officer having legal or administrative responsibility for the enforcement of such law to conduct the prosecution, notwith-

standing that he has not been appointed a public Prosecutor; save that such officer shall be subject to the directions of the Director of Public Prosecutions in the conduct of the prosecution.

97. A public prosecutor may appear and plead without any written authority before any court in which any case of which he has charge is under inquiry, trial or appeal; and if any private person instructs an advocate to prosecute in any such case the public prosecutor may conduct the prosecution, and the advocate so instructed shall act therein under his directions.

Power of public prosecutors

98. In any trial before a subordinate court any public prosecutor may, with the consent of the court or on the instructions of the Director of Public Prosecutions, at any time before judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of one or more of the offences with which such person is charged; and upon such withdrawal.-

Withdrawal from prosecution in trials before subordinate courts

- (a) if it is made before the accused person is called upon to make his defence, he shall be discharged, but such discharge of an accused person shall not operate as a bar to subsequent proceedings against him on account of the same facts;
- (b) if it is made after the accused person is called upon to make his defence, he shall be acquitted.

99.-(1) Any magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person, but no person other than a public prosecutor or other officer generally or specially authorized by the President in this behalf shall be entitled to conduct the prosecution without such permission.

Permission to conduct prosecution and title of summary proceedings

(2) Any such person or officer shall have the like power of withdrawing from the prosecution as if provided by the last preceding section, and the provisions of that section shall apply to any withdrawal by such person or officer.

(3) Any person conducting the prosecution may do so personally or by an advocate.

(4) In a summary trial, if the prosecutor is a private person, his name shall appear in the title of the proceedings as the prosecutor and, if the prosecutor is a police officer, it shall be sufficient if, in the title of the proceedings, the prosecutor is described as the Inspector-General of Police.

PART V

INSTITUTION OF PROCEEDINGS

A. Process to Compel the Appearance of Accused Persons

(a)- Summons

100.-(1) Every summons issued by a court under this Act shall be in writing, in duplicate, signed and sealed by the presiding officer of such court or by such other officer as the High Court may from time to time, by rules *direct*.

Form and contents of summons

(2) Every summons shall be directed to the person summoned and shall require him to appear at a time and place to be appointed in the summons before a court having jurisdiction to inquire into or try the offence alleged to have been committed. It shall state shortly the offence with which the person against whom it is issued is charged.

Service of
summons

101.-(1) Every summons shall be served by a police officer or by an officer of the court issuing it or other public servant or such other person as the court may direct and shall, if practicable, be served personally, on the person summoned by delivering or tendering to him one of the duplicates of the summons.

(2) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt for it on the back of the other duplicate.

Service
when person
summoned
cannot
be found

102. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult member of his family or with an adult servant residing with him or with his employer; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt for it on the back of the other duplicate

Procedure
when
service
cannot be
effected
as before
provided

103. if the service In the manner provided by the two preceding sections cannot by the exercise of due diligence be effected, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides, and thereupon the summons shall be deemed to have been duly served.

Service
on servant
of Govern-
ment

104. Where the person summoned is in the active service of any department of the Government, or of a public corporation, the court issuing the summons shall ordinarily send it in duplicate to the head of the department of public corporation, as the case may be, in which such person is so employed, and such head shall thereupon cause the summons to be served in the manner provided by section 102 and shall return it to the court under his signature with the endorsement required by that section.

Service
on
company

105. Service of summons on an incorporated company may be effected by serving it on the secretary, local manager or other principal officer of the company at the registered offices of such company or by registered letter addressed to the chief executive, officer of the company. In the latter case service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

Appearance by
corporation
plea of not
guilty to be
entered when
representa-
tive does
not appear

106. Where, at the trial of a corporation, a representative does not appear at the time appointed in and by the summons or information or such representative having appeared failed to enter any plea, the court shall order a plea of not guilty to be entered and the trial shall proceed as though entered when the corporation had duly entered a plea of "not guilty".

Service
outside
local limits
of
jurisdiction

107. When a court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall send such summons in duplicate to a magistrate within the local limits of whose jurisdiction the person summoned resides or is to be served.

108. Where the officer who has served a summons is not present at the hearing of the case, and in any case where a summons issued by a court has been served outside the local limits of its jurisdiction, an affidavit purporting to be made before a magistrate that such summons has been served, and a duplicate of the summons purporting to be endorsed in the manner previously provided by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

Proof of
service
when
serving
officer not
present

109.-(1) Appearance before a court by a corporation shall be by an advocate or by any officer of the corporation.

Appearance
by
Corporation

(2) Notwithstanding anything contained in the Articles of Association, By-laws or other documents governing the constitution of the corporation, and notwithstanding anything in any other law contained, an officer of the corporation appearing in court on behalf of such corporation under the provisions of this section shall be deemed so to appear with the full authority of such corporation and to have full powers to represent such corporation.

(3) in this section and in section 111 "officer" in relation to a corporation means any director, any member of the board of management by whatsoever name or style designated, the local manager or other principal officer of the corporation and the secretary.

(b) Warrant of Arrest

110. Notwithstanding the issue of summons, a warrant may be issued at any time before or after the time appointed in the summons for the appearance of the accused. But no such warrant shall be issued unless a complaint has been made upon oath, or by a police officer or an authorized officer of a local government authority-

Warrants
after
issued of
summons

111.-(1) If the accused person, other than a corporation, does not appear at the time and place appointed in and by the summons and his personal attendance has not been dispensed with under section 193, the court may issue a warrant to apprehend him and cause him to be brought before it.

Disobedi-
ence to
summons
ord. 1960
No. 24
s. 19

(2) If the accused, being a corporation, does not appear in the manner provided for by section 109, the court may cause any officer of the corporation to be brought before it in the manner provided under this Act for the compelling the attendance of witnesses.

(3) No warrant of arrest shall be issued under this section unless a complaint has been made on oath, or by a police officer or any authorized officer of a local government authority.

(4) Nothing in this section shall affect the power of the court to deal with any case in the absence of the accused, in the manner provided for by section 193, whether the accused is an individual or a corporation.

Form,
contents
and dura-
tion of
warrant of
arrest

112.-(1) Every warrant of arrest shall be under the hand of the judge or the magistrate issuing the same and shall bear the seal of the court.

(2) Every warrant shall state shortly the offence with which, the person against whom it is issued is charged and shall name or otherwise describe such person, and it shall order the person or persons to whom it is directed to apprehend the person against whom it is issued and bring him before the court issuing the warrant or before some other court having jurisdiction in the case to answer to the charge mentioned in the warrant and to be further dealt with according to law

(3) Every such warrant shall remain in force until it is executed or until it is Canceled by the court which issued it.

Power to
direct
security
to be
taken

113.-(1) Any court issuing a warrant for the arrest of any person in respect of any offence other than murder or treason, may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the court at a specified time and thereafter until otherwise directed by the court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

(2) The endorsement shall state-

(a) the number of sureties;

(b) the amount in which they and the persons for whose arrest the warrant is issued are to be respectively bound; and

(c) the time at which he has to attend before the court.

(3) Whenever security is taken under this section the officer to whom the warrant is directed shall forward the bond to the court.

Warrants,
to whom
directed

114.-(1) A warrant of arrest may be directed to one or more police officers, or to one police officer or to all other police officers of the area within which the court has jurisdiction, or generally to all police officers of such area. But any court issuing such a warrant may, if its immediate execution is necessary, and no police officer is immediately available, direct it to an authorized officer of any local government within its jurisdiction, or to any other person or persons, and such person or persons shall execute the warrant forthwith.

(2) When a warrant is directed to more officers or persons than one, it may be executed by all or by any one or more of them.

Warrant
may be
directed
to land
holders
etc.

115.-(1) Any district or resident magistrate may direct a warrant to any landholder, manager of land or farmer within the local limits of his jurisdiction for the arrest of any escaped convict or person who has been accused of an arrestable offence has eluded pursuit.

(2) Such landholder, manager or farmer shall acknowledge in writing the receipt of the warrant and shall execute it if the person for whose arrest it was issued is in or enters on his land or farm or the land under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be handed over with the warrant to the nearest police officer, who shall cause him to be taken before a magistrate having jurisdiction unless security is taken under section 113.

116. A warrant directed to any police officer may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

Execution of warrant directed to police officer

117. The police officer or other person executing a warrant of arrest shall notify the substance of the warrant to the person to be arrested and if so required, shall show him the warrant.

Notification of substance of warrant

118. The police officer or other person executing a warrant of arrest shall, without unnecessary delay, and subject to the provisions of section 113 as to security; bring the person arrested before the court before which he is required by law to produce the person, and shall return the warrant to the court with an endorsement on it showing the time and manner of execution.

Person arrested to be brought before the court without delay

119. A warrant of arrest may be executed in any place within the United Republic of Tanzania.

Where warrant of arrest may be executed

120.-(1) When a warrant of arrest is to be executed outside the local limits of the jurisdiction of the court issuing it, such court may, instead of directing such warrant to a police officer, forward the same by post or otherwise to any magistrate within the local limits of whose jurisdiction it is to be executed.

Forwarding of warrants for execution outside jurisdiction

(2) The magistrate to whom such warrant is so forwarded shall endorse his name on it and, if practicable, cause it to be executed in the manner previously provided for within the local limits of his jurisdiction.

121.-(1) When a warrant of arrest directed to a police officer is to be executed outside the local limits of the jurisdiction of the court issuing the same, he shall take it for endorsement to a magistrate within the local limits of whose jurisdiction it is to be executed.

Procedure in case of warrant directed to police officer for execution outside jurisdiction

(2) Such magistrate shall endorse his name on it, and such endorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute it within such limits and local police officers shall, if so required, assist such officer in executing that warrant.

(3) Whenever there is reason to believe that the delay to be occasioned by obtaining the endorsement of the magistrate within the local limits of whose jurisdiction the warrant is to be executed will prevent such execution the police officer to whom it is directed may execute the warrant without such endorsement in any place outside the local limits of jurisdiction of the court which issued it.

Procedure
on arrest
of person
outside
jurisdiction

122.-(1) When a warrant of arrest is executed outside the local limits of the jurisdiction of the court by which it was issued, the person arrested shall, unless the court which issued the warrant is within twenty miles of the place of arrest, or is nearer than the magistrate within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 113, be taken before the magistrate within the local limits of whose jurisdiction the arrest was made.

(2) Such magistrate shall, if the person arrested appears to be the person intended by the court which issued the warrant, direct the removal in custody to such court.

(3) Subject to subsection (2), if such person has been arrested for an offence other than murder or treason, and he is ready and willing to give bail to the satisfaction of such magistrate or if the direction has been endorsed under section 113 on the warrant and such person is ready and willing to give security required by such direction, the magistrate shall take such bail or security, as the case may be, and shall forward the bond to the court which issued the warrant.

(4) Nothing in this section shall be deemed to prevent a police officer from taking security under section 113.

Irregularities
in
warrant

123. Any irregularity or defect in the substance or form of the warrant of arrest and any variance between it and any written complaint or between such complaint and the evidence produced on the part of the prosecution at any inquiry or trial, shall not affect the validity of any proceedings at or subsequent to the hearing of the case, but if any such variance appears to the court to be such that the accused has been thereby deceived or misled, the court may, at the request of the accused, adjourn the hearing of the case to some future date, and in the meantime remand the accused or admit him to bail.

(c) Miscellaneous Provisions Regarding Processes

Power to
take bond
for appear-
ance

124. When any person for whose appearance or arrest the officer presiding in any court is empowered to issue a summons or warrant is present in such court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such court.

Arrest for
breach of
bond for
appearance

125. Where any person who is bound by any bond taken under this Act to appear before a court does not so appear, the officer presiding in such court may issue a warrant directing that such person be arrested and produced before him.

Power of
court to
order
prisoner
to be
brought
before it

126. (1) When any person for whose appearance or arrest a court is empowered to issue summons or warrant is confined in any prison within the local limits of the jurisdiction of such court, the court may issue an order to the officer in charge of such prison requiring him to bring *such* prisoner in proper custody, at a time to be specified in the order, before *such* court.

(2) The officer so in charge, on receipt of such order, shall act in accordance with it, and shall provide for the safe custody of the prisoner during the absence from the prison for the purpose aforesaid

127. The provisions contained in this part relating to summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Act or by a justice of the peace, and, save in so far or the same may be inconsistent with any other law, the powers of a magistrate or court in relation to the issuing or endorsing of summons or warrant may be exercised by a justice of the peace.

Provisions of this part generally applicable to summonses and warrant Power of Justices of Peace

B. Proceedings

(a) Making a Complaint

128.-(1) Proceedings may be instituted either by the making of a complaint or by the bringing before a magistrate of a person who has been of arrested with or without warrant.

Institution of proceedings

(2) Any person who believes from a reasonable and probable cause that an offence has been committed by any person may make a complaint of the offence to a magistrate having competent jurisdiction.

(3) Where a complaint made under subsection (2) is made to a magistrate who is not competent to take cognizance of the offence, he shall-

- (a) if the complaint is in writing, return in for presentation to the court with an endorsement to that effect;
- (b) if the complaint is not in writing, direct the complainant to present the complaint to the proper court.

(4) A complaint may be made orally or in writing, but if made orally, shall be reduced to writing by the magistrate and, in either case, shall be signed by the complainant and the magistrate

(5) The magistrate, upon receiving any such complaint, shall, subject to section 129, draw up or cause to be drawn up, and shall sign, a formal charge containing a statement of the offence with which the accused is charged, unless such a charge shall be signed and presented by a police officer.

(6) When an accused person who has been arrested without a warrant is brought before a magistrate, a formal charge containing a statement of the offence with which the accused is charged shall be signed and presented by the police officer preferring the charge

129. Where the magistrate is of the opinion that any complaint formal charge made or presented under section 128 does not disclose any offence, the magistrate shall make an order refusing to admit such complaint or formal charge and shall record his reasons for such order.

Power of magistrate to reject complaint or formal charge

Issue of
summons
or warrant

130. Upon receiving a complaint and having signed the charge in accordance with section 128, the magistrate may, in his discretion, issue either a summons or a warrant to compel the attendance of the accused person before a subordinate court having jurisdiction to inquire into or try the offence alleged to have been committed; save that a warrant shall not be issued in the first instance unless the complaint has been made upon oath either by the complainant or by a witness or witnesses

(b) The Formal Charge

Persons
charged
to be
cautioned

131. Immediately after police officer charges a suspect with an offence, the police officer shall caution the person in writing and if practicable orally, in the prescribed manner

Offences
to be
specified
in charge
with necessary
particulars

132. Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.

Joinder or
counts in
a charge or
information

133.-(1) Any offences may be charged together in the same charge or information if the offences charged are founded on the same facts or form or are a part of a series of offences of the same or a similar character.

(2) Where more than one offence is charged in a charge or information, a description of each offence charged shall be set out in a separate paragraph of file charge or information called a count.

(3) Where, before trial, or at any stage of a trial, the court is of the opinion that a person accused may be embarrassed or prejudiced in his defence by reason of being charged with more than one offence in the same charge or information or that for any other reason it is desirable to direct that the person should be tried separately for any one or more offences charged in a charge or information, the court may order a separate trial of any count or count of such charge or information

Joinder of
two or more
accused in
one charge
or
information

134.-(1) The following persons may be joined in one charge or information and may be tried together namely-

- (a) Persons accused of the same offence committed in the course of the same transaction
- (b) person accused of an offence and person accused of a betting, or an attempt to commit such an offence
- (c) person accused of any different offence committed in the course of the same transaction;
- (d) person accused of any offence under Chapter XXIV to XXX of the Penal Code and person accused of receiving or retaining property, possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or on abetment of or attempting to commit either of such last-named offences;

- (c) persons accused of any offence relating to counterfeit coin under Chapter XXXVI of the Penal Code, and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence;
- (f) persons accused of any economic offence under the Economic and Organized Crimes Control Act, 1984.

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(2) For the avoidance of doubts, it is hereby declared that nothing in this section or in this Act shall be construed as preventing persons who have been committed for trial separately from being joined in one charge or information and being tried together if they are persons who fall under any of the categories specified in subsection (1).

135. The following provisions shall apply to all charges and informations and, notwithstanding any rule of law or practice, a charge or an information shall, subject to the provisions of this Act, not be open to objection in respect of its form or contents if it is framed in accordance with the provisions of this section of this Act -

Mode in
which
offences
are to be
charged

- (a) (i) a count of a charge or information shall commence with a statement of the offence charged called *the statement* of the offence;
- (ii) the statement of offence shall describe the offence shortly in ordinary language avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence and, if the offence charged is one created by enactment, shall contain a reference to the section of the enactment creating the offences;
- (iii) after the statement of the offence particulars of such offence shall be set out in ordinary language, in which the use of technical terms shall not be necessary, save that where any rule of law limits the particulars of an offence which are required to be given in a charge or an information, nothing in this paragraph shall require any more particular to be given than those so required;
- (iv) the forms set out in the Second schedule to this Act, or forms conforming to them as nearly as may be, shall be used in cases to which they are applicable; and in other cases forms to the like effect, or conforming to conforming as nearly as may be, shall be used, the statement of offence and the particulars of offence being varied according to the circumstances in each case;
- (v) where a charge or an information contains more than one count, the counts shall be numbered consecutively.
- (b) (i) where an enactment constituting an offence states the offence to be the doing of or the omission to do any one of any different acts in the alternative, or the doing of or the omission to do any act in any one of any different capacities, or with any one of different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matters stated in the alternative in the enactment, may be stated in the alternative in the count charging the offence;

- (ii) it shall not be necessary, in any count charging an offence constituted by an enactment, to negative any exception or exemption from, or qualification to, the operation of the enactment creating the offence.
- (c) (i) the description of property in a charge or an information shall be in ordinary language and such as to indicate with reasonable clarity the property referred to, and, if the property is so described, it shall not be necessary (except when required for the purpose of describing an offence depending on any special ownership of property or special value of property) to name the person to whom the property belongs or the value of the property;
- (ii) where property is vested in more than one person, and the owners of the property are referred to in a charge or an information, it shall be sufficient to describe the property as owned by one of those persons by name with the others, and if the persons owning the property are a body of persons with a collective name, such as a joint stock company or "Inhabitants", "Trustees", "Commissioners" or a "Cluba" or other such name, it shall be sufficient to use the collective name without naming any individual;
- (iii) property belonging to or provided for the use of, any public establishment, service or department may be described as the property of the United Republic;
- (iv) coin, bank notes and currency notes may be described as money, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank or currency note (although the particular species of coin of which such amount was composed, or the particular nature of the bank or currency note, shall not be proved); and in cases of stealing and defrauding by false pretences, by proof that the accused persons dishonestly appropriated or obtained any coin or any bank or currency note, or any portion of the value thereof, although such coin or bank or currency note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same or to any other person, and such part shall have been returned accordingly,
- (v) where a person is charged with stealing money or any other thing, it shall be sufficient to specify the gross sum or the total number or quantity of thing as the case may be, in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates.
- (d) the description or designation in a charge or an information of the accused person, or any other person to whom reference is made in the charge or information, shall be such as is reasonably sufficient to identify him, without necessarily stating his correct name, or his abode, style, degree or occupation, and, if, owing to the name of the person not being known or for any other reason, it is

impracticable to give such a description or designation, shall be given as is reasonably practicable in the circumstances, or such person may be described as "a person unknown";

- (e) where it is necessary to refer to any document or instrument in a charge or an information, it shall be sufficient to describe it by any name or designation by which it is usually known, or by the purport of it, without setting out any copy of it;
- (f) subject to any other provision of this section, it shall be sufficient to describe any place, time, thing, matter, act or omission of any kind to which it is necessary to refer in any charge or information in ordinary language in such manner as to indicate with reasonable clarity the place, time, thing, matter, act or omission referred to;
- (g) it shall not be necessary in stating any intent to defraud, deceive or injure to state an intent to defraud, deceive or injure any particular person, where the enactment creating the offence does not make an intent to defraud, deceive or injure a particular person an essential ingredient of the offence;
- (h) where a previous conviction of an offence is charged in a charge or an information, it shall be charged at the end of the charge or information by means of a statement that the accused person has been previously convicted of that offence at a certain time and place without stating the particulars of the offence;
- (i) figures and abbreviations may be used for expressing anything which is commonly expressed by them.

136. When in any charge two or more persons are charged together with committing a crime, it shall not be necessary to allege that "both and each" or "one or other", or that "all and each" or "one or more" of them committed the crime, or did or failed to do any particular act; but such alternatives shall be implied in all such charges.

Case of two or more persons charged

(c) Previous Conviction or Acquittal

137. A person who has once been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal has not been reversed or set aside, not be liable to be tried again on the same facts for the same offence.

Persons convicted or acquitted not to be tried again for the same offence

138. A person convicted or acquitted of any offence may be afterwards tried for any other offence with which he might have been charged on the former trial under subsection (1) of section 134.

Person may be tried again for separate offences

Consequences supervening or not known at time of former trial 139. A person convicted or acquitted of any act causing consequences which together with such act constitute a different offence from that for which such person was convicted or acquitted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened or were not known to the court to have happened at the time when he was convicted or acquitted.

Where original court was not competent to try subsequent charge 140. A person convicted or acquitted of any offence constituted by any act may, notwithstanding such conviction or acquittal, be subsequently charged with and tried for any other offence constituted by the same acts which he may have committed, if the court by which he was first tried was not competent to try the offence with which he is subsequently charged.

Previous conviction how proved 141.-(1) In any inquiry, trial or other proceeding under this Act, a previous conviction may be proved, in addition to any other mode provided by any law for the time being in force-

- (a) by an extract certified, under the hand of the officer having the custody of the records of the court in which such conviction was had, to be a copy of the sentence or order; or
- (b) by a certificate signed by the officer in charge of the prison in which the punishment or any part of it was inflicted; or
- (c) by production of the warrant of commitment under which the punishment was suffered; or
- (d) by production of a final judgment of a competent court finally declaring a person to be guilty of the offence;

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted.

(2) A certificate in the form prescribed by the Director of Public Prosecutions given under the hand of an officer appointed by the Director of Public Prosecutions in that behalf, who shall have compared the finger prints of an accused person with the finger prints of a person previously convicted, shall be prima facie evidence of all facts set forth in it provided it is produced by the person who took the finger prints or the accused.

(3) A previous conviction in any place outside Tanzania may be proved by the production of a certificate purporting to be given under the hand of a police officer in the country where the conviction was had, containing a copy of the sentence or order and the finger prints, or photographs of the finger prints, of the person so convicted, together with either-

- (a) evidence that the finger prints, or the photographs, of the person previously convicted are those of the accused person; or
- (b) a certificate given under the hand of an officer appointed by the Director of Public Prosecutions under subsection (2) that he has compared the finger prints, or the photographs, of the person previously convicted with the finger prints or the photographs of the accused person and that they are those of one and the same person.

A certificate purporting to be given under the hand of a police officer in the country where the conviction was had and a certificate given in accordance with the provisions of paragraph (b) of this subsection shall, if in the case of the latter certificate it is produced by the person who took the finger prints of the accused persons, be prima facie evidence of all facts set forth in it without proof that the offence purporting to sign it did in fact sign it and was empowered to do so.

(d) *Compelling Attendance of Witnesses*

142.-(1) If it is made to appear that material evidence can be given by or Is in the possession of any person, it shall be lawful for a court to issue summons for witness to such person requiring his attendance before such court or requiring him to bring and produce to such court for the purpose of evidence all documents and writings in his possession or power which may be specified or otherwise sufficiently described in the summons.

(2) Nothing in this section shall be deemed to affect the provisions of section 132 of the Evidence Act, 1967. Acts, 1967 No. 6.

143. If, without sufficient excuse, a witness does not appear in obedience to a summons, the court, on proof of the proper service of the summons a reasonable time before, may issue a warrant to bring him before the court at such time and place as shall be specified in the warrant. Warrant for witness who disobeys summons

144. If the court is satisfied by evidence on oath that such person will not attend unless compelled to do so, it may at once issue a warrant for the arrest and production of the witness before the court at a time and place to be specified in the warrant of arrest. Warrant for witness in first appearance

145. When any witness is arrested under a warrant the court may, on his furnishing security by recognizance to the satisfaction of the court for his appearance at the hearing of the case, order him to be released from custody, or shall, on his failing to furnish such security, order him to be detained for the production at such hearing. Mode of dealing with witness arrested under warrant

146.-(1) Any court desirous of examining as a witness, in any case pending before it, any person confined in any prison within the local limits of its jurisdiction may issue an order to the officer in charge of the prison requiring him to bring that prisoner in proper custody, at a time to be named in the order, before the court for examination. Power of court to order prisoner to be brought up for examination

(2) The officer so in charge, on receipt of such order, shall act in accordance with it and shall provide for the safe custody of the prisoner during his absence from the prison for the purpose specified in the order.

