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# Criminal Procedure Code

[criminal procedure](#)

**Cap:**  
54

**In force:**  
Yes

**Related Statutory Instruments:**

- [Criminal Procedure \(Minor Offences\) Order](#)
- [Supreme Court \(Record of Evidence\) Rules](#)
- [Jurors \(Travelling and Subsistence\) Rules](#)
- [Prescription of Persons Notice, 1972](#)

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CHAPTER 54

CRIMINAL PROCEDURE CODE

[1st February, 1955]

Act 13 of 1952

Act 9 of 1955

Act 3 of 1956

Act 13 of 1957

Act 23 of 1957

Act 3 of 1959

Act 11 of 1959

Act 39 of 1960

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S.I 51 of 1959

S.I 53 of 1962

S.I 7 of 1963

S.I 23 of 1971

Act 29 of 1973

S.I 99 of 1973

Act 2 of 1974

S.I 95 of 1975

Act 14 of 1975

Act 19 of 1975

S.I 72 of 1976

Act 23 of 1976

Act 32 of 1980

Act 20 of 1981

Act 23 of 1981

Act 5 of 1982

Act 4 of 1986

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Short title.           1. This Act may be cited as the  
Criminal Procedure Code

19/31/1976.       (hereinafter called this Code).

3/23/1976.

Interpretation. 2. In this Code, unless the context otherwise requires -

7/9/1955.

2/31/1964. "advocate" means a barrister or attorney admitted to practise

2/2/1965. in the Supreme Court ;

S.I.51/1959.

S.I.123/1970. "cognisable offence" means any offence for which a police

Act 2/2/1974. officer may in accordance with the third schedule or under any

S.I.95/1975. law for the time being in force, arrest without warrant ;

S.I.72/1976.

70/D14/1979. "court of Appeal" means the Court of Appeal for Seychelles constituted under section 70 of the Constitution ;

"judicial officer" means a Judge, a Senior Magistrate, a Magistrate, a Justice of the Peace or the Registrar ;

"Magistrate" includes a Senior Magistrate ;

"Magistrates' Court" means a court presided over by a Senior Magistrate or a Magistrate ;

"non-cognisable offence" means an offence for which a police officer may not 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 a 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 such officer and is above the rank of constable, or when the President so directs, any other police officer so

present ;

"police officer" includes any member of the Police Force ;

"police station" means a post or place appointed by the Commissioner of Police to be a police station ;

"public prosecutor" means any person appointed under section 63 and includes the Attorney General and any person acting under the directions of the Attorney General ;

"Registrar" means the Registrar of the Supreme Court and includes the Assistant Registrar ;

" summary trial" means a trial held by the Supreme Court or the Magistrates' Court under Part VI.

Trial of 3(1)All offences under the Penal Code shall be inquired

offences. into, tried and otherwise dealt with according to the

2/39/1960. provisions hereinafter contained.

2/4/1963.

Cap. 158. (2) All offences under any other law shall be inquired into, tried and otherwise dealt with according to the same provisions, subject, however, to any enactment for the time being in force regulating the manner or place of inquiring into, trying or otherwise dealing with such offences.

(3) Notwithstanding anything in this Code contained, the Supreme Court, may, subject to the provisions of any law for the time being in force in Seychelles, in exercising its criminal jurisdiction in respect of any matter or thing to which the procedure described by this Code is inapplicable, or for which no procedure is so prescribed, exercise such jurisdiction according to the course of

procedure observed by and before the High Court of Justice in England.

## PART II

### Powers of Courts

Offences by 4. Subject to the other provisions of this Code, any

what court offence under the Penal Code or under any law other than the

triable. Penal Code may be tried -

3/31/1964.

Cap. 158. (a) by the Supreme Court, or

(b) by the Magistrates' Court when such offence is shown in the third schedule to be triable by that court.

Sentences 5. The Supreme Court may pass any sentence authorised by

which Supreme law.

Court may

pass

Sentences 6(1)The Magistrates' Court when presided over by a Senior

which the Magistrate may pass any sentence authorised by law :

Magistrates'

Court may Provided that such sentence shall not exceed, in the

pass. case of imprisonment, seven years, and in the case of a fine,

3/2/1974                      Rs.25,000.

3/4/1986

(2) The Magistrates' Court when presided over by a Magistrate other than a Senior Magistrate may pass any sentence authorised by law :

Provided that such sentence shall not exceed, in the case of imprisonment, five years, and in the case of a fine, Rs.10,000.

Committal                      7(1)When a Magistrate has convicted a person and he is of

for sentence.                      opinion that a higher sentence should be passed in respect of the offence than he has power to pass he may commit the offender for sentence to the Supreme Court in accordance with the following provisions of this section.

(2) The Magistrate may either admit the offender to bail or remand him in custody until he appears or is brought before the Supreme Court.

(3) When an offender is committed as aforesaid the Supreme Court may -

(a)                      exercise any of its powers of revision under section 329(1); and

(b)                      whether any such powers have been exercised or not, deal with the offender in any manner in which he could be dealt with if he had been convicted by the Supreme Court.

Combination                      8(1)Any court may pass any lawful sentence combining any

of sentences.                      of the sentences which it is authorised by law to pass.

7/9/1955.

19/31/1964. (2) In determining the extent of the court's jurisdiction under section 6 to pass a sentence of imprisonment the court shall be deemed to have jurisdiction to pass the full sentence of imprisonment provided in that section in addition to any term of imprisonment which may be awarded in default of payment of a fine, costs or compensation.

Sentences in 9(1)When a person is convicted at one trial of two or more

case of distinct offences the court may sentence him, for such

conviction of offences, to the several punishments prescribed therefor which

several such court is competent to impose, such punishments when

offences at consisting of imprisonment to commence the one after the

one trial. expiration of the other in such order as the court may direct,

18/31/1964. unless the court directs that such punishments shall run

4/2/1974. concurrently.

(2) For the purpose of appeal the aggregate of consecutive sentences imposed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

### PART III

#### General Provisions

#### ARREST, ESCAPE AND RETAKING

## Arrest Generally

Arrest how 10(1) In making an arrest the police officer or other person

made. making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest :

Provided that nothing in this section contained shall be deemed to justify the use of greater force than was reasonable in the particular circumstances in which it was employed, or was necessary for the apprehension of the offender.

Search of 11(1) If any person acting under a warrant of arrest, or any

place entered police officer having authority to arrest, has reason to

by person believe that the person to be arrested has entered into or is

sought to be within any place, the person residing in or being in charge of

arrested. such place shall, on demand of such person acting as aforesaid or such police officer, allow him free ingress thereto and afford all reasonable facilities for a search therein.

(2) If ingress to such place cannot be obtained under subsection (1), 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 such place and search therein, and, in order to effect an entrance into such 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, if after notification of his

authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

Power to 12. Any police officer or other person authorised to make

break open an arrest may break open any outer or inner door or window of

doors and any house or place in order to liberate himself or any other

windows for person who, having lawfully entered for the purpose of making

purposes of an arrest, is detained therein.

liberation.

No unneces- 13. The person arrested shall not be subjected to more

sary restraint. restraint than is necessary to prevent his escape.

Search of 14. Whenever a person is arrested - arrested

persons. (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 is unable to furnish bail,

the police officer making the arrest or, when the arrest is made by a private person, the police officer to whom he 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 15. Any police officer may stop, search  
and detain any  
police officer vessel, boat or vehicle in or upon which  
there shall be reason  
to detain and to suspect that anything stolen or  
unlawfully obtained may be  
search boats, found and also any person who may be  
reasonably suspected of  
vehicles and having in his possession or conveying in  
any manner anything  
persons in stolen or unlawfully obtained.  
certain  
circumstances.

Mode of 16. Whenever it is necessary to cause a  
woman to be  
searching searched the search shall be made by  
another woman with strict  
women. regard to decency.

Power to 17. The officer or other person making  
any arrest may take  
seize from the person arrested any offensive  
weapons which he has  
offensive about his person, and shall deliver all  
weapons so taken to  
weapons. the court or officer before which or  
whom the officer or person making the arrest is required  
by law to produce the person arrested.

#### Arrest Without Warrant

Arrest by 18. Any police officer may, without an  
order from a  
police judicial officer and without a warrant,

arrest -

officer

without (a) any person whom he  
suspects upon reasonable

warrant. grounds of having committed  
a cognisable offence;

4/7/1961.

19/31/1964. (b) any person who commits a  
breach of the peace in

S.I.72/1976. his presence ;

(c) any person who obstructs a police officer while in  
the execution of his duty, or who has escaped or attempts  
to escape from lawful custody;

(d) any person named in a notice published under  
section 88;

(e) any person whom he finds lying or loitering in any  
highway, yard or other place during the night and whom  
he suspects upon reasonable grounds of having  
committed or being about to commit a felony;

(f) any person whom he suspects upon reasonable  
grounds of having been concerned in any act committed  
at any place out of Seychelles which, if committed in  
Seychelles, would have been punishable as an offence,  
and for which he is, under The Extradition Act, liable to be  
apprehended and detained in Seychelles;

(g) any person having in his possession without lawful  
excuse, the burden of providing which excuse shall lie on  
such person, any implement of house-breaking;

(h) any released convict committing a breach of any  
provision prescribed by section 304 or of any rule made  
thereunder;

(i) any person in whose possession anything 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;

(j) any person for whom he has reasonable cause to believe a warrant of arrest has been issued.

Procedure 19. When any officer in charge of a police station when police requires any officer subordinate to him to arrest without a officer warrant (otherwise than in his presence) any person who may deposes sub- lawfully be arrested without a warrant, he shall deliver to ordinate to the officer required to make the arrest an order in writing arrest without specifying the person to be arrested and the offence or other warrant. cause for which the arrest is to be made.

Refusal to 20(1) When any person who in the presence of a police give name officer has committed or has been accused of committing a and residence. non-cognisable offence refuses on the demand of such officer 2/39/1960. to give his name and residence, or gives a name and residence 19/31/1964. which such officer has reason to believe to be false, he may be arrested by such officer in order that his name and residence may be ascertained.

(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 :

(3)Should the true name and residence of such 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 forwarded to the nearest Magistrate having jurisdiction.

Disposal of 21. A police officer making an arrest without a warrant

person shall without unnecessary delay and subject to the provisions

arrested by herein contained as to bail, take or send the person arrested

police officer. before the Judge or a Magistrate or before an officer in

6/3/1959. charge of a police station.

19/31/1964.

Arrest by 22(1) Any private person may arrest any person who in his

private view commits a cognisable offence, or whom he reasonably

person. suspects of having committed a felony, or who has been named in a notice published under section 88.

(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 authorised by him.

Disposal of 23(1) Any private person arresting any other person without

person a warrant shall without unnecessary delay make over the person

arrested by \_\_\_\_\_ so arrested to a police officer, or in the absence of a police

private \_\_\_\_\_ officer shall take such person to the nearest police station.

person.

(2) If there is reason to believe that such person comes under the provisions of section 18 a police officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognisable 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 20. If there is no sufficient reason to believe that he has committed any offence he shall be at once released.

Detention of \_\_\_\_\_ 24. When any person has been taken into custody without a

person \_\_\_\_\_ warrant for an offence other than murder or treason, the

arrested with- \_\_\_\_\_ officer in charge of the police station to which such person

out warrant. \_\_\_\_\_ shall be brought may in any case and shall, if it does not

2/39/1960. \_\_\_\_\_ appear practicable to bring such person before an appropriate

9/31/1964. \_\_\_\_\_ court within twenty-four hours after he was so taken into

2/23/1971. \_\_\_\_\_ custody, inquire into the case, and unless the offence appears to the officer to be of a serious nature, release the person on his executing a bond, with 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 any person is retained in custody he shall be brought before a court as soon as practicable:

Provided that an officer in charge of a police station may release a person arrested on suspicion on a charge of committing any offence, when after due police inquiry, insufficient evidence is, in his opinion, disclosed on which

to proceed with the charge.

Police to 25. Officers in charge of police stations  
shall report to

report the Commissioner of Police the case of  
all persons arrested

apprehensions. without warrant within the limits of their  
respective

S.I. 51/1959. stations, whether such persons have  
been admitted to bail or otherwise.

Offence 26. When any offence is committed in  
the presence of a

committed in judicial officer, he may himself arrest or  
order any person to

judicial arrest the offender, any may thereupon,  
subject to the

officer's provisions herein contained as to bail,  
commit the offender to

presence. custody.

6/3/1959.

19/31/1964.

Arrest by 27. A judicial officer may at any time  
arrest or direct

judicial the arrest in his presence of nay person  
for whose arrest he

officer. is competent at the time and in the  
circumstances to issue a

19/31/1964. warrant.

#### Escape and Retaking

Recapture of 28. If a person in lawful custody escapes  
or is rescued,

person the person from whose custody he  
escapes or is rescued may

escaping. immediately pursue and arrest him in  
any place in Seychelles.

Provisions of 29. The provisions of sections 11 and 12  
shall apply to

sections 11 arrests under section 28, although the  
person making any such

and 12 to arrest is not acting under a warrant and  
is not a police

apply to officer having authority to arrest.

arrests under

section 28.

Assistance to 30. Every person is bound to assist a  
judicial or police

judicial officer reasonably demanding his aid -

officer or

police (a) in the taking or preventing the  
escape of any other

officer. person whom such judicial or police  
office is authorised to arrest;

(b) in the preventing or suppression of a breach of the  
peace or in the prevention of any injury attempted to be  
committed to any telegraph or public property.

## PREVENTION OF OFFENCES

Security for Keeping the Peace and for Good Behaviour

Security for 31. Whenever the Judge or a Magistrate is informed that

keeping the any person is likely to commit a breach of the peace or

peace. disturb the public tranquillity, or to do any wrongful act that

6/3/1959. may probably occasion a breach of the peace or disturb the

19/31/1964. public tranquillity, the judicial officer may, in manner

hereinafter provided, require such 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 judicial officer thinks fit to fix.

Security for 32. Whenever the Judge or a Magistrate has information

good behaviour that there is any person who, either orally or in writing or

from persons in any manner, disseminated or attempts to disseminate, or in

disseminating any wise abets the dissemination of -

sedition

matters. (a) any seditious matter, that is to say, any matter the

6/3/1959. publication of which is punishable under section 55 of

19/31/1964. the Penal Code; or

Cap. 158.

(b) any matter concerning a judge which amounts to libel under the Penal Code,

such judicial officer may (in manner provided in this Code) require such 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 judicial officer thinks fit to fix.

Security for 33. Whenever the Judge or a Magistrate receives informa

tion -

good behaviour

from vagrants (a) that any person is taking precautions to conceal his

persons. presence, and that there is reason to believe that

6/3/1959. such person is taking such precautions with a view to

19/31/1964. committing any offence; or

(b) that there is a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such judicial officer 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 judicial officer thinks fit to fix.

Security for 34. Whenever the Judge or a Magistrate receives

good behaviour information that any person -

from habitual

offenders. (a) is by habit a robber, house-breaker or thief; or

6/3/1959.

19/31/1964. (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 XXXVI 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 so desperate and dangerous as to render his being at large without security hazardous to the community,

such judicial officer 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 three years, as the judicial officer thinks fit to fix.

Fiat of                      35. Where the Judge or a Magistrate has  
or receives

Attorney                    information under section 32, section 33  
or section 34 no

General to                further proceedings in respect thereof  
shall be taken without

proceed under    the consent of the Attorney General.

sections 32,

33 or 34.

2/23/1957.

6/3/1959.

Order to be                36. When a judicial officer acting under  
section 31,

made. section 32, section 33 or section 34 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.

Procedure in 37. If such person in respect of whom such order is made

respect of is present in court, it shall be read over to him or, if he so

person present desires, the substance thereof shall be explained to him.

in court.

Procedure in 38. If such person is not present in court, the Judge or

respect of Magistrate, shall issue a summons requiring him to appear, or,

person not when such person is in custody, a warrant directing the

present in officer in whose custody he is to bring him before the court:

court.

7/9/1955. Provided that whenever it appears to such Judge or

6/3/1959. Magistrate, upon the report of a police officer or upon other

19/31/1964. information (the substance of which report or information shall be recorded by the judicial officer), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the judicial officer may at any time issue a warrant for his arrest.

Copy of 39. Every summons or warrant issued under section 38 shall

order to be accompanied by a copy of the order made under section 36

accompany and such copy shall be delivered by the officer serving or

summons or executing such summons or warrant to the person served with or

warrant. arrested under the same.

Power to 40. The Judge or Magistrate may, if he sees sufficient

dispense with cause, dispense with the personal attendance of any person

personal called upon to show cause why he should not be ordered to

attendance. execute a bond for keeping the peace, and may permit him to

6/3/1959. appear by an advocate.

19/31/1964.

Inquiry as to 41(1) When an order under section 36 has been read or

truth of explained under section 37 to a person present in court, or

information. when any person appears or is brought before a judicial

6/3/1959. officer in compliance with or in execution of a summons or

19/31/1964. warrant issued under section 38, the judicial officer 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 hereinafter prescribed for conducting trials and recording evidence in trials before the court.

(3) For the purposes of this section the fact that a person is an habitual offender 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 Judge or Magistrate thinks just.

Order to give 42(1) If upon such inquiry it is proved that it is necessary

security. for keeping the peace or maintaining good behaviour, as the

6/3/1959. case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Judge or Magistrate shall make an order accordingly:

Provided 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 36;

(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 by a Magistrate to give security for good behaviour under this section may appeal to the Supreme Court, and the provisions of Part X (relating to appeals) shall apply to every such appeal.

Discharge of 43. If on an inquiry under section 41 it is not proved

person that it is necessary for keeping the peace or maintaining good

informed behaviour, as the case may be, that the person in respect of

against. whom the inquiry is made should execute a bond, the judicial officer 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.

Proceedings in all cases subsequent to Order to

furnish Security

Commencement 44(1) If any person in respect of whom an order requiring

of period for security is made under section 36 or section 42 is, at the

which security time such order is made, sentenced to or undergoing a sentence

is required. of imprisonment, the period for which such security is

6/3/1959. required shall commence on the expiration of such sentence.

(2) In other cases such period shall commence on the date of such order unless the Judge or Magistrate, for sufficient reason, fixes a later date.

Contents of 45. The bond to be executed by any such person shall bind

of bond. 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 aiding, abetting counselling or procuring the commission of any offence punishable with imprisonment, wherever it may be committed, shall be a breach of the bond.

Power to 46. The Judge or a Magistrate may refuse to accept any

reject surety offered under any of the preceding sections on the

sureties. ground that, for reasons to be recorded by him, such surety is

6/3/1959. an unfit person.

Procedure on 47(1) If any person ordered to give security as aforesaid

failure of does not give such security on or before the date on which the

person to period for which such security is to be given commences, he

give security. shall, except in the case mentioned in subsection (3), be

7/9/1955. committed to prison, or, if he is already in prison, be

19/31/1964. 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.

(2) Where the order is made by the Supreme Court such period may be for any reasonable time.

(3) When such person has been ordered by a Magistrate to give security for a period exceeding six months, 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 order of the Supreme Court, and the proceedings shall be laid as soon as conveniently may be before such court.

(4) The Supreme Court, 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.

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

(6) 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 48. Whenever a Magistrate is of opinion  
that any person

release per- imprisoned for failing to give security  
may be released

sons impri- without hazard to the community, such  
Magistrate shall make an

soned for immediate report of the case for the  
orders of the Supreme

failing to Court, and such Court may, if it thinks  
fit, order such person

give security. to be discharged.

Power of 49. The Supreme Court may at any  
time, for sufficient

Supreme Court reasons to be recorded in writing, cancel  
any bond for keeping

cancel the peace or for good behaviour  
executed under any of the

bond. preceding sections by order of any

court.

Discharge of 50(1) Any surety for the peaceable  
conduct or good behaviour

sureties. of another person may at any time  
apply to the Judge or a

6/3/1959. Magistrate to cancel any bond executed  
under any of the

19/31/1964. preceding sections.

(2) On such application being made, the judicial  
officer 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 Judge or Magistrate, such judicial officer 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 45, 46, 47  
and 48, be deemed to be an order made under section 42.

#### PREVENTIVE ACTION OF THE POLICE

Police to 51. Every police officer may interpose  
for the purpose of

prevent preventing, and shall to the best of his  
ability prevent, a

breaches of breach of the peace or the commission of  
any cognisable

the peace or offence.

cognisable

offences.

19/31/1964.

Information of 52. Every police officer receiving information of a design

designs to to commit any cognisable offence shall communicate such

commit such information to the police officer to whom he is subordinate,

offences. and to any other officer whose duty it is to prevent or take cognisance of the commission of any such offence.

Arrest to 53. A police officer knowing of a design to commit any

prevent such cognisable offence may arrest, without orders from a judicial

offences. officer and without a warrant, the person so designing if it

19/31/1964. appears to such officer that the commission of the offence cannot otherwise be prevented.

Prevention of 54. A police officer may of his own authority interpose to

injury to prevent any injury attempted to be committed in his view to

public any public property, movable or immovable, or the removal of

property. or injury to any public landmark or buoy or other mark used for navigation.

#### PART IV

Provisions Relating to all Criminal Investigations

#### PLACE OF INQUIRY OR TRIAL

General 55. Every court has authority to cause

to be brought

authority before it any person who is within the local limits of its

of courts. jurisdiction and is charged with an offence committed within Seychelles, or which according to law may be dealt with as if it had been committed within Seychelles and to deal with the accused person according to its jurisdiction.

Place of 56. Every court may inquire into or try any offence

inquiry or subject to its jurisdiction at any place where it has power to

trial. hold sittings.

4/31/1964.

Place and 57(1) For the exercise of its criminal jurisdiction the

date of sit- Supreme Court shall hold sittings at such places and on such

tings of dates as the Chief Justice may direct.

the Supreme

Court.

4/31/1964 (2) The Registrar shall ordinarily give notice beforehand of all such sittings.

Court to 58. The place in which a court is held for the purpose of

be open. inquiring into or trying an offence shall be deemed an open

4/31/1964 court to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the Judge or Magistrate may, if he thinks fit, order at any stage in the inquiry into or trial of any particular case that the public generally, or any particular person or class of persons, shall not have access to, or be or remain in, the room or building used by the court.

