Tanzania

# Criminal Procedure Act

Chapter 20

Legislation as at 30 November 2019

Note: There are **outstanding amendments** that have not yet been applied: Act 1 of 2020, Act 2 of 2020, Act 1 of 2022, Act 11 of 2023.

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Criminal Procedure Act (Chapter 20)
Contents

# Tanzania

# Criminal Procedure Act
## Chapter 20

**Commenced on 1 November 1985**

*[This is the version of this document as it was at 30 November 2019 to 20 February 2020.]*

*[Note: This legislation has been thoroughly revised and consolidated under the supervision of the Attorney General's Office, in compliance with the Laws Revision Act No. 7 of 1994, the Revised Laws and Annual Revision Act (Chapter 356 (R.L.)), and the Interpretation of Laws and General Clauses Act No. 30 of 1972. This version is up-to-date as at 31st July 2002.]*

*[Amended by Written Laws (Miscellaneous Amendments) (No.3) Act, 2002 (Act 25 of 2002) on 20 December 2002]*
*[Amended by Prevention of Terrorism Act, 2002 (Act 21 of 2002) on 15 June 2003]*
*[Amended by Written Laws (Miscellaneous Amendments) Act, 2005 (Act 5 of 2005) on 22 April 2005]*
*[Amended by Written Laws (Miscellaneous Amendments) Act, 2007 (Act 2 of 2007) on 6 April 2007]*
*[Amended by National Prosecutions Service Act, 2008 (Chapter 430) on 9 June 2008]*
*[Amended by Written Laws (Miscellaneous Amendments) (No. 3) Act, 2010 (Act 2 of 2010) on 26 March 2010]*
*[Amended by Law of the Child Act (Chapter 13) on 1 April 2010]*
*[Amended by Written Laws (Miscellaneous Amendments) (No. 2) Act, 2010 (Act 11 of 2010) on 28 May 2010]*
*[Amended by Written Laws (Miscellaneous Amendments) Act, 2011 (Act 3 of 2011) on 10 June 2011]*
*[Amended by Mental Health Act, 2008 (Chapter 98) on 1 July 2011]*
*[Amended by Written Laws (Miscellaneous Amendments) (No. 2) Act, 2018 (Act 7 of 2018) on 25 September 2018]*
*[Amended by Written Laws (Miscellaneous Amendments) (No. 4) Act, 2019 (Act 11 of 2019) on 20 September 2019]*

*[G.N. No. 375 of 1985; Acts Nos. 9 of 1985; 9 and 12 of 1987; 5 and 13 of 1988; 10 of 1989; 4 and 27 of 1991; 19 of 1992; 5 of 1993; 32 of 1994; 2, 9 and 17 of 1996; 4 and 12 of 1998; 5 and 9 of 2002; 21 of 2002; 25 of 2002; 4 of 2004; 5 of 2005; 2 of 2007; 6 of 2008; 21 of 2008; 27 of 2008; 21 of 2009; 2 of 2010; 11 of 2010; 3 of 2011; 7 of 2018; 11 of 2019]*

**An Act to provide for the procedure to be followed in the investigation of crimes and the conduct of criminal trials and for other related purposes.**

## Part I – Preliminary provisions

### 1. Short title

This Act may be cited as the Criminal Procedure Act.

### 2. Interpretation

In this Act, unless the context otherwise requires—

"**adult**" means a person of or above the age of sixteen years;

"**arrestable offence**" means an offence for which a police officer may, in accordance with the First Schedule to this Act or under any written law for the time being in force, arrest without warrant;

"**child**" means a person who has not attained the age of sixteen;

"**committal proceedings**" means proceedings held by a subordinate court with a view to the committal of an accused person to the High Court;

"**complainant**" in a private prosecution, means the private prosecutor or the person making the complaint before the court and, in all public prosecutions, means the person presenting the case on behalf of the Republic before the court;

"**complaint**" means an allegation that some person known or unknown, has committed an offence;

"**juvenile**" means a person under the age of sixteen years;

"**Minister**" means the Minister responsible for legal affairs;

*[Cap. 4 s. 8]*

"**non-warrant offence**" means an offence for which a police officer may arrest without a warrant;

"**officer in charge of a police station**" includes any officer superior in rank to an officer in charge of a police station and also includes, when the officer in charge of the police station is absent from the station house or unable from illness or other cause to perform his duties, the police officer present at the station house who is next in rank to that officer and is above the rank of constable or, when the Minister for the time being, responsible for home affairs so directs, any police officer so present;

"**plea agreement**" means an agreement entered into between the prosecution and the accused in a criminal trial in accordance with sections 194A, 194B and 194C;

"**plea bargaining**" means a negotiation in a criminal case between a prosecutor and the accused whereby the accused agrees to—

(a) plead guilty to a particular offence or a lesser offence or to a particular count or counts in a charge with multiple counts; or

(b) cooperate with the prosecutor in the provision of information that may lead to a discovery of other information relating to the offence or count charged, in return for concession from the prosecutor which may lead to a lenient sentence or withdrawal of other counts.