147.-(1) Any person summoned to attend as a witness who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the court, or fails to attend after adjournment of the court after being ordered to attend, shall be liable by order of the court to a fine not exceeding five hundred shillings. Penalty for non-attendance of witness

(2) Such fine shall be levied by attachment and sale of any movable property belonging to such witness which is within the local limits of the jurisdiction of the court.

(3) In default of recovery of the fine by attachment and sale the witness may, by order of the court, be imprisoned as a civil prisoner for a term of fifteen days unless such fine is paid before the end of the said term.

(4) For good cause shown, the High Court may remit or reduce any fine imposed under this section by a subordinate court.

(e)- Provisions as to Bail Recognizances and Bonds

Bail

148.-(1) When any person is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a court, and is prepared at any time while in the custody of that officer or at any stage of the proceedings before that court to give bail, the officer or the court, as the case may be, may, subject to the following provisions of this section, admit that person to bail; save that the officer or the court may, instead of taking bail from that person, release him on his executing a bond with or without sureties for his appearance as provided in this section.

(2) The amount of bail shall be fixed with due regard to the gravity and other circumstances of the case, but shall not be excessive.

(3) The High Court may, subject to sub-section (4) and (5) of this section, in any case direct that any person be admitted to bail or that the bail required by a subordinate court or police officer be reduced.

(4) Notwithstanding anything in this section contained no person shall, for such period as the court shall consider necessary in the circumstances of the case concerned, be admitted to bail, either pending trial or pending appeal, if the Director of Public Prosecutions certifies in writing that it is likely that the safety or interests of the Republic would thereby be prejudiced.

(5) A police officer in charge of a police station, or a court before whom an accused person is brought or appears, shall not admit that person to bail if-

- (a) that person is accused of murder or treason;
- (b) it appears that the accused person has previously been sentenced to imprisonment for a term exceeding three years;
- (c) it appears that the accused person has previously been granted bail by a court and failed to comply with the conditions of the bail or absconded;
- (d) the accused person is charged with an offence alleged to have been committed while he was released on bail by a court of law;
- (e) the act or any of the acts constituting the offence with which a person is charged consists of a serious assault on or threat of violence to another person, or of having or possessing a firearm or an explosive;
- (f) it appears to the court that it is necessary that the accused person be kept in custody for his own protection or safety.

(6) Where a court decides to admit an accused person to bail, it shall impose the following conditions on the bail namely-

- (a) surrender by the accused person to the police of his passport or any other travel document; and
- (b) restriction of the movement of the accused to the area of the town, village or other area of his residence.

(7) A court may, in addition to the mandatory conditions prescribed in subsection (6), impose any one or more of the following conditions, namely-

- (i) requiring the accused to report at specified intervals to a police station or other authority within the area of his residence;
- (ii) requiring the accused to abstain from visiting a particular locality or premises, or association with certain specified persons;
- (iii) any other condition which the court may deem proper and just to impose in addition to the preceding conditions,

which appear to the court to be likely to result in the appearance of the accused for the trial or resumption of the trial at the time and place required or as may be necessary in the interests of justice or for the prevention of crime.

149. Where in connection with any criminal proceedings a subordinate court has power to admit any person to be it, but either refuses to do so or does so or offers to do so on terms unacceptable to him, the High Court may admit him or direct his admission to bail or, where he has been admitted to bail, may vary any conditions on which he was so admitted or reduce the amount in which he or any surety is bound to discharge any of the sureties.

Power of the High Court to vary terms of bail by lower court

150. Where an accused person has been admitted to bail and circumstances arise which, if the accused person had not been admitted to bail would, in the opinion of a prosecutor or police officer justify the court in after grant refusing bail or in requiring bail of greater amount, the judge or magistrate, as the case may be, on the circumstances being brought to his notice by a prosecutor or police officer, issue his warrant for the arrest of the accused person and, after giving the accused person opportunity of being heard, may either commit him to prison to await trial or admit him to bail for the same or on increased amount as the judge or magistrate may think just.

Charge of circumstances after grant of bail

151. Before any person is released on bail, or on his own recognizance, a bond for such sum as the court or police officer, as the case may be, thinks sufficient shall be executed by such person, and when he is released on bail, by one or more sufficient sureties, conditioned that such person shall attend at the time and place mentioned in the bond and shall continue so to attend until otherwise directed by the court or police officer, as the case may be.

Executive of bonds

152.-(1) As soon as the bond has been executed the person for whose appearance it has been executed shall be released, and when he is in prison the court admitting him to bail shall issue an order of release to the officer in charge of the prison, and such officer on receipt of the order shall release him.

Discharge from custody

(2) Nothing in this section or section 146 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

Deposit instead of bond

153. When any person is required by any court or officer to execute a bond, with or without sureties, Such court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money of such amount as the court or officer may fix in lieu of executing such a bond.

Power to order sufficient bail when that first taken is insufficient

154. if, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sureties, and on his failing to do so may commit him to prison

Discharge of sureties

155.-(1) All or any of the sureties for the appearance and attendance of a person released on bail may at any time apply to a magistrate to discharge the bond either wholly or so far as it relates to the applicant or applicants.

(2) On such application being made the magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the magistrate shall direct the bond to be discharged either wholly or so far as it relates to the applicant or applicants, and shall call -upon such person to find other sufficient sureties, and if he fails to do so may commit him to prison.

Death of of surety

156. Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond, but the party who gave the bond may be required to find a new surety.

Person bound by recognizance absconding or breaking condition of bail may be arrested

157.-(1) A police officer may , arrest without warrant any person who has been admitted to bail-

(a) if the police officer has reasonable grounds for believing that that person is likely to break the condition that he will appear at the time and place required or any other condition on which he was admitted to bail, or has cause to suspect that that person is breaking or has broken any such other conditions

(b) on being notified in writing by any surety for that person that the surety believes that person is likely to break the first mentioned condition and for that reason the surety wishes to be relieved of his obligation as surety

(2) A person arrested under subsection (1)-

- (a) shall, unless he is arrested within the period of twenty-four hours immediately preceding an occasion on which he is required by virtue of a condition of his bail to appear before any court, be brought as soon as practicable, and in any event within twenty-four hours after his arrest, before a magistrate with jurisdiction of the area in which he was arrested; and
- (b) in the excepted case shall be brought before the court before which he is required for resumption of the trial

158. Any person who is on bail and who is arrested on the reasonable suspicion that he is preparing or is in the process of jumping bail shall, the court is satisfied that he was justly arrested not be considered again for any further bail in the same case.

Person absconding or breaking condition of bail not to be considered for further bail

159. Where a person absconds while he is on bail or not being on bail, fails to appear before the court on the date fixed and conceals himself so that a warrant of arrest may not be executed-

- (a) such of his property, movable or immovable, as is commensurate to the monetary value of any property involved in the case may be confiscated by attachment; and
- (b) the trial in respect of that person shall continue irrespective of the stage of the trial when the accused absconds, after sufficient efforts have been made to trace him and compel his attendance

Punishment for breaking or trying to break conditions of bail.

160.-(1) Whenever it is proved to the satisfaction of a court by which a recognizance under this Act or the Penal Code has been taken or when the recognizance has been taken by a police officer for appearance before the court to the satisfaction of the court that such recognizance has been forfeited, the court shall record the grounds of such proof and may call upon any person bound by such recognizance to pay the penalty thereof or to show cause why it should not be paid.

Forfeiture of recognizance

(2) If sufficient cause is not shown and the penalty is not paid, the court may proceed to recover the same by issuing a warrant for the attachment and sale of the movable property belonging to that person or his estate if he be dead.

(3) The warrant may be executed within the local limits of the jurisdiction of the court which issued it and it shall authorise the attachment and sale of the movable property belonging to that person without such limits when endorsed by any magistrate within the local limits of whose jurisdiction that property is found.

(4) If that penalty is not paid and cannot be recovered by that attachment and sale, the person so bound shall be liable by order of the court which issued the warrant to imprisonment for six months.

(5) The court may at its discretion remit any portion of the penalty mentioned and enforce payment in part only.

(6) Where a surety to a recognizance dies before the recognizance is forfeited his estate shall be discharged from all liability in respect of the recognizance.

(7) When any person who has furnished security is convicted of an offence the commission of which constitutes a breach of the condition of his recognizance a certified copy of the judgment of the court by which he was convicted of such offence may be used as evidence in the proceedings under this section against his surety or sureties and if such certified is so used the court shall presume that such offence was committed by him unless the contrary is proved.

Appeal
from and
Prevision
of orders

161. All orders passed under sections 148 to 160 by any magistrate shall be appealable to and may be reviewed by the High Court.

Power to
direct levy of
amount due

162. The High Court may direct any magistrate to levy the amount due on the recognizance to appear and attend at the High Court.

on certain
recognizances
Reconciliation
in certain cases

163. In the case of proceeding for common assault or for any other offence of personal or private nature the court may, if is of the opinion that the public interest does not demand the infliction of the penalty, promote reconciliation, and encourage and facilitate the settlement, in an amicable way, of the proceedings or on terms of payment of compensation or other term approved by the court, and may thereupon order the proceedings to be stayed.

PART VI

TRIALS

GENERAL PROVISIONS RELATING TO TRIALS

A.-POWERS OF COURTS

(a) *Towers Generally*

Offences
under
Penal Code

164.-(1) Subject to the other provisions of this Act, any offence under the Penal Code may be tried by the High Court or, where the offence is shown in the fifth column of Part A of the First *Schedule* to this Act, to be triable by a subordinate court, by a subordinate court

(2) Notwithstanding subsection (1), where no provision is made in Part A of the First *Schedule* to this Act in respect of an offence under the Penal Code, such offence shall be triable, and shall be deemed to have always been triable, by the High Court as well as by a subordinate court.

Offences
under
other
laws other
than the
Penal Code

165.-(1) Any offence under any law other than the Penal Code shall, when any court is mentioned in that behalf in that law, be tried by that court.

(2) Where no court is so mentioned it may, subject to the other provisions of this Act, be tried by the High Court or, where the offence is shown in the fifth column of Part B of the First Schedule to this Act to be an offence triable by subordinate court, by a subordinate court

166. The High Court may pass any sentence or make any other order authorised by law.

Sentences which High Court may pass

167.-(1) Any court may pass any lawful sentence combining any of the sentences which it is authorized by law to pass; but where a subordinate court presided over by a magistrate other than a resident magistrate or senior district magistrate, imposes a sentence of corporal punishment in addition to a sentence of imprisonment, no such sentence of corporal punishment shall be carried into effect until confirmed by the High Court.

Combination of sentences

(2) In determining the extent of the court's jurisdiction under section 164 to pass a sentence of imprisonment the court shall be deemed to have jurisdiction to pass the full sentence of imprisonment mentioned in the said section in addition to any term imprisonment which may be awarded in default of payment of a fine

168.-(1) Where a person is, at one trial by the High Court, convicted of two or more offences, the High Court may sentence him for those offences to the several punishments prescribed for them; and when consisting of imprisonment, such punishment shall commence the one after the expiration of the other in such order as the High Court may direct unless the High Court directs that those punishments shall run concurrently.

Sentences in cases of conviction of two or more offences at one trial

(2) Where a person is convicted at one trial of two or more offences by a subordinate court the court may, subject to the provisions of subsection (3), sentence him for those offences to the several punishments prescribed for them and which the court is competent to impose and those punishments when consisting of imprisonment, shall commence the one after the expiration of the other, in such order as the court may direct, unless the court directs that the punishments shall run concurrently

(3) Notwithstanding the provisions of subsection (2), a subordinate court shall not, in any case in which it has convicted a person at one trial of two or more offences, be competent-

- (a) where the court imposes substantive sentences of imprisonments only, to impose consecutive sentences of imprisonment which exceed in aggregate-
 - (i) in any case in which any of the offences of which the offender has been convicted is an offence in respect of which a subordinate court may lawfully pass a sentence of imprisonment for a term exceeding five years, a term, of imprisonment for ten years;
 - (ii) in any other case, a term of imprisonment for eight years;
- (b) where the court imposes sentence of fines only, to impose sentences of fines which exceed in aggregate-

- (i) in any case in which any of the offences of which the offender is convicted is an offence in respect of which a subordinate court may lawfully impose a fine exceeding ten thousand shillings, a sum equal to thrice the amount of which the subordinate court may so lawfully impose;
- (ii) in any other case, a sum of thirty thousand shillings; save that the aggregate of consecutive sentences of imprisonment in default of payment of fines shall not exceed a term of imprisonment of eight years;
- (c) where the court passes a combination of a substantive sentence or sentences of imprisonment and a fine or fines, to impose sentences which exceed-
 - (i) an aggregate of consecutive sentences of imprisonment whether substantive sentences of imprisonment or sentences of imprisonment in default of payment of fine, of ten years; and
 - (ii) a total of fines of thirty thousand shillings or where any of the offences of which the offender is convicted is an offence in respect of which a subordinate court may lawfully impose a fine exceeding ten thousand shillings, a sum equal to twice the amount of fine which the subordinate court may so lawfully impose.
- (4) For the purpose of appeal or confirmation, the aggregate imposed under this section in cases of convictions for two or more offences at one trial shall be deemed to be a single sentence.

(5) Notwithstanding subsection (4), where two or more sentences of imprisonment are directed to run concurrently, only the longer term of those sentences of imprisonment shall be taken into account for computing the aggregate of sentences of imprisonment for the purposes of this section

Exclusion
of evidence
illegally
obtained

169.-(1) Where, in any proceedings in a court in respect of an offence, objection is taken to the admission of evidence on the ground that the evidence was obtained in contravention of, or in consequences of a Contravention of, or of a failure to comply with a provision of this or any other Act or law, in relation to a person the court shall, in its absolute discretion, not admit the evidence unless it is on the balance of probabilities, satisfied that the admission of the evidence would specifically and substantially benefit the public interest without unduly prejudicing the rights and freedom of any person.

(2) The matters that a court may have regard to in deciding whether, in proceeding in respect of any offence, it is satisfied as required by subsection (1) include-

- (a) the seriousness of the offence in the course of the investigation of which the provision was contravened, or was not complied with the urgency and difficulty of detecting the offender and urgency or the need to preserve evidence of the fact;
- (b) the nature and seriousness of the contravention or failure; and
- (c) the extent to which the evidence that was obtained in contravention of or in consequence of the contravention of or in consequence of the failure to comply with the provision of any law, might have been lawfully obtained.

(3) The burden of satisfying the court that evidence obtained in contravention of, in consequence of the contravention of, or in consequence of the failure to comply with a provision of this Act should be admitted in proceedings lies on the party who seeks to have the evidence admitted-

(4) This section is in addition to, and not in derogation of, any other law or rule under which a court may refuse to admit evidence in proceedings.

(b) Subordinate Courts

170.-(1) A subordinate Court may, in the cases in which such sentences are authorized by law, pass the following sentences

Sentences
which a
subordinate
court may pass

(a) imprisonment for a term not exceeding five years; save that where a court convicts a person for a schedule offence, it may, if such sentence is authorized by law, pass a sentence of imprisonment for such offence for a term not exceeding eight years;

(b) a fine not exceeding twenty thousand shilling

(c) subject to the provisions of the Corporal Punishment Ordinance, corporal punishment;

(2) Notwithstanding the provisions of subsection (1)-

(a) a sentence of imprisonment-

(i) for a scheduled offence, which exceeds the minimum term of imprisonment prescribed in respect of it by the Minimum Sentences Act, 1972;

(ii) for any other offence, which exceeds twelve months;

(b) a sentence of corporal punishment which exceeds twelve strokes;

(c) a sentence of a fine or for the payment of money (other than payment of compensation under the Minimum Sentences Act, 1972) which exceeds six thousand shillings;

shall not be carried into effect, executed or levied until the record of the case, or a certified copy of it, has been transmitted to the High Court and the sentence or order has been confirmed by a Judge.

save that this section shall not apply in respect of any sentence passed by a Senior Resident Magistrate of any grade or rank

(3) The provisions of subsection (2) shall apply in relation to a sentence of imprisonment whether such sentence is a substantive sentence of imprisonment in default of a payment of a fine or a or a combination of two sentences.

(4) The provisions of subsection (1) shall be without prejudice to the provisions of any written law authorizing a subordinate court to impose in relation to any offence specified in such written law, a sentence in excess of the sentences provided for in that subsection.

(5) In this section "scheduled offence" shall have the meaning assigned to that expression by the Minimum Sentences Act, 1972.

When
subordinate
court may
commit to
High Court
for sentence

171.-(1) Where under the provisions of this Act a subordinate court; presided over by a District Magistrate convicts any adult of an offence; then, if on obtaining information as to the character and antecedents of such adult or as to the circumstances of the offence, the court is of opinion that they are such that greater punishment should be inflicted for the offence than the court has power to inflict, the court may, instead, of dealing with him in any other manner, commit the offender in custody to the High Court for sentence in accordance with the following provisions, of this section.

(2) Where an offender is committed to the High Court for sentence under the provisions of this section, the High Court shall inquire into the circumstances of the case and shall deal with the offender in any manner in which he could have been dealt with by the High Court if he had been convicted by the High Court of the offence in question.

(3) If the High Court imposes a sentence on the offender, the provisions of this Act with regard to an appeal against conviction only shall apply as for any other case tried by a subordinate court.

(4) The High Court may in its discretion postpone its inquiry under the provisions of subsection (2) of this section until the expiration of the time for filing notice of appeal against conviction, and if such notice has been filed before the High Court commences such inquiry until final determination of such appeal or subsequent appeals or for such lesser period as the court may deem fit.

(5) Where a person, who has been committed in custody to the High Court for sentence in accordance with the provisions of subsection (1), files a notice of appeal against his conviction, the High Court or the subordinate court which convicted such person may, for reasons to be recorded by it in writing, grant bail with or without sureties pending the hearing of such appeal.

(6) The provisions of this section shall be so construed as to enable the High Court in its consideration of any case thereunder to exercise its power of revision under section 373 of this Act in the same manner as if the record of the proceedings had under that section been reported to the High Court for orders.

Release on
bail pending
confirmation
and powers
of confirm-
ing court

172.-(1) Whenever a subordinate court passes a sentence which requires confirmation, the court imposing such sentence may in its discretion- release the person sentenced on bail pending confirmation or such order, as the confirming court may wake.

(2) Where-

(a) a person is committed in custody for sentence by the High Court; or

(b) a person is remanded in custody awaiting the confirmation of his sentence by a higher court;

(c) a person has been in remand custody for a period awaiting his trial; his sentence whether it is under the Minimum Sentence Act, 1972 or otherwise, shall start to run when such sentence is imposed confirmed, as the case may be, and such sentence shall take into account the period the person spent in remand.

(4) If the person sentenced is at the time sentence is passed serving a sentence of imprisonment for another offence the term of imprisonment to which he is sentenced shall, unless the court otherwise orders, run from the date of the expiry of the sentence for such other offence, subject to subsection (5).

(5) The High Court may exercise the same powers in confirmation as are conferred upon it in revision by Part X of this Act.

(6) The confirming court may in its discretion where no order has been made under subsection (1) of this section by the convicting court, release the person sentenced on bail pending an order in revision made by the High Court in exercise of its power under section 385 of this Act.

(7) Where a person is convicted of an offence specified in any of the Schedules to the Minimum Sentences Act, 1972, the provisions of this section shall have effect subject to provision; of section 8 of that Act.

(c) Extended jurisdiction of Subordinate Courts

173.-(1) The Minister lay, on the recommendation of the Chief Justice or, in his absence, the Senior Puisne Judge then being in Dar es Salaam by order-

Extended jurisdiction

- (a) invest any resident magistrate with power to try any category of offences which, but for the provisions of this section, would ordinarily be tried by the High Court and may specify the area within which he may exercise such extended powers, or
- (b) invest any such magistrate with power to try any specified case or cases of such offences,

and such magistrate shall, by virtue of such order, have power, in respect of the offences, specified in the order, to impose any sentence which could lawfully be imposed by the High Court.

(2) Nothing in this section shall effect the power of the High Court to order the transfer of cases.

174. All offences tried under the provisions of section 173 shall be tried with the aid of two or more assessors and in the manner prescribed for the trial of offences by the High Court.

Trials to be with aid of assessors

175.-(1) Every sentence of death passed by a subordinate court exercising power conferred upon it under section 173, shall, if the accused person does not appeal to the Court of Appeal, be subject to confirmation by the High Court, and whenever such subordinate court imposed such a sentence, the record of the case, or a certified copy of it, shall if no appeal is preferred within the time prescribed for the lodging of the appeal, without delay be transmitted to the High Court for confirmation; such sentence of death shall not be carried out until the sentence has been confirmed.

Confirmation of sentences of death in certain cases

(2) The High Court may exercise the same powers in confirmation under this section as are conferred upon it in revision n by Part X of this Act.

Record and report to be sent to be President

176. In every case where a sentence of death is confirmed, by the High Court, the judge confirming the sentence shall as soon as maybe transmit the record of the case or a certified true copy of it to the President together with a report in writing signed by him containing any recommendation or observations which he may think fit to make and forwarding with it any recommendation or observations made by the Court which sentenced the accused, and after that the matter shall be dealt with under Part VIII of this Act.

B. Of Trials Generally

(a) *Place of Inquiry or Trial*

General authority courts of Tanzania

177. Every court has authority to cause to be brought before it any person who is within the local limit of its jurisdiction and is charged with an offence committed within Tanzania or which according to law may be dealt with as if it had been committed within Tanzania and to deal with the accused person according to its jurisdiction.

Power of the High Court

178. The High Court may inquire into and try any offence, subject to its jurisdiction in any place where it has power to hold sittings; save that except under section 93, no criminal case shall be brought under cognizance of the High Court unless the same shall have been previously investigated by a subordinate court and the accused person shall have been committed for trial before the High Court.

Place and date of sessions of the High Court

179.-(1) For the exercise of its original criminal jurisdiction the High Court shall hold sittings at such places and on such days as the Chief Justice may direct.

(2) The Registrar of the High Court shall ordinarily give notice before hand of all such sittings.

Ordinary place of inquiry and trial

180.. Subject to the provisions of section 178 and to the powers of transfer conferred by section 189, 190 and 191, every offence shall be inquired into and tried, as the case may be, by a court within the local limits of whose jurisdiction it was committed or within the local limits of whose jurisdiction the accused was apprehended, or is in custody on a charge for the offence, or has appeared in answer to a summons lawfully issued charging him with the offence.

Trial at Place where act done or where consequence of offence

181. When a person is accused of the commission of any offence by reason of anything which has been done or of any consequence which has ensued, such offence may be inquired into or tried as the case may be by a court within the local limits of whose jurisdiction any such thing has been done or any such consequence has ensued.

Trials where offence is connected with another offence

182. When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence charge of the mentioned offence may be inquired into or tried by a court within the local limits of whose jurisdiction either act was done.

183. When it is uncertain in which of several local areas an offence was committed; or when an offence is committed partly in one local area and partly in another; or when it consists of several acts done in different local areas, it may be inquired into or tried by a court having jurisdiction Over any of such local areas.

Trial where place is offence is uncertain

184. An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a court through or into the local limits of whose jurisdiction the offender or the person against whom or the thing in respect of which the offence was committed passed in the course of that journey or voyage.

Offence Committed on a journey

185. Whenever a doubt arises as to the court by which any offence should be inquired into or tried any court entertaining such doubt may in its discretion report the circumstances to the High Court and the High Court shall decide by which court the offence shall be inquired into or tried. Any such decision of the High Court shall be final and conclusive except that it shall be open to an accused person to show that no court in Tanzania has jurisdiction in the case.

High Court may decide appropriate court in cases of doubt

186.-(1) The place in which any court is held for the purpose of inquiring into or trying any offence shall unless the contrary is expressly provide by an Act for the time being in force be deemed an open court to which the public generally may have access so far as the same can conveniently contain them save that the presiding judge or

Court to be open court

magistrate may, if he considers it necessary or expedient-

- (a) in interlocutory proceedings; or
 - (b) in circumstances where publicity would be prejudicial to the interest of-
 - (i) justice, defence, public safety, public order or public morality; or;
 - (ii) the welfare of persons under the age of eighteen years or the protection of private lives of persons concerned in the proceedings,
- order at any stage of the inquiry into or trial of any particular cast that persons generally or any particular person other than the parties thereto or their legal representative shall not have access to or be or remain in the room or building used by the court.