Power of 59(1) Whenever it appears to the Supreme Court that it is

Supreme Court necessary or expedient so to do, it may order that an accused

to change person against whom proceedings have been instituted in the

venue. Magistrates' Court be brought for trial to itself or that an

4/31/1964 accused person against whom proceedings have been instituted in the Supreme Court be sent for trial to the Magistrates' Court if that court has jurisdiction to try the case.

(2) The Supreme Court may act either on the report of the Magistrates' Court or on the application of an interested party or on its own initiative.

#### CONTROL IN CRIMINAL PROCEEDINGS BY THE REPUBLIC

Attorney 60(1) The Attorney General is vested with the right of

General. prosecuting all crimes and offences committed within Seychelles.

(2) The right and power of prosecuting vested in the Attorney General is absolutely under his management and control and any officer who may be appointed a public prosecutor under section 63 shall be under the control of the Attorney General and be bound to conform to any direction which shall or may be given to him by the Attorney General.

Nolle 61(1) In any criminal case and at any stage thereof before

prosequi.            verdict or judgment, as the case may  
be, the Attorney

7/9/1955.            General may enter a nolle prosequi,  
either by stating in

18/31/1964.        court or by informing the court in  
writing that the Republic

SI. 72/1976.        intends that the proceedings shall not  
continue, and thereupon the accused shall be at once  
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 recognisances  
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.

(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 may be detained, and  
also, if the accused person has been committed for trial,  
to the Magistrates' Court by which he was so committed,  
and the Magistrates' Court shall forthwith cause a similar  
notice in writing to be given to any witness bound over to  
prosecute and 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.

Criminal            62(1)    Notwithstanding anything in this  
Code contained the

informations        Attorney General may exhibit to the  
Supreme Court, against

by the                persons subject to the jurisdiction of the  
Supreme Court,

Attorney            informations for all purposes for which  
Her Majesty's Attorney

General.            General for England may exhibit  
informations on behalf of the Crown in the High Court of  
Justice in England.

(2)Such proceedings may be taken upon every such  
information as may lawfully be taken in the case of similar  
informations filed by Her Majesty's Attorney General for  
England so far as the circumstances of the case and the

practice and procedure of the Supreme Court will admit.

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

#### APPOINTMENT OF PUBLIC PROSECUTORS AND CONDUCT OF PROSECUTIONS

Appointment 63(1) The President may appoint generally, or in any case,

of public or for any specified class of cases, in any local area, one or

prosecutors. more officers to be called public prosecutors.

18/31/1964.

S.I.72/1976 (2)The Attorney General by writing under his hand may appoint any advocate of the Supreme Court or person employed in public service, not being a police officer below the rank of sergeant of police to be a public prosecutor for the purpose of any case:

Provided that in the Magistrates' Court offences may be prosecuted by any member of the Police Force.

(3)Every public prosecutor shall be subject to the express directions of the Attorney General.

Powers of 64. A public prosecutor may appear and plead without any

public written authority before any court in which any case of which

prosecutors. he has charge is under inquiry, trial or appeal; and if any

18/31/1964. private person instructs an advocate to prosecute in any such case the public prosecutor may conduct the prosecutions, and the advocate so instructed

shall act therein under his directions.

Withdrawal 65. In a trial before any court a public prosecutor may,

from pro- with the consent of the court or on the instructions of the

section. Attorney General, at any time before judgment is pronounced,

3/4/1963. withdraw from the prosecution of any person; and upon such withdrawal-

(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.

Permission to 66(1) The Judge or any Magistrate inquiring into or trying

conduct any case may permit the prosecution to be conducted by any

prosecution. person, but no person other than a public prosecutor or other

6/3/1959. officer generally or specially authorised by the President in

18/31/1964. this behalf shall be entitled to do so without permission.

S.I.72/1976. With the like permission, any manager or employee may prosecute for an offence committed to the prejudice of his principal or employer.

(2) Any such person or officer shall have the like power of withdrawing from the prosecution as is provided by section 65, 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 advocate.

## INSTITUTION OF PROCEEDINGS

### Making of Complaint

Institution of 67. Proceedings may be instituted either by the making of

proceedings. a complaint or by the bringing before a court of a person who

5/31/1964. has been arrested without warrant.

Complaint 68(1) Any person who believes from reasonable and probable

and charge. cause that an offence has been committed by any person may

5/31/1964 make a complaint thereof to a judicial officer.

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

(3) The judicial officer upon receiving any such complaint shall subject to the provisions of subsection (4), 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 is signed and presented by a police officer.

(4) Where the judicial officer is of opinion that any complaint or formal charge made or presented under this section does not disclose any offence, the judicial officer shall make an order refusing to admit such complaint or

formal charge and shall record his reasons for such order.

Issue of 69(1) Upon receiving a complaint and having signed the

summons or charge in accordance with the provisions of section 68 the

warrant. judicial officer may, in his discretion issue either a summons

5/31/1964 or a warrant to compel the attendance of the accused person before a court having jurisdiction to inquire into or try the offence alleged to have been committed :

Provided 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.

(2)The validity of any proceedings taken in pursuance of a complaint or charge shall not be affected either by any defect in the complaint or charge or by the fact that a summons or warrant was issued without a complaint or charge.

(3)Any summons or warrant may be issued on a Sunday.

(4)At Anse Royale or at Praslin and La Digue a complaint or formal charge may be made or presented to the clerk of the Magistrates' Court at the aforesaid places in respect of an offence within the jurisdiction of the Magistrates' Court and in such a case and for such purposes the clerk shall have the same powers as, and shall be deemed to be, a judicial officer.

Person 70(1) Where a person who has been arrested without warrant

arrested is brought before a court, the Judge or Magistrate before whom

without the person is brought shall draw up or cause to be drawn up

warrant how and shall sign a formal charge containing a statement of the

to be dealt with. offence with which such person is charged, unless such a

with. charge shall be signed and presented by a police officer.

5/31/1964

2/29/1973. (2)The court, if it has jurisdiction, may inquire into or try the offence alleged to have been committed.

(3)If the accused person is brought before the Magistrates' Court and such court has no jurisdiction to inquire into or to try him on the charge drawn up or presented under subsection (1) the court may either admit the accused person to bail or remand him in custody for a period not exceeding fourteen days and shall forthwith notify the Attorney-General thereof in writing.

(4)If at the end of such period of bail or custody, the Attorney-General has not ordered a preliminary inquiry under the provisions of section 192(1), or taken steps to have the accused person appear or be brought before the Supreme Court, or taken any action to terminate the proceedings under the action to terminate the proceedings under the provisions of section 61 or section 65 or otherwise, the Magistrates' Court shall direct that the accused person appear or be brought before the Supreme Court and may admit the accused person to bail or remand him in custody to appear or be brought before the Supreme Court.

#### PROCESSES TO COMPEL THE APPEARANCE OF ACCUSED PERSONS

##### Summons

Form and 71(1) Every summons issued by a judicial officer under this

contents of Code shall be in writing, in duplicate and signed by such

summons. judicial officer.

6/31/1964.

(2) Every summons shall be directed to the person summoned and shall require him to appear at a time and place to be therein appointed before a court having jurisdiction to inquire into and deal with the complaint or charge. It shall state shortly the offence for which the person against whom it is issued is charged.

Service of 72(1) Every summons shall be served by a police officer or

summons. by an usher\* of the Supreme Court or other public servant and

19/31/1964. 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 therefor on the back of the other duplicate.

Service when 73(1) Where the person summoned cannot by the exercise of

person due diligence be found, the summons may be served by leaving

summons one of the duplicates for him with some adult male member of

cannot be his family or with his servant residing with him or with his

found. employer; and the person with whom the summons is so left

shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

(2) If any person with whom a summons is left pursuant to

this section fails or refuses to take all reasonable steps to cause the same to be served he shall be guilty of contempt of court.

Procedure 74. If service in the manner provided by sections 72 or 73

when service cannot by the exercise of due diligence be effected, the

cannot be serving officer shall affix one of the duplicates of the

effected as summons to some conspicuous part of the house or homestead in

before which the person summoned ordinarily resides, and thereupon

provided. the summons shall be deemed to have been duly served.

Service on 75. Service of a summons on an incorporated company or

company. other body corporate may be effected by serving it on the secretary, local manager or other principal officer of the corporation or by registered letter addressed to the chief officer of the corporation in Seychelles. In the latter case service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

Proof of 76(1) Where the officer who has served a summons is not

service. present at the hearing of the case, an affidavit purporting to

2/39/1960. be made before the Registrar or a judicial officer that such

19/31/1964. summons has been served and a duplicate of the summons purporting to be indorsed in the manner hereinbefore 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.

(2)The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the court.

Power to 77(1) Whenever a judicial officer issues a summons in

dispense with respect of any offence other than a felony, he may if he sees

personal reason to do so, and shall when the offence with which the

attendance of accused is charged is punishable only by fine and/or

accused. imprisonment not exceeding three months, dispense with the

7/9/1955. personal attendance of the accused, provided that he pleads

6/3/1959. guilty in writing or appears by an advocate.

18 &

19/31/1964. (2)A court inquiring into or trying any case may in its discretion, at any subsequent stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinafter provided.

(3)If the court 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 prescribed for such payment the court 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 court may then prescribe. If such accused person does not attend upon the return of such summons the court may forthwith issue a warrant and commit such person to prison for such term as the court may then fix.

(4)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 court may adjourn the proceedings and direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinafter provided.

(5)Whenever the attendance of an accused person has

been so dispensed with and his attendance is subsequently required, the cost of any adjournment for such purpose shall be borne in any event by the accused.

#### Warrant of Arrest

Warrant in 78(1) Where a prosecution has been instituted and a case of Magistrate or the Registrar has reason to believe that the absconding, accused is avoiding service or that he is unlikely to obey the etc. summons or surrender to his bail or attend the resumed 2/39/1960. hearing, as the case may be, the Magistrate or Registrar may issue a warrant for the arrest of the accused.

(2)An application for a warrant under this section may be made either in writing by a public prosecutor or orally by any police officer or by the complainant or a surety, in which case the Magistrate or Registrar shall examine the applicant and any necessary witness on oath or affirmation and record the substance of his information.

Warrant on 79. If the accused does not appear at the time and place

disobedience appointed in and by the summons, and his personal attendance

to summons. has not been dispensed with under section 77 the court may issue a warrant to apprehend him and cause him to be brought before such a court. But no such warrant shall be issued unless a complaint has been made upon oath.

Form, contents 80(1) Every warrant of arrest shall be under the hand of the

and duration judicial officer issuing the same.

of warrant.

7/9/1955. (2)Every warrant shall state shortly the offence with

18 & which the person against whom it is issued is charged and

19/13/1964. 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 having jurisdiction in the case to answer to the charge therein mentioned 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 cancelled by the judicial officer who issued it.

Power to 81(1) A judicial officer issuing a warrant for the arrest of

direct any person in respect of any offence other than murder or

security to treason may in his discretion direct by indorsement on the

be taken. warrant that, if such person executes a bond with sufficient

19/31/1964. sureties for his attendance before the specified court at a

2/23/1971. 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 indorsement shall state -

(a) the number of sureties;

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

(c) the time at which he is 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.

Warrant, to 82(1) A warrant of arrest may be directed to one or more

whom directed. police officers, or generally to all police officers. But a

19/13/1964. judicial officer issuing such a warrant may, if its immediate execution is necessary, and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.

(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.

Execution of 83. A warrant directed to any police officer may also be

warrant executed by any other police officer whose name is indorsed

directed to upon the warrant by the officer to whom it is directed or

police officer. indorsed.

Notification 84. The police officer or other person executing a warrant

of substance of arrest shall notify the substance thereof to the person to

of warrant. be arrested and, if so required, shall show him the warrant.

Person 85. The police officer or other person  
executing a warrant

arrested to be of arrest shall (subject to the provisions  
of section 81 as to

brought before security) without unnecessary delay bring  
the person arrested

the court before the court before which he is  
required by law to produce

without delay. such person.

Where warrant 86. A warrant of arrest may be  
executed at any place in

of arrest Seychelles.

may be

executed.

Irregularities 87. Any irregularity or defect in the  
substance or form of

in warrant. a warrant, and any variance between it  
and the written complaint or information, or between  
either 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, such 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.

#### PUBLICATION AND ATTACHMENT

Publication of 88(1) If any court has reason to  
believe (whether after

notice for taking evidence or not) that any person  
against whom a warrant

absent person. of arrest has been issued is not in, or  
cannot be found in,

2/23/1981. Seychelles, the court may give notice in the manner specified in subsection (2) requiring that person to appear at a specified place within 30 days of the date of publication of the notice or such longer time as is specified in the notice.

(2)A notice under subsection (1) shall be published -

(a) in the Gazette ; and

(b) in a newspaper published in and or circulating in Seychelles ; and

(c) by being broadcast on Radio Seychelles,

and shall be served either -

(i) by sending it to the person named in the notice by registered post at his last known address, whether in or outside Seychelles ; or

(ii) by serving it, in the manner provided for service of a summons in section 72, 73 or 74 on a person in Seychelles who has purported to be an agent of that person.

(3)A statement in writing by that court that a notice under subsection (2) was published on a specified day and served is conclusive evidence that subsections (1) and (2) were complied with and that the notice was so published and served.

Attachment 89(1) Where a notice under section 88 has been published and

of property. served, the court issuing the notice may at any time order the

2/23/1981. attachment of any property, whether movable or immovable, belonging to the person named in the notice (subject to such exceptions as the court considers necessary for the maintenance of any wife, children or dependant of that person).

(2)An order under subsection (1) authorises the attachment of all property, whether movable or immovable, belonging to that person in such manner as may be prescribed.

(3)The Chief Justice may make rules of court prescribing the manner of, and generally in relation to, the attachment of property under this section.

(4)If the property under attachment or part of that property is perishable or consists of livestock, the court may, if it thinks it expedient, order immediate disposal or sale of that property or part of that property, as the case may be.

(5)If the person named in a notice under section 88 does not appear within 6 months of the date of publication of the notice, the court may determine that such of the property under attachment as the court directs is placed at the disposal of the Government (subject to such exceptions as the court considers necessary for the maintenance of any wife, children or dependant of that person).

(6)Property under attachment placed at the disposal of the Government shall be disposed of in accordance with the instructions of the President and shall be sold or used or reserved for the public service.

(7)Where property is placed at the disposal of the Government in terms of this section, the person named in the notice is not entitled to an accounting or to compensation for its value.

Restoration of 90(1) If the person named in a notice under section 88

attached                    appears voluntarily or is apprehended  
and brought before the

property                    court by whose order the property was  
attached and proves to

2/23/1981.                he satisfaction of that court that

(a) he was not out of Seychelles or unable to be found in  
Seychelles, as the case may be, for the purpose of  
avoiding execution of the warrant of arrest; and

(b) he did not have such notice of that notice as to  
enable him to appear within the time specified,

all his property under attachment together with the net  
proceeds of any of that property which has been sold shall  
be returned to the person named in the notice.

(2)All property under attachment not placed at the  
disposal of the Government under section 89(5), together  
with the net proceeds of any of that property which has  
been sold shall be

(a) returned to the person named in the notice or

(b) delivered to the Curator or another person named by  
the court as guardian, to be held for the benefit of the  
wife, children or named dependants of the person named  
in the notice.

(3)Any person whose application under this section for  
the delivery of property or the net proceeds of sale of that  
property has been rejected by the court may appeal and  
Part X (Appeals) shall apply to that appeal.

Processes                    Miscellaneous Provisions Regarding

Power of                    91. Where any person for whose

appearance or arrest the

take bond for officer presiding in any court is empowered to issue a summons

appearance. or warrant is present in such court, such officer may require

19/31/1964. such person to execute a bond, with or without sureties, for his appearance in such court.

Arrest for 92. When any person who is bound by any bond taken under

breach of this Code to appear before a court does not so appear, the

bond. officer presiding in such court may issue a warrant directing that such person be arrested and produced before him.

Power of 93(1) When any person for whose appearance or arrest a court

court to order is empowered to issue a summons or warrant is confined in any

prisoner to be prison, the court may issue an order to the officer in charge

brought before of such prison requiring him to bring such prisoner in proper

it. custody, at a time to be named in the order, before such

19/31/1964. court.

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

Provisions of 94. The provisions contained in this part relating to a

this part summons and warrant, and their issue, service and execution,

generally shall, so far as may be, apply to every  
summons and every

applicable to warrant of arrest issued under this Code.

summons

and warrants.

## SEARCH WARRANTS

Power to 95. Where it is proved on oath to a  
judicial officer that

issue search in fact or according to reasonable  
suspicion anything upon,

warrants. by or in respect of which an offence has  
been committed or

7/9/1955. anything which is necessary to the  
conduct of an investigation

19/31/1964. into any offence is in any building, ship,  
carriage, box, receptacle or place, the judicial officer may  
by warrant (called a search warrant) authorise a police  
officer or other person therein named to search the  
building, ship, carriage, box, receptacle or place (which  
shall be named or described in the warrant) for any such  
thing and, if anything searched for be found, to seize it  
and carry it before a court to be dealt with according to  
law.

Execution of 96. Every search warrant may be issued  
on any day

search warrant. (including Sunday) and may be executed  
on any day (including

7/9/1955. Sunday) between the hours of sunrise  
and sunset but the

19/31/1964. judicial officer may, by the warrant, in  
his discretion, authorise the police officer or other person  
to whom it is addressed to execute it at any hour.

Person in 97(1) Whenever any building or other  
place liable to search

charge of is closed, any person residing in or being

in charge of such

closed place building or place, shall, on demand of the police officer or

to allow other person executing the search warrant, and on production

ingress. of the warrant, allow him free ingress thereto and egress therefrom and afford all reasonable facilities for a search therein.

(2) If ingress into, or egress from, such building or other place cannot be obtained, the police officer or other person executing the search warrant may proceed in the manner prescribed by section 11 or 12.

(3) Where any person in or about such building or place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman the provisions of section 16 shall be observed.

Detention of 98(1) When any such thing is seized and brought before a

property court, it may be detained until the conclusion of the case or

seized. 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 it 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 thing to be restored to the person from whom it was taken, unless the court sees fit and is authorised or required by law to dispose of it otherwise.

Provisions 99. The provisions of sections 80(1) and (3), 82, 83 and

applicable to 86, shall, so far as may be, apply to all  
search warrants

search issued section 95.

warrants.

#### PROVISIONS AS TO BAIL

Power to 100(1) When any person, other than  
any person accused of

grant bail in murder or treason, is arrested or  
detained without warrant by

certain cases. an officer in charge of a police station,  
or appears or is

18 & brought before a court, and is prepared  
at any time while in

19/31/1964. the custody of such officer or at any  
stage of the proceedings

2/23/1971. before such court to give bail, such  
person may be admitted to bail:

Provided that such officer or court may, instead of taking  
bail from such person, release him on his executing a  
bond without sureties for his appearance as hereinafter  
provided.

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

(3) Notwithstanding anything contained in subsection  
(1), the Supreme Court may in any case direct that any  
person be admitted to bail or that the bail required by the  
Magistrates' Court or a police officer be reduced.

Bail bond and 101(1) Before any person is released on  
bail or on his own

special conditions of bail.      recognisance, a bond for such sum as the court or police

officer, as the case may be, thinks sufficient shall be

18/31/1964.      executed by such person and, when he is released on bail, by

2/19/1975.      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.

(2) In releasing any person on bail or on his own recognizance a court may impose such conditions as it may deem fit.

(3) The conditions on which any person is released on bail or on his own recognizance may include conditions appearing to the court to be likely to result in his appearance at the time and place required or to be necessary in the interests of justice or for the prevention of crime.

(4) A court which on releasing, or directing the release of, any person on bail imposes a condition under the foregoing subsection shall not require him to find sureties in respect of that condition.

Discharge      102(1) As soon as the bond has been executed the person for

from custody      whose appearance it has been executed shall be released, and

of person      when he is in prison the court admitting him to bail shall

bailed.      issue an order of release to the officer in charge of the prison, and such officer on receipt of the order shall release him.

(2) Nothing in this section or in section 100 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 103. When any person is required by any court or officer to

instead of execute a bond, with or without sureties, such court or

recognisance. 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 104. If, through mistake, fraud or otherwise, insufficient

order suffi- sureties have been accepted, or if they afterwards become

cient bail insufficient, the court may issue a warrant of arrest

when bail directing that the person released on bail be brought before

first taken it and may order him to find sufficient sureties, and on his

is insuffi- failing so to do may commit him to prison.

cient.

Discharge of 105(1) All of any of the sureties for the appearance and

sureties. attendance of a person released on bail may at any time apply to a court to discharge the bond either wholly or so far as it relates to the applicant or applicants.

(2) On such application being made the court shall issue a warrant of arrest directing that the person so released be brought before it.

(3) On the appearance of such person pursuant to

the warrant, or on his voluntary surrender, the court 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 106. Where a surety to a bond dies before the bond is

surety. 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 107. If it is made to appear to any court, by information

by recogni- on oath that any person bound by recognisance is about to

sance abscon- leave Seychelles, the court may cause him to be arrested and

ding may be may commit him to prison until the trial, unless the court

committed. shall see fit to admit him to bail upon further recognisance.

Forfeiture of 108(1) Whenever it is proved to the satisfaction of a court

recognisance. by which a recognisance under this Code has been taken, or

9 & when the recognisance is for appearance before a court, to the

19/31/1964. satisfaction of such court, that such recognisance has been forfeited, the court shall record the grounds of such proof, and call upon any person bound by such recognisance to pay the penalty thereof, or to show cause why it should not be paid.

(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 such person, or his estate if he be dead.

(3) Such warrant may be executed by the attachment and sale of such property wherever found in Seychelles.

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

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

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

Appeal from 109. All orders made under section 108 by any Magistrate

and revision shall be appealable to and may be revised by the Supreme

of orders. Court.

Power to 110. The Supreme Court may direct any Magistrate to levy

direct levy of the amount due on a recognisance to appear and attend at the

amount due on Supreme Court.

certain recog-

nisances.