(2) Any court may for the purpose of inquiring into or trying any offence may sit on Sunday or on a public holiday and no finding sentence or order passed by a court of competent jurisdiction shall be reversed or altered only by reason of the fact that the same was made or passed on a Sunday or public holiday save that the court shall not sit on Sunday or a public holiday unless in the opinion of the court the omission to do so would cause an amount of delay, expense or inconvenience which in the circumstances of the case would be unreasonable.

187. No child shall be permitted to be present in court during the trial of any other person charged with an offence or during any proceedings preliminary thereto except during such time as his presence is required a witness or otherwise for the purposes of justice; and any child present

Exclusion of children from court proceedings

court when under this section he is not permitted to be so shall be ordered to be removed save that this section shall not apply to messengers, law officers, clerks and other persons required to attend at any court for the purposes connected with their employment-

188. The court may prohibit the publication of names or identities of parties or of witnesses for the furtherance of or otherwise in the interests of the administration of justice.

Court may prohibit publication of name etc. of

(b) *Transfer of cases*

189. If upon the hearing of any complaint it appears that the cause complaint arose out of the limits of the jurisdiction of the court before which such complaint has been brought, the court may in its discretion direct the case to be transferred to the court having jurisdiction where the cause of complaint arose.

The Transfer of case where offence committed outside jurisdiction

(2) If the accused person is in custody, and the court directing such transfer thinks it expedient that such custody should be continued or if he is not in custody, that he should be placed in such custody, the court shall direct the offender to be taken by a police officer before the court having jurisdiction where the cause of complaint arose and shall give a warrant for that purpose to such officer, and shall deliver to him the complaint and recognizances, if any, taken by such court to be delivered to the court before whom the accused person is to be taken, and such complaint and recognizances, if any, shall be treated to all intents and purposes as if they had been taken by such last mentioned court.

(3) if the accused person is not continued or placed in custody as aforesaid, the court shall inform him that if has directed the transfer of the case as aforesaid, and thereupon the provisions of the preceding subsection respecting the transmission and validity of the documents in the case shall apply.

190. Any district magistrate,-

- (a) may transfer any case of which he has taken cognizance for inquiry or trial to any subordinate court empowered to enquire into or try such case within the local limits of such magistrate's jurisdiction; and
- (b) may, where the general convenience of the parties or witnesses require it, transfer any case of which he has taken cognizance for inquiry or trial to any subordinate court beyond the limit of his jurisdiction which has power to inquire into or try such case.

Transfer of cases between magistrates

191.-(1) Whenever it is made to appear to the High Court-

- (a) that a fair and impartial inquiry or trial cannot be had in any court subordinate thereto; or
- (b) that some question of law of unusual difficulty is likely to arise; or
- (c) that a view of the place in or near which an offence has been committed may be required for the satisfactory inquiry into or trial of the same; or

Power of High Court to Change venue

- (d) that an order under this section, will tend to the general convenience of the parties or witnesses; or
- (e) that such an order is expedient for the ends of justice or is required by any provision of this Act;

it may order

- (i) that any offence be inquired into or tried by any court not empowered under the preceding sections of this Part but in other respect competent to inquire into or try such offence,
- (ii) that any particular criminal case or class of cases be transferred from court subordinate to its authority to any other court of equal or superior jurisdiction,
- (iii) that an accused person be committed for trial to itself.

(2) The High Court may act either on the report of the lower court or the application of a party interested or on its own initiative.

(3) Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except where the applicant is the Director of Public Prosecutions, be supported by an affidavit.

(4) Every accused person making any such application shall give to the Director of Public Prosecutions notice in writing of the application, together with a copy of the grounds on which it is made and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(5) Where an accused person makes any such application the High Court may direct him to execute a bond with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor.

(c) Accelerated Trial and Disposal of Cases

192.-(1) Notwithstanding the provisions of section 229, if an accused person who is legally represented pleads not guilty, the court shall as soon as is convenient hold a preliminary hearing in open court in the presence of the accused and his advocate and of the public prosecutor to consider such matters as are not in dispute between the parties and which will promote a fair and expeditious trial

(2) In ascertaining such matters that are not in dispute the court may put questions to the parties as it thinks fit and the answers may be given without oath or affirmation.

(3) At the conclusion of a preliminary hearing held under this section, the court shall prepare a memorandum of the matters agreed and the memorandum shall be read over and explained to the accused in a language that he understands, signed by the accused and his advocate and by the public prosecutor and then filed.

(4) Any fact or document admitted or agreed (whether such fact or document is mentioned in the summary of evidence or not) in a memorandum filed under this section shall be deemed to have been duly proved; save that if, during the course of the trial, the court is of the opinion that the interests of justice so demand, the court may direct that any fact or document admitted or agreed in a memorandum filed under this section be formally proved.

(5) Wherever possible, the accused person shall be tried immediately after the preliminary hearing and if the case is to be adjourned due to the absence of witnesses or any other cause, nothing in this section shall be read as requiring the same judge or magistrate who held the preliminary hearing under this section to preside at the trial.

(6) The Minister may, after consultation with the Chief Justice, by order published in the *Gazette*, make rules for the better carrying out of the purposes of this section and without prejudice to the generality of the foregoing, such rules may provide for-

- (a) delaying the summoning of witnesses until it is ascertained whether they will be required to give evidence on the trial or not;
- (b) the giving of notice to witnesses warning them that they may be required to attend court to give evidence at the trial.

Person
charged
with warrant
offence may
plead guilty
without court
appearance

193.-(1) A person formally charged with a warrant offence which is punishable only by a fine or by imprisonment not exceeding six months, or by a combination of such sentences may in writing or through an advocate plead guilty to the charge whether that person is summoned or not, and the magistrate shall dispense with the personal attendance of the accused unless such personal attendance is required for any other reasons in which case he may direct the personal attendance of the accused.

(2) If a magistrate imposes a fine on an accused person whose personal attendance has been dispensed with under this section, and such fine is not paid within the time proscribed for such payment the magistrate may forthwith issue a summons calling upon such accused person to show cause why he should not be committed to prison for such term as the magistrate may then prescribe. If such accused person does not attend upon the return of such summons the magistrate may forthwith issue a warrant and commit such person to prison for such terms as the magistrate may then fix.

(3) If, in any case in which under this section the attendance of an accused person is dispensed with, previous convictions are alleged against such person and are not admitted in writing or through such person's advocate the magistrate may adjourn the proceedings and direct the personal attendance of the accused, and if necessary, enforce such attendance in a manner provided under this Act.

(4) Whenever the attendance of an accused has been so dispensed with and his attendance is subsequently required, the cost of any adjournment for the purpose shall be borne in any event by the accused.

194.-(1) Where an accused person charged with a non-warrant offence other than an offence punishable with death or life imprisonment intends to plead guilty to the charge and desires to have his case disposed of at once, he may give a written notice to that effect to the magistrate before whom the case is to be heard, and it shall be lawful for the magistrate to serve the person with a formal charge and a notice to appear, not less than four clear days before the magistrate for the purpose of pleading to the charge and final disposition of the case.

Procedure where accused desires to plead guilty to a non-warrant offence or intends to rely on defence of an *alibi*

(2) If the accused in pursuance to a notice served upon him under subsection (1) appears and pleads guilty to the charge the magistrate shall deal with the case in like manner as a case where the accused pleads guilty under section 229 save that if the case is such as can be tried only in the High Court, or is of such an aggravated nature that the magistrate holds that the question of punishment shall be disposed of by that court, the magistrate shall remit the accused to that court for sentence, and such remittal shall be a sufficient warrant to bring the accused, without any further notice before the High Court for sentence, and the original warrant of commitment of such period he still is liberated in due course of law, shall remain force until he is brought before the High Court for sentencing.

(3) If the accused when brought before the magistrate to plead does not plead guilty to the charge or pleads guilty only to a part of the charge, the magistrate shall not accept such restricted plea, and the plea shall be deserted *pro loco et tempore*, and thereafter the procedure against the accused shall be continued according to the other provisions of this Act.

(4) Where an accused person intends to rely upon an alibi in his defence, he shall give to the court and the prosecution notice of his intention to rely on such defence before the hearing of the case

(5) Where an accused person does not give notice of his intention to rely on the defence of alibi before the hearing of the case, he shall furnish the prosecution with the particulars of the *alibi* at any time before the case for the prosecution is closed.

(6) If the accused raises a defence of alibi without having first furnished the particulars of the *alibi* to the court or to the prosecution pursuant to this section, the court may in its discretion, accord no weight of any kind to the defence.

C. Examination of Witness

(a) General Provisions

195. (1) Any court may, at any stage of a trial or other proceeding under this Act, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

Power to summon material witness or examine person present

(2) The prosecutor or the defendant or his advocate, shall have the right to cross-examine any such person, and the court shall adjourn the case for such purpose if it considers necessary

- Evidence to be taken in presence of accused 196. Except as otherwise expressly provided, all evidence taken in any trial under this Act shall be taken in the presence of the accused, save where his personal attendance has been dispensed with.
- Evidence may be given in absence of accused in certain cases 197. Notwithstanding the provisions of section 196 evidence may be taken in any trial under this Act in the absence of the accused if-
- (a) the examining justice considers that by reason of his disorderly conduct before him it is not practicable for the evidence to be given in his presence; or
 - (b) he cannot be present for reasons of health but is represented by a counsel and has consented to the evidence being given in his absence,
- and it shall be lawful for the court to continue with the trial and give judgment in the absence of such accused.
- Evidence to be given on oath Acts 1966 No. 59 198.-(1) Every witness in a criminal cause or matter shall, subject to the provisions of any other written law to the contrary, be examined upon oath or affirmation in accordance with the provisions of the Oaths (Judicial Proceedings) and Statutory Declaration Act, 1966.
- (2) Where an accused person upon being examined elects to keep silent the court shall have the right to draw an adverse inference against him, and the court and the prosecution may comment on the failure by the accused to give evidence-
- Refractory witness 199. (1) Whenever any person, appearing, either in obedience to a summons or by virtue of a warrant, or being present in court and being verbally required by the court to give evidence
- (a) refuses to be sworn or affirmed; or
 - (b) having been sworn or affirmed, refuses to answer any question put to him; or
 - (c) refuses or neglects to produce any document or thing which he is required to produce; or
 - (d) refuses to sign his depositions,
- without in any case offering any sufficient excuse for such refusal, a neglect, the court may adjourn the case for a period not exceeding eight days, and may in the meantime commit such person to prison, unless he sooner consents to do what is required of him.
- (2) If such person, upon being brought before the court at or before such adjourned hearing, again refuses to do what is required of him, the court may, if it sees fit, again adjourn the case and commit him for the like period, and so again from time to time until such person consents to do what is so required of him.
- Procedure where accused is only witness called for defence 200. Where the only witness to the facts of the case called by the defence is the person charged, he shall be called as a witness after the close of the evidence for the prosecution, but it shall be lawful for the court in its discretion to adjourn the hearing of the case to a certain time and place to be then appointed and stated in the presence and hearing of the person charged.

201. In cases where the right of reply under section 296 depends upon the question whether evidence has been called for the defence the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply save that the Attorney-General the Deputy- Attorney-General and the Directors of Public Prosecution when appearing as advocate for the prosecution shall in all cases have the right of replay

Right of
reply

202.- (1) In any inquiry, trial or other proceeding under this Act a certificate in the form in the Third Schedule to this Act, given under the hand of an officer appointed by order of the Attorney-General for the purpose, who shall have prepared a photographic print or a photographic enlargement from exposed film together with any photographic prints, photo-graphic enlargements and any other annexures referred to therein, and shall be evidence of all facts stated in the certificate.

Certificate
regarding
preparation
of photograph
prints etc.
receivable
in evidence

(2) The court may presume that the signature to any such certificate is genuine

(3) When any such certificate is used any trial, or proceeding under this Act other than an inquiry, the court may if it thinks fit, summon and examine the person who gave such certificate.

203.- (1) Any document, purporting to be a report under the hand of any government analyst, upon any matter thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Act, may be used as evidence in any inquiry, trial or other proceeding under this Act.

Report of
government
analyst

(2) The court may presume that the signature to any such document is genuine and that the person signing it held the office which he professed to hold at the time when he signed it.

(3) When any report is so used in any proceeding other than an inquiry the court may, if it thinks fit, summon and examine the analyst as to the subject matter of that report

(4) In this section "government analyst" includes the Senior Pathologist, the Pathologist and any person appointed by the minister responsible for health to perform the duties of a government analyst under this section.

204.- (1) Any document under the hand of an officer appointed for that purpose by order of the Director of Public Prosecutions, which purport to be a report upon any fingerprint or any photographic representation fingerprints submitted to him for examination or comparison shall be or receivable in evidence in any inquiry trial other proceeding under this Act and shall be evidence of all facts stated, that document.

Report of
finger
print
expert

(2) The court may presume that the signature to any such report is genuine.

(3) When any such report is received as evidence in any trial or proceeding under this Act other than an inquiry, the court may, if it thinks fit, and shall if so requested by the accused or his advocate, summon, and examine or make available for cross-examination, the person who gave such report.

(4) In this section "fingerprint" includes palm print, a toe print, and the impression of a foot and "fingerprint" shall be construed accordingly.

Report of
hand-
writing
expert

205.-(1) In any committal proceeding, trial or other proceeding by or before a magistrate or a judge under this Act, a report in the form set out in the seventh Schedule to this Act, given under the hand of an officer appointed by order of the Director of Public Prosecutions for the purpose, being a report upon any handwriting, or any photographic representation of any handwriting, submitted to him for examination or comparison, together with any photographic prints, enlargements or other annexures referred to in it and signed by such officer, shall be receivable in evidence and shall be evidence of the matters stated in it

(2) The court may presume that the signature to any such report, print, enlargement or annexure is genuine.

(3) when any such report is received in evidence in any trial or proceeding under this Act other than an inquiry, the court shall, if the accused or his advocate so requests, and may if it thinks fit summon and examine the person who made the report of make him available for cross-examination.

(b) *Issue of Commission for Examination of Witness*

Issue of
Commi-
ssion

206. (1) Whenever in the course of any proceeding under this Act, the High Court or the district magistrate is satisfied that the examination of witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable, the court or magistrate may issue a commission to any magistrate, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

(2) The magistrate to whom the commission is issued shall proceed to the place where the witness is or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same power, as in the case of a trial.

Parties
may
examine
witnesses

207. (1) The parties to any proceeding under this Act in which a commission is issued shall be informed by the court or magistrate issuing the commission that they may respectively forward any interrogatories in writing which the court or magistrate directing the commission may think relevant to the issue, and the magistrate to whom the commission is directed shall examine the witness upon such interrogatories.

(2) Any such party may appear before such magistrate by advocate, or if not in custody, in person, and may examine, cross-examine and re-examine, as the case may be, the said witness.

208. (1) After any commission issued under section 206 has been duly executed it shall be returned, together with the deposition of the witness examined thereunder, to the High Court or the magistrate who issued it, as the case may be, and the commission, the return thereto, and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

Return of
Commi-
ssion

(2) Any deposition so taken, if it satisfies the conditions of section 132 of the Evidence Act, 1967; may also be received in evidence at any subsequent stage of the case before another court.

Acts, 1967
No.6

209. In every case in which a commission is issued wider section 206 the proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

Adjourn-
ment of
proceeding

(c) Taking and Recording of Evidence

210.-(1) In trials, other than trials under section 213, by or before the evidence of the witnesses shall be recorded in the recording in the following manner -

- (a) the evidence of each witness shall be taken down in writing in the language of the court by the magistrate, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by him and shall form part of the record;
- (b) such evidence shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative subject to subsection (2);

(2) The magistrate may, in his discretion, take down or cause to be taken down any particular question and answer.

(3) The magistrate shall inform each witness that he is entitled to have his evidence read over to him. If a witness asks that his evidence be read over to him the magistrate shall record any comments which the witness may make concerning his evidence.

211.-(1) Whenever, any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open court in a language understood by him.

Interpretation
of evidence
to accused
or his
advocate

(2) If he appears by advocate and the evidence is given in a language other than the language of the court, and not understood by the advocate, it shall be interpreted to such advocate in the language of the court.

(3) When documents are put in for the purpose of formal proof it shall be in the discretion of the court to interpret as much of them as appears necessary.

212. When a magistrate has recorded the evidence of a witness he shall also record such remarks, if any, as he thinks material respecting the demeanor of such witness whilst under examination.

Remarks
respecting
demeanour
of witness

Procedure
in cast of
minor
offences

213.-(1) Notwithstanding anything contained, in this Act, every magistrate may, if he thinks fit, try any of the offences mentioned in the next succeeding subsection without recording the evidence as hereinbefore provided, but in any such case he shall enter in such form as the High Court may direct the following particulars:-

- (a) the serial number;
- (b) the date of the commission of the offence;
- (c) the date of the complaint;
- (d) the name of the complainant;
- (e) the name, parentage and residence of the accused;
- (f) the offence complained of and the offence (if any) proved, and, in cases coming under paragraph (c), (d) or (e) of the next succeeding subsection, the value of the property in respect of which the offence has been committed;
- (g) the plea of the accused;
- (h) the finding and, where evidence has been taken, a judgment embodying the substance of such evidence;
- (i) the sentence or other final order;
- (j) the date on which the proceedings terminated.

(2) The offences referred to in the, preceding subsection are as follows:-

- (a) offences punishable with imprisonment for a term not exceeding six months or a fine not exceeding one thousand shillings;
- (b) common assault under section 239 of the Penal Code;
- (c) theft under Chapter XXVI of the Penal Code where the value of the property stolen does not exceed one hundred shillings;
- (d) receiving or retaining stolen property under Chapter XXXI of the Penal Code where the value of such property does not exceed one hundred shillings;
- (e) malicious injury to property where the value of such property does not exceed one hundred shillings;
- (f) any other offence which the Chief Justice may, by order published in the *Gazette*, direct to be tried in accordance with the provisions of this section;
- (g) aiding, abetting, counseling or procuring the commission of any of the foregoing offences;
- (h) attempting to commit any of the foregoing offences.

(3) When in the course of a trial under the provisions of this section it appears to the magistrate that the case is of a character which renders it undesirable that it should be so tried, the magistrate shall recall any witnesses and proceed to rehear the case in the manner provided by the preceding section of this Part.

(4) No sentence of imprisonment for a term exceeding six months or of a fine of an amount exceeding one thousand shillings shall be passed in the case of any conviction under this section.

214.-(1) Where any magistrate, after having, heard and recorded the whole or any part of the evidence in any trial or conducted in whole or part any committal proceedings is for any reason unable to complete the trial or the committal proceedings or he is unable to complete the trial or committal proceedings within a reasonable time, another magistrate who has and two exercises jurisdiction may take over and continue or the trial committal proceedings as the case may be and the magistrate so taking over may act on the evidence or proceeding recorded by his predecessor and, may in the case of a trial re-summon the witnesses and recommence the trial or the committal proceedings or otherwise subject to subsection (2)

Conviction or committal where proceedings heard partly by one magistrate and partly by another

(2) Whenever the provision of subsection (1) applies -

- (a) in any trial the accused may, when the such other magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re -heard and shall be informed of such right by the second magistrate when he commences his proceedings;
- (b) the High Court may, whether there be an appeals or not, set aside any conviction passed on evidence not wholly recorded by the magistrate to before the conviction was had, if it is of the opinion that the accused has been materially prejudiced thereby and may order a new trial.

(3) Nothing in subsection (1) shall be construed as preventing a magistrate who has recorded the whole of the evidence in any trial and who, before passing the judgment, is unable to complete the trial, from writing the judgment and forwarding the record of the proceeding together with the judgment who the magistrate who has succeeded him for the ment to be read over and, in the case of conviction, for the sentence to be passed by such other magistrate

215. The High Court may, from time to tune, by rules, prescribe the manner in which evidence shall be taken down in cases coming before the court and the evidence or the substance those of it shall be taken down in accordance with those rules.

Manner of recording evidence in the High Court

D. Procedure in case of the Insanity or Incapacity of an Accused person

216.-(1) When in the course of a trial the court has reason to believe that the accused is of unsound mind and consequently incapable of making his, defence it shall, before inquiring into the fact of such unsoundness of mind and notwithstanding the fact that the accused may not have pleaded to the charge, call on the prosecution to give or adduce evidence in support of the charge

Prosecutor to give or adduce evidence before inquiry by court as insanity of accused

(2) If at a close of the evidence in support of the of the charge it appears to the court, that a case is not made out against the accused person it shall dismiss the charge and acquit the accused person and may then proceed to deal with him under the Mental Diseases Ordinance.

(3) If at the close of the evidence in support of the charge it appears to the court that a case has been made out against the accused person it shall then proceed to inquire into the fact of the unsoundness of mind of the accused and for this purpose may order him to be detained in a mental

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hospital for medical examination or, in case where bail may be granted, may admit him to bail on sufficient security as to his personal safety and that of the public and on condition that he submits himself to medical examination or observation by a medical officer as may be directed by the court.

(4) The medical officer in-charge of the mental hospital in which an accused person has been ordered to be detained or a medical officer to whom he has been ordered to submit himself for mental examination or observation pursuant to sub-section (3) shall, within forty-two days of such detention or submission, prepare and transmit to the court ordering the detention or submission, a written report on the mental condition of accused stating whether in his opinion the accused is of unsound mind and consequently incapable of making his defence.

(5) On the receipt by the court of the written report provided for by sub-section (4) it shall resume its inquiry into the question of the unsoundness of mind of the accused, and may admit as evidence for this purpose any such written report purporting to be signed by the medical officer preparing the same unless it is proved that the medical officer purporting to sign the same in fact did not sign it.

(6) Where the court having considered any written report admitted in evidence under sub-section (5) and any other evidence that may be available to it regarding the state of mind of the accused, is of the opinion the accused is of unsound mind and consequently incapable of making his defence it shall record a finding to that effect, postpone further proceedings in the case, order the accused to be detained in safe custody in such place and manner as it may think fit and transmit the court record or a certified copy thereof to the Minister

(7) Upon consideration of the record the Minister may by order directed to the court, direct that the accused be detained as a criminal lunatic in a mental hospital or other suitable place of custody and the court shall issue a warrant in accordance with such order. Any such order and warrant shall be sufficient authority for the detention of such accused person until released or otherwise dealt with in the manner provided for by section 217 or 218.

(8) Where the written report required by sub-section (4) is to the effect that the accused is of sound mind and capable of making his defence, proceedings shall be resumed as provided for by section 218.

Procedure
when accused
certified as
capable
of making
defence

217.-(1) Where an accused person detained in pursuance of a warrant issued under section 216 or section 281 is found by the medical officer in whose charge he is to have recovered his soundness of mind sufficiently to be capable of making his defence, the medical officer shall forward to the Director of Public Prosecutions a certificate to that effect stating therein also whether the accused would, but for the charge against him, be fit for unconditional discharge from detention.

(2) Upon receipt of the certificate Provided for in sub-section (1) the Director of Public Prosecutions shall inform the court which issued the warrant under section 216 or 281 whether it is the intention of the Republic to continue proceedings against the accused.

(3) Where the court is informed by the Director of Public Prosecutions that the Republic intends to continue proceedings against the accused, it shall thereupon order the removal of the person from the place where he is detained and shall cause him to be brought before it in the manner provided by section 218.

(4) Where the court is informed by the Director of Public Prosecutions that the Republic does not intend to continue proceedings against the accused, the court shall-

- (a) in cases where the certificate provided for in sub-section (1) states that the accused is fit for unconditional discharge forthwith make an order for his discharge,
- (b) in all other cases record the fact that proceedings have been discontinued discharge the accused of the charge and forthwith proceed to deal with him under section 8 of the Mental Diseases Ordinance as a person deemed to have been brought before it under that Ordinance.

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(5) Notwithstanding the Provisions of sub-section (4), any discharge of the accused pursuant to this section shall not operate as a bar to any subsequent proceedings against him on account of the same facts.

218.-(1) Whenever a written report under sub-section (4) of section 216 or information under sub-section (3) of section 217 is received by the court, it shall, subject to sub-section 4 resume the trial and require the accused to appear or be brought before it.

Resumption
for a trial

(2) Where proceedings are resumed under sub-section (1) the court shall in all cases where the proceedings are resumed by virtue of sub-section (3) of section 217 proceed to hear the case *de novo*, and in any other case it may in its discretion treat the case as partly heard and may then proceed to hear further evidence in the case.