## CHARGES AND INFORMATIONS

111. Every charge or information shall contain, and shall be specified in the charge or information together with such particulars as may be necessary for giving with necessary particulars. Every charge or information 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.

112(1) Any offences, whether felonies or misdemeanours, 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 similar character.

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

(3) Where, before trial, or at any stage of a trial, the court is of opinion that a person accused may be embarrassed 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 counts of such charge or information.

Joinder of 113. The following persons may be  
joined in one charge or

two or more information and may be tried together  
namely -

accused in

one charge or (a) persons accused of the same  
offence committed in

information. the course of the same  
transaction;

7/9/1955.

(b) persons accused of an offence and persons accused  
of abetment, or of an attempt to commit such offence;

(c) persons accused of more offences than one of the  
same kind (that is to say, offences punishable with the  
same amount of punishment under the same section of  
the Penal Code or of any other written law) committed by  
them jointly within a period of twelve months;

(d) persons accused of different offences committed in  
the course of the same transaction;

(e) persons accused of any offence under Chapter

Cap. 158 XXVI to XXX of the Penal Code  
and persons 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 of abetment or attempting to commit either of such  
last-named offences;

(f) 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 or of attempting  
to commit any such offence.

Rules for the 114. The following provisions shall  
apply to all charges

framing of and informations and, notwithstanding  
any rule of law or

charges and practice, a charge or an information shall, subject to the

informations. provisions of this Code, not be open to objection in respect

7/9/1955. of its form or contents if it is framed in accordance with the

19/31/1964. provisions of this Code -

Mode in (a)(i)A count of a charge or an information

which shall commence with a statement of the

offences are offence charged, called the statement of

to be charged. offence;

4/23/1976.

(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 offence;

(iii) after the statement of the offence, particulars of such offences shall be set out in ordinary language, in which the use of technical terms shall not be necessary;

Provided that where any rule of law or any Act 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 particulars to be given than those so required;

(iv) the forms set out in the fourth schedule to this Code or forms conforming thereto as nearly as may be shall be used in cases to which they are applicable, and in other cases forms to the like effect of conforming thereto 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.

Provisions as (b)(i)Where an enactment constituting an offence

to statutory states the offence to be an omission to do

offences. any different acts in the alternative, or the doing 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 matter 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.

Description (c)(i)The description of property in a charge or

of property an information shall be in ordinary

S.I. 72/1976. language, and such as to indicate with reasonable clearness 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 the property is vested in more than one person, and the owners of the property are referred to in a charge or 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 "Club" or such other 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 Republic;

(iv) coin and bank notes may be described as money; and any allegation as to 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 person dishonestly appropriated or obtained any coin or any bank or currency note or any portion of the value thereof, although such coin or bank 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.

Description. (d) The description or designation in a charge or an information of the accused person, or of any other person to whom reference is made therein, 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, such description or designation shall be given as is reasonably practicable in the circumstances, or such person may be described as "a person unknown."

Description of (e) Where it is necessary to refer to any document

documents. 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 thereof, without setting out any copy thereof.

General rule (f) Subject to any other provisions of this section

as to it shall be sufficient to

describe any place,

description. time, thing, matter, act or omission whatsoever to which it is necessary to refer in any charge or information in ordinary language, in such a manner as to indicate with reasonable clearness the place, time, thing, matter, act or omission referred to.

Statement of (g)It shall not be necessary in stating any intent

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.

Use of figures (h) Figures and abbreviations may be used for

and abbre- expressing anything which is commonly expressed

viations. thereby.

Gross sum (i) When a person is charged with any offence under

may be sections 265, 266, 267 or 268 of the Penal Code

specified in it shall be sufficient to specify the gross

certain cases amount of property in respect of which the

of stealing. offence is alleged to have been committed and

Cap. 158. the dates between which the offence is alleged to have been committed without specifying particular times or exact dates.

PREVIOUS CONVICTION OR ACQUITTAL

Person 115. A person who has been once  
 tried by a court of  
 convicted or competent jurisdiction for an offence and  
 convicted or  
 acquitted not acquitted of such offence shall, while  
 such conviction or  
 to be tried acquittal has not been reversed or set  
 aside, not be liable to  
 again for be tried again on the same facts for the  
 same offence.  
 same offence.

Person may be 116. A person convicted or acquitted  
 of any offence may  
 tried again afterwards be tried for any other offence  
 with which he might  
 for separate have been charged on the former trial  
 under subsection (1) of  
 offence. section 112 of this Code.

Consequences 117. A person convicted or acquitted  
 of any act causing  
 supervening consequences which together with such  
 act constitute a  
 or not known different offence from that for which  
 such person was  
 at time of convicted or acquitted, may be  
 afterwards tried for such  
 former trial. 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  
 acquitted or convicted.

Where original 118. A person convicted or acquitted  
 of any offence

court was not constituted by any acts may,  
notwithstanding such conviction

competent to or acquittal, be subsequently charged  
with and tried for any

try subse- other offence constituted by the same  
acts which he may have

quent charge. committed, if the court by which he was  
first tried was not competent to try the offence with which  
he is subsequently charged.

Mode of 119(1) In any inquiry, trial or other  
proceeding under this

proof of Code, a previous conviction or acquittal  
may be proved, in

previous addition to any other mode provided by  
any law for the time

conviction or being in force -

acquittal.

7/6/1968. (a)by an extract certified, under  
the hand of the officer having the custody of the records  
of the court in which such conviction or acquittal was had,  
to be a copy of the sentence or order; or

(b)in case of a conviction, either by a certificate signed by  
the officer in charge of the prison in which the punishment  
or any part thereof was inflicted, or by production of the  
warrant of commitment under which the punishment was  
suffered,

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

(2) A certificate issued under the provisions of  
section

Cap. 172. 26(4) of the Police Force Act shall be  
prima facie evidence of all facts therein set forth.

(3) A previous conviction in any place outside Seychelles 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 fingerprints or photographs of the fingerprints of the person so convicted together with evidence that the fingerprints of the person so convicted are those of the accused person.

Such a certificate as aforesaid shall be prima facie evidence of all facts therein set forth without proof that the officer purporting to sign it did in fact sign it and was empowered to do so.

#### COMPELLING ATTENDANCE OF WITNESSES

Summons for 120(1) If it is made to appear that material evidence can be

witness. given by or is in the possession of any person, it shall be lawful for a court having cognisance of any criminal cause or matter to issue a summons to such person requiring his attendance before such court or requiring him to bring and produce to such court for the purpose of the evidence all documents and writings in his possession or power which may be specified or otherwise sufficiently described in the summons.

Evidence as (2) No person shall be permitted to give any evidence

to affairs of derived from unpublished official records relating to any

state and affairs of state, except with the permission of the officer at

official com- the head of the department concerned who shall give or

munications. withhold such permission as he thinks fit, and no public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interest would suffer by the disclosure.

Warrant for 121. If without sufficient excuse, a witness does not

witness who appear in obedience to the summons, the court, on proof of the

disobeys proper service of the summons a reasonable time before, may

summons. issue a warrant to bring him before the court at such time and place as shall be therein specified.

Warrant for 122. If the court is satisfied by evidence on oath that

witness in such person will not attend unless compelled to do so, it may

first at once issue a warrant for the arrest and production of the

instance. witness before the court at a time and place to be therein specified.

Mode of 123. When any witness is arrested under a warrant the court

dealing with may, on his furnishing security by recognisance to the

witness satisfaction of the court for his appearance at the hearing of

arrested under the case, order him to be released from custody, or shall, on

warrant. his failing to furnish such security, order him to be detained for production at such hearing.

Power to 124(1) Any court desirous of examining as a witness, in any

order pro- case pending before it, any person confined in any prison may

duction of issue an order to the officer in charge of such prison

prisoner as requiring him to bring such prisoner in proper custody, at a

witness. time to be named in his order before the  
court for

19/31/1964. examination.

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

Penalty for 125(1) Any person summoned to attend  
as a witness who, with-

non- out lawful excuse, fails to attend as  
required by the summons,

attendance or who, having attended, departs  
without having obtained the

of witness. permission of the court, or fails to attend  
after adjournment

18 & 19/ of the court after being ordered to  
attend, shall be liable by

31/1964. order of the court to a fine not  
exceeding two hundred and fifty rupees, and to  
imprisonment for a term not exceeding fifteen days.

(2) Such fine shall be levied by attachment and sale  
of any movable property belonging to such witness.

(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 Supreme Court may  
remit or reduce any sentence imposed under this section  
by the Magistrates' Court.

#### EXAMINATION OF WITNESSES

Power to 126. Any court may at any stage of

any inquiry, trial or

summon other proceeding under this Code  
summon or call any person as

material a witness, or examine any person in  
attendance though not

witness or summoned as a witness or recall and  
re-examine any person

examine already examined, and the court shall  
summon and examine or

person recall and re-examine any such person if  
his evidence appears

present. to it essential to the just decision of the  
case:

18/31/1964.

Provided that the prosecutor or the advocate for the prosecution 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 time (if any) as it thinks necessary to enable such cross-examination to be adequately prepared if, in its opinion, either party may be prejudiced by the calling of any such person as a witness.

Evidence to 127. Save as otherwise provided  
every witness in any

be given on criminal cause or matter shall be  
examined upon oath or

oath. affirmation, and the court before which  
any witness shall

7/9/1955. appear shall have full power and  
authority to administer the

3/19/1975. usual oath or affirmation:

Provided that the court may at any time, if it thinks it just and expedient (for reasons to be recorded in the proceedings), take without oath the evidence of any person declaring that the taking of any oath whatever is according to his religious belief unlawful, or who by reason of immature age or want of religious belief ought not, in the opinion of the court, to be admitted to give evidence

on oath, the fact of the evidence having been so taken being also recorded in the proceedings.

Proof by 128(1) In any trial before the Supreme Court in its summary

written jurisdiction or in the Magistrates' Court, a written statement

statement. by any person shall subject to the conditions contained in

4/19/1975. subsection (2) be admissible as evidence to the like extent as oral evidence to the like effect by that person.

(2) A statement may be tendered in evidence under subsection (1) if -

(a) the statement purports to be signed by the person who made it;

(b) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief;

(c) at least twenty-one days before the hearing at which the statement is tendered in evidence a copy of the statement is served, by or on behalf of the party proposing to tender it, on each of the other parties to the proceedings; and

(d) none of the other parties or their advocates, within fourteen days from the service of the copy of the statement, serves a notice on the party so proposing objecting to the statement being tendered in evidence under this section.

Provided that paragraph (c) and (d) shall not apply if the parties agree before or during the hearing that the statement shall be so tendered.

(3) If a statement tendered in evidence under subsection (1) -

(a) is made by a person under the age of twenty one, it shall give his age;

(b) is made by a person who cannot read it, it shall be read to him before he signs it and shall be accompanied by a declaration by the person who so read the statement to the effect that it was so read;

(c) is made in a language other than English, it shall be accompanied by an English translation thereof certified by the court translator;

(d) refers to any other document as an exhibit, the copy served on any other party to the proceedings under subsection (2) (c) shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party on whom it is served to inspect that document or a copy thereof.

(4) Notwithstanding that a written statement made by any person may be admissible as evidence by virtue of this section-

(a) the party by whom or on whose behalf a copy of the statement was served may call the person making the statement to give evidence; and

(b) the court may, of its own motion or on the application of any party to the proceedings either before or during the hearing, require the person making the statement to attend before the court and give evidence:

Provided that any application made to the court under this

paragraph shall not be unreasonably refused.

(5) So much of any statement as is admitted in evidence by virtue of this section shall, unless the court otherwise directs, be read aloud at the hearing and where the court so directs an account shall be given orally of so much of any statement as is not read aloud.

(6) Any documents or object referred to as an exhibit and identified in a written statement admitted in evidence under this section shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.

(7) A document required by this section to be served on any person may be served -

(a) by delivering it to him or to his advocate; or

(b) in the case of a body corporate, by delivering it to the secretary or clerk of the body at its registered or principal office or by sending it by registered post addressed to the Secretary or clerk of that body at that office.

Proof by 129(1) Subject to the provisions of this section any fact of

formal which oral evidence may be given in any criminal trial may be

Admission. admitted for the purpose of that trial by or on behalf of the

4/19/1975. prosecutor or accused person and the admission by any party of any such fact under this section shall as against that party be conclusive evidence in that trial of the fact admitted.

(2) An admission under this section -

- (a) may be made before or during the trial;
- (b) if made otherwise than in court, shall be in writing;
- (c) if made in writing by an individual, shall purport to be signed by the person making it and, if so made by a body corporate, shall purport to be signed by a director or manager, or the secretary or clerk, or some other similar officer of the body corporate;
- (d) if made on behalf of an accused person who is an individual, shall be made by his advocate;
- (e) if made at any stage before the trial by an accused person who is an individual must be approved by his advocate (whether at the time it was made or subsequently) before or during the trial in question.

(3) An admission under this section for the purpose of proceedings relating to any matter shall be treated as an admission for the purpose of any subsequent criminal proceedings relating to that matter (including any appeal or retrial).

(4) An admission under this section may with the leave of the court be withdrawn in the trial for the purpose of which it is made or any subsequent criminal proceedings relating to the same matter.

Refractory 130(1) Whenever any person, appearing either in obedience to

witnesses. 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

(b)having been sworn, 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 deposition,

without in any such case offering any sufficient excuse for such refusal or neglects, the court may adjourn the case for any 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.

(3) Nothing herein contained shall affect the liability of any such person to any other punishment or proceeding for refusing or neglecting to do what is so required of him, or shall prevent the court from disposing of the case in the meantime according to any other sufficient evidence taken before it.

Report of 131(1) Any document, purporting to be a report of a

government government analyst or any prescribed person, upon any matter

analyst. or thing submitted to him for examination or analysis and

3/23/1971. report may be used as evidence of the facts stated therein in

SI. 95/1975 any inquiry, trial or other proceeding under this Code.

SI. 72/1976.

(2) When any report is so used the court may, if it thinks fit, summon and examine the analyst or the prescribed person as to the subject-matter thereof or may cause written interrogatories to be submitted to him for reply, and such interrogatories and any reply thereto, purporting to be a reply from such person, may also be used as evidence in such inquiry, trial or other proceeding.

(3) Nothing in this section shall affect any other law under which any certificate or other document is made admissible in evidence, and the provisions of this section are additional to, and not in substitution for, any such law.

(4) In this section -

"government" means the Government of Seychelles;

"prescribed person" means such person as may be prescribed for the purpose of this section by the Minister by notice in the Gazette.

Cases when 132(1) Save as provided in subsection (2), the wife or husband

wife or of the person charged shall not be a competent witness for the

husband may prosecution in any inquiry or trial.

be called for (2) The wife or husband of a monogamous marriage shall be

the prose- competent witness for the prosecution in the following cases

cution. only: -

7/9/1955.

(a) in any case where the wife or husband of a person charged may, under the Common Law of England, be called as a witness without the consent of such person;

(b) in any case where such person is charged with bigamy

or with an offence under Chapter XV of

Cap. 158 the Penal Code;

(c) in any case where such person is charged in respect of an act or omission affecting the person or property of the wife or husband of such person or the children of either of them.

(3) For the purpose of subsection (2) a monogamous marriage means a marriage which is by law necessarily monogamous and binding during the lifetime of both parties unless dissolved by a valid judgment of a court.

Taking of 133(1) If it is proved that an accused person has absconded

evidence in and that there is no immediate prospect of arresting him, the

absence of court competent to try or commit for trial such person for the

the accused. offence complained of may, in his absence, examine the

4/23/1971. witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such depositions may, on the arrest of such person, be given in evidence against him on the inquiry into or trial for the offence with which he is charged if the deponent is dead or incapable of giving evidence, or beyond the limits of Seychelles, or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) If it appears that an offence has been committed by some person or persons unknown, a judicial officer may hold an inquiry and examine any witness who can give evidence concerning the offence. Any depositions so taken may be given in evidence against any person who is subsequently accused of the offence if the deponent is dead or incapable of giving evidence or beyond the limits of Seychelles, or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

## EVIDENCE FOR DEFENCE

Competency of 134. Every person charged with an offence, and the wife or

accused and husband, as the case may be, of the person so charged, shall

husband or be a competent witness for the defence at every stage of the

wife as proceedings, whether the person so charged is charged solely

witnesses. or jointly with any other person:

Provided as follows: -

Own (a) a person so charged shall not be called as a

application. witness in pursuance of this section except upon his own application;

No comment (b) the failure of any person charged with an

if not called offence or of the wife or husband, as the case

as witness. may be, of the person so charged, to give evidence shall not be made the subject of any comment by the prosecution;

Spouses. (c) the wife or husband of the person charged shall not be called as a witness except upon the application of the person so charged;

Communications (d) nothing in this section shall make a husband

during communication made compellable to disclose any

marriage. to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage;

Cross-witness in (e) a person charged and being a

examination. pursuance of this section may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged;

No question witness in pursuance (f) a person charged and called as a

to show asked, and if asked of this section shall not be

commission of any question tending shall not be required to answer,

offence not or been convicted of or to show that he has committed

charged. been charged with any offence other than that where- with he is then charged, or is of bad character, unless -

Exceptions. (i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or

(ii) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establishing his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the complainant or the witness for the prosecution; or

(iii) he has given evidence against any other person charged with the same offence.

Evidence (7) Every person called as a witness in pursuance of this

from box. section shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses have given their evidence.

Statement by (8) Nothing in this section shall affect the provisions of

person section 197 or any right of the person charged to make a

charged. Statement without being sworn.

Procedure 135(1) Where the only witness to the facts of the case called

where person by the defence is the person charged, he shall be called as a

charged is the witness immediately after the close of the evidence for the

only witness prosecution.

called.

(2) Where any witness other than the person charged is called on behalf of the defence, the person charged shall not be permitted to give evidence after such witness without permission of the court.

#### PROCEDURE IN CASE OF THE LUNACY OR OTHER INCAPACITY OF AN ACCUSED PERSON

Inquiry by 136(1) When in the course of a trial or preliminary inquiry

court as to the court has reason to believe that the accused may be of

lunacy of unsound mind and consequently

incapable of making his defence,

accused. it shall inquire into the fact of such  
unsoundness, and may

2/39/1960. for that purpose order him to be  
detained in a mental hospital

19/31/1964. for medical observation and report for  
any period not

S.I.95/1975. exceeding one month.

S.I.72/1976.

(2) If the court is of opinion that the accused is of  
unsound mind and consequently incapable of making his  
defence, it shall postpone further proceedings in the case.

(3) If the case is one in which bail may be taken, the  
court may release the accused person on sufficient  
security being given that he will be properly taken care of  
and prevented from doing injury to himself or to any other  
person, and for his appearance before the court or such  
officer as the court may appoint in that behalf.

(4) If the case is one in which bail may not be taken,  
or if sufficient security be not given, the court shall report  
the case for the order of the President and shall  
meanwhile order the accused to be kept in custody in such  
manner as the court shall direct.

(5) In any case which has been reported to him as  
aforesaid the President may order the accused to be  
confined in a mental hospital or other suitable place of  
custody, and the court shall issue a warrant in accordance  
with such order.

Defence of 137. When the accused person appears  
to be of sound mind at

lunacy at the time of the preliminary inquiry, the  
court,

preliminary notwithstanding that it is alleged that at  
the time when the

inquiry. act was committed in respect of which  
the accused person is

19/31/1964. charged he was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, shall proceed with the case and, if the accused person ought, in the opinion of the court, to be committed for trial on information, the court shall so commit him.

Defence of 138. Where any act or omission is charged against any

lunacy at person as an offence, and it is given in evidence on the trial

trial. of such person for that offence that he was insane so as not

S.I.95/1975. to be responsible for his actions at the time when the act was

S.I.72/1976. done or omission made, then if it appears to the court before which such person is tried that he did the act or made the omission charged but was insane as aforesaid at the time when he did or made the same, the court shall make a special finding to the effect that the accused was guilty of the act or omission charged but was insane as aforesaid when he did the act or made the omission.

When such special finding is made the court shall report the case for the order of the President and shall meanwhile order the accused to be kept in custody as a criminal lunatic in such place and in such manner as the court shall direct.

The President may order such person to be confined in a mental hospital, prison or other suitable place of safe custody.

Resumption 139. Whenever any preliminary inquiry or trial is postponed

of trial or the court may at any time resume the preliminary inquiry or

inquiry trial and require the accused to appear or to be brought

19/31/1964. before such court, when, if the court considers him capable of making his defence, the

preliminary inquiry or trial shall proceed.

But if the court considers the accused to be still incapable of making his defence, it shall act as if the accused were brought before it for the first time.

Certificate of 140. If an accused person is confined in a mental hospital

medical under the provisions of this Code and the medical officer in

officer of charge of such mental hospital certifies that the accused is

mental capable of making his defence, such accused shall be taken

hospital as before the court at such time as the court appoints to be

to sanity to dealt with according to law, and the certificate of such

be evidence. medical officer shall be receivable in evidence.

Procedure 141. If the accused, though not insane, cannot be made to

when accused understand the proceedings, the court may proceed with the

does not preliminary inquiry or trial ; and in the case of a court

understand other than the Supreme Court, if such inquiry results in a

proceedings. committal for trial, or if such trial results in a conviction,

19/31/1964. the proceedings shall be forwarded to the Supreme Court with a report of the circumstances and the Supreme Court shall pass thereon such order as it thinks fit.

JUDGMENT

Mode of 142(1) The judgment in every trial in any criminal court in delivering the exercise of its original jurisdiction shall be pronounced, judgment, or the substance of such judgment shall be explained in open convicted court either immediately after the termination of the trial or person to be at some subsequent time of which notice shall be given to the informed of parties and their advocates, if any: right of appeal. Provided that the whole judgment shall be read out by 4/7/1961. the presiding Judge or Magistrate if he is requested so to do 18/31/1964. either by the prosecution or the defence.

(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) 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.

(4) At the time of any conviction by the Magistrates' Court the magistrate shall, where a right of appeal exists, inform the convicted person of his right of appeal, and the magistrate shall thereupon record that he has complied with the provisions of this subsection, sign such note and date it.