(3) Any written report given under sub-section (4) of section 216 or the production of certificate issued under sub-section (1) of section 217, it may, if still not satisfied that the accused is of sound mind and capable of making his defence record a finding to that effect and proceed to make a fresh order under sub-section (6) of section 216.

219.-(1) Where any act or omission is charged against any person as an offence and it is intended at the trial of that person to raise the defence insanity of insanity, that defence shall be raised at the time when the person is called upon to plead.

Defence of
insanity
at trial.

(2) If, on the evidence on record, it appears to the court that the accused did the act or made the commission charged but was insane so as not to be responsible for his action at the time when the act was done or the omission was made, the court shall make a special finding to the effect that the accused did the act or made the omission charged but by reason of his insanity, as aforesaid, is not guilty of the offence.

been committed to prison shall be released, or if on bail his recognizance shall be discharged; but such discharge of the accused shall not operate as bar to any subsequent proceedings against him on account of the same facts.

(2) A person sentenced to be detained during the President's pleasure shall be liable to be detained in such place and under such conditions as the Minister may, by order from time to time direct, and whilst so detained shall be deemed to be in legal custody.

(3) The Minister may at any time, of his own motion or after receiving a report from any person or persons thereunto empowered by him, order that a person so detained as in sub-section (2) aforesaid be discharged or otherwise dealt with, subject to such conditions as to the said remaining under supervision in any place or by any person and such other conditions for ensuring the safety and welfare of the said person and the public as the Minister shall think fit

(4) When a person has been detained during the President's pleasure under sub-section 1 (a) or (b) of this section, the presiding judge or magistrate shall forward to the Attorney-General a copy of the notes of evidence taken on trial, with a report in writing signed by him containing any recommendation or observations on the case which he may think fit to make.

PART VII.

PROCEDURE IN TRIALS BEFORE SUBORDINATE COURTS

(i) Provisions Relating to the Hearing and Determination of Cases

- | | |
|--|---|
| Non-appearance of complainant at hearing | 222. If, in any case which a subordinate court has jurisdiction to hear and determine, the accused person appears in obedience to the summons served upon him at the time and place appointed in the summons for the hearing of the case, or is brought before the court under arrest, then, if the complainant, having had notice of the time and place appointed for the hearing of the charge does not appear, the court shall dismiss the charge and acquit the accused person, unless for some reason, it shall think it proper to adjourn the hearing of the case until some other date, and pending the adjourned hearing, either admit the accused person to bail or remand him to prison, or take such security for his appearance as the court shall think fit. |
| Appearance of both parties | 223. If at a time appointed for hearing of the case both the complainant and the accused person appear before the court which is to hear and determine the charge, or if the complainant appears and the personal attendance of the accused the court shall proceed to |
| Withdrawal of complainant | 224. If a complainant, at any time before a final order is passed in any case under this part, satisfies the court that there are sufficient grounds for permitting him to withdraw his complaint, against the accused or, if there be more than one accused persons, or any of them, the court may permit |

him to withdraw the same and shall thereupon acquit the accused against whom the complaint is so withdrawn; save that this section shall apply only in cases of minor offences.

225.-(1) Subject to sub-section (3) before or during the hearing of any case, it shall be lawful for the court in its discretion to adjourn the hearing to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties or their respective advocates then present, and in the meantime the court may suffer the accused person to go at large, or may commit him to prison, or may release him upon his entering into a recognizance with or without sureties at the discretion of the court, conditioned for his appearance at the time and place to which such hearing or further hearing shall be adjourned. Adjournment
and remand
of accused

(2) The provisions of sub-section (1) notwithstanding, no such adjournment shall be for more than thirty clear days, or if the accused person has been committed to prison, for more than fifteen clear days, the day following that on which the adjournment is made being counted as the first day.

(3) The court may commit the accused person to police custody-

- (a) for not more than three clear days if there is no prison within five miles of the court house, and may from time to time further commit such accused person to police custody for a period of not more than fifteen days in the aggregate; or
- (b) for not more than seven clear days if there is no prison within five miles of the court house and the court does not intend to sit again at such court house within three days, and may from time to time further commit such accused person to police custody for a period of not more than fifteen days in the aggregate; or
- (c) at the request of the accused person, for not more than fifteen clear days.

(4) Except for cases involving offences under sections 39, 40, 41, 43, 45, 48(a) and 59, of the penal code or offences involving fraud, conspiracy to defraud or forgery, it shall not be lawful for a court to adjourn a case, in respect of offences specified in the First Schedule to this Act, under the provisions of subsection (1) of this section for an aggregate exceeding sixty days except under the following circumstances: Cap. 20

- (a) Wherever a certificate by a Regional Crimes Officer is filed in court stating the need and grounds for adjourning the case, the court may adjourn the case for a further period not exceeding an aggregate of sixty days in respect of offences stated in the First Schedule to this Act.
- (b) Wherever a certificate is filed in court by the State Attorney stating the need and grounds for seeking a further adjournment beyond the adjournment made under paragraph (a), the court shall adjourn the case for a further period not exceeding in aggregate of sixty days.
- (c) Wherever a certificate a certificate is filed in court by the Director of Public Prosecutions or a person authorised by him in that behalf stating the need for and grounds for a further adjournment

228.-(1) The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he admits or denies the truth of the charge.

Accessed
to be
called in
to plead

(2) If the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words he uses, and the magistrate shall convict him and pass sentence upon or make an order against him, unless there shall appear to be sufficient cause to the contrary.

(3) If the accused person does not admit the truth of the charge, the court shall proceed to hear the case hereinafter provided-

(4) If the accused person refused to plead, the court shall order a plea of "not guilty" to be entered for him.

(5) (a) If the accused pleads-

(i) that he has been previously acquitted as the case may be, of the same offence, or

(ii) he has obtained a pardon at law for his offence,

the court shall first try whether such plea is true in fact or not:

(b) If the court holds that the evidence adduced in support of such plea does not sustain the plea, or if it finds that such plea is false in fact, the accused person shall be required to plead to the charge.

229.-(1) If the accused person does not admit the truth of the charge the prosecutor shall open the case against the accused person, and shall call witness and adduce evidence in support of the charge.

Procedure
on plea of
'not guilty'

(2) The accused person or his advocate may put question to each witness produced against him.

(3) If the accused person does not employ an advocate, the court shall, at the close of the examination of each witness for the prosecution, ask the accused person whether he wishes to put any questions to that witness or make any statement. If the accused person asks any question the magistrate shall record the answer, and if he makes a statement the magistrate shall, if he thinks it desirable in the interest of the accused person, put the substance of such statement to the witness in the form of a question and record the answer of such witness.

230. If at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence either in relation to the offence with which he is charged or in relation to any other offence of which under provisions of sections 312-321 inclusive of this Act, he is liable to be convicted, the court shall dismiss the charge and acquit the accused person.

Discharge of
accused
person when
no case
to answer

231.-(1) At the close of the evidence in support of the charge, if it appears to the court that a case is made against the accused person sufficiently to require him to make a defence either in relation to the

The defence

offence with which he is charged or in relation to any other offence of which under the provisions of sections 312-321 inclusive of this Act he is liable to be convicted, the court shall again explain inclusive substance of the charge to the accused and inform him of his right,

- (a) to give evidence whether or not on oath or affirmation, on his own behalf;
- (b) to call witnesses in his defence; and

shall then ask the accused person, or his advocate, if it is intended to exercise any of the above rights and shall record the answer. The court shall then call on the accused person to enter on his defence save where the accused person does not wish to exercise either of the above rights.

(2) Notwithstanding that an accused elects to give evidence not on oath or affirmation, he shall be subject to cross-examination by the prosecution.

(3) If the accused, after he has been informed in terms of subsection (1) elects to remain silent the court shall be entitled to draw an adverse inference against him and the court as well as the prosecution shall be permitted to comment on the failure by the accused to give evidence.

(4) If the accused person states that he has witnesses to call but that they are not present in court, and the court is satisfied that the absence of such witness is not due to any faults or neglect of the accused persons, and that there is likelihood that they could, if present, give material evidence on behalf of the accused person, the court may adjourn the trial and issue process, or take other steps, to compel attendance of such witnesses.

Evidence
in reply

232. If the accused person shall have examined any witnesses or given any evidence other than as to his general character, the court may grant leave to the prosecutor to give or adduce evidence in reply.

Order of
speech

233. The prosecutor or his advocate and the accused or his advocate shall be entitled to address the court in the same manner and order as in the trial under the provisions of this Act before the High Court.

Variance
between
charge and
evidence and
amendments
of charge

234.-(1) Where at any stage of a trial, it appears to the court that the charge is defective, either in substance or form, the court may make such order for alteration of the charge either by way of amendment of the charge or by substitution or addition of a new charge as the court thinks necessary to meet circumstances of the case unless, having regard to the merits of the case, the required amendments cannot be made without injustice, and all amendments made under the provisions of this sub-section shall be made upon such terms as to the court shall seem just.

(2) Subject to sub-section (1), where a charge is altered as aforesaid-

- (a) the court, shall thereupon call upon the accused persons to plead to the altered charge; and

- (b) the accused may demand that the witnesses or any of them be recalled and give their evidence afresh or be further cross-examined by the accused or his advocate and, in such last mentioned event, the prosecution shall have the right to re-examine any such witness on matters arising out of such further cross-examination.
- (c) the court may permit to the prosecution to recall and examine with reference to any alteration of or addition to the charge that may be allowed, any witness who may have been examined unless the court for any reason to be recorded in writing considers that such application is made for the purpose of vexation delay or for defeating the ends of justice.

(3) Variance between the charge and the evidence adduced in support of it with respect to the time at which the alleged offence was committed is not material and the charge need not be amended for such variance if it is proved that the proceedings were in fact instituted within the time, if any, limited by law for the institution thereof.

(4) Where an alteration of the charge is made under sub-section (1) or there is a variance between the charge and the evidence as described in sub-section (2), the court shall, if it is of the opinion that the accused has been thereby misled or deceived, adjourn the trial for such period as may be reasonably necessary.

(5) Where an alteration of the charge is made under sub section (1) the prosecution may demand that the witnesses or any of them be recalled and give their evidence afresh or be further examined by the prosecution and the court shall call such witness or witnesses unless the court for reasons to be recorded in writing, considers that such application is made for the purpose of vexation, delay or for defeating the ends of justice.

235. The court having heard both the complainant and the accused person and their witnesses and evidence shall convict the accused and pass sentence upon or make an order against him according to law, or shall acquit him, or shall dismiss the charge under section 38 of the Penal Code.

The decision

236. The court may before passing sentence, receive such evidence as it thinks fit, in order to inform itself as to the sentence proper to be passed

Evidence
relative to
proper
Sentences
or order

237. Without prejudice to the generality of section 236 a subordinate court presided by a resident magistrate may subject to the provisions of this section, for the purpose of assessing the proper sentence to be passed, on other take into consideration any other offence committed by the accused offences

Taking
into consid-
eration
on other
offences

- (a) it has been explained by the court to the accused person in ordinary language that the sentence to be passed upon him for the offence of which he has been convicted in those proceedings may be greater if the other offence is taken into consideration; and
- (b) after such explanation as aforesaid, the accused person-
 - (i) admits the commission of the other offence; and
 - (ii) asks the court to take the other offence into consideration.

(3) Nothing in this section shall entitle a court which has taken an offence into consideration to pass upon an accused person any sentence in excess of the maximum sentence which could be awarded by that court for the offence of which that person was convicted in those proceedings.

Drawing conviction or order

238. The conviction or acquittal or other order may, if required, be afterwards drawn up and shall be signed by the court making the same, or by the clerk or other officer of the court.

Order of dismissal for further charges

239. The production of the copy of the order of acquittal, certified by the clerk or other officer of the court, shall without other proof be a bar to any subsequent charge for the same matter against the same accused.

Statements by medical witness

240.-(1) In any trial before a subordinate court, any document purporting to be a report signed by a medical witness upon any purely medical or surgical matter shall be receivable in evidence.

(2) The court may presume that the signature to any such document is genuine and that the person signing the same held the office or had the qualifications which he possessed to hold or to have when he so signed the same.

3. When any such report is received in evidence, the court may, if it thinks fit, and shall if so requested by the accused or his advocate, summon and examine or make available for cross-examination, the person who made the report. The court shall inform the accused of his right to require the person who made the report to be summoned in accordance with the provisions of this subsection.

(b) Limitations and Exception Relating to Trials Before subordinate Courts

Limitation of time for summary trials in certain cases

241. Except where a longer time is specially allowed by law, no offence, the maximum punishment for which does not exceed imprisonment, for six months and/or a fine of five thousand shillings, shall be triable by a subordinate court, unless the charge or complaint relating to it is laid within twelve months, from the time when the matter of such charge or complaint arose.

Procedure in case of offence proving unsuitable for summary trial

242. If in the course of a trial it appears to the magistrate at any stage of the proceedings that the case is one which ought to be tried by the High Court, he shall stop further proceedings and commit the accused person for trial upon information before the High Court, and in such case he shall follow the procedure hereinafter directed in relation to

(iii) Provisions Relating to Committal of Accused Persons of Trial Court for Trial

(a) Committal of Accused Persons by Subordinate Courts to the High Court for Trial

Power to commit for trial

243. Any magistrate may, unless precluded from so doing by the terms of his appointment, commit any person for trial to the High Court.

244. Whenever any charge has been brought against any person of an offence not triable by a subordinate court or as to which the court is advised by the Director of Public Prosecutions in writing or otherwise that it is not suitable to be disposed of upon summary trial committal proceedings shall be held according to the provisions hereinafter contained by a subordinate court of competent jurisdiction.

Courts to hold committal proceedings

245.-(1) After a person is arrested, or upon the completion of investigations and the arrest of any person or persons, in respect, of the commission of an offence triable by the High Court, the person arrested shall be brought within the period prescribed under section 32 of this Act before a subordinate court of competent jurisdiction within whose local limits the arrest was made, together with the charge upon which it is proposed to prosecute him, for him to be dealt with according to law, subject to this Act.

Procedure on arrest

(2) Whenever a person is brought before or subordinate court pursuant to sub-section (1), the magistrate concerned shall read over and explain to the accused person, the charge or charges set out in the charge sheet in respect of which it is proposed to prosecute the accused, but the accused, person shall not be required to plead or make any reply to the charge.

(3) After having read and explained to the accused the charge or charges the magistrate shall address to him the following words or words to the like effect;

"This is not your trial. If it is so decided, you will be tried later in the High Court, and the evidence against you will then be adduced. You will then be able to make your defence and call witnesses on your behalf".

(4) After a person is committed to remand prison or on bail by a subordinate court or after the investigations have been completed, but before the suspect is arrested, the police officer, or other public officer in charge of the relevant criminal investigations under this Act, shall forthwith cause the statements in quintuplicate of, persons intended to be called as witnesses at the trial to be properly typed out, conveniently compiled and sent, along with the police case file, to the Director of Public Prosecutions or any other public officer designated by him in that behalf.

(5) If the Director of Public Prosecutions or that other public officer, after studying the police case file and the statements of the intended witnesses, is of the view that the evidence available insufficient to warrant mounting a prosecution, or it is otherwise inadvisable to prosecute, he shall, where the accused has already been charged, immediately enter *nolle prosequi*; unless he has reason to believe that further investigations can change the position, in which case he shall cause further investigations to be carried out.

(6) If the Director of Public Prosecutions or that other public officer, after studying the police case file and the statements of the intended witnesses, decides that the evidence available, or the case as such, warrants putting the suspect on trial, he shall draw up or cause to be drawn up an

information in accordance with law, and when signed by him, submit it, together with three copies of each of the statements of witnesses sent to him under sub-section (4), including any document containing the substance of the evidence of any witness who has not made a written statement.

(7) After an information is filed in the High Court, the Registrar shall cause a copy of it to be delivered to the district court Where the accused was first presented or within the local limits of which the accused resides.

Committal
for trial
by court

246.-(1) Upon receipt of the copy of the information and the notice the subordinate court shall summon the accused person from remand prison or, if not yet arrested, order his arrest and appearance before to deliver to him, or to his counsel a copy of the information and notice of trial delivered to it under section 245 (7) and commit him for trial by the Court; and the committal order shall be sufficient authority for the person in charge of the remand prison concerned to remove the accused person from prisons on the specified date and to facilitate his appearance before the court.

(2) Upon appearance of the accused person before it, the subordinate court shall read and explain or cause to be read and explained to the accused person the information brought against him as well as the statements or documents containing the substance of the evidence of witnesses whom the Director of Public Prosecutions intends to call at the trial.

(3) After complying with the provision of the foregoing sub-sections the court shall address to the accused person the following word or words to the like effect;

"You have now heard the substance of the evidence that the prosecution intends to call at your trial. You may either reserve your defence, which you are at liberty to do, or say anything which you may wish to say relevant to the charge against you. Anything you say will be taken down and may be used in evidence at your trial".

(4) Before the accused person makes any statement the court shall state to him and give clearly to understand that he has nothing to hope from any promise of favour and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt, but that whatsoever he then says may be given in evidence on his trial notwithstanding the promise or threat.

(5) Everything that the accused persons says shall be recorded in full and shall be shown or read over to him and he shall be at liberty to explain or add to anything contained in the record thereof.

(6) When the record of the statement, if any, made by the accused is made confirmable to what he declares is the truth, the record shall be attested by the magistrate who shall certify that such statement was taken in his presence and hearing and contains accurately the whole statement made by the accused person. The accused person shall sign or attest by his mark such record. If he refuses the court shall add a note of his refusal and the record may be used as if the accused had signed or attested it.

247. Immediately after complying with the provisions of sections 245 to 246 the court shall make the list of all witnesses whom the Director of Public Prosecutions intends to call and shall ask the accused person whether he intends to call witnesses at the trial and, if so, whether he desires to give their names and addresses so that they may be summoned. The court shall thereupon, record the names and addresses of any such witnesses whom the accused may mention.

Witness for prosecutor and defence

248.-(1) If from any reasonable cause to be recorded in the proceedings the court considers it necessary or advisable to adjourn the proceedings the court may, from time to time, by warrant, remand the accused for a reasonable time, not exceeding fifteen days at any one, time to some prison or any other place or security.

Adjourning proceedings

(2) Where the remand is for not more than three days the court may, by word of mouth, order the officer or person in whose custody the accused person is, or any other fit officer or person, to continue to keep the accused in his custody and to bring him up at the time appointed for the commencement or continuance of the inquiry.

(3) During a remand, a court may at anytime order the accused to be brought up before it.

(4) Subject to the provision of section 148 the court may admit an accused on remand to bail.

249.-(1) A person who has been committed for trial before the High Court shall be entitled at any time before the trial to have a copy of the record of the committal proceeding without payment.

Accused entitled to copy proceedings

(2) The court shall, at the time Of committing him for trial inform the accused person of his right to a copy of record of the committal proceedings without payment.

(3) Every record of the proceedings supplied to the accused pursuant to this section shall contain a copy of the charge or charges, copies of the statements and documents produced to the court during the committal proceedings and copy of the record of the proceedings before the court

250.-(1) A prosecutor may at any time during the trial before the High Court, apply to the court to summon any person whose attendance may be required at the trial to give evidence or to produce any document and to bind such person to appear at the trial.

Court may bind witness to appear at trial

(2) Upon the application being made under sub-section (1) the court shall summon the person in respect of whom such application is made to appear before it, and when he so appears, the court shall bind him by recognizance with or without sureties as it may deem requisite to appear at the trial in compliance with any summons issued in accordance with section 268.

251. If a person required to enter into recognizance under section 241 refuses to enter into such recognizance, the court may commit him to prison or into the custody of any other officer of the court there to remain until such time as the trial has taken place or the case against the accused is otherwise disposed of, unless in the meantime such person enters into recognizance as required by the court.

Refusal to be bound over

(b) Preservation of testimony in Certain Cases

Taking
deposition
dangerously
ill or unable
to trial

252. Where it appears to a magistrate that any person, who is dangerously ill or hurt and not likely to recover or who, for any other reason whatsoever, may not be available to give evidence at the trial, is able to and willing to give material evidence relating to any offence, such court may take in writing, a statement on oath or affirmation of such person, and shall subscribe the same, and certify that it contains, accurately the whole of the statement made by such person, and the magistrate taking the statement shall certify his reason for taking the same and shall state the date and place when and where the same was taken, and shall preserve such statement and file for record:

Provided that where the statement is that of a person who by reason of immature age or want of religious belief ought not, in the opinion of the magistrate, to be sworn or affirmed, the statement may be taken without oath or affirmation.

Notice to
be given

253.-(1) Where any person is tinder a charge or has been committed for trial in respect of the offence to which such statement is expected to relate (in sections 257 and 258 referred to as the "accused person") reasonable notice shall be given of intention to take such statement both to the prosecutor and to such person.

(2) If such person is in custody, he may, and shall if he so requests, be brought by the officer in whose charge he is, under an order in writing of the magistrate, to the place where the statement is to be taken.

Opportunity
for cross-
examination
and
transmission
of state-
ments

254. Where such statement is taken in the presence of an accused person, such accused person or his advocate (the prosecutor also if he be present) shall be given an opportunity to put questions to the deponent and the answers of such deponent thereto shall form part of the statement; and, if the accused person is committed for trial, the statement shall be transmitted to the Registrar of the High Court, and a copy thereof to the Director of Public Prosecutions.

Use of
statements
in evidence

255.-(1) Every such statement duly subscribed and certified by the magistrate in the manner required by section 254 shall, without further proof, be admissible in evidence at any trial, whether before, the High Court or subordinate court in which the accused person is charged with the offence to which such statement relates if-

(a) the court is satisfied that the person who made the statement is dead, or that his attendance cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable; and

(b) the accused received notice of the court to take such statement as provided in section 243 and had, or might have had if he had chosen to be present, full opportunity of cross-examining the deponent.

(2) When any case in the course of which such statement has been admitted in evidence is finally disposed of, the statement shall be returned to the magistrate who took the same for filing in accordance with the provisions of section 255.

(3) Nothing in this section shall be construed as affecting the provisions of section 34 of the Evidence Act, 1967.

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No. 6

(c) Proceedings after Committal for Trial

256. When an accused person has been committed for trial the record of committal proceedings, duly signed and authenticated by the magistrate, shall be transmitted without delay by the committing court to the Registrar of the High Court and authenticated copies of the charge and proceedings aforesaid shall be forwarded to the Director of Public Prosecutions.

Transmission of records to the High Court

257. After the receipt of the copies of the record of committal proceedings in the High Court the Registrar or his deputy shall endorse or annex to every information filed as aforesaid and to every copy thereof delivered to the officer of the court or police officer for service thereof, a notice of trial which notice shall specify the particular sessions of the High Court at which the accused person is to be tried on the said information, and shall be in the following form, or as near thereto as may be:-

Notice of trial

"A.B.

Take notice that you will be tried in the information whereof this a true copy at the sessions of the High Court to be held at
 on the day of
 19....."

258. The Registrar shall deliver or cause to be delivered to the officer of the court or police officer serving the information a copy thereof with the notice of trial endorsed on the same or annexed thereto, and, if there are more accused persons committed for trial than one, then as many copies as there are such accused persons, and the officer of the court or police officer aforesaid shall, as soon as may be after having received the copy or copies of the information and notices or notices of trial, and three days at least before the day specified therein for trial, by himself or his deputy or other officer, deliver to the accused person or persons committed for trial the said copy or copies of the information and notice or notices, and explain to him or them the nature and interagency thereof; and when any accused person shall have been admitted to bail and cannot readily be found, he shall leave a copy of the said of the said information and notice of trial with someone of his household for him at his dwelling house or with someone of his bail for him, and if none such can be found, shall affix the said copy and notice to the outer or principal door of the dwelling house or dwelling houses of the accused person or of any of his bail:

Copy of information and notice of trial to be served

Provided always that nothing herein contained shall prevent any person committed for trial, and in custody at the opening of or during any session of the High Court, from being tried thereat, if he shall express his assent to be so tried and no special objection be made thereto on the part of the Republic.

259. The officer serving the copy or copies of the information and notice or notice of trial shall forthwith make to the registrar a return the made of service thereof.

Returns of services

Postpone-
ment of
trial

260.-(1) It shall be lawful for the High Court upon the application of the prosecutor or the accused person, if the court considers that there is sufficient cause for the delay, to postpone the trial of any accused person to the next sessions of the court held in the district or at some other convenient place, or to a subsequent session.

(2) The High Court may give such directions of the amendment of information and the service of any notices which the court may deem necessary in consequence of any order made under sub-section (1).

Information
to be
signed by
Director
of Public
Prosecutions

261. All information drawn up in pursuance of section 261 shall be in the name of and (subject to the provisions of section 92) signed by the Director of Public Prosecutions.

Form of
informa-
tions

262. Every information shall bear date of the day when the same is signed, and, with such modifications as shall be necessary to adapt it to the circumstances of each case, may commence in the following form:-

"In the High Court of Tanzania the day of 19
At the session holder at
on the day of 19
the court is formed by the Director of Public Prosecutions on behalf of
the United Republic that A.B is charged with the following offence
(or offences)".

Witness
to be
summoned

263. The Registrar of the High Court shall, before the commencement of the trial, issue summons for the attendance of the trial of all witnesses whose statements were produced during the Committee proceeding and all witnesses whose names and addresses were given to the committing magistrate by the accused.

PART VIII

PROCEDURE IN TRIALS BEFORE THE HIGH COURT

(a) Practice and the mode of Trial

Practice of
the High
Court in its
criminal
jurisdiction

264. The High Court may, subject to the provisions of this Act and any other written laws, regulate its own practice in the exercise of its criminal jurisdiction.

Trial before
High Court
to be with
aid of
assessors

265. All trials before the High Court shall be with aid or assessors the number of whom shall be two or more as the court thinks fit.

(b) Assessors

Liability to
serve as
assessor

266.-(1) Subject to exemptions under the provisions of section 267 and sub-section (3) of this section, all persons between the ages of twenty-one and sixty years shall be liable to serve as assessors.

(2) The High Court shall from time to time make rules regulating the area within which a person may be summoned to serve as an assessor.

(3) A person shall be disqualified to serve as an assessor if he was convicted and sentenced to a term of imprisonment exceeding six months for an offence involving moral turpitude.

(4) No proceedings shall be invalid only by the reason that any of the assessors was disqualified or exempt from serving as an assessor.

267. The following persons are exempt from liability to serve as assessors, namely;

Exemptions

- (a) Ministers and Members of National Assembly;
- (b) Judges and Magistrates;
- (c) persons actively discharging the duties of priests or ministers of their respective religions;
- (d) physicians, surgeons, dentists and apothecaries in actual practice;
- (e) legal practitioners in actual practice;
- (f) officers and men in the Armed Forces of the United Republic;
- (g) persons exempted from personal appearance in court under the provisions of the Code of Civil Procedure or any rules made thereunder;
- (h) persons disabled by mental or bodily infirmity;
- (i) officers of the Police and Prisons services;
- (j) such other officers of the government and such persons as may be exempted by the Chief Justice from liability to serve.

Acts, 1966
No. 49

No exemption by sex or marriage from liability to serve as assessor

268. A person shall not be exempted by sex or marriage from liability to serve as an assessor but any judge or magistrate may, in his discretion, on an application made by or on behalf of the prosecution or the accused or at his own instance, make an order that the assessors shall be composed only of men or of women only, as the case may require, or may on the application made by a woman to be exempted from service as an assessor in respect of any case by reason of the nature of the evidence to be given or of the issues to be tried, grant such exemptions.

(c) Attendance of Assessors

269.-(1) The Registrar of High court shall ordinarily not less than fourteen days before the day fixed for holding any sessions of the High Court, direct a resident of district magistrate for the time being exercising jurisdiction in the district in which such sessions are to be held to summon such number of persons to serve as assessors at the said sessions as to the Registrar may appear necessary, and such magistrate shall comply with such direction accordingly.

Summoning of assessor

(2) Where in accordance with the provisions of sub-section (1), a resident or district magistrate is directed to summon assessors, he shall select and summon persons whom he considers to be suitable and to be liable under the preceding sections to serve as assessors.

(3) Subject to the provisions of sub-section (1) and (2) a resident or district magistrate so directed by the Registrar if any circumstances he so deems, may delegate such selection to any administrative officer having jurisdiction in the same district or region.

Form of
summons

270. Every summons to an assessor shall be in writing and shall require his attendance at a time and place to be therein specified-

Objections
to
summons
to serve as
assessor

271.-(1) Any person who has been served with a summons issued under section 269 may, if he is of the opinion that he is of the not liable under the preceding section to serve as an assessor, appear without delay before a district or resident magistrate prior to the date when he is required by summons to attend and object to the summons and if such magistrate is satisfied that the said person is not liable to serve as an assessor he shall thereupon rescind the summons and discharge the said person from the attendance specified therein.

(2) Appearance before a district or resident magistrate under the provisions of sub-section (1) shall be by the person objecting personally except in case of person objecting, under the provisions of paragraph (he) of section 266 in which case a person who satisfied the magistrate that he is duly authorized to appear may appear on his behalf.

Excuses
from
attendance

272. The High Court, may for reasonable cause excuse any assessor from attendance at any particular sessions, and may, if it shall think fit, at the conclusion of any trial, direct that the assessors who have served at such trial shall not be suiranoned to serve again for the period of twelve months.

List of
assessor
attending

273. At each session the High Court shall cause to be made a list of the names of those who have attended as assessors at such sessions.

Penalty for
non-
attendance
of
assessors

274.-(1) Any person summoned to attend as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the High Court, or fails to attend after adjournment of the court after being ordered to attend, shall be liable by order of the High Court to a fine not exceeding five hundred shillings.

(2), Such fine shall be levied by the district or resident magistrate movable property belonging to such assessor within the local limits of jurisdiction of such magistrate.

(3) For good cause shown, the High Court may remit or reduce any fine so imposed.

(4) In default of recovery, of the fine by attachment and sale an assessor may, by order of the High Court be imprisoned as a civil prisoner for a term of fifteen days unless such fine is paid before the end of the said term.

(d) Arraignment

Pleading
to informa-
tion

275. The accused person to be tried before the High Court upon an information shall be placed at the bar unfettered, unless the court shall see cause otherwise to order, and the information shall be read, over to him by the Registrar or other officer of the court, and explained if need be by that officer or interpreted by the interpreter of the court, and such accused person shall be required to plead instantly thereto unless, where the accused person is entitled to service of a copy of the information, he shall object to the want of such service, and the court shall find that he has not been duly served therewith.

276.-(1) Every objection to any formal defect on the face an information of shall be taken immediately after the information has been read over to the accused person and not later.

(2) Where before a trial upon information or at any stage of such trial, it appears to the court that the information is defective, the court shall make such order for the amendment of the information as the court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendment cannot be made without injustice. All such amendments shall be made upon such terms as to the court shall seem just.

(3) Where an information is so amended, a note of the order for amendment shall be endorsed on the information, and the information shall be treated for the purposes of all proceedings in connection therewith as having been filed in the amended form.

(4) Where, before a trial upon information or at any stage of such trial, the court is of the opinion that the accused may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same information, or that for any reason it is desirable to direct that the accused should be tried separately for any one or more offences charged in an information, the court may order a separate trial on any count or counts of such information.

(5) Where, before a trial upon information or at any stage of such trial, the court is of the opinion that the postponement of the trial of the accused is expedient as a consequence of the exercise of any power of the court under this Act, the court shall make such order as to the postponement of the trial as appears necessary.

(6) Where an order of the court is made under this section for a separate trial or for postponement of a trial

(a) the court may order that the assessors are to be discharged from giving opinions on the count or counts the trial of which is postponed, or on the information, as the case may be; and

(b) the procedure on the separate trial of a count shall be the same in all respects as if the count had been found in a separate information, and the procedure in the postponed trial shall be the same in all respects (provided that the assessors, if any have been discharged) as if the trial had not commenced; and

(c) the court may make such order as to admitting the accused to bail, and as to the enlargement of recognizances and otherwise as the court thinks fit.

(7) Any power of the court under this section shall be in addition to and not in derogation of any other power of the court for the same or similar purposes.

277.-(1) If an information does not state, and cannot by any amendment authorized by the last preceding section be made to state, any offence of which the accused has had notice, it shall be quashed either on a motion made before the accused pleads or motion made in arrest of judgment.

Order for amendment of information separate trial and postponement of trial

Quashing of information

(2) A written statement of every such motion shall be delivered to the registrar or other officer of the court by or on behalf of the accused and shall be entered upon the record.

Procedure
in cast of
previous
conviction

278.-(1) Subject to sub-section (2) where an information contains a count charging an accused person with having been previously convicted of any offence, the procedure shall be as follows-

- (a) the part of the information stating the previous conviction shall not be read out in court, nor shall the accused be asked whether he has been previously convicted as alleged in the information, unless and until he has either pleaded guilty to or been convicted of the subsequent offence;
- (b) if he pleads guilty to or is convicted of the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the information;
- (c) if he answers that he has been previously convicted, the judge may proceed to pass sentence on him accordingly; but if he denies that he has been so previously convicted, or refuses to or does not answer such question, the court shall then hear evidence concerning such previous conviction.

(2) If upon the trial of any person for any such subsequent offence, such person shall give evidence of his own good character, it shall be lawful for the advocate for the prosecution, in answer thereto, to give evidence of the conviction of such person for the previous offence or offences before he is convicted of such subsequent offence, and the court shall inquire concerning such previous conviction or convictions at the same time that it inquires concerning such subsequent offence.

Plea of
"not
guilty"

279. Every accused person who, upon being arraigned upon any information by pleading generally thereto the plea of "not guilty" shall, without further form, be deemed to have put himself upon his trial.

Plea of
autrefois
acquitt and
autrefois
convict

280.-(1) Any accused person upon whom an information is filed may plead-

- (a) that he has been previously convicted or acquitted, as the case may be, of the same offence; or
- (b) that he has obtained a pardon at law for his offence.

(2) If either of such pleas are pleaded in any case and denied to be true in fact, the court shall try whether such plea is true in fact or not.

(3) If the court holds that the facts alleged by the accused do not prove the plea, or it finds that it is false in fact, the accused shall be required to plead to the information.

Refusal to
plead

281.-(1) If any accused person being arraigned upon any information stands mute of malice, or neither will, nor by reason of infirmity can, answer directly to the information, the court if it thinks fit, shall order the Registrar or other officer of the court to enter a plea of "not guilty" on behalf of such accused person, and the plea so entered shall have the same force and effect as if such accused person had actually pleaded the same, or else the court shall thereupon proceed to try whether the

accused person be of sound or unsound mind, and, if he shall be found of sound mind, shall proceed with the trial, and if he shall be found of unsound mind and consequently incapable of making his defence shall order the trial to be postponed, and the accused person to be kept meanwhile in safe custody in such place and manner as the court thinks fit and shall transmit the court record to the Attorney-General for consideration by the Minister. The Minister may order such accused person to be detained in a mental hospital or other suitable place of safe custody.

(2) Any subsequent proceedings in relation to the said accused person shall be regulated by section 217 and 218 of this Act.

282. If the accused pleads "guilty" the plea shall be recorded and he may be convicted thereon.

Plea of guilty

283. If the accused pleads "not guilty" or if the plea of "not guilty" is entered in accordance with the provisions of section 281, the court shall proceed to choose assessors, as hereinafter directed, and to try the case; save that the same assessors may aid in the trial of as many accused persons successively as the court thinks fit.

Proceedings after plea of "not guilty"

284. If, from the absence of witnesses or any other reasonable cause to be recorded in the proceedings, the court considers it necessary or advisable to postpone the commencement of or to adjourn any trial, the court may from time to time postpone or adjourn the trial on such terms as it thinks fit for such time as it considers reasonable, and may by warrant remand the accused to some prison or other place of security.

Power to postpone or adjourn proceedings

During a remand the court may at any time order the accused to be brought before it.

The court may on remand admit the accused to bail.

(d) Selection of Assessors

285. When a trial is to be held with the aid of assessors, the assessors shall be selected by the court.

Selection of assessors

286. If, in the course of trial with the aid of assessors, at any time before the finding any assessor is from any sufficient cause prevented from attending throughout the trial, or absents himself, and it is not practicable immediately to enforce his attendance, the trial shall proceed before the remaining assessors but only if they are not less than two in number, and where the trial so proceeds the remaining assessors shall be deemed in all respects to be properly constituted for the purpose of the trial and shall have power to return a verdict accordingly whether unanimous or by majority.

The absence of an assessor

287. If the trial is adjourned, the assessors shall be required to attend at the adjourned sitting, and at any subsequent sitting until the conclusion of the trial.

Assessors to attend at adjourned sittings

(c) Case for the Prosecution

Opening of
case for
prosecution

288. When the assessors have been chosen, the advocate for the prosecution shall open the case against the accused person, and shall call witnesses and adduce evidence in support of the charge.

Additional
witness for
prosecu-
tion

289.-(1) No witness whose statement or substance of evidence was not read at committal proceedings shall be called by the prosecution at the trial unless the prosecution has given a reasonable notice in writing to the accused person or his advocate of the intention to call such witness.

(2) The notice shall state the name and address of the witness and the substance of the evidence which he intends to give.

(3) The court shall determine what notice is reasonable, regard being had to the time when and the circumstances under which the prosecution became acquainted with the nature of the witness's evidence and determined to call him as a witness. No such notice need be given if the prosecution first became aware of the evidence which the witness would give on the date on which he is called.

Cross-
examination
of witnesses
for the
prosecu-
tion

290. The witnesses called for the prosecution shall be subject to cross-examination by the accused person or his advocate, and to re-examination by the advocate for the prosecution.

Statements
by medical
witnesses

291.-(1) In any trial before the High Court, any document purporting to be a report signed by a medical witness upon a purely medical or surgical matter, shall be receivable in evidence save that this sub-section shall not apply unless reasonable notice of the intention to produce the document at the trial, together with a copy of the document has been given to the accused or his advocate.

(2) The court may presume that the signature to any such document is genuine and that the person signing the same holds the office or had the qualifications which he professed to hold or to have when he so signed the same.

(3) Where any such evidence is received in evidence the court may, if it thinks fit, and shall, if so requested by the accused or his advocate, summon and examine or make available for cross-examination, the person who made the report, and the court shall inform the accused of his right to require the person who made the report to be summoned in accordance with the provisions of this sub-section.

(4) Notwithstanding the provisions of subsection (3), the court may dispense with the requirement of this sub-section where it is satisfied that the person who made the report is dead or that the attendance of such person cannot be procured without undue delay or expense.

Statement
of
evidence
of accused

292. Any statement of the accused person duly certified by the committing magistrate in the manner provided by section 246 may, whether signed by the accused person or not, be given in evidence without further proof thereof, unless it is proved that the magistrate purporting to certify the same did not in fact certify it.

293.-(1) When the evidence of the witnesses for the prosecution has been concluded, and the statement, if any, of the accused person before the committing court has been given in evidence, the court, if it considers, after hearing the advocates for the prosecution and for the defence, that there is no evidence that the accused or any one of several accused committed the offence or any other offence of which, under the provisions of section 312 to 321 inclusive of this Act, he is liable to be convicted, shall inform each accused person of his right-

Close of
case for
prosecution

- (a) to give evidence on his own behalf, and
- (b) to call witnesses in his defence,

and shall then ask the accused person, or his advocate, if it is intended to exercise any of the above rights and shall record the answer. They shall then call on the accused. to enter on his defence save where the accused person does not wish to exercise either of the above rights.

(2) If the accused, after he has been informed in terms of sub-section (1) elects to remain silent the court shall be entitled to draw an adverse inference against him and the court as well as the prosecution shall be permitted to comment on the failure by the accused to give evidence.

(3) Notwithstanding that the accused accepts or gives any evidence not on oath or affirmation he shall be subject to cross-examination by the prosecution.

(f) Case for the Defence

294. The accused person or his advocate may then open his case stating the fact or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution. The accused person may then give evidence on his own behalf and he or his advocate may examine his witnesses (if any), and after their cross-examination or re-examination (if any), may sum up his case.

Case for
the defence

295.-(1) In addition to the witnesses summoned pursuant to the provisions of section 268 the accused shall be allowed to examine any witness who is in attendance at the trial.

Additional
witnesses
for the
defence

(2) The accused shall not be entitled as of right to have any witness summoned other than the witnesses whose names and address were given by him to the magistrate at the committal proceedings, but any subordinate court may, after committal for trial and before the trial begins, and the court of trial may, either before or during the trial, issue a summons for the attendance of any person as a witness for the defence if the court is satisfied that the evidence is in any way material to the case.

296. If the person, or any one of several accused persons, adduces any evidence, the prosecutor shall be entitled to reply subject to the provisions of section 201.

Prosecu-
tor's reply

Where
accused
person
does not
give
evidence

297. If the accused person says that he does not mean to give or adduce evidence and the court considers that there is evidence that he committed the offence the advocate, for the prosecution shall then sum up the case against the accused person and the court shall then call on the accused person or personally or by his advocate to address the court.

(g) *Close of Hearing*

Delivery
of
opinion
by assessors
and giving
of
judgment

298.-(1) When the case on both sides is closed, the judge may sum up the evidence for the prosecution and the defence, and shall then require each of the assessors to state his opinion orally as to the case generally and as to any specific question of fact addressed to him by the judge, and shall record such opinion.

(2) The judge shall then give judgment, but in doing so, shall not be bound to confirm to the opinions of the assessors.

(3) If the accused person is convicted, the judge shall pass sentence on him according to law.

(4) Nothing in this section shall be construed as prohibiting the assessors, or any of them, from retiring to consider their opinions if they so wish or, during any such retirement or at any time during the trial, from, consultation with one another.

Conviction
where
proceedings
heard
partly by
one judge
and partly
by another

299.-(1) where any judge, after having heard and recorded the whole or any part of the evidence in any trial is for any reason unable to complete the trial or he is unable to complete the trial within a reasonable time, another judge who has and who exercises jurisdiction may take over and continue the trial and the judge so taking over may act on the evidence or proceeding recorded by his predecessor, may, in the case of a trial re-summon the witnesses and recommence the trial; save that in any trial the accused may, when the second judge commences his proceedings, demand that the witnesses of any or them be re-summoned and re-heard and shall be informed of such right the second judge when he commences his proceeding.

(2) Nothing in sub-section (1) shall be construed as preventing a judge who has recorded the whole of the evidence in any trial and who, before passing the judgment and forwarding the record of the proceedings together with the judgment to the judge who has succeeded him for the judgment to be read over and, in the case of conviction, for the sentence to be passed by such other judge.

PART IX

CONVICTIONS, JUDGMENT, SENTENCES AND THEIR EXECUTION IN THE SUBORDINATE AND HIGH COURT

A.-Miscellaneous Provisions Relating to Convictions

When
offence
proved is
charged

300.-(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved but the remaining particulars are not proved, he may be convicted of the minor offence although he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he was not charged with it.

(3) For the purpose of this section the offences specified in section 222 of the Penal Code shall, where a person is charged with the offence of attempted murder under section 211 thereof, be deemed to be minor offences.

301. When a person is charged with an offence, he may be convicted of having attempted to commit that offence, although he was not charged with the attempt.

Person charged with any offence may be convicted if attempt

302.-(1) When a woman is charged with the murder of her newly born child and the court is of the opinion that she, by any willful act or omission, caused its death but at the time of the act or omission she had not fully recovered from the effect of giving birth to such child and that by reasons thereof or by reason of the effect of lactation consequent upon the birth of the child, the balance of her mind was then disturbed, she may, notwithstanding that the circumstances were such that but for the provisions of section 199 of the Penal Code she might be convicted of murder, be convicted of the offence of infanticide although she was not charged with it.

(2) When a person is charged with the murder or manslaughter of any child or with infanticide, or with an offence under section 150 or section 151 of the Penal Code (relating to the procuring of abortion), and the court is of opinion that he is not guilty of murder, manslaughter or infanticide or of an offence under section 150 or section 151 of the Penal Code but that he is guilty of the offence of child destruction under section 219 of the Penal Code, he may be convicted of that offence although he was not charged with it.

(3) When a person is charged with the offence of child destruction and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under either section 150 or section 151 of the Penal Code, he may be convicted of that offence although he was not charged with it.

(4) When a person is charged with the murder or infanticide of any child or with child destruction and the court is of opinion that he is not guilty of any of the said offences but that he is guilty of the offence of concealment of birth, he may be convicted of that offence although he was not charged with it.

303. When a person is charged with manslaughter in connection with the driving of motor vehicle by him and the court is of the opinion that he is not guilty of that offence, but that he is guilty of an offence under section 42 of the Road Traffic Act, 1973 (relating to reckless or dangerous driving or careless driving) he may be convicted of all offence under either of those sections although he was not charged with it.

Alternative verdict under Road Traffic Act in certain manslaughter cases Acts, 1983 No. 8

Alternative
verdicts
in charges
of rape
and
kindred
offence
Cap. 20

304.-(1) When a person is charged with an offence under section 131 or section 132 of the Penal Code and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence under one of sections 135, 136, 140 and 158 of the Penal Code, he may be convicted of that offence although he was not charged with it.

(2) When a person is charged with an offence under section 158 of the Penal Code and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence under one of the sections 136 and 137 of the Penal Code, he may be convicted of that offence although he was not charged with it.

(3) When a person is charged with an offence under section 136 of the Penal Code and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under sub-section (1) or sub-section (3) of section 135 or under section 140 of the Penal Code, he may be convicted of that offence although he was not charged with it.

Person
charged
with
burglary
etc. may
be
convicted
of
kindred
offences

305. When a person is charged with an offence under one of the sections 294 to 298 of the Penal Code and the court is of opinion that he is not guilty of that offence but that he is guilty of any other offence under another of the said sections he may be convicted of that other offence although he was not charged with it.

Alternative
verdicts
in charges
of stealing
and
kindred
offences

306.-(1) When a person is charged with stealing anything and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence in respect of that thing under one of the sections 302, 304, 311 and 312 of the Penal Code, he may be convicted of that offence although he was not charged with it.

(2) When a person is charged with an offence under section 304 of the Penal Code and the court is of opinion that he is not guilty of that offence but that he is guilty of the offence of stealing the thing in respect of which he is charged he may be convicted of that offence although he was not charged with it.

(3) Where a person is charged with an offence under section 302 of the Penal Code and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under section 304 of the Penal Code, he may be convicted of that offence although he was not charged with it: and where a person is charged with an offence under section 304 of the Penal Code and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence under section 302 of the Penal Code, he may be convicted of that offence although he was not charged

(4) When a person is charged under section 311 of the Penal Code with the offence of receiving anything and the court is of opinion that he is not guilty of that offence but that he is guilty of retaining the thing, and when a person is charged under the said section with the offence of retaining anything and the court is of opinion that he is not guilty of that offence but that he is guilty of receiving the thing, then he may be convicted under the provisions of the said section of retaining or receiving, as the case may be, although he was not so charged.

307. Where any person is charged with an offence under sub-section (1) of section 9 of the Prevention of Corruption Act, 1971, and the court is of opinion that he did not corruptly acquire or receive the Property but that he is guilty of an offence under section 312 of the Penal Code in respect of such property, the court may convict him of such latter offence although he was not charged with it.

Alternative verdict in charge of being in possession of property of having been corruptly acquired Acts. 1971 No. 16

308. The provisions of section, 300 to 306, shall be construed as an addition to, and not in derogation of, the provisions of any other Act and the other provisions of this Code, and the provisions of sections 301 to 306 shall be construed as being without prejudice to the generality of the provisions of section 300.

Construction of section 300 to 306

309. If on any trial for a warrant offence the facts proved in evidence amount to a non-warrant offence, the accused shall not for that reason be acquitted of such a warrant offence; and no person tried for such warrant offence shall be liable afterwards to be prosecuted for a warrant offence on the same facts, unless the court shall think fit, in its discretion, to direct such person to be prosecuted for a non-warrant offence, whereupon such person may be dealt with as if he had previously been Put on trial for a warrant offence.

Person charge with a warrant offence not to be with a arrestable if a offence is proved

310. Any Person accused before any criminal court, other than a primary court may of right be defended by an advocate of the High Court, subject always to the provisions of any rules of court made by the High Court under powers conferred by Article 26 of the Tanganyika Order in Council, 1920 from time to time in force.

Right of an accused to be defended

B.- Judgment Generally

311.-(1) The judgment in every trial in any criminal court shall be pronounced in open court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties and their advocates if any; that where the judgment is in writing at the time, of pronouncement the judge or magistrate may, unless objection to such a course is taken by either the prosecution, or the defence, explain the substance of such judgment in. open court in lieu of reading such judgment in full.