(5) Nothing in this section shall be construed to limit in any way the provisions of section 345.

Contents of 143(1) Every such judgment shall, except as otherwise

judgment, expressly provided by this Code, be written by the presiding

4/7/1961. officer of the court 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 the presiding officer in open court at the time of pronouncing it.

(2) In the case of a conviction the judgment shall specify

Cap. 158 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.

(4) Notwithstanding anything hereinbefore contained, in trials by jury the court need not write a judgment but shall record the heads of the charge to the jury.

Copy of 144(1) On the application of the accused person a copy of the

judgment, judgment shall be given to him without delay. Such copy shall

etc., to be be given free of cost.

given to

accused on (2) In a trial by jury a copy of the heads of the charge

application. to the jury shall, on the application of the

accused person,

4/7/1961. be given to him without delay and free of cost.

Alternative or 145. Where there are more charges than one against the same

additional accused and he has been convicted of one or more of them the

charges. person conducting the prosecution, may, with the consent of

2/39/1960. the court, withdraw the others or the court of its own motion

4/4/1963. may stay the proceedings on the others. Such withdrawal shall have the same effect as a withdrawal under section 65.

#### COSTS AND COMPENSATION

Costs against 146(1) It shall be lawful for the Judge or a Magistrate to

accused. order any person convicted before him of an offence to pay to

6/3/1959. the public or private prosecutor, as the case may be, such

18/31/1964. reasonable costs as to such Judge or Magistrate may seem fit, in addition to any other penalty imposed:

Provided that such costs shall not exceed five hundred rupees in the case of the Supreme Court or two hundred and fifty rupees in the case of the Magistrates' Court.

Costs against (2) It shall be lawful for the Judge or a Magistrate who

private acquits or discharges a person accused of an offence, if the

prosecutor. prosecution for such offence was originally instituted on a

S.I. 72/1976. 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:

Provided that such costs shall not exceed five hundred rupees in the case of an acquittal or discharge by the Supreme Court or two hundred and fifty rupees in the case of an acquittal or discharge by the Magistrates' Court:

Provided 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 149.

(4) In this section -

"public prosecutor" means any person prosecuting on behalf of the Republic or for or on behalf of a public authority;

"private prosecutor" means any prosecutor other than a public prosecutor.

Republic not 147(1) The Republic shall not be sentenced to pay costs in

to pay costs. case of dismissal of any charge, but witnesses called on

19/31/1964. behalf of the Republic shall be entitled to payment of their attendance fees and allowances by the Republic, in all cases subject to recovery by the Republic from any party sentenced to pay costs.

Power to (2) The court shall have power to disallow fees or

disallow fees. travelling allowances to any witness called on behalf of the Republic in any case tried by it.

Order to pay 148. An appeal shall lie from any order awarding costs

costs under section 146 if made by a Magistrate to the Supreme Court

appealable. and if by the Judge to the Court of Appeal. The appellate

2/13/1957. court shall have power to give such costs of the appeal as it

19/31/1964. shall deem reasonable.

Compensation 149. If on the dismissal of any case any court shall be of

in case of opinion that the charge was frivolous or vexatious, such court

frivolous or may order the complainant to pay to the accused person a

vexatious reasonable sum as compensation for the trouble and expense to

charge. which such person may have been put by reason of such charge in addition to his costs.

Costs and 150. Sums allowed for costs or compensation awarded under

compensation section 146 or section 149 shall in all cases be specified in

to be the conviction or order. If the person who has been ordered

specified in to pay such costs or compensation fails so to pay, he shall ,

order, how in default of distress levied in

accordance with section 297,

recoverable. be liable to imprisonment in accordance with the scale laid down in section 28 of the Penal Code unless such costs or

Cap. 158. compensation be sooner paid:

Provided that in no case shall the period of imprisonment imposed under this section exceed three months.

Power of 151(1) Whenever any court imposes a fine, or confirms on

court to appeal, revision or otherwise a sentence of fine, or a

award expenses sentence of which a fine forms part, the court may, when

or compensa- passing judgment, order the whole or any part of the fine

tion out recovered to be applied -

of fine.

(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 compensation in any subsequent civil suit relating to the same matter, the court shall take into account any sum paid or recovered as compensation under this section.

President may (4) It shall also be lawful for the

President to restore

restore any article or articles which shall be seized or forfeited, or

forfeited to restore the proceeds of the same if sold, in any case in

articles or which the said seizure or forfeiture may have been made or

their decreed by way of penalty for any contravention of any law in

proceeds. Seychelles, notwithstanding that the article or articles so

7/9/1955. seized or forfeited, or the whole or part of the proceeds

S.I. 95/1975. thereof, may be receivable by any person or persons or other

S.I. 72/1976. herein aforesaid.

#### DISPOSAL OF PROPERTY IN POSSESSION OF THE POLICE, FORFEITURE AND RESTITUTION OF PROPERTY

Disposal of 152(1) Where any property of whatsoever description comes

property in into the possession of the police in the course of their

possession of duties it shall be lawful for the Commissioner of Police to

police. direct that it be disposed of by sale or otherwise unless

3/9/1955. claimed by the owner of the said property -

S.I. 51/1959.

S.I. 72/1976. (a)within one day in the case of perishable goods;

(b)within fifteen days in the case of all other goods when the total value of such goods belong- ing to the same

person is less than Rupees 10;

(c) in all other cases three months after an announcement shall have appeared in the Gazette giving a description of the property and requesting the owner to claim it from the Police.

(2) All moneys resulting from the sale or disposal of such property by the police shall be paid into the Police Reward Fund and no claim shall lie against the Police by the owner or any other person in respect of such property.

\*Power (3) This section shall not apply to any property that is

delegated forfeited to the Republic, and in any such case the property

vide G.N. shall be disposed of as the President directs.

118/1957.

Cap. 241

Sub. Leg.

S.I. 72/1976.

Forfeiture. 153. In addition to any forfeiture specially provided for

3/9/1955. by this Code or any other law, the corpus delicti when it

S.I. 72/1976. is the property of the offender and all the things produced by the offence or which may have been used or were intended to be used for committing an offence, shall on the conviction of the offender become forfeited to the Republic.

Restitution. 154(1) Subject to the provisions of Article 2280 of the Civil

3/9/1955. Code the court may order the restitution of any article pro-

Cap. 33                   duced in court to the original owner or other person lawfully entitled thereto.

(2) The court shall have power to grant from time to time writs of restitution for the said property or to order the restitution thereof in a summary manner.

(3) On the restitution of any stolen property if it appears to the court, that the offender has sold the stolen property to any person in circumstances other than those

Cap. 33                   specified in Article 2280 of the Civil Code, that such person had no knowledge that the same was stolen and than any moneys have been taken from the offender on his apprehension, the court may, on the application of such purchaser, order that out of such moneys a sum not exceeding the amount of the proceeds of such sale, be delivered to the said purchaser.

(4) Any person aggrieved by an order made by a Magistrate under this section may appeal to the Supreme Court and upon the hearing of such appeal the court may annul or vary any order made for the restitution of any property to any person.

Property found 155. Where, upon the apprehension of a person charged with

on accused           an offence, any property is taken from him, the court before

person.               which he is charged may order -

3/9/1955.

(a) that the property or a 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 part thereof be applied to the payment of any fine or any costs or compensation directed to be paid by the person charged.

CONVICTION FOR OFFENCES OTHER THAN THOSE

## CHARGED

When offence 156(1) When a person is charged with an offence consisting of

proved is several particulars, a combination of some only of which

included in constitutes a complete minor offence, and such combination is

offence proved but the remaining particulars are not proved, he may be

charged. 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.

Person 157. When a person is charged with an offence, he may be

charged with convicted of having attempted to commit that offence, although

any offence he was not charged with the attempt.

may be

convicted of

attempt.

Alternative 158. When a person is charged with murder or manslaughter

verdict to and it is proved that he aided, abetted, counselled or

murder or procured the suicide of the person in question, he may be

manslaughter convicted of that offence although he was not charged with it.

in cases of  
 complicity in  
 another's  
 suicide.  
 10/31/1964.

Alternative 159(1) When a woman is charged with the murder of her child,

verdicts in being a child under the age of twelve months, and the court is

various of opinion that she, by any wilful act or omission, caused its

offences death but at the time of the act or omission she had not fully

involving the recovered from the effect of giving birth to such child and

homicide of that by reason thereof or by reason of the effect of lactation

children. consequent upon the birth of the child, the balance of her

7/9/1955. mind was then disturbed, she may, notwithstanding that the circumstances were such that but for the provisions of section

Cap. 158 214 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

Cap. 158. of any child or with infanticide, or with an offence under section 147 or section 148 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 147 or section 148 of the Penal Code, but that he is guilty of the offence of killing an unborn child, he may be convicted of that offence although he was not charged with it.

(3) When a person is charged with killing an unborn child and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under either

Cap. 158. section 147 or 148 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 killing an unborn child 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 the offence of concealment of birth although he was not charged with it.

Alternative 160. When a person is charged with manslaughter in

verdict in connection with the driving of a motor vehicle by him and the

charge of court is of opinion that he is not guilty of that offence, but

manslaughter that he is guilty of an offence under section 24 of the Road

from driving Transport Act, he may be convicted of that offence although he

of motor was not charged with it.

vehicle.

Cap. 206.

Alternative 161. When a person is charged with -

verdict in

certain (a)driving a motor vehicle on a road recklessly or

driving at a speed or in a manner which is dangerous to

offences the public contrary to section 24(1)(b) of the

3/20/1981. Road Transport Act; or

Cap. 206.

(b)driving a motor vehicle while drunk or under the influence of drink or drugs contrary to section 24(1)(c) of that Act,

and the court is of opinion that he is not guilty of that offence, but that he is guilty of the offence of driving a motor vehicle negligently contrary to section 24(1)(b) of that Act, he may be convicted of that offence of driving negligently although he was not charged with it.

Alternative 162(1) When a person is charged with rape and the court is of

verdict in opinion that he is not guilty of that offence but that he is

charge of guilty of an offence under one of the sections 135, 136, 136A,

rape and 139 and 155 of the Penal Code, he may be convicted of that

kindred offence although he was not charged with it.

offences.

7/9/1955. (2) When a person is charged with an offence under section

5/4/1963. 155 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

Cap. 158. under one of the sections 136, 136A 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 the defilement of a girl under the age of thirteen years or with the defilement of a girl between thirteen and fifteen years of age and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under one of the sections 135 and

Cap. 158. 139 of the Penal Code, he may be convicted of that offence although he was not charged

with it.

Person 163. When a person is charged with an offence mentioned in

charged with Chapter XXIX of the Penal Code and the court is of opinion

burglary, that he is not guilty of that offence but that he is guilty of

etc., may be any other offence (mentioned in the said Chapter), he may be

convicted of convicted of that offence although he was not charged with it.

kindred

offences.

Cap. 158.

Alternative 164(1) When a person is charged with stealing anything and -

verdicts in

charges of (a) it is proved that he received the thing knowing the

stealing and same to have been stolen, he may be convicted of the

kindred offence of receiving although he was not charged with

offences. it;

(b) it is proved that he obtained the thing in any such manner as would amount, under the provisions of the

Cap. 158. Penal Code or of any other law for the time being in force to obtaining it by false pretences with intent to defraud, he may be convicted of the offence of obtaining it by false pretences although he was not charged with it;

(c) the facts proved amount to an offence under section

Cap. 158. 310 of the Penal Code he may be convicted of the offence under that section although he was not charged with it.

(2) When a person is charged with obtaining anything capable of being stolen by false pretences with intent to defraud, and it is proved that he stole the thing, he may be convicted of the offence of stealing although he was not charged with it.

Construction 165. The provisions of sections 156 to 164 of this Code,

of sections both inclusive, shall be construed as in addition to, and not

156 to 164 of in derogation of the provisions of any other Act and the other

this Code. provisions of this Code, and the provisions of sections 157 to 164 of this Code, both inclusive, shall be construed as being without prejudice to the generality of the provisions of section 156 of this Code.

#### MISCELLANEOUS PROVISIONS

Person 166. If on any trial for misdemeanour the facts proved in

charged with evidence amount to a felony, the accused shall not be there-

misdemeanour fore acquitted of such misdemeanour; and no person tried for

not to be such misdemeanour shall be liable afterwards to be prosecuted

acquitted for felony on the same facts, unless the court shall think

if felony fit, in its discretion, to direct such person to be prosecuted

proved unless for felony, whereupon such person may be dealt with as if not

court so previously put on trial for  
misdemeanour.

directs.

Right of 167. Any person accused of an  
offence before any criminal

accused to be court or against whom proceedings are  
instituted under this

defended. Code in any such court, may of right be  
defended by an

18/31/1964. advocate.

Promotion of 168. In all cases the court may  
promote reconciliation and

Reconciliation. encourage and facilitate the settlement in  
an amicable way of proceedings for common assault, or  
any other offence of a personal or private nature not  
amounting to felony, and not aggravated in degree, on  
terms of payment of compensation or other terms  
approved by the court, and may thereupon order the  
proceedings to be stayed or terminated.

## PART V

Mode of Taking and Recording Evidence in Inquiries  
and Trials

### GENERAL

Evidence to 169. Except as otherwise expressly  
provided, all evidence

be taken in taken in any inquiry or trial under this  
Code shall be taken

presence of in the presence of the accused, or, when  
his personal

accused. attendance has been dispensed with, in

the presence of his advocate.

Interpretation 170(1) Whenever any evidence is given in a language not

of evidence understood by the accused, and he is present in person, it

to accused or shall be interpreted to him in open court in a language

his advocate. understood by him.

6/4/1963.

18/31/1964. (2) If he appears by advocate and the evidence is given in a language other than English, and not understood by the advocate it shall be interpreted to such advocate in English.

(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 thereof as appears necessary.

(4) When the court is satisfied that it is sufficiently conversant with English, French or Creole, the court may, without the use of a sworn interpreter, undertake any interpretation required under this section or which may be necessary in any inquiry or trial from one into any other of the aforementioned languages with which the court is conversant.

#### MAGISTRATES' COURT

Manner of 171. In inquiries and trials other than trials under

recording section 173 by or before a Magistrate, the evidence of the

evidence witnesses shall be recorded in the following manner -

before

magistrate. (a) the evidence of each witness

shall be taken down in

7/9/1955. writing in English by the  
Magistrate, or in his

2/11/1959. presence and hearing and  
under his personal direction

7 & and superintendence, and shall  
be signed by the

8/4/1963. Magistrate 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 :

Provided that the Magistrate may, in his discretion, take down or cause to be taken down any particular question and answer;

(c) whenever the evidence of a witness is given in French or Creole the Magistrate may, if he is satisfied that he is sufficiently conversant with these languages, take down or cause to be taken down such evidence in English in accordance with the provisions of the preceding paragraphs without the use of a sworn interpreter.

Remarks 172. When a Magistrate has recorded the evidence of a

respecting witness he shall also record such remarks (if any) as he

demeanour of thinks material respecting the demeanour of such witness

witness. whilst under examination.

Procedure in 173(1) Notwithstanding anything in this Code, any Magistrate

case of minor having jurisdiction to try any of the offences mentioned in

offences. subsection (2) may try any such offence without recording the

3/11/1959. evidence as hereinbefore provided, but in any such case he

S.I.95/1975. shall enter, in such form as the Supreme Court may direct, the

S.I.72/1976. 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, surname and residence of the accused;

(f) the offence complained of and the offence (if any) proved, and in cases coming under paragraph (d) of subsection (2) 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 subsection (1) are as follows -

(a) offences punishable with imprisonment for a term not exceeding six months or a fine not exceeding five hundred rupees;

Cap. 158. (b) offences under Chapter XVII of the Penal Code;

Cap. 158. (c) common assault under section 235 of the Penal Code;

(d) offences under Chapters XXVI, XXVII, XXX, XXXI and XXXIII, of the Penal Code where the value of the property in respect of which the offence is alleged to have been committed does not exceed sixty rupees;

(e) any other offence which the President may, by order in the Gazette, direct to be tried in accordance with the provisions of this section;

(f) aiding, abetting, counselling, or procuring the commission of any of the foregoing offences;

(g) 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 a manner provided by the preceding sections of this part.

(4) No sentence of imprisonment for a term exceeding three months and no fine of an amount

exceeding two hundred and fifty rupees shall be passed or inflicted in the case of any conviction under this section.

Conviction or 174. Whenever any Magistrate, after having heard and

commitment recorded the whole or any part of the evidence in any inquiry

on evidence or trial, ceases to exercise jurisdiction therein and is

partly succeeded, whether by virtue of an order of transfer under the

recorded by provisions of this Code or otherwise, by another Magistrate

one magistrate who has and who exercises such jurisdiction, the Magistrate so

and partly by succeeding may act on the evidence so recorded by his

another. predecessor, or partly by himself, or he may resummon the witnesses and recommence the inquiry or trial:

Provided that -

(a)in any trial the accused may when the second Magistrate commences his proceedings, demand that the witnesses or any of them be resummoned and reheard;

(b)the Supreme Court may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if it is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial.

#### SUPREME COURT

Manner of 175. The Chief Justice may from time

to time, by rules,

recording prescribe the manner in which evidence shall be taken down in

evidence in cases coming before the Supreme Court, and the Judge of such

Supreme Court. court shall take down or cause to be taken down the evidence

7/9/1955. or the substance thereof in accordance with such rules.

9/4/1963.

## PART VI

Procedure in Trials before the Supreme Court in its Summary

Jurisdiction and before the Magistrates' Court

### PROVISIONS RELATING TO THE HEARING AND DETERMINATION OF CASES

Non-appearance<sup>176</sup>. If, in any case which a court has jurisdiction to hear

of complainant and determine, the accused person appears in obedience to the

at hearing. 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, unless for some reason it shall think it proper to adjourn the hearing of the case until some other date, upon such terms as it shall think fit, in which event it may, pending such adjourned hearing, either admit the accused to bail or remand him to prison, or take such security for his appearance as the court shall think fit.

Appearance 177. If at the time appointed for the

hearing of the case

of both                    both the complainant and the accused  
person appear before the

parties.                    court which is to hear and determine the  
charge, or if the complainant appears and the personal  
attendance of the accused person has been dispensed  
with under section 77, the court shall proceed to hear the  
case.

Withdrawal            178.    If a complainant, at any time  
before a final order is

of complaint.            passed in any case under this part,  
satisfies the court that there are sufficient grounds for  
permitting him to withdraw his complaint, the court may  
permit him to withdraw the same and thereupon acquit  
the accused.

Adjournment.    179.    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  
recognisance 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:

Provided that, if the accused person has been committed  
to prison, no such adjournment shall be for more than  
fifteen clear days, the day following that on which the  
adjournment is made being counted as the first day.

Non-appearance180(1) If at the time or place to which  
the hearing or

of parties                    further hearing shall be adjourned, the  
accused person shall

after                            not appear before the court which shall  
have made the order of

adjournment.            adjournment, it shall be lawful for such  
court, unless the accused person is charged with felony, to

proceed with the hearing or further hearing as if the accused were present, and if the complainant shall not appear the court may dismiss the charge with or without costs as the court shall think fit.

(2) If the court convicts the accused person in his absence, it may set aside such conviction upon being satisfied that his absence was from causes over which he had no control, and that he had a probable defence on the merits.

(3) Any sentence passed under subsection (1) shall be deemed to commence from the date of apprehension, and the person effecting such apprehension shall indorse the date thereof on the back of the warrant of commitment.

(4) If the accused person who has not appeared as aforesaid is charged with felony, or if the court, in its discretion, refrains from convicting the accused in his absence, the court shall issue a warrant for the apprehension of the accused person and cause him to be brought before the court.

Accused to be 181(1) The substance of the charge or complaint shall be

called upon stated to the accused person by the court, and he shall be

plead. asked whether he admits or denies the truth of the charge.

2/39/1960.

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

(3) If the accused person does not admit the truth of the charge or if the court does not accept his admission the court shall proceed to hear the case as hereinafter provided.

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

Procedure on 182. If the accused person does not admit the truth of the

plea of not charge, the court shall proceed to hear the complainant and

guilty. his witnesses and other evidence, if any.

18/31/1964.

The accused person or his advocate may put questions to each witness produced against him.

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 wished to put any questions to that witness and shall record his answer.

Acquittal of 183. If at the close of the evidence in support of the

accused person charge, it appears to the court that a case is not made out

when no case against the accused person sufficiently to require him to make

to answer. a defence, the court shall dismiss the case and shall forthwith acquit him.

The defence. 184(1) At the close of the evidence in support of the charge, if it appears to the court that a case is made out against the accused person sufficiently to require him to make a defence, the court shall again explain the substance of the charge to the accused and shall inform him that he has the right to give evidence on oath from the witness box and that, if he does so, he will be liable to cross-examination, or to make a statement not on oath from the dock, and shall ask him whether he has any witnesses to examine or other evidence to adduce in his defence, and the court shall then hear the accused and his witnesses and other evidence (if any).

(2) 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 witnesses is not due to any fault or neglect of the accused person, and that there is a 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 the attendance of such witnesses.

Evidence in 185. If the accused person adduces evidence in his defence

reply. introducing new matter which the prosecutor could not by the exercise of reasonable diligence have foreseen, the court may allow the prosecutor to adduce evidence in reply to rebut the said matter.

Addressing 186(1) The prosecutor or his advocate may address the court

the court. at the commencement of the prosecution case.

4/2/1965.

(2) The accused person or his advocate may address the court at the commencement of the defence case when witnesses to the facts other than the accused himself are to be called for the defence.

(3) After the close of the evidence for the defence and in rebuttal, if any, the addresses to the court shall be in the following order -

(a) the prosecutor or his advocate may address the court, except in a case where the accused person is not represented by an advocate and has not called witnesses to the facts other than himself;

(b) the accused person or his advocate may address the court whether or not the prosecutor or his advocate has addressed the court.

(4) Where there are several accused persons the order of addresses to the court by or on behalf of the accused shall follow the order in which their names appear on the charge or information.

Amendment 187(1) Where it appears to the court that the charge is

of charge. defective, the court may make such order for the amendment of the charge as the court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice.