Mode of delivering judgment

(2) The accused person shall, if in custody, be brought up, or, if not in, custody, be required by the court to attend, to hear judgment delivered except where his personal attendance during the trial has, been dispensed with and the sentence is one of fine only or he is acquitted.

(3) Subject to sub-section (2), where there are more than one accused persons and one or more of them do's not attend the court on the date on which, the judgment is to be delivered, the judge or magistrate may, in order to avoid undue delay in the disposal of the case, deliver the judgment notwithstanding his or their absence, as the case may be

(4) No judgment delivered by any court shall be deemed to be invalid by reason only of the absence of any party or his advocate on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their advocates, or any of them, the notice of such day and place.

(5) Nothing in this section shall be construed as to limit in anyway the provisions of section 400.

Content
Of
judgment

312.-(1) Every judgment under the provisions of section 311 shall, except as otherwise expressly provided by this Act, be written by, or reduced to writing under the personal direction and superintendence of, the presiding judge or magistrate in the language of the court, and shall contain the point or points for determination, the decision thereon and the reasons for the decision, and shall be dated and signed by such presiding officer as of the date on which it is pronounced in open court.

(2) In the case of conviction the judgment shall specify the offence of which, and the section of the Penal Code or other law under which the accused person is convicted, and the punishment to which he is sentenced.

(3) In the case of an acquittal the judgment shall state the offence of which the accused person is acquitted and shall direct that he be set at liberty.

Copy of
judgment
etc. to be
mailed to the
accused
or any
interested
party on
application

313.-(1) On the application of the accused person a copy of the judgment, or, when he so desires, a translation in his own language, if practicable, shall be given to him without delay. Such a copy or translation shall be given to him free of cost.

(2) Any interested party or person affected by the judgment may be provided with such copy of judgment on application:

Provided that such person pays the prescribed fee, unless the court, if it thinks fit for some reason, to give it to him free of costs.

C.-Sentences

(a) *Passing Sentences in the High Court*

Calling
upon
the
accused

314. If the judge convicts the accused person, or if he pleads guilty, it shall be the duty of the registrar or other officer of the court to ask whether he has anything to say why sentence should not be passed upon him according to law, but the omission so to ask him shall have no effect on the validity of the proceedings.

Mention in
arrest of
judgment

315.-(1) The accused person may, at any time before sentence, whether on plea of guilty or otherwise, move in arrest of judgment on the ground that the information does not, after any amendment which the court is willing and has power to make, state any offence which the court has power to try.

(2) The court may, in its discretion, either hear and determine the matter during the same sitting, or adjourn the hearing thereof to a future time to be fixed for that purpose.

(3) If the court decides in favour of the accused he shall be discharged from that information.

316. If no motion in arrest of judgment is made, or if the court decides against the accused person upon such motion, the court may sentence the accused person at anytime during the sessions.

Sentence

317. The court before which any person is tried for an offence reserve the giving of its final decision on questions raised at the trial, and its decision whenever given shall be considered as given at the time of trial.

Power to reserve decisions on question raised at trial

318.-(1) When any person has, in a trial before the High Court, been convicted of an offence, the judge may reserve and refer for the decision of a court consisting of two or more judges of the High Court any question which has arisen in the course of trial, and the determination of which would affect the event of the trial.

Power to reserve questions arising in the course of the trial

(2) If the judge reserves any such question, the person convicted shall pending the decision thereon, be remanded to prison or, if the judge thinks fit, be admitted to bail, and the High Court shall have power to review the case, or such part thereof as may be necessary, and finally determine such question and thereupon to alter the sentence passed by the trial judge and to pass such judgment or order as the High Court may think fit.

319. No judgment shall be stayed or reserved on the ground of any objection, which if stated after the information was read over to the accused person, or during the progress of the trial, might have been cured by amendment by the court, nor, for any informality in swearing the witnesses or any of them.

Objections cured by judgment

320. The court may, before passing the sentence, receive such evidence as it thinks fit, in order to inform itself as to the sentence proper to be passed.

Evidence for arriving at a proper sentence

321.-(1) without prejudice to the generality of section 320, the High Court may subject to the provisions of this section, for the purpose of assessing the proper sentence to be passed, take into consideration any other offence committed by the accused person but of which he has not been convicted.

Taking of the offences into account

(2) The High Court shall not take any offence into consideration unless-

- (a) it has been explained by the court to the accused person in ordinary language that the sentence to be passed upon him for the offence of which he has been convicted in those proceedings may be greater if the other offence is taken into consideration; and,
- (b) after such explanation as aforesaid, the accused person-
 - (i) admits the commission of the other offence; and
 - (ii) asks the court to take the other offences into consideration.

(3) Nothing in this section shall entitle the court, after taking into consideration, to pass upon an accused person any sentence in excess of the maximum sentence which could be awarded for the offence of which that person was convicted in those proceedings.

(b) Sentences of Death

Sentence
of hanging

322.-(1) When any person is sentenced to death, he shall suffer death by hanging.

(2) When any person is sentenced to death the sentence shall direct that he suffers death by hanging.

Accused
to be
informed
of right
appeal

323. When an accused person is sentenced to death, the court shall inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

Authority
for
detention

324. A certificate under the hand of the registrar or other officer of the court that sentence, of death has been passed, and naming the condemned, shall be sufficient authority for the detention of such person.

Record to
be sent to
President

325.-(1) As soon as conveniently may be after sentence of death has been pronounced, if no appeal from a sentence of death passed by the High Court, is preferred, or if an appeal from any sentence of death is preferred and the sentence is upheld on appeal, then as soon as conveniently may be after the determination of the appeal the presiding judge or magistrate exercising powers conferred on him by section 173 shall forward to the President a copy of the notes of evidence taken on the trial with a report in writing signed by him containing any recommendation or observations on the case he may think fit to make.

(2) After the said report has been considered the President shall communicate to the said judge or magistrate or his successor in office, the terms of any decision to which he may come thereon, and such judge or magistrate shall cause the tenor and substance thereof to be entered in the records of the court.

(3) The President shall issue a death warrant, or an order of the sentence of death to be commuted, or a pardon, under his hand and the seal of the United Republic to give effect to the said decision. If the sentence of death is to be carried out, the warrant shall state the place where and the time when execution is to be had, and shall give directions as to the place of burial of the body of the person executed. If the sentence is commuted for any other punishment, the order shall state that punishment. If the person sentenced is pardoned, the pardon shall state whether it is free, or to what conditions if any, it is subject.

(4) Subject to sub-section (3), the warrant may direct that the execution shall take place at such time and at such place, and that the body of the person executed shall be buried or cremated at such place, as shall be appointed by some officer specified in the warrant.

(5) The warrant or order, or pardon of the President shall be sufficient authority in law to all persons to whom the same is directed to execute the sentence of death or other punishment awarded, and to carry out the directions therein given in accordance with the terms thereof.

323. (1) Where any Court thinks that the Charge is proved, but is of opinion that, having regard to the Character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment, or that it is expedient to discharge the offender conditionally as hereinafter provided, the Court may, without proceeding to convict, either:

- (a) order such offender to be discharged after such admonition as to the Court as shall seem fit; or
- (b) discharge the offender conditionally on his executing a bond, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the order of the Court.

(2) An order under Sub-Section (1) shall, for the purpose of re-vesting or restoring stolen property, or in respect of matters relating to the restitution or delivers of property to the owner, have the like effect as a conviction.

(3) A bond executed under this Section may contain such conditions, as the court may, having regard to the particular circumstances of the case, order to be inserted therein with respect to all or any of the following matters:

- (a) for prohibition the offender from associating with undesirable persons, or from frequenting undesirable places;
- (b) as to abstention from intoxicating liquor, where the offender was drunkness or an offence committed under the influence of drink;
- (c) generally for securing that the offender should lead an honest and industrious life;
- (d) providing that the offender with his surety or sureties, if any, shall appear in chambers before the judge of the court, such intervals as may be specified in the order.

(d) Execution of Sentences

327. A warrant under the hand of the judge or magistrate by whom any person shall be sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within Tanzania Mainland, shall be issued by the sentencing judge or magistrate, and shall be full authority to the officer in charge of such prison and to all other persons for carrying into effect the sentence described in such warrant, not being a sentence of death. Every sentence shall be deemed to commence from, and to, include the whole of the day of the date on which it was pronounced, except where otherwise provided in this Act or in the Penal Code.

Warrant in
case of
sentences of
imprison-
ment

Warrant for
levy

328.-(1) Where a court orders money to be paid by an accused person or by a prosecutor or complainant for fine, penalty, compensation, costs, expenses or otherwise, the money may be levied on the movable and immovable property of the person ordered to pay the same by distress and the sale under warrant. If he shows sufficient movable property to satisfy the order his immovable property shall not be sold.

(2) Such person may pay or tender to the officer having the execution of the warrant the sum therein mentioned, together with the amount of the expenses of the distress up to the time of payment or tender, and thereupon the officer shall cease to execute the same.

(3) A warrant under this section may be executed within the local limits of jurisdiction of the court issuing it, and it shall authorise the distress and sale of any property belonging to such person when endorsed by a district or resident magistrate within the local limits of whose jurisdiction such property is found.

Objections
to
attachment

329.-(1) Any person claiming to be entitled to have a legal or equitable interest in the whole or part of any property attached in execution of a warrant issued under section 327, may, at any time prior to the receipt by the court of the proceeds of sale of such property, give notice in writing to the court of his objection to the attachment of such property. Such notice shall set out shortly the nature of the claim which such person (hereinafter in the section called the objector) makes to the whole or part of the property attached, and shall certify the value of the property claimed by him. Such value shall be deposed to an affidavit which shall be filed with the notice.

(2) Upon receipt of a valid notice given under subsection (1) the court shall, by an order in writing, addressed to the officer having the execution of the warrant, direct a stay of the execution proceedings.

(3) Upon the issue of an order under subsection (2) the court shall, by notice in writing, direct the objector to appear before such court and establish his claim upon a date to be specified in the notice.

(4) A notice shall be served upon the person whose property was, by the warrant issued under section 328, directed to be attached and, unless the property is to be applied to the payment of a fine, upon the person entitled to the proceeds of the sale of such property. Such notice shall specify the time and place fixed for the appearance of the objector and shall direct the person upon whom the notice is served to appear before the court at the same time and place if he wishes to be heard upon the hearing of the objection.

(5) Upon the date fixed for the hearing of the objection, the court shall investigate the claim and, for such purpose, may hear any evidence which the objector may give or adduce and any evidence given or adduced by any person served with a notice in accordance with sub-section (4).

(6) If, upon investigation of the claim, the court is satisfied that the property attached was not, when attached, in the possession of the person ordered to pay the money or of some person in trust for him, or in the occupancy of a tenant, or other person paying rent to him, or that, being in the possession of the person ordered to pay the money a

such time it was so in his possession not on his own account or as his own property but on account of or in trust for some other person or party on his own account and partly on account of some other person, the court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.

(7) If, upon the date fixed for his appearance, the objector fails to appear, or if, upon investigation of the claim in accordance with subsection (5), the court is of an opinion that the objector has failed to establish his claim, the court shall order the attachment and execution to proceed and shall make such order as to costs as it deems proper.

(8) Nothing in this section shall be deemed to deprive a person who has failed to comply with the requirements of subsection (1) of the right to take any other proceedings which, apart from the provisions of this section, may lawfully be taken by a person claiming an interest in property attached under a warrant.

330.-(1) When an offender has been sentenced to a fine only and to imprisonment in default of payment of the fine, the court may suspend the execution of the sentence of imprisonment and may release the offender on his executing a bond, within or without sureties, as the court thinks fit, conditioned for his appearance before such court on a date not being more than fifteen days from the time of executing the bond; and in the event of the fine not having been realized the court may direct the sentence of imprisonment to be carried into execution at once, or may from time to time extend the operation of the bond for a further period of not more than fifteen days.

Suspension of
execution of
sentence of
imprisonment
in default
of fine

(2) In any case in which an order for the payment of money has been made, or non-recovery of which is not paid forthwith, the court may require the person ordered to make such payment to enter into a bond as prescribed in subsection (1), and in default of his so doing may at once pass sentence of imprisonment as if the money had not been recovered.

(3) Without prejudice to the provisions of subsections (1) and (2), in any case in which an order for the payment of money has been made, and whether or not any order has been made for imprisonment in default of payment, the court may, in its direction, either the time such order is made or subsequently direct that the money may be paid by installments at such times and in such amounts as the court may think fit.

(4) Where under subsection (3), the court directs that money may be paid by installments and the whole of the amount outstanding shall unless the court "tends the period within which such installment is to be paid, become due and payable and all the provisions of this Act and of the Penal Code applicable in the case of non-payment of a fine shall apply to and in respect of the said amount outstanding.

331. If the officer having the execution of a warrant of distress reports that he can find no property or not sufficient property where upon to levy the money mentioned in the warrant with expenses, the court may by the same or a subsequent warrant commit the person ordered to pay to prison for a time specified, in the warrant, unless the money and all expenses of the distress, to be specified in the warrant, are sooner paid.

Commitment
for want
of distress

Commitment
in lieu of
distress

332. When it appears to the court that distress and sale of property would be ruinous to the person ordered to pay the money or his family or (by his confession or otherwise) that he has no property whereon the distress may be levied, or other sufficient reason appears to the court, the court may if it thinks fit, instead of or after issuing a warrant of distress, commit him to prison for a time specified in the warrant, unless the money and all expenses of the commitment and conveyance to prison, to be specified in the warrant, are sooner paid.

Payment in
full after
commitment

333. Any person committed for non-payment may pay the sum mentioned in the warrant, with the amount of expenses therein authorized, if any, to the person in whose custody he is, and that person shall thereupon release him if he is in custody for no other matter.

Part payment
offer after
commitment

334.(1) If any person who is confined in any prison, for non-payment of any sum adjudged by a court in its criminal jurisdiction to be paid under this Act under any Act, shall pay any sum in part satisfaction of the sum adjudged to be paid, the term of his imprisonment shall be reduced by a number of days bearing nearly as possible the same proportion to the total number of days for which such person is committed, as the sum of paid bears to the sum for which he is liable.

(2) The officer in charge of a prison in which a person is confined who is desirous of taking advantage of the provisions of the preceding subsection shall, on application being made to him by such person, at once take him before a court, and such court shall certify the amount by which the term of imprisonment originally awarded is reduced by such payment in part satisfaction, and shall make such order as is required in the circumstances.

Who may
issue warrant

335. Every warrant for the execution of any sentence may be issued either by the judge or magistrate who passed the sentence or by his successor in office or jurisdiction.

Limitation
of imprison-
ment after
commitment

336. No commitment for non-payment shall be for a longer period than six months, unless the law under which the conviction has taken place enjoins or allows a longer period.

(d) Miscellaneous Provisions for Dealing with Offenders

(a) First Offenders

Power to
release
probation
instead of
sentences to
punishment

337.-(1) In any case in which a person is convicted before any courts of any offence not punishable with death, and no previous conviction is proved against him, if it appears to the court before which he is convicted that, having regard to the youth, character, antecedents, health or mental condition, of the offender, or to the trivial nature of the offence, or to any extenuating circumstances under which the offence was committed, it is expedient to release the offender on probation, the court may instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, and during such

period (not exceeding three years) as the court may direct, to appear and receive sentence when called upon and in the meantime to keep the peace and be of good behaviour.

(2) An order under this section may be made by the High Court when exercising its power of revision.

338.-(1) If at any time the court, which convicted the offender, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(2) An offender when apprehended on any such warrant shall be brought forthwith before the court by which the warrant was issued, and such court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned for his appearing for sentence. Such court may, after hearing the case, pass sentence.

339. The Court, before directing the release of an offender under section 338, shall be satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place for which the court acts, or in which the offender is likely to live during the period named for his observance of the condition.

340. Section 337, 339 and 339 of this Act, shall not apply in any area of Mainland Tanzania to which the Probation of Offenders Ordinance applies.

(b) Offenders with previous Conviction

341.-(1) When any person-

- (a) has been convicted of any offence against sections 59 or 60 of the penal Code or section 19, 20, or 21 of the Societies Ordinance, or
- (b) having been convicted of any offence punishable with imprisonment for a term of three years or upwards or of an offence under section 342 of this Act,

the court may, if it thinks fit, at the time of passing sentence of imprisonment on such person, also order that he shall be subject to police supervision as hereinafter provided for a period not exceeding five years from the date of his release from prison.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) An order under this section may be made by the High Court when exercising its powers of revision.

(4) Every such order shall be made out in the prescribed form and in addition be stated in the warrant of commitment.

342.-(1) A court may at any time direct that a person shall, whilst subject to police supervision and at large in Tanzania, comply with all or any of the following requirements and may vary any such direction at any time:-

- (a) To reside within the limits of any specified district;

Provisions in case of offender failing to serve conditions of his recognizance

Conditions as to abide of offender

Sections 336, 337 and 338 not to apply in certain circumstances

Person twice convicted may be subjected to police supervision

Requirements from person subject to police supervision

- (b) not to transfer his residence to any other district without the written consent of the administrative officer or police officer in charge of such district;
- (c) not to leave the district in which he resides without the written consent of the administrative officer or police officer in charge of such district;
- (d) at all times to keep the police office, or if there is no police officer the administrative officer in charge of the district in which he resides notified of the house or place in which he resides;
- (e) to present himself, whenever called upon so to do by the administrative officer or police officer in charge of the district in which he resides, at any place in such district.

(2) For the purpose of giving any directions or of varying any directions under sub-section (1) of this section, a court may issue a summons to a person to whom the said subsection relates and who is within the jurisdiction of such court requiring his attendance before such court at such time and place as may be specified, and the provisions of sections 143, 144, 145, 146 and 147 of this Act shall apply *mutatis mutandis* to such person as they apply to a witness.

(3) The Minister may make rules for carrying out the provisions of this section.

Failure to
comply
with
require-
ments
under
section 341

343. If any person subject to police supervision who is at large in Tanzania refuses or neglects to comply with any requirement prescribed by the last preceding section or by any rule made thereunder, such person shall, unless he proves to the satisfaction of the court before which he is tried that he did his best to act in conformity with the law, be guilty of an offence and liable to imprisonment for a term not exceeding six months and on the second or any subsequent conviction for such offence to imprisonment for a term not exceeding twelve months.

(c) Defects in Orders of Warrant

Errors and
ommis-
sions in
orders and
warrant

344. The court may at any time amend any defect in substance or in form in any order or warrant, and no omission or error as to time and place, and no defect in form in any order or warrant given under this Act, shall be held to render void or unlawful any act done or intended to be done by virtue of such order or warrant, provided that it is therein mentioned, or may be inferred therefrom, that it is founded on a conviction or judgment and there is a valid conviction or judgment to sustain the same.

D.-Miscellaneous Powers of the Court to Order Compensations, Gifts, Forfeiture, etc. Persons

(a) Costs and Compensations

Gifts
against
accused

345.-(1) It shall be lawful for a judge of the High Court or any magistrate to order any person convicted before him of an offence to pay to the public or private prosecutor, as the case may be, such reasonable

costs as to such judge or magistrate may seem fit, in addition to any other penalty imposed; save that such costs shall not exceed four thousand shillings in the case of the High Court or two thousand shillings in the case of a subordinate court.

(2) It shall be lawful for a judge of the High Court or any magistrate who acquits or discharges a person accused of an offence, if the prosecution for such offence was originally instituted on a summons or warrant issued by a court on the application of a private prosecutor, to order such private prosecutor to pay to the accused such reasonable costs as to such judge or magistrate may seem fit; save that such costs shall not exceed two thousand shillings in the case of an acquittal or discharge by the High Court or one thousand shillings in the case of an acquittal or discharge by a subordinate Court; save further that no such order shall be made if the judge or magistrate shall consider that the private prosecutor had reasonable grounds for making his complaint.

(3) The costs awarded under this section may be awarded in addition to any compensation awarded under section 347.

(4) In this section-

"public prosecutor" means any person prosecuting for or on behalf of the United Republic or for on behalf of a public authority;

"private prosecutor" means any prosecutor other than a public prosecutor;

346. An appeal shall lie against any order awarding costs under the last preceding section, if made by a magistrate to the High Court and if by a judge to the Court of Appeal. The Appeal court shall have power to give such costs of the appeal as it shall deem reasonable.

Order to pay

347. If on the acquittal of an accused person any court shall be of opinion that the charge was frivolous or vexatious, such court may order the complainant to pay to the accused person a reasonable sum as compensation for the trouble and expense to which such person may have been put by reason of such charge in addition to his costs.

Compensation in case of frivolous or vexatious charge

348.-(1) When an accused person is convicted by any court of any offence not punishable with death and it appears from the evidence that some other person, whether or not he is the prosecutor or a witness in the case, has suffered material loss or personal injury in consequence of the offence committed and that substantial compensation is, in the opinion of the court, recoverable by that person by civil suit, such court may, in its discretion and in addition to any other lawful punishment order the convicted person to pay to that other person such compensation, in kind or in money, as the court deems fair and reasonable.

Power to order accused to pay compensation Acts, 1979 No. 2 Sch.

(2) When any person is convicted of any offence under Chapters XXVI to XXXI both inclusive of the Penal Code, the power conferred by section (1) shall be deemed to include a power to award compensation to any bona fide purchaser of any property in relation to which the offence was committed for the loss of such property if the same is restored to the possession of the person entitled thereto.

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(3) Any order for compensation under this section shall be subject to appeal if an order for the payment of a fine of a similar amount would have been subject to appeal and no payment of compensation shall be made before the period allowed for presenting the appeal has elapsed or, if an appeal be presented, before the decision on the appeal.

Costs and compensation to be specified in order, how recoverable

349. The sums allowed for costs or compensation shall in all cases be specified in the conviction or order, and the same shall be recoverable in like manner as any penalty may be recoverable under this Act; and in default of payment of such costs or compensation and in default of distress as hereinafter provided the person in default shall be liable to imprisonment for a term not exceeding six months unless such costs or compensation shall be sooner paid.

Power of costs to award expenses or compensation on out of fine

350.-(1) Wherever any court imposes a fine, or confirms on appeal; revision or otherwise a sentence of fine, or a sentence of which a fine, or forms part, the court may, when

- any part of the fine recovered to be passing judgment, order the whole or
- (a) in defraying expenses Properly incurred in the Prosecution;
 - (b) in the payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is in the opinion of the court recoverable by civil suit.

(2) If the fine is imposed in a case which is subject to appeal no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) At the time of awarding any compensation in any subsequent civil suit relating to the same matter, the court hearing the civil suit shall take into account any compensation paid or recovered under section 348.

(h) Forfeiture

Power to order forfeiture

351.-(1) Where a person is convicted of an offence and the court which passes sentence is satisfied that any property which was in his possession or under his control at the time of his apprehension-

- (a) has been used for the purpose of committing or facilitating the commission of any offence; or
- (b) was intended by him to be used for that purposes,

that property shall be liable to forfeiture and confiscation and any property so forfeited under this section shall be disposed of as the court may direct.

(2) Where the court orders the forfeiture or confiscation of any property as provided in sub-section (1) of this section but does not make an order for its destruction or for its delivery to any person, the court may direct that the property shall be kept or sold and that the same, or, if sold, the proceeds thereof shall be held as it directs until same person establishes to the court's satisfaction a right thereto. If no person established such a right within six months from the date of forfeiture or confiscation, such property or the proceeds thereof shall be paid into and form part of the Consolidated Fund.

(3) The power conferred by this section upon the court shall include the power to make an order for the forfeiture or confiscation or for the destruction or for the delivery to any person of such property, but shall be exercised subject to any special provisions regarding forfeiture, confiscation, destruction, detention or delivery contained in the written law wider which the conviction was had or in any other written law applicable to the case.

(4) When an order is made under this section in a case in which an appeal lies, such order shall not, except when the property is livestock or is subject to speedy and natural decay, be carried out until the period allowed for presenting such appeal has passed or when such appeal is entered until the disposal of such appeal.

(5) In this section any reference to-

- (a) "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but any property into or for which it is exchanged and anything acquired by such conversion or exchange, whether immediately or otherwise;
- (b) facilitating the commission of an offence shall include a reference to the taking of all steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection.

352. Where a court has made an order for the forfeiture or confiscation of an article the court or any justice may, if satisfied on information on oath-

- (a) that there is reasonable cause to believe that the article is to be found in any place or premises; and
- (b) that admission to the place or premises has been refused or that a refusal of such admission is apprehended,

issue a warrant of search which may be executed according to law.