(2) An amendment may be made -

(a) before trial or at any state of a trial, except that in a trial held by the Magistrates' Court no amendment may be made after the close of the case for the prosecution;

(b) up to the close of the case for the prosecution by way of substitution or addition of a new charge.

(3) Where a charge is amended -

(a) the amendment shall be noted on the charge and it shall be treated for the purposes of the trial and of all proceedings in connection therewith as having been originally drawn up or presented and signed by the proper officer in the amended form:

Provided that, where the amendment is by way of substitution or addition of a new charge, the accused shall be called upon to plead to the new charge;

(b) the court shall, if it is of opinion that the interests of justice so required, adjourn the trial for such period as may be necessary;

(c) the court shall ask the accused whether he wishes to adduce additional evidence or to recall any witnesses for the purpose of further examination or cross-examination and if he so wishes the court shall allow him to do so.

(4) 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.

The decision. 188(1) When the evidence and the addresses, if any, have been

2/39/1960. completed the court shall record a conviction or acquittal on each charge, except in cases to which section 145 applies.

(2) Where the accused is convicted of an offence other than that charged the offence of which he is convicted shall be recorded.

(3) The court shall pass and record a sentence or order on each charge on which the accused is convicted.

Drawing up 189. The conviction or order may, if required, be afterwards

conviction or drawn up and shall be signed by the court making the conviction or

order. order, or by the clerk or other officer of the court.

Order of 190. The production of a copy of the order of acquittal certi-

acquittal bar fied by the clerk or other officers of the court, shall without

to further other proof be a bar to any subsequent information or complaint for

procedure. the same matter against the same accused person.

LIMITATIONS RELATING TO TRIALS BEFORE THE  
SUPREME COURT IN ITS SUMMARY JURISDICTION AND  
BEFORE

THE MAGISTRATES' COURT

Limitations of 191. Except where a longer time is  
specially allowed by

time for law, no offence, the maximum  
punishment for which does not

summary trials exceed imprisonment for six months  
and/or a fine of five

in certain hundred rupees shall be triable by the  
Supreme Court in its

cases. summary Jurisdiction or the Magistrates'  
Court, unless the

18/31/1964. charge or complaint relating to it is laid  
within twelve months from the time when the matter of  
such charge or complaint arose.

PART VII

Provisions relating to the Committal of Accused  
Persons for Trial

before the Supreme Court

PRELIMINARY INQUIRY BY THE MAGISTRATES'  
COURT

Holding of 192(1) Where -

preliminary

inquiry. (a) a person is charged with  
having committed any

2/5/1982. offence; and

(b) the Attorney-General certifies that in his opinion a preliminary inquiry should be held,

a preliminary inquiry in accordance with this Part shall be held by a Magistrate.

(2) At the commencement of the preliminary inquiry the Magistrate shall read the charge or charges to the accused but the accused shall not be required to make any reply thereto.

Depositions. 193(1) When the accused person charged with such an offence

18 & comes before the court, on summons or warrant or otherwise,

19/31/1964. the court shall, in his presence, take down in writing, the statements on oath of those who know the facts and circumstances of the case.

Statements of witnesses so taken down in writing are termed depositions.

(2) The accused person may put questions to each witness produced against him, and the answer of the witness thereto shall form part of such witness's depositions.

(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 question to that witness.

(4) The deposition of each witness shall be read over to such witness and shall be signed by him and by the magistrate holding the inquiry.

Variance 194. No objection to a charge, summons or warrant for  
 between defect in substance or in form, or for  
 variance between it and  
 evidence the evidence of the prosecution, shall be  
 allowed; but if any  
 and charge. variance appears to the court to be such  
 that the accused person has been thereby deceived or  
 misled, the court may, on the application of the accused  
 person, adjourn the inquiry and allow any witness to be  
 recalled, and such questions to be put to him as by reason  
 of the terms of the charge may have been omitted.

Remand. 195. 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 adjourn the inquiry, 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  
 other place of security. Or, if 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.

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

The court may on a remand admit the accused to bail.

Taking 196(1) If, after examination of the  
 witness called on behalf  
 statements of the prosecution, the court considers  
 that on the evidence  
 or evidence as it stands there are sufficient grounds  
 for committing the  
 or accused accused for trial, the Magistrate shall  
 frame a charge under

person.                    his hand declaring with what offence or offences the accused is charged and shall read the charge to the accused person and explain the nature thereof to him in simple language, and address to him the following words or words to the like effect:

"This is not your trial. You will be tried later in another court and before another Judge, where all the witnesses you have heard here will be produced and you will be allowed to question them. You will then be able to make any statement you may wish or to give evidence on oath and to call any witnesses on your own behalf. Unless you wish to reserve your defence, which you are at liberty to do, you may now either make a statement not on oath or give evidence on oath, and may call witnesses on your own behalf. If you give evidence on oath, you will be liable to cross-examination. Anything you may say whether on oath or not will be taken down and may be used in evidence at your trial."

(2) Before the accused person makes any statement in answer to the charge, or gives evidence, as the case may be, the Magistrate shall state to him and give him 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 any such promise or threat.

(3) Everything which the accused person says, either by way of statement or evidence, 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.

(4) When the whole is made conformable to what he declares is the truth, the record thereof shall be attested by the Magistrate, who shall certify that such statement or evidence was taken in his presence and hearing and contains accurately the whole statement made, or evidence given, as the case may be, 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 he had signed or attested it.

Evidence and    197(1) Immediately after complying with

the requirements of

address in section 196 of this Code relating to the statement or evidence

defence. of the accused person, and whether the accused person has or

18/31/1964. has not made a statement or given evidence, the court shall ask him whether he desires to call witnesses on his own behalf.

(2)The court shall take the evidence of any witnesses called by the accused person in like manner as in the case of the witnesses for the prosecution, and every such witness, not being merely a witness to the character of the accused person, shall, if the court be of opinion that his evidence is in any way material to the case, be bound by recognisance to appear and give evidence at the trial of such accused person.

(3)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 witnesses is not due to any fault or neglect of the accused person, and that there is a likelihood that they could, if present, give material evidence on behalf of the accused person, the court may adjourn the inquiry and issue process, or take other steps, to compel the attendance of such witnesses, and on their attendance shall take their depositions and bind them by recognisance in the same manner as witnesses under subsection (2).

(4)(a) In any preliminary inquiry under this part the accused person or his advocate shall be at liberty to address the court -

(i) after the examination of the witnesses called on behalf of the prosecution;

(ii) if no witnesses for the defence are to be called, immediately after the statement or evidence of the accused person;

(iii) if the accused person elects -

(a) to give evidence or to make a statement and witnesses for the defence are to be called; or

(b) not to give evidence or to make a statement but to call witnesses,

immediately after the evidence of such witnesses.

(b) If the accused person or his advocate addresses the court in accordance with the provisions of sub-paragraph (i) or (iii) of paragraph (a) of this subsection the prosecution shall have the right of reply.

(5) Where the accused person reserves his defence, or at the conclusion of any statement in answer to the charge or evidence in defence as the case may be, the court shall ask him whether he intends to call witnesses at the trial other than any whose evidence has been taken under the provisions of this section, 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 he may mention.

Discharge of 198. If, at the close of the case for the prosecution, or

accused hearing any evidence in defence, the court considers that the

person. evidence against the accused person is not sufficient to put him on his trial, the court shall forthwith order him to be discharged as to the particular charge under inquiry; but such discharge shall not be a bar to any subsequent charge in respect of the same facts:

Provided always that nothing contained in this section shall prevent the court from either forthwith, or after such adjournment of the inquiry as may seem expedient in the interests of justice, proceeding to investigate any other charge upon which the accused person may have been summoned or otherwise brought before it, or which, in the

course of the charge so dismissed as aforesaid, it may appear that the accused person has committed.

Commitment 199. If the court considers the evidence sufficient to put

for trial. the accused person on his trial, the court shall commit him

19/31/1964. for trial to the Supreme Court and shall, until the trial, either admit him to bail or send him to prison for safe-keeping. The warrant of such first-named court shall be sufficient authority to the officer in charge of any prison.

Conflict of 200. Where there is a conflict of evidence, the court

evidence. shall consider the evidence to be sufficient to put the

2/39/1960. accused on his trial if the evidence against him is such as, if uncontradicted, would raise a probable presumption of his guilt, notwithstanding that it is contradicted in material points by evidence in favour of the accused.

Committal. 201. All persons committed for trial by the Magistrates'

2/39/1960. Court shall be committed for trial at the Supreme Court.

18/31/1964.

Summary 202. If, at the close of or during the inquiry, it shall

adjudication. appear to the Magistrates' Court that the offence is of such a

18/31/1964. nature that it may suitably be dealt with under the powers possessed by the court, the court may, subject to the provisions of Part VI, hear and finally determine the matter and either convict the accused person or dismiss the charge:

Provided that in every such case the accused shall be entitled to have recalled for cross-examination all

witnesses for the prosecution whom he has not already cross-examined.

Complainant 203. When the accused person is committed for trial before

and witnesses the Supreme Court, the Magistrates' Court committing him shall

to be bound bind by recognisance, with or without surety or sureties, as

over. it may deem requisite, the complainant and every witness to

18/31/1964. appear at the trial to give evidence, and also to appear and give evidence, if required, at any further examination concerning the charge which may be held by direction of the Attorney General.

Refusal to be 204. If a person refuses to enter into such recognisance,

bound over. the court may commit him to prison or into the custody of any officer of the court, there to remain until after the trial, unless in the meantime he enters into a recognisance. But if afterwards, from want of sufficient evidence or other cause, the accused is discharged, the court shall order that the person imprisoned for so refusing to be also discharged.

Accused person 205. A person who has been committed for trial before the

entitled to Supreme Court shall be entitled at any time before the trial

copy of to have a copy of the depositions on payment of a reasonable

depositions. sum, not exceeding fifty cents for every hundred words, or, if

19/31/1964. the court thinks fit, without payment.

The court shall at the time of committing him for trial inform the accused person of the effect of this provision.

Binding over 206(1) Where any person charged before the Magistrates'

of witnesses Court with an offence triable upon information before the

conditionally. Supreme Court is committed for trial, and it appears to the

2/39/1960. Magistrates' Court, after taking into account anything which

18 & may be said with reference thereto by the accused or the

19/31/1964. prosecutor, that the attendance at the trial of any witness who has been examined before it is unnecessary by reason of anything contained in any statement by the accused person, or of the evidence of the witness being merely of a formal nature, the Magistrates' Court shall, if the witness has not already been bound over, bind him over to attend the trial conditionally upon notice given to him and not otherwise, or shall if the witness has already been bound over direct that he shall be treated as having been bound over to attend only conditionally as aforesaid, and shall transmit to the Supreme Court a statement in writing of the names, addresses and occupations of the witnesses who are, or who are to be treated as having been, bound over to attend the trial conditionally.

(2)Where a witness has been or is to be treated as having been, bound over conditionally to attend the trial, the Attorney General or the person committed for trial may give notice at any time to the Registrar that he desires the witness to attend at the trial, and the Registrar to whom any such notice is given shall forthwith notify the witness that he is required so to attend in pursuance of his recognisance.

The Magistrates' Court shall, on committing the accused person for trial, inform him of his right to require the attendance at the trial of any such witness as aforesaid, and of the steps which he must take for the purpose of enforcing such attendance.

(3) Any documents or articles produced in evidence before the Magistrates' Court by any witness whose attendance at the trial is stated to be unnecessary

in accordance with the provisions of this section and marked as exhibits shall, unless in any particular case the Magistrates' Court otherwise orders, be retained by the Magistrates' Court and forwarded with the depositions to the Registrar.

Inspections 207(1) The Magistrate shall make or cause to be made such

and post- local inspections as circumstances may require and may make or

mortem cause to be made any examination of the person of the accused

examinations. as circumstances may require.

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(2)The Magistrate may order a post-mortem examination, and, for the purpose of such examination, may order the body of any person who has been already interred to be exhumed.

#### PRESERVATION OF TESTIMONY IN CERTAIN CASES

Taking the 208. Whenever it appears to any Magistrate that any person

depositions dangerously ill or hurt and not likely to recover, is able and

of persons willing to give material evidence relating to any offence

dangerously triable by the Supreme Court, and it shall not be practicable

ill. to take the deposition in accordance with the provisions of this Code of the person so ill or hurt, such Magistrate may take in writing the 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 shall add a statement of his reason for taking the same, and of the date and place when and where the same was taken, and shall preserve such statement and file it for record.

Notices to be 209. If the statement relates or is expected to relate to

given. an offence for which any person is under a charge or committal for trial, reasonable notice of the intention to take the same shall be served upon the prosecutor and the accused person, and if the accused person is in custody he may, and shall, if he so requests, be brought by the person in whose charge he is, under an order in writing of the Magistrate, to the place where the statement is to be taken.

Transmission 210. If the statement relates to an offence for which any

of statements. person is then or subsequently committed for trial, it shall

19/31/1964. be transmitted to the Registrar and a copy thereof shall be transmitted to the Attorney General.

Use of 211. Such statement so taken may afterwards be used in

statement in evidence on the trial of any person accused of an offence to

evidence. which the same relates, if the person who made the statement be dead, or if the court is satisfied that for any sufficient cause his attendance cannot be procured, and if reasonable notice of the intention to take such statement was served upon the person (whether prosecutor or accused person) against whom it is proposed to be read in evidence, and he had or might have had, if he had chosen to be present, full opportunity of cross-examining the person making the same.

PROCEEDINGS AFTER COMMITTAL FOR  
TRIAL

Transmission 212. If the event of a committal for trial  
the written

of record to charge (if any), the depositions, the  
statement of the accused

Supreme Court person, the recognisances of the  
complainant and of the

and Attorney witnesses, the recognisances of bail, and  
any documents or

General. things which have been put in evidence,  
shall be transmitted

7/9/1955. without delay by the committing court  
to the Registrar and an

19/31/1964. authenticated copy of the written  
charge, the depositions and statement aforesaid shall be  
also transmitted to the Attorney General.

Power of 213. If, after receipt of the  
authenticated copy of the

Attorney written charge, the depositions and  
statement provided for by

General to section 212 and before the trial before  
the Supreme court, the

direct further Attorney General shall be of opinion that  
further

investigation. investigation is required before such  
trial, it shall be

7/9/1955. lawful for the Attorney General to direct  
that the original depositions be remitted to the court  
which committed the accused person for trial, and such  
court shall thereupon re-open the case and deal with it in  
all respects as if such person had not been committed for  
trial as aforesaid.

Powers of 214. If, after receipt of the  
authenticated copy of the

Attorney depositions and statement as aforesaid  
and before the trial

General as to before the Supreme Court, the Attorney  
General shall be of

additional opinion that there is, in any case  
committed for trial, any

witnesses. material or necessary witness for the  
prosecution or the

7/9/1955. defence who has not been bound over  
to give evidence on the trial of the case, the Attorney  
General may require the Magistrates' Court which  
committed the accused for trial to take the depositions of  
such witness and compel his attendance either by  
summons or by warrant as hereinbefore provided.

Attorney 215. If on consideration of the record of  
the committal

General may proceedings the Attorney General is of  
opinion that the

direct trial accused ought to be tried by the  
Magistrates' Court for an

by the offence within its jurisdiction he shall  
give a direction to

Magistrates' that effect and the accused shall be tried  
by the Magistrates'

Court. Court for such offence in accordance  
with this Code.

12/31/1964.

Filing of an 216. If, after the receipt of the  
authenticated copy of

information. the depositions as aforesaid, the  
Attorney-General shall be of the opinion that the case is  
one which should be tried upon information before the  
Supreme Court, an information shall be drawn up in  
accordance with the provisions of this Code, and when  
signed by the Attorney General shall be filed in the  
registry of the Supreme Court.

Offence with 217. In such information the Attorney  
General may charge

which accused the accused person with any offences  
which in his opinion are

may be disclosed by the depositions either in addition to, or in

charged. substitution for, the offences upon which the accused person has been committed for trial.

Notice of 218. The Registrar shall indorse on or annex to every

trial. information filed as aforesaid, and to every copy thereof

2/39/1960. delivered to the officer of the court or police officer for

19/31/1964. service thereof, a notice of trial, which notice shall be in the following form, or as near thereto as may be -

"A.B.

"Take notice that you will be tried on the information whereof this is a true copy at the Supreme Court .....

..... on the ..... day of ..... 19....."

Copy of 219. The Registrar shall deliver or cause to be delivered

information to the officer of the court or police officer serving the

and notice of information a copy thereof with the notice of trial endorsed

trial to be on the same or annexed thereto, and, if there are more accused

served. persons committed for trial than one, then as many copies as

2/39/1960. 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 notice 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 exigency 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 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.

Return of copies of the 220. The officer serving the copy or

service information and notice or notices of trial shall forthwith make to the Registrar a return of the mode of service thereof.

Postponement 221(1) It shall be lawful for the Supreme Court upon the

of trial. application of the prosecutor or the accused person, if the

2/39/1960. court considers that there is sufficient cause for the delay, to postpone the trial of any accused person and to respite the recognisances of the complainant and witnesses, in which case the respited recognisances shall have the same force and effect as fresh recognisances to prosecute and give evidence would have had.

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

Informations 222. All informations drawn up in pursuance of section 216

by Attorney shall be in the name of and signed by the Attorney General and

General. when so signed shall be as valid and effectual in all respects as an indictment in England which has been signed by the pro- per officer of the court in

accordance with the Act entitled

23 & 24 Geo 5 the Administration of Justice  
(Miscellaneous Provisions) Act,

C. 36. 1933.

Form of 223. Every information shall bear date  
of the day when the

information. same is signed, and with such  
modifications as shall be

2/39/1960. necessary to adapt it to the  
circumstances of each case, may commence in the  
following form -

IN THE SUPREME COURT OF SEYCHELLES

The ..... day of ..... 19.... the  
Court is informed by the Attorney General on behalf of the  
Republic that A.B. is charged with the following offence (or  
offences).

Procedure for 224. Subject to the provisions of section  
225, the

trials on procedure for the trial of persons  
committed by the

information Magistrates' Court for trial before the  
Supreme Court shall be

after that set out in Part VI, and in sections  
247, 248, 251, 252,

committal 253 and 254 of Part VIII.

other than in

offences

triable by

jury.

3/29/1973.

## PART VIII

Procedure in Trials by Jury before the  
Supreme Court

## TRIAL BY JURY

Offences charged with 225. Every case in which the accused is charged with

triable by jury. conviction to the punishment of death, shall be tried by the

2/5/1982. Supreme Court with a jury in accordance with this Part.

Qualifications 226(1) Every citizen of Seychelles who is

-

of jurors.

2/23/1981. (a) ordinarily resident in Seychelles;

(b) 18 years of age or older and not over 65 years of age; and

(c) not ineligible under section 227 or any other written law,

is qualified and liable to serve as a juror.

(2) In this section "citizen of Seychelles" means a person who is a citizen of Seychelles in terms of Part II of

Cap. 42 the Constitution of the Republic of Seychelles.

Sch.

Persons 227. The following persons shall not be  
jurors -

ineligible.

S.I.95/1975. (a) the President ;

S.I.72/1976.

2/D31/1979. (b) members of the Council of  
Ministers and the

2/23/1981' People's Assembly ;

(c) Judges, registrars, magistrates and officers of the  
courts ;

(d) members of the Seychelles People's Defence Force  
on continuous full time service in terms of the

Cap. 58. Defence Act ;

(e) members of the police force and prison officers;

(f) persons actually officiating as priests or ministers of  
their respective religions ;

(g) notaries, barristers and attorneys-at-law actually  
practising and their clerks ;

(h) registered medical practitioners and dentists ;

(i) registered pharmacists and midwives ;

(j) masters actually in command of vessels ;

(k) persons who have suffered imprisonment in any part of the Commonwealth and have not received a free pardon.

Exemptions 228. A person summoned as a juror may be excused by the

from service. court from attendance at a particular trial  
-

S.I.95/1975.

(a) on any ground which the court thinks sufficient, stated in writing to the Registrar, as early as is practicable after service of the summons, by the Secretary to the Council of Ministers, the head of any department or office of the government or of a public telegraph company in which the person summoned is serving; or

(b) on the ground of ill-health or disability, on application to the Registrar, in writing supported by a medical certificate; or

(c) on any ground which the court thinks sufficient, on application of the person summoned, either in writing to the Registrar or in person in open court.

Jury list. 229(1) On 1st January, 1982, and thereafter at intervals not

2/23/1981 exceeding 3 years, the Chief Justice shall make a jury list of such number as he thinks sufficient of persons who in his opinion are qualified to serve as jurors.

(2)The jury list shall set out the full name, surname, occupation and home address of each person on it.

(3)Copies of the jury list shall be -

(a) published in the Gazette ;

(b) posted on the notice board of the Supreme Court :  
and

(c) filed in the Registry of the Supreme Court (being called the master list).

(4)The Registrar shall from time to time delete from the master list any person whom he believes to have died or become ineligible to serve as a juror.

Ballot box. 230. When the jury list has been gazetted the Registrar shall cause all the names therein to be written on cards or discs of equal size and placed in a box, to be called the main ballot box, kept by him for that purpose.

#### EMPANELLING A JURY

Forming a 231(1) When a panel of jurors is required for a trial the

panel. Registrar shall, in the presence of another officer of the Supreme Court, draw from the main ballot box as many names as he shall think sufficient and after checking the names drawn with the master list and, if necessary, drawing further names he shall place the names drawn in a separate ballot box to be called the panel box and the jurors named therein shall form the panel for the trial.

(2)When two or more persons have been committed for trial on capital charges at or about the same time the Registrar shall form one panel sufficient for all such trials, or a separate panel for each trial, as he shall think convenient.

Summons 232(1) When a date for trial has been fixed the Registrar

to jurors. shall cause to be served on each juror in the panel a summons requiring his attendance at the

Supreme Court on the day fixed.

(2) Every such summons shall be served in the manner prescribed for a summons to a witness.

Default of 233(1) Any person summoned to attend the Supreme Court as a

attendance juror who fails, without reasonable excuse the burden of proof

by juror. whereof shall be on him, to attend the proceedings as required by the summons and by any subsequent notice issued or order made by the court on adjournment or otherwise until discharged by the court, is liable to imprisonment for three months or to fine or to both.

(2) The Judge presiding at any trial by jury may, if he thinks fit, on any default under this section coming to his notice summarily convict the defaulter and inflict on him a fine not exceeding two hundred rupees.

(3) When any person is so fined in his absence, the Registrar shall forthwith send to him a written notice of the fact requiring him to pay the fine or to show cause to the court within seven days for not paying the same.

(4) If any such fine be not paid within seven days of infliction if inflicted in the presence of the defaulter or of the fact coming to his knowledge, by notice or otherwise, if inflicted in his absence, the fine may be levied or the court may issue a warrant for his arrest and sentence him to imprisonment in default of payment.

(5) The court may, on sufficient cause being shown, remit any fine so imposed.

Attendance 234(1) On the day fixed for their attendance the jurors

of jurors. shall assemble in the court house and shall answer to their names when called over by an officer

of the court and they shall then be brought into the court room unless the presiding Judge directs that they remain in another room until the accused has been called upon to plead.

(2)When the Judge mounts the bench the Registrar shall inform him whether all the jurors summoned and not previously exempted or excused are present and the names of any absentees shall be called.

#### PROCEDURE AT TRIAL

Charge and 235(1) The charge shall then be read and if necessary

plea. explained or interpreted to the accused and the Registrar

2/5/1982. shall call upon him to plead thereto. If he pleads guilty the court shall hear his counsel and if the court is satisfied that the accused understands the matter and intends to admit, without qualification, that he committed the offence charged and that the case does not involve any issue which ought to be tried, the court may convict him on his plea.

(2)In any other event the court shall record the gist of the plea, or the fact that the prisoner does not plead, and a jury shall be formed.

Amendment of 236(1) Where no preliminary inquiry under section 192 has

charge has been held and it appears to the court that the charge is

2/5/1982. defective, the court may make such order for the amendment of the charge as the court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice.

(2)an amendment may be made -

(a) before trial or at any stage of a trial: or

(b) up to the close of the case for the prosecution by way of substitution or addition of a new charge.

(3) Where a charge is amended -

(a) the amendment shall be noted on the charge and it shall be treated for the purposes of the trial and of all proceedings in connection therewith as having been originally drawn up or presented and signed by the proper officer in the amended form:

Provided that, where the amendment is by way of substitution or addition of a new charge, the accused shall be called upon to plead to the new charge;

(b) the court shall, if it is of opinion that the interests of justice so require, adjourn the trial for such period as may be necessary;

(c) the court shall ask the accused whether he wishes to adduce additional evidence or to recall any witnesses for the purposes of further examination or cross-examination and if he so wishes the court shall allow him to do so.

(4) 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.

Number of 237. A jury shall consist of nine persons.  
jury.

Formation of 238(1) The Registrar shall address to the accused, or cause

jury. to be interpreted to him, the following words:-

I shall now call the names of the jurors who are to try you. If you object to be tried by any of those persons you may say so now and your objection will be heard.

(2)The Registrar shall then draw names from the panel box and call them one by one; as each name is called the juror named shall stand in a position where he can be clearly seen by the accused and by the prosecuting counsel.

(3)Objections without grounds stated shall be allowed to the number of four on behalf of each person charged.

(4)At the instance of the prosecuting counsel, without ground of objection stated, any number of jurors may be ordered to stand by until the names of all jurors available have been called. If a jury has not then been formed the names of the jurors standing by shall be called again and the prosecuting counsel shall state the grounds of his objection, if any, under section 239.

(5)The court of its own motion may exclude any juror with or without stating the reason for so doing.

Ground of 239. Any objection to a juror on any of the following

objection. grounds if made out to the satisfaction of the court, shall be

2/23/1981. allowed:-

(a) some actual or presumed want of impartiality in the juror;

(b) some personal ground such as deficiency in age or any other qualification required by law or the practice of

the court;

(c) his holding any office in or under the court;

(d) the performance by him of any duties in or auxiliary to the police force;

(e) his having been convicted of any offence which, in the opinion of the court, renders him unfit to serve on the jury;

(f) any other circumstances which, in the opinion of the court, makes it undesirable that he should serve as a juror in that trial.

Disposal of 240. The court shall rule on every objection taken to a

objections. juror and such ruling shall be recorded and shall be final.

Procedure 241 If the panel is exhausted before a jury has been

where jurors completely formed the trial shall be adjourned until the

insufficient. attendance of a sufficient number of jurors, selected from the master list in such manner as the court may direct can be procured. The jurors already accepted shall be released until the day fixed for resumption of the trial and those to whom objections have been allowed shall be discharged.

Foreman of 242(1) When nine jurors have been accepted the court shall

jury. direct them to choose one of their number to be their foreman.

(2) If a majority of the jury do not agree on the choice of a foreman within such time as the Judge thinks reasonable the Judge shall choose a foreman.

(3) The foreman shall deliver the verdict of the jury.

Oaths of 243(1) An officer of the court shall administer an oath to

jurors. every juror who does not object to an oath on ground of creed

S.I.72/1976. or conscience. A juror who so objects to an oath shall make a

2/23/1981. solemn affirmation.

(2) The oath of a juror shall be in the following form:-

I swear that I will well and truly try the matters at issue between the Republic and the prisoner at the bar, according to the evidence. SO HELP ME GOD.

(3) A juror who professes the Christian religion shall hold in his right hand, unless disabled, the Holy Bible, or any part of it.

(4) A juror of any other religious persuasion may hold, or place his hand on, any book or writing relating to his persuasion or cover his head or make any other customary and reverent gesture.

(5) A juror who declines to take an oath shall raise his right hand, unless disabled, and make affirmation in the form:-

I solemnly declare and affirm that I will well and truly try the matters at issue between the Republic and the prisoner at the bar, according to the evidence.

(6) If at the time of making the oath or affirmation it appears to the court that objection to him might have been taken successfully, the court shall discharge or release him and substitute another juror, in manner aforesaid.

Release of 244(1) When the jurymen have been sworn the court shall

other jurors. discharge the remaining jurors unless their attendance is required for another trial in which case the court shall release them until a date fixed for their further attendance.

(2) Those of the jurors who have not been successfully challenged shall remain liable to recall if their attendance is required later for the trial of the same prisoner.

(3) The cards of the members of the jury formed, of the jurors successfully challenged, and the jurors released or discharged without having been called shall be kept in separate boxes until the conclusion of the proceedings.

Charge of 245. When the jurymen have been sworn or affirmed the

jury. Registrar shall give the accused in charge of the jury by saying-

Members of the jury, the accused stands charged by the name A.B. for that he, (reciting the words of the charge). Upon this charge he has claimed to be tried. Your duty therefore is to hearken to the evidence and inquire whether he is guilty or not guilty.

Opening. 246. Counsel for the prosecution shall open the case by stating shortly the nature of the offence and the evidence which he proposes to adduce.

Evidence for 247(1) The witnesses for the prosecution

shall then be

prosecution examined.

2/5/1982.

(2) Where no preliminary inquiry has been held under section 192, subsections (3) to (9) shall not apply, and the public prosecutor -

(a) shall cause to be served on the counsel or attorney for the accused, or on the accused if he is not legally represented, not less than 14 days before the trial, notice of the names and address, or the designations, of all witnesses for the prosecution and the substance of the evidence they are expected to give; and

(b) where those witnesses are to produce or prove a document, shall annex to the notice a copy or abstract of the document; and the counsel or attorney for the accused, or the accused if he is not legally represented, shall have a reasonable opportunity to examine the original before the trial if he so desires.

(3) Subject to the other provisions of this section all the persons who made depositions before the committing Magistrate but no other persons shall be called as witnesses for the prosecution at the trial.

(4) If a deponent has died or become incapable of testifying or if his attendance cannot be procured without unreasonable delay or expense his deposition may be read as evidence.

(5) The public prosecutor may, at any time not less than seven days before the trial, give notice to counsel for the accused that he does not intend to call a deponent named in the notice. Such a deponent may be summoned as a witness for the defence.

(6) Counsel conducting the prosecution may, at any time before closing his case, decide not to call as a witness a deponent who is in attendance, in which case that deponent shall be called into court and released from further attendance unless counsel for the accused desires

to call him as a witness for the defence.

(7) Where documentary evidence has been admitted by the committing Magistrate an additional witness may be called to prove the document.

(8) Where an affidavit, certificate or report has been admitted in evidence by the committing Magistrate the deponent or certifying officer may be called to support or amplify the contents of the document, or counsel for the accused may give written notice to the public prosecutor that he wishes to cross-examine such a deponent or officer. If the notice is given in sufficient time, the document shall not be read unless the deponent or officer is present provided that, if such deponent or officer has become incapable of testifying or his attendance cannot be procured without unreasonable delay or expense, the court may admit the document and permit another witness with suitable qualifications to be called.

Notice of (9) The public prosecutor may cause to be served on the

additional counsel or attorney for the accused notice of intention to

evidence. adduce additional evidence. Such notice shall state the name and address, or the designation, of the proposed witness, the substance of the evidence he is expected to give and where he is to produce or prove a document a copy or abstract of the document shall be annexed to the notice and counsel for the accused shall have a reasonable opportunity to examine the original before the trial if he so desires.

(10) The court may permit an additional witness for the prosecution to be called if it appears that the public prosecutor could not, with reasonable diligence, have become aware that the witness could give material evidence in time to give notice under subsection (2) or (9) as the case may be.

(11) Where two or more accused are defended by separate counsel they may cross-examine the witnesses for the prosecution in the order in which their respective clients were charged.

Statements recorded by the accused. 248. Any statement by the accused recorded by the Magistrate during the proceedings for committal may be read as evidence either for the prosecution or for the defence.

Close of prosecution. 249(1) If, when the case for the prosecution has been concluded, the Judge rules, as a matter of law, that there is no evidence on which the accused could be convicted, the jury shall, under the direction of the Judge, return a verdict of not guilty.

(2) In any other event the court shall call upon the accused for his defence.

Opening defence. 250. Counsel for the accused may, if he so desired, open the case for the defence.

Evidence of accused. 251(1) If an accused elects to give evidence or make a statement he shall do so before any other witness is called.

(2) Where two or more accused are tried jointly, the first charged shall make his election first and after he has given his evidence or made his statement (if he so elects) the others shall do so successively in the order in which they were charged.

(3) An accused who has elected not to give evidence and who considers that his position has been altered by the evidence or statement of a subsequent accused may

re-elect and give evidence.

(4) An accused who gives evidence may be further examined or cross-examined, on behalf of any other accused and may then be cross-examined on behalf of the prosecution.

Other 252(1) The witnesses for the defence shall then be called.

defence

witnesses. (2) Any person who is in attendance may be called as a witness for the defence.

(3) No adjournment to procure the attendance of a witness shall be allowed unless the court is satisfied that his evidence would be material and -

(a) that he was summoned in sufficient time and that his absence is due to serious illness or other sufficient cause; or

(b) that the defence could not, with due diligence, have procured the issue and service of a summons in sufficient time.

Order of 253(1) Where two or more accused are tried jointly the

defence witnesses called on behalf of the accused first charged shall,

witnesses. so far as practicable, be examined first and witnesses called on behalf of the other accused shall be examined successively in the order in which the accused were charged.

(2) A witness called on behalf of an accused may be examined or cross-examined on behalf of any other accused and may then be cross-examined on behalf of the prosecution.

(3) Where two or more accused are defended by separate counsel a witness shall be examined first by counsel for the accused on whose behalf he was called and may be examined or cross-examined by counsel for the other accused in the order in which their respective clients were charged.

Rebutting 254. If the evidence for the defence introduces new matter

evidence. which the prosecution could not, with reasonable diligence, have foreseen the court may allow the prosecution to adduce evidence in reply to rebut such matter.

A witness called in rebuttal may be a previous witness recalled or a new witness.

Final 255. After the close of the evidence for the defence and

addresses. in rebuttal, if any, the addresses to the court shall be in

5/2/1965. the following order:-

(a) counsel for the prosecution may address the court;

(b) counsel for the accused may address the court, if more than one, in the order in which their respective clients were charged.

Absence of a 256(1) If in the course of the trial at any time before the

juryman. return of the verdict any juryman is prevented for any sufficient cause from attending throughout the trial, or if any juryman absents himself and it is not practicable to enforce his attendance, or if it appears to the court that any juryman lacks proficiency in the English language, the court may if it thinks fit, discharge such juryman and proceed with the trial, provided that the number of the jury shall not fall below seven.

(2) If the court does not proceed as aforesaid the court shall either discharge such jurymen and substitute another juror or discharge the whole jury and form a new jury and in either event the trial shall be commenced anew.

Incapacity of 257. If the accused becomes incapable of remaining at the accused. bar the jury may be discharged.

Jury may 258. Whenever a point of law is to be argued by counsel withdraw the jury may remain in court, or withdraw, as the judge during directs. arguments.

View by jury. 259. If in the course of a trial the Judge considers it 10/4/1963. expedient that the jury should have a view of any place or thing the Judge may direct that view to be had.

When a 260. If a jurymen is personally acquainted with any jurymen may relevant fact he shall so inform the Judge, whereupon he may testify. be sworn and examined in the same manner as any other witness and the provisions of section 256 shall apply.

Adjournment. 261. When a trial is adjourned the jury shall attend on the resumption and at every subsequent sitting until discharged.

When jury to 262(1) It shall not be necessary for the jury to be kept

be kept together during any adjournment previous to the summing up by

together. the Judge unless the Judge considers it advisable in the interests of justice for them to be kept together.

(2)No person, except another jurymen, shall make to any jurymen any communication tending to influence the opinion of such jurymen on any matter at issue in the trial and no jurymen, shall voluntarily receive any such communication. Any jurymen who receives any such communication shall inform the Judge of the matter at the earliest opportunity. Any person making any such communication shall be deemed to be guilty of contempt of court.

(3)On the making of the first adjournment when the jury are to separate and on subsequent adjournments as and when he shall think fit to do so the Judge shall warn the jury not to permit any discussion of the case in their presence.

Court may 263. Whenever the jury are kept together during an

allow adjournment or retirement and the Judge considers that they

refreshment should be allowed refreshment reasonable refreshment shall be

for jury. provided at the public expense and served under the supervision of an officer of the court.

Summing up. 264(1) When the final addresses of counsel are concluded the Judge shall charge the jury, summing up the evidence and laying down the law by which the jury are to be guided.

(2)The summing up shall be recorded in shorthand and the transcript thereof, verified by the affidavit of the writer or writers, shall form part of the record.

Province of 265(1) The judge shall decide -  
judge.

(a) all questions of law arising in the course of the trial and especially all question as to the relevance of facts, the admissibility of evidence and the propriety of questions to witnesses asked or proposed by the parties or their counsel and, in his discretion, preventing the production of irrelevant or inadmissible evidence, whether objected to by a party or not;

(b) the meaning and construction of all documents given in evidence at the trial;

(c) all matters of fact necessary to be proved in order to enable evidence of particulars matters to be given;

(d) whether any question which arises is for himself or for the jury.

(2)The Judge may, whenever he thinks proper in the course of the summing up, express to the jury his own opinion on any question of fact, or of mixed law and fact, relevant to the proceedings.

Province of 266(1) The jury shall -  
jury.

(a) decide which view of the facts is correct and shall then return the verdict which under such view ought, according to the direction of the Judge, to be returned;

(b) determine the meaning of technical terms other than terms of law and of words used in an unusual sense which it is necessary to determine, whether such words occur in documentary or oral evidence;

(c) decide all questions which, according to law, are deemed to be questions of fact;

(d) decide whether general indefinite expressions do or do not apply to particular cases unless such expressions refer to legal procedure or unless their meaning is ascertained by law, in either of which cases the Judge shall decide their meaning.

(2) The jury shall not directly question witnesses but when the cross-examination and re-examination of a witness have ended the foreman may suggest to the Judge any question and any further question which the Judge thinks necessary shall then be put.

Retirement 267(1) When the Judge has completed his charge the jury may,

to consider if they so desire, retire to consider their verdict.

verdict.

(2) If the jury retire, they shall be committed to the charge of an officer of the court who shall make oath or solemn affirmation to keep the jury in his custody and not to allow any person to communicate with them, except with the leave of the court.

(3) No person, other than another member of the jury, shall hold any communication whatsoever with any member of the jury during their retirement except with the leave of the court.

(4) Whenever it is practicable to do so the Judge shall begin the summing up at such a time as will enable him to complete it and to leave a reasonable period on the same day for the jury to consider their verdict without an adjournment involving their separation.

(5) After the conclusion of the summing up the jury shall be kept together until they have given their verdict or have been discharged.

Delivery of their verdict they 268. When the jury have considered

verdict. shall return into court and the foreman shall inform the Judge what their verdict is and whether it is unanimous.

Procedure 269(1) If the jury are not unanimous the Judge may direct

where jury them to retire for further consideration. not agreed.

(2)If after such period as the Judge considers reasonable the jury are unable to agree they may deliver a verdict, though not unanimous.

(3)If the jury desire further directions the Judge shall give them such further directions as he shall think expedient and such further directions shall be recorded and shall be deemed to form part of the summing up.

(4)The Judge may require the jury to deliver a distinct and separate verdict on each charge left to their consideration by him and may, if necessary, question them to ascertain what their verdict is and may, also, if necessary, direct them to retire for further consideration.

Recording 270(1) The verdict of the jury and the majority, if any,

verdict. shall be recorded.

(2)If by accident or mistake a wrong verdict is delivered the jury may, before or immediately after it is recorded, amend the verdict and it shall stand as ultimately amended.

(3)The accused shall be acquitted or convicted in accordance with the verdict.

Decision 271(1) In the event of there being no clear majority of the

where no jury in favour of any one verdict the following provisions

majority. shall apply.

(2) If one half of the jury find the accused not guilty of any offence he shall be acquitted unless the Judge considers it necessary, in the interests of justice, that there should be a new trial in which case the accused shall be remanded in custody and the Attorney General shall take such further steps as are necessary.

(3) If a majority of the jury find the accused guilty of an offence but they do not all find him guilty of the same offence he shall be convicted of such offence as the Judge

directs, provided that he shall not be convicted of a capital offence unless at least one half of the jury find him guilty of a capital offence.

#### PROCEDURE AFTER VERDICT

Procedure on 272(1) If the accused is convicted the Judge shall pass

conviction. sentence according to law.

11/4/1963.

3/8/1966. (2) If the Judge thinks it inexpedient to pass sentence

S.I.95/1975. immediately he shall remand the prisoner in custody for such

S.I.72/1976. period as he thinks fit.

(3) Where sentence of death is passed, the form of the sentence shall be to the effect only that the prisoner is to suffer death in the manner authorised by law.

(4) If it appears to the court that, at the time when the offence was committed, a prisoner convicted of murder or of a capital offence was under the age of eighteen years

the court shall sentence him to be detained during President's pleasure and he shall thereafter be detained in such custody as the President shall from time to time direct.

(5) If a prisoner convicted of a capital offence is a woman who appears to be of child-bearing age the court, before passing sentence, shall ask her whether she has anything to say before sentence is passed and if she then alleges that she is pregnant she shall be remanded in custody for medical examination.

(6) If a medical officer or practitioner satisfy the court that such a prisoner is pregnant she shall be sentenced to imprisonment for life. A sentence of death may be revised by the court under this subsection.

(7) Any question concerning the age or pregnancy of a prisoner shall be decided by the Judge alone.

(8) A warrant of commitment stating the sentence shall be drawn up forthwith under the seal of the court and delivered to the officer having custody of the prisoner.

Procedure on 273(1) When the prisoner is acquitted he shall forthwith be

acquittal. removed from the court room in custody and shall thereafter be released.

(2) If a police officer on duty at or near the court house thinks it expedient to detain the prisoner in custody for his own safety or the avoidance of public demonstration or disorder the prisoner shall be detained in custody for such period as may be deemed necessary for such purpose.

(3) If the public prosecutor contemplates other proceedings against the prisoner, the prisoner may be detained in custody for any period not exceeding seven days, after which he shall be released unless in the meantime he has been lawfully re-arrested or charged before a court.

Discharge of jury. 274. When the prisoner has been acquitted, sentenced or remanded the jury shall be discharged.

Verdict in case of the prisoner was insane at the time of the commission of the offence charged and the prisoner is acquitted the jury shall, under the direction of the Judge, deliver a special verdict

S.I.95/1975. stating whether they find that the prisoner committed the act

S.I.22/1976. charged and, if he did commit it, whether they find that he was not criminally responsible for that act by reason of

Cap. 158. insanity within the meaning of the Penal Code and where the jury so find, either unanimously or by a majority, or where there is no majority, or where there is no majority and the Judge so finds, the verdict shall be deemed to be not guilty on the ground of insanity and the court shall order the prisoner to be detained in custody during the President's pleasure and thereafter he shall be detained in such custody as the President shall from time to time direct.

Procedure 276(1) As soon as practicable after passing a sentence of

after sentence death the Judge who passed it shall prepare a report stating

of death. the principal facts proved and his own opinion as to whether

S.I.95/1975. the sentence should or should not be carried out.

S.I.72/1976.

(2)The report shall be kept secret.

(3) If the prisoner does not appeal, or if his appeal is withdrawn or dismissed, the report shall be sent to the President as soon as the time for appealing has expired or the appellate proceedings have terminated, as the case may be.

(4) The Registrar shall also send to the President copies of such portions of the record of the trial as the President directs or a copy of the record of the appeal.

Power of 277(1) A copy of an instrument conveying the decision of the

President. President, in respect of the condemned prisoner, under Article

S.I.95/1975. 100 of the Constitution shall be sealed and sent to the court

S.I.72/1976. and filed with the record of the trial.

Cap. 42

(2) If the President assents to the sentence of death the prisoner shall be hanged by the neck until he be dead.

(3) The assent of the President shall be conveyed to the officer having custody of the prisoner by an instrument signed by the President and sealed with the Public Seal.

(4) The sentence shall be carried out by such officer and in such manner and at such time and place as may be prescribed by law and as to any matters not so prescribed in accordance with orders of the President in writing.