Such
warrant for
forfeited
or confis-
cated
articles

(c) Disposal of Exhibits

353.-(1) Where anything which has been tendered or put in evidence in any criminal proceedings before any court has not been claimed by any person who appears to the court to be entitled thereto within a period of twelve months after the final disposal of such proceeding or if any appeal entered in respect thereof, such thing may be sold, destroyed or otherwise disposed of in such manner as the Court may by order direct and the proceeds of such sale shall be paid into the general revenues of the Republic.

Disposal
of exhibits

(2) If anything which has been tendered or put in evidence in any criminal proceeding before any court is subject to speedy and natural decay the court may, at any stage of the proceedings or any time after the final disposal of such proceedings, order that it be sold or otherwise disposed of but shall hold the proceeds of any such sale and, if unclaimed

at the expiration of a period of twelve months after the final disposal of such proceedings, or any appeal entered in respect thereof shall pay such proceeds into the general revenues of the Republic.

(3) Notwithstanding the provisions of subsection (1), the court may if it is satisfied that it would be just and equitable so to do, order that anything tendered, or put in evidence in criminal proceedings before it should be returned at any stage of the proceedings or at any time after the final disposal of such proceeding to the person who appears to be entitled thereto, subject to such conditions as the court may see fit to impose,

(4) Any order of a court made under the provisions of sub-section (1) or (2) shall be final and shall operate as a bar to any claim by or of any interest in such thing by virtue of any title arising prior to the date of such order.

(5) When an order is made under this section in a case which an appeal been lodged has been lodged such order shall not (except when the property is livestock or is subject to speedy and natural (decay) be carried out until the period allowed for lodging an appeal has elapsed, or when an appeal is lodged, until such appeal has been disposed of

(6) In this section the term "property" includes in the case of property regarding which an offence appears to have been committed not only such property as has been originally in the possession or under the control of any party but also any property into or for which the same may have been converted or exchanged and anything acquired by such conversion or exchange whether immediate or otherwise.

Disposed
of obscene or
defama-
tory
publication
noxious or
adulterated
find, etc

354. (1) On a conviction in respect of any obscene or defamatory publication, the court may order destruction of all the copies of the thing in respect of which the conviction was had and which are in the custody of the court or remain in the possession or power of the person convicted.

(2) The Court may in like manner on a conviction in respect of any noxious or adulteration food, drink, drug or medical preparation order the thing in respect of which the conviction was had to be destroyed.

Person
dispos-
sessed of
property
may
have it

355.-(1) Where any person is convicted of any offence attended by criminal force and it appears to the court that by such force any person has been dispossessed of any immovable property, the court may if it thinks fit order such person to be restored to the possession of the same.

(2) No such order shall prejudice any right or interest in such movable property which any person may be able to establish in a civil suit.

Public
officer
connected
with the
sale of
property
not to
purchase or
bid
for the
property

356. No public officer having any duty connected with the sale of any property under this Act shall, directly or indirectly, purchase or bid for that property.

E. Restitution of Property

Property
found on
accused
person

357. Where, upon the apprehension of a person charged with an offence, any property is taken from him, the court before which he is charged may order-

- (a) that the property or Part thereof be restored to the person who appears to the court to be entitled thereto, and, if he be the person charged, that it be restored either to him or to such other person as he may direct: or
- (b) that the property or a part thereof be applied to the payment of any fine or any costs or compensation directed to be paid by the person charged.

358.-(1) If any person guilty of an offence mentioned in chapters XXVI to XXXI, both inclusive, of the Penal Code, in stealing, taking, obtaining, extorting, converting or disposing of, or in knowingly receiving any property, is prosecuted to conviction by or on behalf of the owner of such property, the property shall be restored to the owner or his representative.

Property
stolen

(2) In every case referred to in this section the court before which such offender is convicted shall have power to award from time to time writs of restitution for the said property to order the restitution thereof in a summary manner, save that-

- (a) where goods as defined in the Sale of Goods Ordinance have been obtained by fraud or other wrongful means not amounting to stealing, the property in such goods shall not revert in the person who was the owner of the goods or his personal representative by reason only of the conviction of the offender: and
- (b) nothing in this section shall apply to the case of any valuable security which has been in good faith paid or discharged by some person liable to the payment thereof, or being a negotiable instrument has been in good faith taken or received by transfer or delivery by some person for a just and valuable consideration without any notice or without reasonable cause to suspect that the same has been stolen.

Cap. 214

(3) On the restitution of any stolen property if it appears to the court by the evidence that the offender has sold the stolen property to any person, and that such person has had no knowledge that the same was stolen, and that money has been found in possession of and taken from the offender on his apprehension the court may, on the application of such purchaser, order that out of such money a sum not exceeding the amount of the proceeds of such sale be delivered to the said purchaser.

(4) The operation of any order under this section shall unless the court before which the conviction takes place direct to the contrary in any case in which the title to the property is not in dispute be suspended-

- (a) in any case until the time for appeal has elapsed; and
- (b) in any case where an appeal is lodged, until the determination of the appeal, and in cases where the operation of any such order is suspended until the determination of the appeal the order shall not take effect as to property in question if the conviction is quashed on appeal. The High Court may made provision by rules for securing the safe custody of any property, pending the suspension of the operation of any such order.

(5) Any person aggrieved by an order made under this section may appeal to the High Court and upon the hearing of such appeal, the court may, by order annul or vary any order made on a trial for the restitution of any property to any person, although the conviction is not quashed; and the order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

PART X

APPEALS

(a) Appeals *Generally*

Appeal to
the High
Court

359.-(1) Save as hereinafter provided, any person aggrieved by any finding, sentence or order made or passed by a subordinate court other than a subordinate court exercising its extended powers by virtue of an order made under section 173 of this Act may appeal to the High Court and such subordinate court shall at the time when such finding, sentence or order is made or passed, inform such person of the period of time within which, if he wishes to appeal, he is required to give notice of his intention to appeal and to lodge his petition of appeal.

(2) Any appeal to the High Court may be on a matter of fact as well as on a matter of law.

No appeal
on a plea
of guilty

360.-(1) No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by a subordinate court except as to the extent or legality of the sentence.

(2) Except with the leave of the High Court, no appeal shall be allowed in cases in which a subordinate court has passed a sentence of a fine not exceeding one thousand shillings only, or of a corporal punishment only imposed on a person under sixteen years of age, or from a sentence of imprisonment in default of the payment of a fine if no substantive sentence of imprisonment has been passed.

(3) No sentence which would not otherwise be liable to appeal shall be appealable on the ground that the person convicted is ordered to find security to keep the peace.

Limitation

361. No appeal from any such findings, sentence or order as aforesaid shall be entertained unless the appellant-

- (a) shall have given notice of his intention to appeal within ten days from the date of the findings, sentence or order, or in the case of a sentence of corporal punishment only, within three days of the date of such sentence; and
- (b) shall have lodged his petition of appeal within forty-five days from the date of the finding, sentence or order:

Provided that in computing the said period of forty-five days the time required for obtaining a copy of the judgment or order appealed against shall be excluded;

And provided further that the High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed.

362.-(1) Every appeal shall be made in the form of a petition in writing presented by the appellant or his advocate, and every such petition shall, (unless the High Court otherwise directs) be accompanied by a copy of the judgment or order appealed against.

Petition of appeal

(2) The petition shall contain particulars of the matters of law or of fact in regard to which the subordinate court appealed from is alleged to have erred.

363. If the appellant is in prison, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the prison, who shall thereupon forward such petition and copies to the Registrar of the High Court.

Appellant in prison

364.-(1) On receiving the petition and copy required by section 62, the High Court shall peruse the same and-

Summary rejection of appeal

- (a) If the appeal is against sentence and is brought on the grounds that the sentence is excessive and it appears to the court that there is no material in the circumstances of the case which could lead it to consider that the sentence ought to be reduced; or
- (b) If the appeal is against conviction and the court considers that the evidence before the lower court leaves no reasonable doubt as to the accused's guilt and that the appeal is frivolous or is without substance; or
- (c) If the appeal is against conviction and the sentence and the court considers that the evidence before the lower court leaves no reasonable doubt as to the accused's guilt and that the appeal is frivolous or is without substance and that there is no material in the judgment for which the sentence ought to be reduced, the court may forthwith summarily reject the appeal by an order certifying that upon perusing the record, the court is satisfied that the appeal has been lodged without any sufficient ground of complaint.

(2) Notice of any order made under the provisions of this section shall be forthwith given to the Director of Public Prosecutions.

365. If the High Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his advocate, and to the Director of Public Prosecutions, of the time and place at which such appeal will be heard and shall furnish the Director of Public Prosecutions with a copy of the proceedings and of the grounds of appeal; save that such notice need not be given to the appellant or his advocate if it has been stated in the petition of appeal that the appellant does not wish to be present and does not intend to engage an advocate to represent him at the hearing of the appeal.

Notice of time, place and hearing

Powers of
the High
Court

366.-(1) At the hearing of the Appeal, the appellant or his advocate may address the court in support of the particulars set out in the petition of appeal and the public prosecutor, if he appears, may then address the court. The Court may invite the appellant or his advocate to reply upon any matters of law or fact raised by the public prosecution in his address. The court may then, if it considers there is, not sufficient ground for interfering, dismiss the appeal or may-

- (a) in an appeal from a conviction-
 - (i) reverse the finding and sentence, and acquit the accused or discharge him under section 38 of the Penal Code or order him to be re-tried by a court of competent jurisdiction or direct the subordinate court to hold a committal proceedings; or
 - (ii) alter the finding, maintaining the sentence, or with or without altering the finding, reduce or increase the sentence; or
 - (iii) with or without such reduction or increase and with or without altering the finding, alter the nature of the sentence;
- (b) in an appeal against sentence, increase or reduce the sentence or alter the nature of the sentence;
- (c) in an appeal from any other order, alter or reverse such order, and in any such case may make any amendment or any consequential or incidental order that may appear just and proper.

(2) (a) An appellant whether in custody or not shall be entitled to be present at the hearing of an appeal.

(b) The right of an appellant who is in custody to be present at the hearing of the appeal shall be subject to his paying all expenses incidental to his transfer to and from the place where the court sits for the determination of the appeal; save that the court may direct that the appellant be brought before the court in any case in which, in the opinion of the court, his presence is desirable for the due determination of the appeal, in which case such expenses shall be defrayed by the Government.

(3) Nothing in this section shall be construed as precluding the Court from inflicting a greater Punishment than the punishment which might have been inflicted by the court which have been inflicted by the court which imposed the sentence.

Order of
the High
Court to
be
certified
to lower
court

367.-(1) When a case is decided on appeal by the High Court, it shall certify its judgment or order to the Court by which the conviction, sentence or order appealed against was recorded or passed.

(2) The court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court, and, if necessary the records shall be amended accordingly.

Suspension
of
sentences
and
admission
to bail
pending
appeal

368.-(1) After the entering of an appeal by a person entitled to appeal, the High Court or the subordinate Court which convicted or sentenced such person may, for reasonable cause to be recorded by it in writing-

- (a) in the case of a person sentenced to a term of imprisonment, order-
- (i) that such person be released on bail with or without sureties pending the hearing of his appeal; or
 - (ii) that the execution of the sentence appealed against be suspended pending the hearing of his appeal in which case such person shall be treated as a remand prisoner pending the hearing of his appeal; and
- (b) in any other case order that the execution of the sentence or order appealed against shall be suspended pending the hearing of his appeal.

(2) If the appeal is ultimately dismissed and the original sentence (being a sentence of imprisonment) is confirmed or some other sentence of imprisonment substituted there for, the time during which the appellant has been released on bail, or during which the sentence has been suspended shall be excluded in computing the term of imprisonment to which he is finally sentenced.

369.-(1) In dealing with an appeal from a subordinate court the High Court if it thinks additional evidence is necessary shall record its reasons, and may either take such evidence itself or direct it to be taken by a subordinate court.

Further
evidence

(2) When the additional evidence is taken by a subordinate court, such court shall certify such evidence to the High Court which shall thereupon proceed to dispose of the appeal.

(3) Unless the High Court otherwise directs, the accused or his advocate shall be present when the additional evidence is taken.

(4) Evidence taken in pursuance of this section shall be taken as if it were evidence taken at a trial before a subordinate court.

370. Appeals from subordinate courts shall be heard by one judge of the High Court except when in any particular case the Chief Justice shall direct that the appeal be heard by two or more judges of the High Court. Such direction shall be given before the hearing of the appeal or at any time before judgment is delivered.

Number
of judges
on appeal

If on the hearing of an appeal the court is equally divided in opinion the appeal shall be dismissed.

371. Every appeal from a subordinate court (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.

Abatement
of appeal

(b) Revision

372. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

Power of
the High
Court to
call for
records

Power of
the High
Court on
revision

373.-(1) In the case of any proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may-

- (a) in the case of conviction, exercise any of the powers conferred on it as a court of appeal by sections 366, 368 and 369 and may enhance the sentence;
- (b) in the case of any other order other than an order of acquittal, alter or reverse such order, save that for the purposes of this paragraph a special finding under sub-section (1) of section 219 of this Act shall be deemed not to be an order of acquittal.

(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence; save that an order reversing an order of a magistrate made under section 129 shall be deemed not to have been made to the prejudice of an accused person within the meaning of this sub-section.

(3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence, which in the opinion of the High Court the accused has committed, than might have been inflicted by the court which imposed the sentence.

(4) Nothing in this section shall be deemed to preclude the High court converting a finding of acquittal into one of conviction where it deems necessary so to in the interests of justice.

Discretion
of Court
as to
hearing
parties

374. No party has any right to be heard either personally or by advocate before the High Court when exercising its power of revision; save that such court may, if it thinks fit, when exercising such powers, hear any party either personally or by advocate, and that nothing in this section shall, be deemed to affect subsection (2) of the last preceding section.

Number
of
Judges in
revision

375. All proceedings of the High Court in the exercise of its revisional jurisdiction may be heard and any judgment or order thereon may be made or passed by one judge:

Provided that when the court is composed of more than one judge and is equally divided in opinion, the sentence or order of the subordinate court shall be upheld.

High Court
order to be
certified
to lower
court

376. When a case is revised by a High Court it shall certify its decision or order to the court by which the sentence or order so revised was recorded or passed, and the court to which the decision or order is so satisfied shall thereupon make such orders as are conformable to the decision certified, and, if necessary, the record shall be amended in accordance therewith.

(c) Appeals by Director of Public Prosecutions

Interpreta-
tion

377. In the following section of this Part unless the context otherwise requires-
"Director of Public Prosecutions shall include any officer subordinate to him acting in accordance with his general or special instructions;

"respondent" means the person who was the accused in the proceedings to which the appeal under section 390 relates and who may be affected by any order of the High Court on such appeal.

378.-(1) Where the Director of Public Prosecutions is dissatisfied with any acquittal, finding, sentence or order made or passed by a subordinate court other than a subordinate court exercising its extended powers by virtue of an order made under section 173 of this Act he may appeal to the High Court.

Appeal by
Director
of
Public
Prosecutor

(2) An appeal to the High Court under this section may be on a matter of fact as well as on a matter of law.

379. No appeal under section 370 shall be entertained unless the Director of Public Prosecutions-

Limitation

- (a) shall have give notice of his intention to appeal to the subordinate court within thirty days of the acquittal, finding, sentence or order against which he wishes appeal; and
- (b) shall have lodged his petition of appeal within forty-five days from the date of such acquittal, finding, sentence or order; save that-
 - (i) in computing the said period of forty-five days the time requisite for obtaining a copy of the judgment or order appealed against shall be excluded; and
 - (ii) the High Court may for good cause admit an appeal notwithstanding that the periods of limitation prescribed in this section have elapsed.

380.-(1) Every appeal under section 370 shall be made in the form of a petition in writing presented by the Director of Public Prosecutions and shall, unless the High Court otherwise directs, be accompanied by a copy of the judgment or order appealed against.

Petition of
appeal

(2) The petition shall contain particulars of the matters of law or fact in regard to which the subordinate court appealed from is alleged to have erred.

381. Where a petition of appeal is lodged with the High Court in accordance with the provisions of section 380 the High Court shall cause notice to be given to the respondent or to his advocate, and every Such notice shall state the time and place at which such appeal will be heard and shall be accompanied by a copy of the petition of appeal and a copy of the Judgment or order appealed against.

Notice of
time less
and
hearing

382.-(1) At the hearing of an appeal under section 378 the Director of Public Prosecutions may address the court in support of the particulars set out in the petition of appeal and the respondent or his advocate may then address the court. The court may invite the Director of Public Prosecutions to reply upon any matter of law or fact raised by the respondent or his advocate. The court may then, if it considers there is not sufficient ground for interfering, dismiss the appeal or may-

Director
of
Public
Prosecu-
tions may
address
the court

- (a) in an appeal from acquittal-

- (i) reverse the finding, convict the respondent of the offence with which he could have been convicted by the subordinate court, and either proceed to sentence him or remit the case to the subordinate court for passing the sentence; or
- (ii) order the respondent to be tried by a court of competent jurisdiction or
- (iii) direct the subordinate court to hold committal proceedings;
- (b) in an appeal against sentence, increase or reduce the sentence or alter the nature of the sentence;
- (c) in an appeal from any other order, alter or reverse such order and in any such case may make any amendment or any consequential or incidental order that may appear just and proper.

Non
attendance
of parties

383.-(1) Where, on the day fixed for the hearing of an appeal under section 378 or any other date to which the hearing may be adjourned, the Director of Public Prosecutions does not appear when the appeal is called on for hearing, the High Court may make an order that the appeal be dismissed.

(2) Where the Director of Public Prosecutions appears and the respondent or his advocate does not appear and the High Court is satisfied that the respondent or his advocate was duly served with notice of appeal, the High Court may proceed to hear the appeal ~~expert~~ or may adjourn the hearing to another date and give notice thereof to the respondent or his advocate.

(3) When an appeal is dismissed under subsection (1) the Director of Public Prosecutions may apply to the court for the re-admission of the appeal, and where he satisfies the court that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing the High Court may re-admit the appeal.

(4) Where at the hearing of an appeal the respondent does not appear personally the High Court may make an order requiring the personal attendance of the respondent and, if the respondent fails to comply with such order, may issue a warrant for the arrest and production of the respondent before the High Court on a date and time specified in the warrant.

Further
evidences

384.-(1) In dealing with an appeal under section 378 the High Court, if it thinks additional evidence is necessary, shall record its reasons and may either take such evidence itself or direct it to be taken by a subordinate court.

(2) When the additional evidence is taken by a subordinate court the court shall certify such evidence to the High Court which shall thereupon proceed to dispose of the appeal.

(3) No additional evidence shall be taken under this subsection save in the presence of the respondent or his advocate and such evidence shall be taken as if it were evidence taken at a trial before a subordinate court.

385. The provisions of section 382 shall apply to appeals under section 32.

Number of judges on appeal

386. Every appeal under section 378 shall abate on the death of the respondent.

Abatement appeal

PART XII

SUPPLEMENTARY PROVISIONS

(a) Irregular Proceedings

387. No finding, sentence or order of any criminal court shall be set aside merely on ground that inquiry, trial or other proceeding, in the course of which it was arrived at or passed, took place in a wrong region, district or other local area, unless it appears that such error has in fact occasioned a failure of justice.

Proceeding in wrong place

388.-(1) Subject to the provisions herein before contained no findings sentence or order made or passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or in any inquiry or other proceedings under this Act; save that where on appeal or revision, the court is satisfied that such error, omission or irregularity has in fact occasioned failure of justice, the court may order a retrial or make such other order as it may consider just and equitable.

Finding or sentence when reversible by reason of error or omission in charge or other proceeding

389. No distress made under this Act shall be deemed unlawful, nor shall a person making the same be deemed a trespasser on account of any defect or want of form in the summons, conviction, warrant of distress or other proceeding relating thereto.

Power to illegal nor distrainer a trespasser for affect or want of form in proceedings

(b) Directions in the Nature of Habeas Corpus and writs

390.-(1) The High Court may whenever it thinks fit direct-

- (a) that any person within the limits of Tanzania Mainland be brought up before the court to be dealt with according to law;
- (b) that any person illegally or improperly detained in public or private custody within such limits, be set at liberty;
- (c) that any prisoner detained in any prison situate within such limits be brought before the court to be there examined as a witness in any matter pending or to be inquired into in such court;
- (d) that any prisoner detained as aforesaid be brought before a court-martial or any commissioners acting under the authority of any commission from the President for trial or be examined touching any matter pending before such court-martial or commissioner respectively;

Power to issue direction of the nature of habeas corpus

(c) that any prisoner within such limits be removed from one custody to another for the purpose of trial; and

(f) that the body of a defendant within such limits be brought in on a return of *cepi corpus* to a writ of a attachment.

Power of
the High
Court

391.-(1) The High Court may in the exercise of its criminal jurisdiction issue any writ which may be issued by such court.

(2) The High Court may from time to time make rules to regulate the procedure in cases under this section.

(e) *Miscellaneous*

Persons
before
whom
affida its
may be
sworn

392. Affidavits and affirmation to be used before the High Court may be sworn and affirmed before a judge of the High Court or any magistrate or the registrar or deputy registrar of the High Court or any justice of the peace or commissioner for oaths .

Copies of
proceedings

393. If any person affected by any judgment or order passed in any proceedings under this Act desires to have a copy of the judgment or order or any deposition or other part of the record he shall on applying for such copy be furnished therewith provided, as respects any deposition or part of the record other than the judgment or order, he pays for the same unless the court for some special reason thinks fit to furnish it free of cost.

Forms

394. Such forms as the High Court may from time to time approve, with such variation as the circumstances of each case may require, may be used for the respective purposes therein mentioned as and if used shall be sufficient.

Expenses
of
assessor
intresses

395. Subject to any rules which may be made by the Minister, any court may order payment on the part of Government of the reasonable expenses of any assessor, complainant or witness attending before such court for the purposes of an inquiry, trial or other proceedings under this Act.

Repeals

396.-(1) The Criminal Procedure Code is hereby repealed.

(2) Notwithstanding the repeal of the Criminal Procedure Code any rule, order, declaration and appointment made, sanction and direction given, forms approved, power conferred and notification and proclamation published under the said Criminal Procedure Code shall, so far as they are consistent with the provisions of this Act, be deemed to have been respectively made, given, approved, conferred and published under this Act.

Amend-
ment of
Police
Office
Ordinance.
Cap. 332

397. The Police Force Ordinance is hereby amended

(a) by repealing section 32 and replacing it by the following new section:

"32.-(1) Where a police officer suspects that a person may have committed a serious offence, or believes that information has been received by the police that may implicate a person in the commission of a serious offence, but that suspicion or belief is not such as could, under section 13

of the Criminal Procedure Act justify) he arrest of the person without a warrant the police officer shall not ask him questions, of the Criminal Procedure Act, justify the arrest of the person without a warrant he may arrest that person but, the police officer shall not ask him questions, unless he has first informed him that he may refuse to answer any questions put to him by the police officer.

(2) A police officer who informs a person as provided under subsection (1) shall ask him to sign or thumb print an acknowledgement, in accordance with a prescribed form, of the fact that he has been so informed and of the date on which, and the time at which, he is so informed.

(3) Where it is necessary for the court in any proceedings, to determine whether a police officer has informed a person as required by section (1), and an acknowledgement referred to subsection (2) and signed by the person is not produced, in evidence, the court shall assume, unless the contrary is proved, that the person was not so informed.

(4) Notwithstanding the preceding provisions of this section, where a police officer in the course of interrogating any person under this section, believes that there is sufficient evidence to warrant that person being charged with an offence, he shall proceed to charge him accordingly and to caution him, in writing an if practicable orally in the prescribed manner, and to inform him that an inference adverse to him may be drawn from his failure or refusal to answer any question or from his failure or refusal to disclose at that stage any matter which may be material to the charge.;

(b) by adding immediately after section 32 the following section-

32A.-(1) A police officer who interviews a person for the purpose of ascertaining whether the person has committed an offence shall, unless it is in all circumstances impracticable to do so, cause the interview or be recorded.