Insanity of 278. If a prisoner under sentence of death becomes insane,

convicted execution shall be respited and the prisoner shall be detained

prisoner. in such custody as the President shall from time to time

S.I.95/1975. direct.

S.I.72/1976.

Rules and 279(1) The President may, after  
consultation with the Chief

scales of Justice, make rules of court to regulate  
matters incidental to

allowances. the operation of this part.

S.I.95/1975.

S.I.72/1976. (2)The Chief Justice may prescribe  
scales of travelling and subsistence allowances to be paid  
to jurors.

## PART IX

### Sentences and their Execution

#### SENTENCE OF DEATH

Accused to be 280(1) When an accused person is  
sentenced to death, the

informed of court shall inform him of the period  
within which, if he

right to wishes to appeal, his appeal should be  
preferred.

appeal.

4/7/1961. (2)Sentence of death shall not in any  
case be executed until after the expiration of the time  
within which notice of appeal or application for leave to  
appeal may be given or made; and where notice is so  
given or application made, the sentence shall not be  
executed until after the dismissal of the appeal, or, in  
cases where an application for leave to appeal is finally  
refused, until after such refusal.

#### OTHER SENTENCES

Warrant in 281. A warrant under the hand of the Judge or Magistrate

case of by whom any person shall be sentenced to imprisonment,

sentence of ordering that the sentence shall be carried out in any prison

imprisonment. within Seychelles, 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. Subject to the provisions of section 36

Cap. 158. of the Penal Code 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 Code.

Suspended 282(1) A court which passes a sentence of imprisonment for

sentences of a term of not more than two years for an offence, other than

imprisonment. an excepted offence, may order that the sentence shall not

2/14/1975. take effect unless during a period specified in the order,

3/23/1976. being not less than one year nor more than three years from the date of the order, the offender commits in Seychelles another offence punishable with imprisonment and thereafter a court having power to do so orders under section 283 that the original sentence shall take effect.

(2)A court which passes a suspended sentence on any person for an offence shall not make a probation order in his case in respect of another offence of which he is convicted by or before the court or for which he is dealt with by the court.

(3)On passing a suspended sentence the court -

(a) may impose such conditions as it thinks fit;

(b) shall explain to the offender in ordinary language his liability under section 283 if during the operational period he commits an offence punishable with imprisonment or breaks any condition imposed under paragraph (a).

(4) Subject to any provisions to the contrary contained in this or any other Act -

(a) a suspended sentence which has not taken effect under section 283 shall be treated as a sentence of imprisonment for the purposes of all Acts except any Act which provides for disqualification for or loss of office, or forfeiture of pensions, of persons sentenced to imprisonment; and

(b) where a suspended sentence has taken effect under section 283, the offender shall be treated for the purposes of the said excepted Acts as having been convicted on the ordinary date on which the period allowed for making an appeal against an order under section 283 expires or, if such an appeal is made, the date on which it is finally disposed of or abandoned or fails for non-prosecution.

Power of 283(1) If an offender is convicted of an offence punishable

court on with imprisonment committed during the operational period of

conviction a suspended sentence or if, during such period, he breaks a

of further condition imposed under section 282(3)(a) and either he is so

offence to convicted by or before a court having power under section 284

deal with to deal with him in respect of the suspended sentence or he

suspended subsequently appears or is brought before such a court, then,

sentence. unless the sentence has already taken effect, that court shall

2/14/1975 consider his case and deal with him by one of the following methods -

(a) the court may order that the suspended sentence shall take effect with the original term unaltered;

(b) it may order that the sentence shall take effect with the substitution of a greater or lesser term for the original term;

(c) it may by order vary the original order under section 282(1) by substituting for the period specified therein a period expiring not later than three years from the date of the variation; or

(d) it may make no order with respect to the suspended sentence,

and a court shall make an order under paragraph (a) of this subsection unless the court is of opinion that it would be unjust to do so in view of all the circumstances which have arisen since the suspended sentence was passed, including the facts of the subsequent offence, and where it is of that opinion court shall state its reasons.

(2)Where a court orders that a suspended sentence shall take effect, with or without any variation of the original term, the term of such sentence shall commence on the expiration of another term of imprisonment passed on the offender by that or another court, unless the court is of opinion that, by reason of special circumstances, the sentence should take effect immediately.

(3)In proceedings for dealing with an offender in respect of a suspended sentence which takes place before the Supreme Court any question whether the offender has been convicted of an offence punishable with imprisonment committed during the operational period of the suspended sentence shall be determined by the court.

(4) Where a court deals with an offender under this section in respect of a suspended sentence the clerk of the court shall notify the clerk of the court which passed the sentence of the method adopted.

(5) For the purposes of any Act conferring rights of appeal in criminal cases any such order made by a court shall be treated as a sentence passed on the offender by that court for the offence for which the suspended sentence was passed.

Court by 284(1) An offender may be dealt with in respect of a

which suspended sentence by any Court before which he appears or is

suspended brought.

sentence is

to be dealt (2) Where an offender is convicted by a Magistrates'

with. Court of an offence punishable with imprisonment and the

2/14/1975. Magistrate is satisfied that the offence was committed during the operational period of a suspended sentence passed by the Supreme Court-

(a) the Magistrate may, if he thinks fit, commit him in custody or on bail to the court having power to deal with him in respect of the suspended sentence; and

(b) if he does not, shall give written notice of the conviction to the Registrar of the court by which the suspended sentence was passed.

(3) The court to which a Magistrate commits an offender under subsection (2) shall be the court by which the suspended sentence was passed, except that the Magistrate may commit him to some other court if, having regard to the time when and the place where he is likely to be dealt with in respect of the suspended sentence by

the court by which that sentence was passed, it would be more convenient that he should be dealt with by that other court.

(4) For the purpose of this section and section 285 a suspended sentence passed on an offender on appeal shall be treated as having been passed by the court by which he was originally sentenced.

Discovery of 285(1) If it appears to a Judge or a Magistrate that an

further offender has been convicted in Seychelles of an offence

offences. punishable with imprisonment committed during the operational

2/14/1975. period of a suspended sentence and that he has not been dealt with in respect of the suspended sentence, the Judge or Magistrate may issue a summons requiring the offender to appear at the place and time specified therein, or may, subject to the following provisions of this section, issue a warrant for his arrest.

(2) A Magistrate shall not issue a summons under this section except on information and shall not issue a warrant under this section except on information in writing and on oath.

(3) A summons or warrant issued under this section shall direct the offender to appear or to be brought before the court by which the suspended sentence was passed, but if a warrant is so issued requiring him to be brought before the Supreme Court and he cannot forthwith be brought before that court because that court is not being held, the warrant shall have effect as if it directed him to be brought before a Magistrate and the Magistrate shall commit him in custody or on bail to the Supreme Court.

Breach of 286. If, during the operational period of a suspended

condition. sentence, an offender is guilty of the breach of any condition

2/14/1975 imposed on him by a court under section 282(3)(a), he shall be liable to be dealt with as if, during such period, he had been convicted of an offence punishable with imprisonment.

Interpre- 287. In section 282, 283, 284, 285 and  
286 -

tation.

2/14/1975. "court" includes the Supreme Court and the Magistrates' Court;

Seventh "excepted offence" means an  
offence declared to be an

Schedule. excepted offence by the Seventh  
Schedule;

"operational period", in relation to a suspended sentence, means the period specified in an order made under section 282(1).

Amendment of 288. The People's Assembly may, by  
resolution, from time

Seventh to time, alter, amend, add to or delete  
from the Seventh

Schedule. Schedule.

2/14/1975.

Meaning of 289. Whenever under any enactment  
now in force or under

words "or," any future enactment several penalties  
are provided for any

"and" and offence, the use of the word "or" shall  
signify that the

"together penalties are to be inflicted  
alternatively; the use of the

with" in word "and" shall signify that the penalties may be inflicted

penal clauses. alternatively or cumulatively; and use of the words. "together with" shall signify that the penalties are to be inflicted cumulatively.

Cost to be 290. When a criminal prosecution shall have been

borne by the instituted by a private individual and shall have resulted in

Republic in the conviction of the accused, it shall be lawful for the court

certain cases. to certify in writing upon the record that in its opinion the

S.I.72/1976. prosecution has been of material benefit to the public and thereupon the fees of court already paid by such person shall be refunded to him, and such person shall not be liable for the costs of witnesses whom, in the opinion of the court, it was proper to summon in connection with such case, but such costs shall after due taxation be paid by the Republic.

Recovery of 291. Where any criminal charge is dismissed by any court,

costs from the court may, if it shall deem fit, order that the taxed

complainant costs duly incurred by the defendant be borne, in whole or in

when charge part, by the complainant other than the Republic, and

is dismissed. thereupon the said costs may be recovered from the complainant

S.I.72/1976. in the same manner as any civil claim for which the creditor shall have obtained a judgment in his favour.

Liability of 292. Where several persons shall be prosecuted before any

several court under one complaint, and shall be convicted, each person

persons shall be individually responsible for the fine imposed upon

jointly him, and for such part of the costs as shall have been

convicted. apportioned to him by such court.

Prescription 293. All claim to shares of fines and forfeitures accruing

after 5 years. to any informer or detecting officer shall be barred after five years reckoning, in the case of a fine, from the payment of the fine to the account of the Government by or for the party condemned to pay it and, in case of forfeitures, from the payment of the proceeds and articles forfeited to the said account.

Sentence of 294. In every case where an offender is found guilty and

imprisonment according to the nature of the offence is duly sentenced to a

in default of fine with or without costs or to a fine with or without costs

payment of together with imprisonment, it shall be competent to the court

fine and which sentences such offender to direct by the sentence that

costs. in default of payment of the fine and cost, the offender shall suffer imprisonment for a certain term. Such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may have been liable under a commutation of a sentence.

Limit of 295(1) The term of imprisonment so ordered shall not exceed

imprisonment one day for each rupee of the total amount of the fine and

in default. costs to which the offender has been sentenced. No sentence

19/31/1964. of imprisonment in default of payment of a fine and costs shall exceed six months in all, or in default of payment of costs only shall exceed two months.

Commencement (2)When imprisonment is imposed in lieu of the payment

of imprisonment of fine and costs such imprisonment shall be reckoned in the

imprisonment in first instance as imprisonment in lieu of the fine and then in

default. lieu of the costs and where imprisonment as well as fine and costs have been decreed by the convicting court such imprisonment shall be in addition to, and shall begin after, any such term of imprisonment so decreed.

Fine or costs (3)The fine or costs or any part thereof which remains

may be levied unpaid, may be levied at any time within six years, after the

within 6 years passing of the sentence, and if under the sentence, the

or at any time offender be liable to imprisonment for a longer period than

during the six years, than at any time previous to the expiration of that

term of period; and the death of the offender does not discharge from

imprisonment. the liability any property which would, after his death, be legally liable for his debts.

Payment of 296(1) Whenever any court shall sentence any offender to pay

fine. any sum as a fine or for costs, such court may at any time -

(a) allow time for payment;

(b) extend such time;

- (c) direct payment to be made by instalments;
  
- (d) allow further time for the payment of any instalment;
  
- (e) vary the instalment;
  
- (f) in the case of parties proceeding to the Outlying Islands, order that payment be made by deduction from their wages.

(2) If the offender fails to pay any instalment within the time fixed for the payment of such instalment and does not obtain further time or a variation of the instalment, execution shall forthwith be issued for the recovery of all the instalments then remaining unpaid in the same manner as if, after the conviction, no order had been made for the payment of the sum by instalments.

Warrant for 297(1) When a court orders money to be paid by an accused

levy of fine, person or by a prosecutor or complainant as fine, penalty,

etc. compensation, costs, expenses or otherwise, the money may be

13/31/1964. levied on the movable and immovable property of the person ordered to pay the same by distress and 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) All sums realised by execution as aforesaid shall be applied by privilege and in the first instance to the payment (i) of the costs of execution, (ii) of the fine, (iii)

of the costs due by such offender in virtue of the conviction or order.

(4)A warrant under this section may be executed by the distress and sale of any property belonging to such person wherever found in Seychelles.

Objections to 298(1) Any person claiming to be entitled to or to have a

attachment. legal or equitable interest in the whole or part of any

4/7/1961. property attached in execution of a warrant issued under section 297 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 this section referred to as 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 deposited to upon 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 the 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 297 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 the provisions of subsection (4).

(6) If, upon investigation of the claim, the court is satisfied that the property 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 at 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 partly 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 the provisions of subsection (5), the court is of 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 fit.

(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.

Commitment in 299. When it appears to the court that distress and sale

lieu of \_\_\_\_\_ of property would be ruinous to the person ordered to pay the

distress. \_\_\_\_\_ 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 300. Any person committed for  
non-payment may pay the sum

full after mentioned in the warrant, with the  
amount of expenses therein

commitment. authorised (if any), to the person in  
whose custody he is, and that person shall thereupon  
discharge him if he is in custody for no other matter.

Part payment 301(1) If any person committed to  
prison for non-payment

after shall pay any sum in part satisfaction of  
the sum adjudged to

commitment. be paid, the term of his imprisonment  
shall be reduced by a number of days bearing as nearly as  
possible the same proportion to the total number of days  
for which such person is committed as the sum so 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 subsection (1) shall, on application being  
made to him by such prisoner, 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 302 Every warrant for the execution of  
any sentence may

issue warrant. be issued either by the Judge or  
Magistrate who passed the

19/31/1964. sentence or by a Judge or Magistrate of  
the same court.

#### PREVIOUSLY CONVICTED OFFENDERS

Power to 303(1) When any person, having been  
convicted of any offence

subject to punishable with imprisonment for a term of three years or

police upwards, is again convicted of any offence punishable with

supervision. imprisonment for a term of three years or upwards, the court

19/31/1964. 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 term not exceeding five years from the date of his release from prison:

Provided that if released on licence and such licence be afterwards forfeited such terms shall not be deemed to include the period of imprisonment undergone in consequence of such forfeiture.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

Requirements 304(1) Every person subject to police supervision, and who is at

from persons large in Seychelles shall -

subject to

police (a) report himself personally once in each month to the

supervision. officer in charge of the police station nearest to

S.I.95/1975. his place of residence at such time as may be

S.I.72/1976. prescribed by rules under this this section; and

(b) notify the place of his residence and any change of such residence at such time and place and in such manner and to such person as may be prescribed by rules under this section.

(2)The President may make rules for carrying out the provisions of this section.

Failure to 305. If any person subject to supervision who is at large  
comply with in Seychelles refuses or neglects to comply with any  
requirements requirement prescribed by section 304 or by any rule made  
under section thereunder, such person shall, unless he proves to the

304. 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.

Powers of 306. When a person -  
Supreme Court

to impose (a) is convicted of an offence punishable by imprisonment  
extended for a term of two years or more;  
and  
sentences of  
imprisonment. (b) has been convicted on at least three previous  
14/31/1964. occasions since reaching, in the opinion of the  
6/2/1965. Supreme Court, the age of 21 years, of offences punishable with such a sentence, and was on at least two of those occasions sentenced to imprisonment and has in consequence undergone imprisonment for an aggregate period of at least three years; and

the offence was committed within three years of his being previously convicted of, or of his completing a sentence of imprisonment for, an offence punishable by imprisonment for a term of two years or more, then, if the Supreme Court is of opinion -

(i) after considering all the circumstances of the offence and the offender, that no other method of dealing with him, including the imposition of a shorter sentence, is appropriate; and

(ii) that it is expedient for the protection of the public that an extended sentence of imprisonment should be imposed,

the Supreme Court may impose a sentence of imprisonment of up to twice the maximum prescribed by law for the offence of which such person is convicted or fourteen years, whichever is the less.

#### DEFECTS IN ORDER OR WARRANT

Errors and any defect in 307. The court may at any time amend

omissions in substance or in form in any order or warrant, and no omission

orders and or error as to time and place, and no defect in form in any

warrants. order or warrant given under this Code 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.

#### PART X

#### Appeals

#### APPEALS FROM THE MAGISTRATES' COURT

Appeal to 308(1) Save as hereinafter provided,  
any person convicted on

Supreme Court. a trial held by the Magistrates' Court may  
appeal to the

18 & Supreme Court.

19/31/1964.

(2) An appeal to the Supreme Court may be on a  
matter of fact as well as on a matter of law.

No appeal on 309(1) No appeal shall be allowed in the  
case of any accused

plea of guilty person who has pleaded guilty and has  
been convicted on such

or in petty plea by the Magistrates' Court, except  
as to the extent or

cases. legality of the sentence.

7/9/1955.

18/31/1964. (2) No appeal shall be allowed in  
cases in which the Magistrates' Court has passed a  
sentence of a fine not exceeding one hundred rupees  
only:

Provided that there shall be no appeal from a sentence of  
imprisonment passed by such court in default of the  
payment of a fine, when no substantive sentence of  
imprisonment has also been passed.

Procedure on 310(1) Every appeal shall be brought by  
notice in writing

appeal. which shall be lodged with the Registrar  
within 14 days after

5/11/1959. the date of the order or sentence  
appealed against.

2/3/1960.

18 & (2) Such notice shall be signed or  
marked by the

19/31/1964. appellant or, if the appellant is represented by an advocate, the notice may be signed by such advocate.

(3) Within 14 days after the filing of his notice of appeal, the appellant shall lodge with the Registrar a memorandum of appeal.

(4) Every memorandum of appeal shall be signed or marked by the appellant or signed by his advocate and shall contain particulars of the matters of law or of fact in regard to which the Magistrates' Court appealed from is alleged to have erred, and, except by leave of the Supreme Court the appellant shall not be permitted on the hearing of the appeal, to rely on any ground of appeal other than those set forth in the memorandum:

Provided that nothing in this subsection shall restrict the power of the Supreme Court to make such order as the justice of the case may require.

(5) If a memorandum is not lodged within the time prescribed by subsection (3), the appeal shall be deemed to have been withdrawn but nothing in this subsection shall be deemed to limit or restrict the power of the Supreme Court to extend time.

(6) The Supreme Court shall have power to extend any time herein provided for the taking of any necessary step in appeal, as it may deem fit.

Appellant in 311(1) If the appellant is in prison he shall be deemed to

prison. have complied with the requirements of section 310 if he gives

5/11/1959. to the officer in charge of the prison notice of his intention

19/31/1964. to appeal and the particulars required to be included in the memorandum of appeal within the times prescribed by such section.

(2) Such officer shall forthwith record the date of

receipt of such notice or memorandum and shall forward the same to the Registrar.

Sending for 312. After the filing of the memorandum of appeal, if the

record. record of the case is not already in the Supreme Court, the

5/11/1959. Registrar shall send for such record.

Summary 313(1) When a memorandum of appeal has been lodged, the

rejection of Judge shall peruse the same together with the record of the

appeal. case and if he considers that there is not sufficient ground

5/11/1959. for interfering, may notwithstanding the provisions of section

4/7/1961. 316, reject the appeal summarily:

18/31/1964.

Provided that no appeal shall be rejected summarily except in the case mentioned in subsection (2), unless the appellant or his advocate has had the opportunity of being heard in support of the same.

(2) Where an appeal is brought on the ground that the conviction is against the weight of the evidence, or that the sentence is excessive, and it appears to the Judge that the evidence is sufficient to support the conviction and that there is no material in the circumstances of the case which could raise a reasonable doubt whether the conviction was right or lead him to the opinion that the sentence ought to be reduced, the appeal may, without being set down for hearing, be summarily rejected by an order of the Judge certifying that he has perused the record and is satisfied that the appeal has been lodged without any sufficient ground of complaint.

(3) Whenever an appeal is summarily rejected notice of such rejection shall forthwith be given to the Attorney General and to the appellant or his advocate.

Fixing of 314. If the Supreme Court does not  
dismiss the appeal

appeal. summarily, the appeal shall be set down  
for hearing by the

5/11/1959. Registrar on a date to be fixed by him.

Order of 315. The order of the Registrar fixing  
the appeal together

Registrar to with a copy of the notice and  
memorandum of appeal shall be

be served on served upon the respondent and, where  
the respondent is a

respondent. public prosecutor, upon the Attorney  
General, at the expense

7/9/1955. of the appellant not later than seven  
clear days before the

6/11/1959. day fixed for the hearing.

Powers of 316. After hearing the appellant or his  
advocate, if he

Supreme Court. appears, and the Attorney General, if he  
appears, the Supreme

18/31/1964. Court may, if it considers that 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 or  
discharge the accused, or order him to be tried by a court  
of competent jurisdiction, or commit him for trial; or

(ii) alter the finding, maintaining the sentence, or with  
or without altering the finding, alter the nature of the  
sentence;

(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 from any other order, alter or reverse such order;

and in either case may make any amendment or any consequential or incidental order as to costs or otherwise that may appear just and proper.

(2) An appellant whether in custody or not shall be entitled to be present at the hearing of his appeal.

Order of the 317(1) When a case is decided on appeal by the Supreme

Supreme Court Court, it shall certify its judgment or order to the court by

to be certi- which the conviction, sentence or order appealed against was

fied to lower recorded or passed.

court.

(2) The court to which the Supreme Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the Supreme Court, and, if necessary, the record shall be amended in accordance therewith.

Admission to 318(1) After entering of an appeal by a person entitled to

bail or appeal, the Supreme Court, or the Magistrates' Court which

suspension of convicted or sentenced such person, may order that he be

sentence released on bail, with or without sureties and subject to such

pending conditions as the court may deem fit or  
if such person is not

appeal. released on bail, shall at the request of  
such person, order

2/39/1960. that the execution of the sentence or  
order appealed against

18/31/1964. shall be suspended pending the hearing  
of the appeal.

S.I.19/1975.

(2) An application for bail under this section may be heard in Chambers. In the Supreme Court such application shall be by motion served on the Attorney General. In the Magistrates' Court such application may be made without formal process on sufficient notice to the officer who conducted the prosecution.

(3) Either party to a decision of the Magistrates' Court under this section may appeal to the Supreme Court.

(4) If an appeal is ultimately dismissed and the original sentence confirmed or some other sentence of imprisonment substituted therefor, 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.

Further 319(1) In dealing with an appeal from  
the Magistrates' Court

evidence. the Supreme Court, if it thinks additional  
evidence is

7/9/1955. necessary, shall record its reasons and  
may either take such

18/31/1964. evidence itself or direct it to be taken by  
the Magistrates' Court.

(2) When the additional evidence is taken by the Magistrates' Court, such court shall certify such evidence to the Supreme Court, which shall thereupon proceed to dispose of the appeal.

(3) Unless the Supreme 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 the Magistrates' Court.

Power to 320. It shall be lawful for the Magistrate  
irrespective of

reserve any appeal or whether a case is  
appealable or not to reserve

question of for the consideration of the Supreme  
Court any point of law

law. arising during any proceeding in the  
court or on which the

6/3/1959. said Magistrate may entertain a doubt  
as to the correctness of his decision. The question of law  
so reserved shall be stated in the form of a case prepared  
and signed by the Magistrate himself, and such case shall  
be transmitted to the Judge:

Provided that nothing herein contained shall exempt the  
Magistrate from giving his own judgment on such  
questions.

Cases 321. Whenever a case shall have been  
so reserved and

reserved how stated by the Magistrate upon an order  
of the Supreme Court,

dealt with. the execution of the Judgment shall be  
stayed until the decision of the Supreme Court has been  
delivered. Any person under detention shall be released  
on sufficient bail to be furnished before the Magistrate  
pending the consideration by the Supreme Court of any  
point reserved.

Cases may be 322. The Supreme Court shall have  
power if it thinks fit,

sent back for to return the case for amendment and thereupon the same shall

amendment. be amended accordingly and judgment shall be delivered after it shall have been so amended.

Judgment of 323. After the decision of the Supreme Court, the

appellate Magistrate shall cause the judgment of the Supreme Court to be

court how enforced as if it were a judgment of his own court and as if

enforced. the same had not been appealed against.

Costs of 324. When the Supreme Court has allowed costs of appeal,

appeal how such costs when taxed by the Registrar, shall be recovered by

recovered. execution in the Magistrates' Court.

18 &

19/31/1964.

Abatement 325. Every appeal from the Magistrates' Court (except an

of appeals. appeal from a sentence of fine) shall finally abate on the

18/31/1964. death of the appellant.

Appeals to 326(1) Any party to an appeal from the Magistrates' Court

Court of may appeal against the decision of the Supreme Court in its

Appeal. appellate jurisdiction to the Court of Appeal on a matter of

3/23/1957. law but not on a matter of fact or mixed

fact and law or on

18 & severity of sentence.

19/31/1964.

3/14/1975. For the purposes of this section the expression "decision of the Supreme Court in its appellate jurisdiction" shall include a decision of that Court made in revision or on case stated.

(2) On any such appeal, the Court of Appeal may, if it thinks that the judgment of the Magistrates' Court or of the first appellate court should be set aside or varied on the ground of a wrong decision on any question of law, make any order which the Magistrates' Court or the first appellate court could have made; or may remit the case, together with its judgment or order thereon, to the first appellate court or to the Magistrates' Court for determination, whether or not by way of re-hearing, with such directions as the Court of Appeal may think necessary:

Provided that in the case of an appeal against conviction, if the Court of Appeal dismisses the appeal and confirms the conviction appealed against it shall not (save as in subsection (3) provided) increase, reduce or alter the nature of the sentence imposed in respect of that conviction, whether by the Magistrates' Court or by the first appellate court, unless the Court of Appeal thinks that such sentence was an unlawful one or was passed in consequence of an error of law, in which case it may impose such sentence in substitution therefor as it thinks proper and as may be warranted in law for the offence of which the appellant has been convicted.

(3) If it appears to the Court of Appeal that a party to an appeal, though not properly convicted on some count of the information, has been properly convicted on some other count of the information, the Court may, in respect of the count of the information on which the Court considers that the appellant has been properly convicted, either affirm the sentence passed by the Magistrates' Court or by the first appellate court, or pass such other sentence (whether more or less severe) in substitution therefor as it thinks proper and as may be warranted in law.

(4) Where a party to an appeal has been convicted of an offence and the Magistrates' Court or the first appellate

court could on the information have found him guilty of some other offence and, on the finding of the Magistrates' Court or of the first appellate court, it appears to the Court of Appeal that the court must have been satisfied of facts which proved him guilty of that other offence, the Court of Appeal may, instead of allowing or dismissing the appeal, substitute for the conviction entered by the Magistrates' Court or by the first appellate court a conviction of guilty of that other offence, and pass such sentence in substitution for the sentence passed by the Magistrates' Court or by the first appellate court as may be warranted in law for that other offence, not being a sentence of greater severity.

(5) On any appeal brought under this section, the Court of Appeal may, notwithstanding that it may be of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has in fact occurred.

Admission to 327. The Judge may, in his discretion, in any case in

bail pending which an appeal from a decision of the Supreme Court in its

appeal. appellate jurisdiction to the Court of Appeal is filed, grant

4/23/1957 bail pending the hearing of such appeal.

19/31/1964.

#### Revisions

Power of 328. The Supreme Court may call for and examine the record

Supreme court of any criminal proceedings before the Magistrates' Court for

to call for the purpose of satisfying itself as to the correctness,

records. legality or propriety of any finding, sentence or order

18/31/1964. recorded or passed, and as to the

regularity of any proceedings of the Magistrates' Court.

Powers of 329(1) In the case of any proceeding in the Magistrates'

Supreme Court Court the record of which has been called for or which has

on revision. been reported for orders, or which otherwise comes to its

4/7/1961. knowledge, the Supreme Court may -

18/31/1964.

(a) in the case of an order of acquittal, reverse such order and direct that further inquiry be made or direct that the accused be retried;

(b) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 316, 318 and 319 and may enhance the sentence;

(c) in the case of any other order, alter or reverse such order.

(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.

(3) Where the sentence dealt with under this section has been passed by the Magistrates' Court, the Supreme Court shall not inflict a greater punishment for the offence, which in the opinion of the Supreme 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 authorise the Supreme Court to convert a finding of acquittal into one of conviction.

(5) Where an appeal lies from any finding, sentence or order and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

Discretion of 330. No party has any right to be heard either personally

court as to or by advocate before the Supreme Court when exercising its

hearing powers of revision:

parties.

18/31/1964. Provided 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 section 329.

Order on 331. When a case is revised by the Supreme Court it shall

revision to certify its decision or order to the court by which the

be certified sentence or order so revised was recorded or passed, and the

to lower court to which the decision or order is so certified shall

court. thereupon make such orders as are conformable to the decision so certified, and if necessary the record shall be amended in accordance therewith.

#### Case Stated

Cases stated 332. After the hearing and determination by the

by the Magistrates' Court of any summons, charge, information or

Magistrates' complaint, either party to the proceedings before the said

Court. Magistrates' Court may, if dissatisfied with the said

18/31/1964. determination as being erroneous in point of law, or as being in excess of jurisdiction, apply in writing within thirty days after the said determination to the said Magistrates' Court to state and sign a case setting forth the facts and the grounds of such determination for the opinion thereon of the Supreme Court, and such party (hereinafter called "the appellant") shall -

(a) within fourteen days after receiving the case transmit the same to the Supreme Court; and

(b) within thirty days after receiving the case serve a copy of the case so stated and signed on the other party to the proceedings in which the determination was given (hereinafter called "the respondent"):

Provided always that no application shall be made under this section by a private prosecutor within the meaning of section 146 without the previous consent in writing of the Attorney General.

Recognisance 333. The appellant, at the time of making such application

to be taken and before the case shall be stated and delivered to him by

and fees paid. the Magistrates' Court, shall in every instance enter into a

18/31/1964. recognisance before such Magistrates' Court, with or without

surety or sureties, and in such sum not exceeding five hundred rupees as to the Magistrates' Court shall seem meet, conditioned to prosecute without delay such appeal, and to submit to the judgment of the Supreme Court and to pay such costs as may be awarded by the same; and before he shall be entitled to have the case delivered to him, he shall pay to the clerk of the Magistrates' Court his fees for and in respect of the case and recognisances, and any other prescribed fees to which such clerk shall be entitled, which fees shall be in accordance with the Sixth Schedule.

If the appellant is then in custody, the court may liberate him upon the recognisance being further conditioned for his appearance before the same court within fourteen days after the judgment of the Supreme Court shall have been given to abide such judgment unless the determination appealed against be reversed.

when appellant is ultimately sentenced to imprisonment, the time during which he is so released shall be excluded in computing the term for which he is sentenced.

Nothing in this section shall apply to an application for a case stated by or under the direction of the Attorney General.

Refusal of opinion that the 334. If the Magistrates' Court be of opinion that the application is merely frivolous, but not otherwise, it may refuse to state a case, and shall, in the request of the appellant, sign and deliver to him a certificate of such refusal:

Provided that the Magistrates' Court shall not refuse to state a case when the application for that purpose is made to him by or under the direction of the Attorney General, who may require a case to be stated with reference to proceedings to which he was not a party.

Procedure on refused to state a 335. When the Magistrates' Court has refused to state a case as aforesaid it shall be lawful for the appellant to apply to the Supreme Court within two months of such refusal, upon an affidavit of the facts, for a rule calling upon the Magistrates' court and also upon the respondent to show cause

why such case should not be stated, and the Supreme Court may make the same absolute or discharge it, with or without payment of costs, as to the court shall seem fit, and the Magistrates' Court, upon being served with such rule absolute, shall state a case accordingly, upon the appellant entering into such recognisance as is hereinbefore provided.

Hearing and 336. The Supreme Court shall (subject to the provisions of

determination section 337) hear and determine the question or questions of

by the Supreme law arising on the case stated, and shall thereupon reverse,

Court. affirm or amend the determination in respect of which the case

18/31/1990. has been stated, or remit the matter to the Magistrates' Court

S.I. 72/1976. with the opinion of the Supreme Court thereon, or may make such orders as to costs, as to the court may seem fit, and all such orders shall be final and conclusive on all parties:

Provided always that no Magistrate who shall state and deliver a case in pursuance of this part or bona fide refuse to state one shall be liable to any costs in respect or by reason of such appeal against his determination or refusal, and provided further that no costs shall be awarded against the Republic except where the Republic is the appellant.

Case may be 337. The Supreme Court shall have power, if it thinks fit,-

sent back for

amendment or (a) to cause the case to be sent back for amendment or

rehearing. restatement, and thereupon the same shall be

18/31/1964. amended or restated accordingly, and judgment shall be delivered after it has

been so amended;

(b) to remit the case to the Magistrates' Court for rehearing and determination with such directions as it may deem necessary.

Powers of 338. After the decision of the Supreme court has been

Magistrates' given on a case stated, the Magistrates' Court in relation to

Court after whose determination the case has been stated, or any other

decision. Magistrates' Court exercising the same jurisdiction, shall

18/31/1964. have the same authority to enforce any conviction or order, which may have been affirmed, amended or made by the Supreme Court, as the Magistrates' Court which originally decided the case would have had to enforce its determination if the same had not been appealed against: and no action or proceeding whatsoever shall be commenced or had against the magistrate holding such court for enforcing such conviction or order, by reason or any defect in the same respectively.

Appellant may 339. No person who has appealed under section 308 shall be

not proceed entitled to have a case stated, and no person who has applied

both by case to have a case stated shall be entitled to appeal under

stated and by section 308.

appeal.

4/7/1961.

Contents of 340. A case stated by the Magistrates' Court shall set

case stated. out-

18/31/1964.

(a) the charge, summons, information or complaint;

(b) the facts found by the Magistrates' Court to be admitted or proved;

(c) any submission of law made by or on behalf of the complainant during the trial or inquiry;

(d) any submission of law made by or on behalf of the accused during the trial or inquiry;

(e) the finding and, in case of conviction, the sentence of the Magistrates' Court;

(f) any question or questions of law which the Magistrates' Court or any of the parties may desire to be submitted for the opinion of the Supreme Court;

(g) any question of law which the Attorney General may require to be submitted for the opinion of the Supreme Court.

Supreme Court 341. The Supreme Court may, if it deems fit, enlarge any

may enlarge period of time prescribed by sections 332, 333 or 335.

time.

4/7/1961.

#### APPEALS FROM SUPREME COURT

Appeals from 342(1) Any person convicted on a trial held by the Supreme

Supreme Court Court may appeal to the Court of Appeal

-

to the Court

of Appeal. (a) against his conviction -

5/23/1957. (i) on any ground of  
appeal whenever the

7/11/1959. penalty awarded  
shall exceed six months'

2/39/1960. imprisonment or one  
thousand rupees;

4/7/1961.

15 & (ii) on any ground of  
appeal which involves a

19/31/1964. question of law  
alone;

S.I. 53/1962.

(iii) with the leave of such Court of Appeal or upon a certificate of the Judge who tried him that it is a fit case for appeal on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact or on any other ground which appears to the Court to be a sufficient ground of appeal;

(b) against the sentence passed on his conviction with the leave of such Court of Appeal, unless the sentence is one fixed by law.

(2) Any person who has been dealt with by the Supreme Court under section 7 may appeal to the Court of Appeal as set out in paragraphs (a) and (b) of subsection (1) as if he had been both convicted and sentenced by the Supreme Court, whether the supreme Court used its powers of revision or not.

(3) Irrespective of any appeal and whether a case be appealable or not, the Judge may reserve for the

consideration of the Court of Appeal any question of law decided by him in the course of any trial. The question or questions so reserved shall be stated in the form of a case prepared and signed by the Judge himself; and such case shall be transmitted by him at the earliest convenient opportunity to such Court of Appeal:

Provided that nothing herein contained shall exempt the Judge from giving his own judgement on any such questions.

(4) The Judge may in his discretion, in any case in which an appeal to the Court of Appeal is filed or in any case in which a question of law has been reserved for the decision of such Court of Appeal, grant bail pending the hearing of such appeal or the decision of the case reserved.

(5) An application for bail under this section shall be by motion, supported by affidavit, served on the Attorney General, and may be heard in Chambers.

References to 343(1) The President on an application made to him by a

the Court of person convicted on a trial held by the Supreme Court or

Appeal by the without such application, may, if he thinks fit, at any time

President. either -

8/2/1965.

S.I. 95/1975. (a) refer the whole case to the Court of Appeal and

S.I. 72/1976. the case shall then be treated for all purposes as an appeal to that Court by the person convicted; or

(b) if he desires the assistance of the Court of Appeal on any point arising in the case, refer that point to the Court of Appeal for their opinion thereon, and that Court shall consider the point so referred and furnish the President with their opinion thereon accordingly.

(2) A reference to the Court of Appeal may be made under this section irrespective of any appeal or whether the case is appealable or not.

(3) Nothing in this section shall affect the prerogative of mercy.

## PART XI

### Supplementary Provisions

#### IRREGULAR PROCEEDINGS

Error or omission in charge or other proceedings. 344. Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account -

4/7/1961. (a) of any error, omission or irregularity in the summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code, or

(b) of any error, omission or irregularity in the preparation of any jury list under the provisions of section 229, or

(c) of any misdirection in any charge to a jury,

unless such error, omission, irregularity or misdirection has in fact occasioned a failure of justice:

Provided that in determining whether any error, omission, or irregularity has occasioned a failure of justice the court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings

Distress not 345. No distress made under this Code shall be deemed

illegal nor unlawful, nor shall any person making the same be deemed a

destrainer a trespasser, on account of any defect or want of form in the

trespasser for summons, conviction, warrant of distress or other proceedings

defect or want relating thereto.

of form in

proceedings.

#### INQUIRIES AS TO SUDDEN DEATHS

Magistrate 346. Any Magistrate, and any person specially empowered in

empowered to that behalf by the President, shall be empowered to hold

hold inquest. inquests.

S.I. 72/1976.

Investigation 347(1) Whenever an officer in charge of a police station is

in case of informed that a person -

violent death.

5/9/1955. (a) has committed suicide; or

2/3/1956.

6/3/1959. (b) has been killed by another,  
or by an animal, or

19/31/1964. by machinery, or by an  
accident; or

S.I. 95/1975.

S.I.104/1975. (c) has died under  
circumstances raising a reason-

S.I. 72/1976. able suspicion that  
somebody has committed an offence; or

(d) has died in prison or in a mental hospital or while in  
the custody of the police,

he shall forthwith proceed to the place where the body is lying and shall then and there make an investigation and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body and stating in what manner or by what weapon or instrument, if any, such injury appears to have been inflicted. The report shall be signed by such police officer and shall be forthwith forwarded to a Magistrate.

(2) Should the Magistrate be satisfied on the face of such police officer's inquiry and report that there is no suspicion whatever that death is due to a crime or foul play, he shall order that the body of the person be buried without any examination by a medical officer. In such cases, his order shall be sufficient authority to the civil status officer to register the death.

(3) When there is any suspicion that the death may not be due to natural causes or when for any reason the Magistrate considers it expedient so to do, he shall with a view to a post-mortem examination being made, order the body to be forwarded to a government medical officer, or if such medical officer is not available, then to any medical

practitioner appointed by the Magistrate who shall draw up a report and forward the same to the Magistrate:

Provided that if the Magistrate considers it necessary so to do, he may order the government medical officer or the medical practitioner appointed by him to proceed to the spot where the body is lying to investigate the matter before performing the post-mortem examination.

(4) After considering the report of the medical officer or practitioner the Magistrate may order that the body be buried or may make such order as to him may seem fit before ordering that the body be buried.

(5) For cases arising elsewhere than in Mahe, should a Magistrate be not available the police officer shall send his report to a Justice of the Peace who is hereby given all the powers of the Magistrate under the preceding subsections.

(6) Should a Magistrate be not available the police officer shall send his report to the Judge who is hereby given all the powers of the Magistrate under the preceding subsections.

(7) Should the Judge or in cases arising elsewhere than in Mahe a Justice of the Peace, be not available the police officer shall send his report direct to the Chief Medical officer or other government medical officer who shall have all the powers of the Magistrate under the preceding subsections.

(8) The Magistrate or Justice of the Peace or when acting under the powers given by subsections (6) and (7) hereof the Judge or the medical officer, as the case may be, shall forward to the Attorney General the report of the police officer and of the post-mortem examination if one has been held, together with his own report and any further information bearing upon the case.

(9) The Attorney General may require a Magistrate or any other person specially empowered in that behalf by the President to hold an inquest into the cause of death and the circumstances connected therewith.

(10) Such Magistrate or other person shall hold such inquest and shall proceed to take the depositions of those who know the facts and circumstances of the case. Such depositions shall be taken and recorded as depositions are taken at a preliminary inquiry by the Magistrates' Court.

(11) In holding such inquest the Magistrate or other person may exercise the powers conferred on the court in section 207.

Court may 348. The Magistrate may at any time during the course of call for the inquest summon any witness to give evidence, if such evidence is necessary for the purpose of the inquest.

Finding. 349. When the Magistrate has heard the evidence tendered 19/31/1964. by or on behalf of the Attorney General, he shall give his findings as to the cause of the death.

Court not to 350. The Magistrate shall not express any opinion as to express any the guilt or innocence or otherwise of any person who may have opinion on been called to give evidence at the inquest, even if that the evidence. person has not volunteered to give evidence therein.

Inquest when 351. In the following cases the Attorney General shall be obligatory. bound to order an inquest to be held - 6/9/1955.

3/3/1956. (a) Where a person has died in  
prison or while in

4/7/1961. the custody of the police;

24/32/1980.

(b) where a person other than a member of the  
Defence Force has died under circumstances raising a  
reasonable suspicion that the death of that person might  
be due to a crime or foul play, unless a preliminary inquiry  
is to be held.

#### DIRECTIONS IN THE NATURE OF HABEAS CORPUS AND WRITS

Power to 352(1) The Supreme Court may  
whenever it thinks fit direct -

issue direc-

tions of the (a) that any person within the  
limits of Seychelles

nature of a be brought up before the  
court to be dealt with

habeas according to law;

corpus.

19/31/1964. (b) that any person illegally or  
improperly detained

S.I. 95/1975. in public or private custody  
within such limits

S.I. 72/1976. 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 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 to be examined touching any matter pending before such court-martial or commissioners respectively;

(e) 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 attachment.

(2) The Chief Justice may from time to time frame rules to regulate the procedure in cases under this section.

Power of the 353(1) The Supreme Court may in exercise of its criminal

Supreme Court jurisdiction issue any writ which may be issued by the High

to issue Court of Judicature in England.

writs.

19/31/1964. (2) The Chief Justice may from time to time frame rules to regulate the procedure in cases under this section.

#### MISCELLANEOUS

Persons 354. Affidavits and affirmations to be issued before the

before whom Supreme Court may be sworn and affirmed before a judicial

affidavits officer.

may be sworn.

19/31/1964.

Shorthand 355. Shorthand notes may be taken of  
the proceedings at

notes of the trial of any person before the  
Supreme Court, and a

proceedings. transcript of such notes shall be made if  
the court so directs, and such transcript shall for all  
purposes be deemed to be the official record of the  
proceedings at such trial.

Copies of 356. If any person affected by any  
judgment or order

proceedings. passed in any proceedings under this  
Code 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 he  
pays for the same, unless the court for some special  
reason thinks fit to furnish it free of cost.

Forms. 357. Such forms as the Supreme Court  
may from time to time

18/31/1964. approve, with such variation as the  
circumstances of each case may require, may be used for  
the respective purposes therein mentioned, and if used  
shall be sufficient. In the absence of directions to the  
contrary by the Supreme Court, the forms printed in the  
Fifth Schedule shall be used in the Magistrates' Court.

Expenses of 358. Subject to any enactment, any  
court may order payment

jurors, on the part of the Government of the  
reasonable expenses of

witnesses, any jurors, complainant or witness  
attending before such court

etc. for the purposes of any inquiry, trial, or  
other proceeding

4/7/1961. under this Code. The fees in the Sixth  
Schedule shall be

19/31/1964. levied in proceedings in the Magistrates'  
Court.

Regulations. 359. The president may be regulations  
amend, add to or

16/31/1964. alter the Third, Fourth, Fifth and Sixth  
Schedules of this

S.I. 95/1975. Code.

S.I. 72/1976.

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