(2) Where a person who is being interviewed by a police officer for the purpose of ascertaining whether he has committed an offence makes, during the interview, either orally or in writing, a confession relating to an offence, the police officer shall make, or cause to be made, while the interview is being held or as soon as practicable after the interview is completed, a record in writing, setting out-

- (a) so far as it is practicable to do so, the questions asked of the person during the interview and the answers given by the person to those questions;
- (b) particulars of any statements made by the person orally during the interview otherwise than in answer to a question;

- (c) whether the person wrote out any statement during the interview and, if so, the times when he commenced to write out the statement;
- (d) whether a caution was given to the person before he made the confession and, if so, the terms in which the caution was given, the time when it was given and any response made by the person to the caution;
- (e) the times when the interview was commenced and completed;
- (f) if the interview was interrupted, the time when it was interrupted and recommenced.

(3) A police officer who makes a record of an interview with a person in accordance with subsection (2) shall write, or cause to be written, at the end of the record a form of certificate in accordance with a prescribed form and shall then, unless the person is unable to read

- (a) show the record to the person and ask him
 - (i) to read the record and make any alteration or correction to it he wishes to make and add to it any further statement that he wishes to make;
 - (ii) to sign the certificate set out at the end of the record, and
 - (iii) if the record extends over more than one page, to initial each page that is not signed by him; and
- (b) if the person refuses, fails or appears to fail to comply with that request, certify on the record under his hand what he has done and in respect of what matters the person refused, failed or appeared to fail to comply with the request.

(4) Where the person who is interviewed by a police officer is unable to read the record or the interview or refuses to read, or appears to the police officer not to read the record when it is shown to him in accordance with subsection (3) the police officer shall

- (a) read the record to him, or cause the record to be read to him;
 - (b) ask him whether he would like to correct or add anything to the record;
 - (c) permit him to correct, alter or add to the record, or make any corrections, alterations or additions to the record that he requests the police officer to make;
 - (d) ask him to sign the certificate at the end of the record; and
 - (e) certify under this hand, at the end of the record; what he has done in pursuance of this subsection."
- (f) in section 34 by repealing that section and by replacing for it with the following new section

34.-(1) If a police officer in charge of a police station is satisfied that there is reasonable grounds for suspecting that there is in any buildings, vessels, carriage box, receptacle or place,

- (i) anything with respect to which any offence has been committed;
- (ii) anything in respect of which there are reasonable grounds to believe that it will afford evidence as to the commission of any offence;
- (iii) anything in respect of which there are reasonable grounds to believe that it is intended to be used for the purposes of committing any offence;

and any officer is satisfied that any delay would result in the removal or distraction of that thing, or would endanger life or property, he may search or issue a written authority to any police officer under him to search the building, vessel, carriage box, receptacle, or place as the case may be.

(2) When any authority referred to in subsection (1) is issued, the police officer concerned shall, as soon as practicable report the issue of authority, the grounds on which it was issued, and the result of any search made under it to a magistrate.

(3) Where anything is seized in pursuance of powers conferred by subsection (1) the officer seizing the thing shall issue a receipt acknowledging the seizure of that thing bearing the signature of the owner of the premises, and those of witnesses of the search of any.

(4) No prosecution resulting from the exercise of powers under this section shall be commenced without the leave of the Director of Public Prosecutions`

- (d) section 35 by repealing that section and replacing for it the following new section:

"35.-(1) Any police officer in charge of a police station or any police officer investigating an offence may take or cause to be taken measurements of, prints of the hand, fingers, feet or toes of, or recordings of the voice or, photographs of, or samples of the handwriting of any person who is charged with an offence, whether such person is in lawful custody of the police or otherwise where such measurements, prints, recordings, photographs or samples, as the case may be, are reasonably believed to be necessary for the identification of the person with respect to, or for affording evidence as to the commission of an offence which he is in custody or charged.

(2) Any police officer in charge of a police station or any police officer investigating an offence may take or cause to be taken measurements, prints of the hands, fingers, feet or toes, recordings of the voice, photographs, or samples of the handwriting, of any person who is not charged with any crime where such measurements, prints, recordings, photographs or samples, as the case may be are reasonably believed to be necessary for facilitating the investigation of any crime.

(3) No person who is in lawful custody or who is charged but not in lawful custody; shall be entitled to refuse or object to having his measurements, prints, recordings, photographs or samples taken, and where he so refuses or objects, the police officer concerned may take such reasonable steps, including the use of reasonable force, as may be necessary to secure that the measurements, prints, recordings, photographs or samples as the case may be, are taken.

(4) Any person who refuses to have his measurements, prints, recordings photographs or samples taken as required under sub-section (1) and (2) is guilty of an offence and shall be liable on conviction to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding twenty-four months or to both such fine and imprisonment.

(5) Subject to the provisions of subsection (10), a person having the custody of measurements, prints, recordings, photographs or samples and each person having the custody of copies of measurements, prints, recordings, photographs or samples shall destroy them

(a) in the case of a person shown to be in lawful custody upon a charge of committing an offence

(i) if the prosecution of that person is not proceeded with; or

(ii) where the prosecution is proceeded with, but he is acquitted;

(b) in the case of a person referred to in subsection (2), if those measurements, prints, recordings, photographs or samples, as the case may be are no longer required for the purpose of facilitating the investigation.

(6) There shall be established at a place to be approved by the Minister responsible for criminal investigations, an office to be known as the Criminal Records Office for the preservation, comparison, and indexing of fingerprints of forms,

(7) The Criminal Records Office shall, subject to the general supervision of the Inspector-General of Police, be under the control of a senior police officer, expert in comparison of fingerprints who shall be appointed from time to time by the Attorney-General by notice published in the Gazette.

(8) Completed finger-prints forms shall be sent to and preserved at the Criminal Records Office.

(9) All finger print forms shall be of the prescribed pattern.

(10) Notwithstanding the provisions of sub-section (5) it shall be lawful to retain all records obtained pursuant to sub-sections (1) and (2) of this section in respect of any person with regard to whom a removal order under the Township (Removal of Undesirable Persons) (Ordinance or an expulsion order under the Expulsion of Undesirable Persons Ordinance) has been made and has been canceled or rescinded." ;

(e) by adding immediately after section 35 the following new sections

35A.-(1) A magistrate may on the application of a police officer allow a Medical Officer to examine the person of a person in lawful custody in respect of an offence or may allow a medical officer to take and analyse any specimen from such a person if he has reasonable grounds for believing that the examination or analysis would provide evidence relating to the offence.

(2) After the Medical Officer has made the examination and analysis as provided under sub-section (1) the shall submit a written report of the same to the court.

(3) In any proceedings, a court may order that any person who is a party to or a witness in the proceedings submits himself for medical examination and that person shall so submit himself.

(4) The Medical Officer shall, after examining a person in respect of whom the court has ordered that he submit himself for medical examination in accordance with the provisions of sub-section (3) transmit to the court ordering the examination a written report pertaining to the examination;

35B.-(1) Any police officer in-charge of a police station or any police officer investigating an offence may hold an identification parade for the purpose of ascertaining whether a witness can identify a person suspected of the commission of an offence.

(2) Any police officer in-charge of a police station or any police officer investigating an offence may require any person whose participation is necessary for the investigation of an offence to attend and participate in an identification parade.

(3) No person who is required under sub-section (2) to attend and participate in an identification parade shall be entitled to refuse or object to attend and participate in an identification parade.

(4) Any person who, without just cause, or who unreasonably refuses to attend and participate in an identification parade is guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and, imprisonment."

398. Section 3 of the Probation of Offenders Ordinance, is amended-
- (a) by deleting the full stop which appears at the end of that section and replacing it with a colon;
- (b) by adding immediately below that section the following proviso:-

Probation
of
offenders
ordinance
amended

Act, 1972
No. 1"provided that this section shall not apply to any offence under the
Minimum sentences Act, 1972.

FIRST SCHEDULE

Sections 2 164, 165 and 225

PART A.—OFFENCES UNDER THE PENAL CODE

Explanatory Note.—The entries in the second and fourth columns of this Schedule, headed respectively "Offence" and "Punishment under the Penal Code," are not intended as definitions of the offences and punishments described in the several corresponding sections of the Penal Code or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

1 Section	2 Offence	3 Whether a police officer may arrest without warrant or not	4 Punishment under the Penal Code. (N.B.—Vide also sections 27 and 35, Penal Code)	5 Court (in addition to the High Court) by which offence is triable
CHAPTER V.—PARTIES TO OFFENCES				
22 ...	Aiding, abetting, counselling, or procuring the commission of an offence.	May arrest without warrant if arrest for the offence aided, abetted, counselled, or procured may be made without warrant but not otherwise.	Same punishment as for the offence aided, abetted, counselled or procured.	Any court by which the offence aided, abetted, counselled, or procured would be triable.
Division I.—Offences against Public Order				
CHAPTER VII.—TREASON AND OTHER OFFENCES AGAINST THE SOVEREIGN'S AUTHORITY				
39 ...	Treason.	May arrest without warrant.	Death.	
40 ...	Treasonable felony.	do.	do.	
41 ...	Misprision of treason.	do.	Imprisonment for life.	
43 ...	Promoting warlike undertaking.	do.	do.	
45 ...	Inciting to mutiny.	do.	do.	
46 ...	Aiding in acts of mutiny.	Shall not arrest without warrant.	Imprisonment for two years.	A Subordinate court.
47 ...	Inducing desertion.	do.	Imprisonment for six months.	do.
48 (a)...	Aiding prisoner of war to escape.	May arrest without warrant.	Imprisonment for life.	
(b)...	Permitting prisoners of war to escape.	Shall not arrest without warrant.	Imprisonment for two years.	do.
52 (1)...	Offences in relation to publications, the importation of which is prohibited.	May arrest without warrant.	Imprisonment for two years or a fine of two thousand shillings or both for first offence.	do.
			Imprisonment for three years for subsequent offence.	do.
(2)...	Possession of prohibited publication.	do.	Imprisonment for one year or a fine of one thousand shillings or both for first offence.	do.
			Imprisonment for two years for subsequent offence.	do.
53 ...	Failure to deliver possession of prohibited publication.	do.	Imprisonment for one year or a fine of one thousand shillings or both.	do.
56 (1)...	Seditious offences.	do.	Imprisonment for two years or a fine of two thousand shillings or both for first offence.	do.
			Imprisonment for three years for subsequent offence.	A Subordinate court.

FIRST SCHEDULE—(contd.)

1 Section	2 Offence	3 Whether a police officer may arrest without warrant or not	4 Punishment under the Penal Code. (N.B.—Vide also sections 27 and 35, Penal Code)	5 Court (in addition to the High Court) by which offence is triable
Division I.—Offences against Public Order—(contd.)				
CHAPTER VII.—TREASON AND OTHER OFFENCES AGAINST THE SOVEREIGN'S AUTHORITY—(continued)				
56 (2)...	Possessing seditious publication.	May arrest without warrant.	Imprisonment for one year or a fine of two thousand shillings or both for first offence.	A Subordinate court.
			Imprisonment for two years for subsequent offence.	do.
56 (10)	Using or attempting to use a printing machine secured or confiscated under section 56(4).	May arrest without warrant.	Imprisonment for three years	do.
56 (11)	Printing or publishing a newspaper in contravention of an order made under section 56(5).	do.	do.	do.
59 ...	Administering or taking oath to commit capital offence.	do.	Imprisonment for life.	
60 ...	Administering or taking other unlawful oaths	do.	Imprisonment for seven years	do.
62 (1)...	Unlawful drilling	do.	do.	do.
(2)...	Being unlawfully drilled.	do.	Imprisonment for two years.	
63 ...	Publishing false reports.	do.	do.	do.
63 A ...	Incitement to violence.	May arrest without warrant.	Imprisonment for three years	
63 B ...	Raising discontent and ill-will for unlawful purposes.	Shall not arrest without warrant.	Imprisonment for twelve months.	do.
CHAPTER VIII.—OFFENCES AFFECTING RELATIONS WITH FOREIGN STATES AND EXTERNAL TRANQUILLITY				
64 ...	Defamation of foreign princes.	Shall not arrest without warrant.	Imprisonment for two years	A Subordinate court.
65 ...	Foreign enlistment.	do.	do.	do.
66 ...	Piracy.	May arrest without warrant.	Punishment prescribed by law of England.	
CHAPTER IX.—UNLAWFUL ASSEMBLIES, RIOTS, AND OTHER OFFENCES AGAINST PUBLIC TRANQUILLITY				
74 ...	Unlawful assembly.	May arrest without warrant.	Imprisonment for one year.	A Subordinate court.
74 ...	Riot.	do.	Imprisonment for two years	do.
79 ...	Rioting after proclamation.	do.	Imprisonment for five years.	do.
80 ...	Obstructing proclamation.	do.	Imprisonment for five or ten years.	do.
81 ...	Rioters destroying buildings.	do.	Imprisonment for life.	
82 ...	Rioters injuring buildings.	do.	Imprisonment for seven years.	do.

FIRST SCHEDULE—(contd.)

1 Section	2 Offence	3 Whether a police officer may arrest without warrant or not	4 Punishment under the Penal Code. (N.B.— <i>Vide</i> also sections 27 and 35, Penal Code)	5 Court (in addition to the High Court) by which offence is triable
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Division I.—Offences against Public Order—(contd.)

CHAPTER IX.—UNLAWFUL ASSEMBLIES, RIOTS, AND OTHER OFFENCES AGAINST PUBLIC TRANQUILLITY—(continued).

...	Riotously interfering with railway, etc.	May arrest without warrant.	Imprisonment for two years.	A Subordinate court.
84 ...	Going armed in public.	do.	do.	do.
85 ...	Forcible entry.	do.	do.	do.
86 ...	Forcible detainer.	do.	do.	do.
87 ...	Committing affray.	do.	Imprisonment for six months.	do.
88 ...	Challenging to fight a duel.	Shall not arrest without warrant.	Imprisonment for two years.	do.
89(1) ...	Abusive language and brawling.	May arrest without warrant.	Imprisonment for six months.	do.
89(2) ...	Threatening violence	do.	Imprisonment for one year.	do.
	If the offence is committed in the night.	do.	Imprisonment for two years.	do.
89A ...	Watching or besetting.	do.	Imprisonment for six months.	A Subordinate court.
89B ...	Intimidation.	Shall not arrest without warrant.	Imprisonment for one year	do.
89C ...	Disuading persons from assisting with self-help schemes.	Shall not arrest without warrant.	Fine of one thousand shillings or imprisonment for six months or both.	do.
90 ...	Assembling for purpose of smuggling.	do.	Fine of two thousand shillings or imprisonment for six months.	do.

Division II.—Offences against the Administration of Lawful Authority

CHAPTER X.—ABUSE OF OFFICE

94 ...	Officer discharging duties in respect of property in which he has a special interest.	Shall not arrest without warrant.	Imprisonment for one year.	A Subordinate court.
95 ...	False claims by officials.	do.	Imprisonment for two years.	do.
96 ...	Abuse of office.	do.	do.	do.
	Abuse of office (if for purposes of gain).	do.	Imprisonment for three years.	do.
97 ...	False certificates by public officers.	do.	Imprisonment for two years.	do.
98 ...	Unauthorized administration of oaths.	do.	Imprisonment for one year.	do.
99 ...	False assumption of authority.	do.	Imprisonment for two years.	do.
100 ...	Personating public officers.	May arrest without warrant.	do.	do.
101 ...	Threat of injury to persons employed in the public service.	Shall not arrest without warrant.	do.	do.

FIRST SCHEDULE—(contd.)

1 Section	2 Offence	3 Whether a police officer may arrest without warrant or not	4 Punishment under the Penal Code, (N.B.—Vide also sections 27 and 33, Penal Code)	5 Court (in addition to the High Court) by which offence is triable
Division II.—Offences against the Administration of Lawful Authority—(contd.)				
CHAPTER XI.—OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE				
103 ...	False statements by interpreters.	Shall not arrest without warrant.	The same punishment as for perjury.	A Subordinate court.
104 ...	Perjury or subornation of perjury.	do.	Imprisonment for seven years.	do.
106 ...	Fabricating evidence.	do.	do.	do.
107 ...	False swearing.	do.	Imprisonment for two years.	do.
108 ...	Deceiving witnesses.	do.	do.	do.
109 ...	Destroying evidence.	do.	do.	do.
110 ...	Conspiracy to defeat justice and interference with witnesses.	do.	do.	do.
111 ...	Compounding felonies.	do.	do.	do.
112 ...	Compounding penal actions.	do.	do.	do.
113 ...	Advertising for stolen property.	do.	do.	do.
114(1) ...	Contempt of court.	do.	Imprisonment for six months or a fine of five hundred shillings.	do.
114(2) ...	Contempt of court (if committed in view of court).	May arrest without warrant.	Fine of four hundred shillings or in default of payment imprisonment for one month.	do.
114A ...	Preventing or obstructing service or execution of process.	May arrest without warrant.	Imprisonment for one year.	A Subordinate court.
CHAPTER XII.—RESCUES, ESCAPES, AND OBSTRUCTING OFFICERS OF COURT OF LAW				
115 ...	Rescue—			
(a) ...	If person rescued is under sentence of death or imprisonment for life or charged with offence punishable with death or imprisonment for life;	May arrest without warrant.	Imprisonment for life.	
(b) ...	If person rescued is imprisoned on a charge or under sentence for any other offence;	do.	Imprisonment for seven years.	A Subordinate court.
(c) ...	In any other case.	do.	Imprisonment for two years.	do.
116 ...	Escape.	do.	do.	do.
116 A(1)	Absence from extra-mural employment.	do.	Imprisonment for two years or a fine or both.	do.
117 ...	Aiding prisoners to escape.	do.	Imprisonment for seven years.	do.
118 ...	Removal, etc., of property under lawful seizure.	do.	Imprisonment for three years.	do.

FIRST SCHEDULE—(contd.)

1 Section	2 Offence	3 Whether a police officer may arrest without warrant or not	4 Punishment under the Penal Code. (N.B.— <i>Vide</i> also sections 27 and 35, Penal Code)	5 Court (in addition to the High Court) by which offence is triable
Division II.—Offences against the Administration of Lawful Authority—(contd.)				
CHAPTER XIII.—MISCELLANEOUS OFFENCES AGAINST PUBLIC AUTHORITY				
120 ...	Frauds and breaches of trust by public officers.	Shall not arrest without warrant.	Imprisonment for two years.	A Subordinate court.
121 ...	Neglect of official duty.	do.	do.	do.
122 ...	False information to persons employed in the public service.	do.	Imprisonment for six months or fine of one thousand shillings.	do.
123 ...	Disobedience of statutory duty.	do.	Imprisonment for two years.	do.
124 ...	Disobedience of lawful orders.	do.	do.	do.
124A ...	Insulting the national flag or emblem.	Shall not arrest without warrant.	Imprisonment for one year or fine of one thousand shillings.	do.
Division III.—Offences Injurious to the Public in General				
CHAPTER XIV.—OFFENCES RELATING TO RELIGION				
125 ...	Insult to religion of any class.	May arrest without warrant.	Imprisonment for two years.	A Subordinate court.
126 ...	Disturbing religious assemblies.	do.	do.	do.
127 ...	Trespassing on burial places.	do.	do.	do.
128 ...	Hindering burial of dead body, etc.	do.	do.	do.
129 ...	Uttering words with intent to wound religious feelings.	Shall not arrest without warrant.	Imprisonment for one year.	do.
CHAPTER XV.—OFFENCES AGAINST MORALITY				
131 ...	Rape.	May arrest without warrant.	Imprisonment for life with or without corporal punishment.	A Subordinate court.
132 ...	Attempted rape.	do.	do.	do.
133 ...	Abduction.	do.	Imprisonment for seven years.	do.
134 ...	Abduction of girl under sixteen.	do.	Imprisonment for two years.	do.
135 (1)...	Indecent assault on females.	do.	Imprisonment for fourteen years.	do.
(3)...	Insulting the modesty of a woman.	do.	Imprisonment for one year.	do.
136 (1)...	Defilement of girl under twelve.	do.	Imprisonment for life, with or without corporal punishment.	do.
(2)...	Attempted defilement of girl under twelve.	do.	Imprisonment for fourteen years, with or without corporal punishment.	do.
137 ...	Defilement of an idiot or imbecile.	do.	do.	do.
138(1) ...	Defilement by husband of wife under twelve.	do.	Imprisonment for five years.	

FIRST SCHEDULE—(contd.)

1 Section	2 Offence	3 Whether a police officer may arrest without warrant or not	4 Punishment under the Penal Code. (N.B.—Vide also sections 27 and 35, Penal Code)	5 Court (in addition to the High Court) by which offence is triable
Division III.—Offences Injurious to the Public in General—(contd.)				
CHAPTER XV.—OFFENCES AGAINST MORALITY—(contd.)				
				G.N. 1971 No. 159
(2)...	Parent or guardian parting with possession of girl under twelve in order that she may be carnally known by her husband.	May arrest without warrant.	Imprisonment for two years.	A Subordinate court.
(8)...	Procuring girl under twelve in order that she may be carnally known by her husband.	do.	do.	do.
139 ...	Procuration.	do.	do.	do.
140 ...	Procuring defilement by threats or fraud or administering drugs.	do.	do.	do.
141 ...	Householder permitting defilement of girl under twelve on his premises.	do.	Imprisonment for five years.	do.
142 ...	Householder permitting defilement of girl under sixteen on his premises.	do.	Imprisonment for two years.	do.
143 ...	Detention with unlawful intent or in brothel.	do.	do.	do.
145 ...	Male person living on earnings of prostitution or persistently solloiting.	do.	do.	do.
146	Woman aiding etc., for gain prostitution of another woman.	do.	do.	do.
148 ...	Keeping a brothel.	do.	do.	do.
149	Conspiracy to defile.	do.	Imprisonment for three years.	do.
150 ...	Attempt to procure abortion.	do.	Imprisonment for fourteen years.	do.
151 ...	Woman attempting to procure her own abortion.	do.	Imprisonment for seven years.	do.
152 ...	Supplying drugs or instruments to procure abortion.	do.	Imprisonment for three years	do.
154 ...	Unnatural offences.	do.	Imprisonment for fourteen years.	do.
155 ...	Attempt to commit unnatural offence.	do.	Imprisonment for seven years.	do.
156 ...	Indecent assault of boy under fourteen.	do.	do.	do.
157 ...	Indecent practices between males.	do.	Imprisonment for five years.	do.
158 (1)...	Incest by males.	do.	do.	
(2)...	If female person is under the age of twelve years.	do.	Imprisonment for life.	
(3)...	Attempt to commit incest.	do.	Imprisonment for two years.	
160 ...	Incest by females.	do.	Imprisonment for five years.	

FIRST SCHEDULE—(contd.)

1 Section	2 Offence	3 Whether a police officer may arrest without warrant or not	4 Punishment under the Penal Code. (N.B.—Vide also sections 27 and 35, Penal Code)	5 Court (in addition to the High Court) by which offence is triable
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Division III.—Offences Injurious to the Public in General—(contd.)

CHAPTER XVI.—OFFENCES RELATING TO MARRIAGE AND DOMESTIC OBLIGATIONS

163 ...	Fraudulent pretence of marriage.	May arrest without warrant.	Imprisonment for ten years.	
164 ...	Bigamy.	do.	Imprisonment for five years.	
165 ...	Dishonestly or fraudulently going through ceremony of marriage.	do.	do.	
166 ...	Desertion of children.	Shall not arrest without warrant.	Imprisonment or two years.	A Subordinate court.
167 ...	Neglecting to provide food, etc., for children.	do.	do.	do.
168 ...	Master not providing for servants or apprentices.	do.	do.	do.
169 ...	Child stealing.	May arrest without warrant.	Imprisonment for seven years.	do.

CHAPTER XVII.—NUISANCES AND OFFENCES AGAINST HEALTH AND CONVENIENCE

170 ...	Committing common nuisance.	Shall not arrest without warrant.	Imprisonment for one year.	A Subordinate court.
171 (3)...	Keeping common gaming house.	do.	Imprisonment for two years.	do.
(4)...	Being found in common gaming house.	do.	Fine of one hundred shillings for first offence, and for each subsequent offence a fine of four hundred shillings or imprisonment for three months or both.	do.
172 ...	Keeping or permitting the keeping of a common betting house.	do.	Imprisonment for one year.	do.
173B ...	Chain letters.	do.	Fine of four thousand shillings or imprisonment for six months or both.	do.
175 ...	Trafficking in obscene publications.	May arrest without warrant.	Imprisonment for two years or a fine of two thousand shillings.	do.
176 ...	Being an idle or disorderly person.	do.	Imprisonment for one month or a fine of forty shillings or both.	do.
176A ...	Harbouring common prostitutes.	Shall not arrest without warrant.	Fine of five hundred shillings for first offence, and of one thousand shillings for subsequent offences.	do.