"**police officer**" includes any member of the police force and, any member of the people's militia when exercising police functions in accordance with the law for the time being in force;

"**public prosecutor**" means a Law Officer or a State Attorney appointed under section 5 of the National Prosecutions Service Act and includes the Director of Public Prosecutions, the Deputy Director of Public Prosecutions or any other person acting in criminal proceedings under the directions of the Director of Public Prosecutions;

*[Cap. 430]*

"**subordinate court**" means any court, other than a court martial, which is subordinate to the High Court;

"**summary trial**" means a trial held by a subordinate court under Part VII of this Act;

"**Village Council**" means a Village Council established under section 22 of the Local Government (District Authorities) Act;

*[Cap. 287]*

"**warrant offence**" means an offence for which a police officer may not arrest without warrant.

*[Acts Nos. 27 of 2008 s. 31; 7 of 2018 s. 8; 11 of 2019 s. 15]*

## 3. Limitation of application

(1) Subject to subsection (2), nothing in this Act shall apply to any primary court or primary court magistrate or to the High Court, a district court or a resident magistrate in the exercise of their respective appellate, revisional, supervisory, or other jurisdiction and powers under Part III of the Magistrates' Courts Act.

*[Cap. 11]*

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

(a) the reference to a court in sections 27, 29, 30, 32 and 141 and the reference to a subordinate court in section 242 shall include reference to a primary court;

(b) the reference to a magistrate in section 36 and sections 70 to section 88 shall include a reference to a primary court magistrate;

(c) the Director of Public Prosecutions and any person lawfully authorised by him, may exercise any of the powers conferred on him by sections 90 and 91 in respect of proceedings in a primary court and proceedings in the High Court or a district court under Part III of the Magistrates' Courts Act; but nothing in this paragraph shall be construed as derogating from the provisions of section 29 of the Magistrates' Courts Act;

*[Cap. 11]*

(d) sections 137, 138, 139, 140 and 141 shall apply to, and the High Court may exercise jurisdiction under sections 148(3), 149, 348 and 349 in respect of, primary courts.

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

*[Cap. 11]*

*[Act No. 5 of 1988 s. 2]*

### 4. Procedure to be adopted for trial of offences

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

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

*[Cap. 16]*

## Part II – Procedure relating to criminal investigations

## A – Arrest, escape and recapture, search warrants and seizure

### *(a) Preliminary provisions*

### 5. When person is under restraint and in lawful custody

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

(2) For the purposes of this Act, a person shall be in lawful custody if he is under restraint—

(a) as a result of his having been lawfully arrested; or

(b) in respect of an offence and the police officer—

(i) believes on reasonable grounds that he has committed the offence; and

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

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

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

## 6. Application of this Part to police officers

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

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

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

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

*[Cap. 322]*

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

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

## 7. Duty to give information on crimes and sudden deaths

(1) Every person who is or becomes aware—

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

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

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

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

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

*[Cap. 4 s. 8]*

*[Cap. 16]*

## 8. Inquiries into deaths

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

*[Cap. 24]*

## 9. Information relating to commission of offence to be given orally or in writing

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

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

(3) Where in pursuance of any information given under this section proceedings are instituted in a magistrate's court, the magistrate shall, if the person giving the information has been named as a witness, cause a copy of the information and of any statement made by him under subsection (3) of section 10, to be furnished to the accused forthwith.

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

*[Act No. 9 of 2002 Sch.]*

## 10. Investigation by police officer

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

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

Provided that, where a police officer receives any certified copy of a document or any other thing he shall issue to the person from whom he received such document or that thing a receipt thereof.

(2A) Any person summoned to attend or to produce a document or any other thing relevant to investigation of the case under subsection (2), who refuses or willfully neglects so to do or who being a witness at such investigation refuses to answer any question put to him or to produce any document or any other thing relevant to investigation commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or both.

(3) [1] Any police officer making an investigation may, subject to the other provisions of this Part, examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined.

*[Cap. 4 s. 8]*

(3A) The whole of the statement, including any question in clarification asked by the police officer and the answer to it, shall be recorded in full in Kiswahili or in English or in any other language in which the person is examined, and the record shall be shown or read over to him or if he does

not understand the language in which it is written it shall be interpreted to him in a language he understands and he shall be at liberty to explain or add to his statement.

(3B) The person examined shall then sign that statement immediately below the last line of the record of that statement and may call upon any person in attendance to sign as a witness to his signature.

(3C) The police officer recording the statement shall append below each statement recorded by him the following certificate:—

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

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

(5) [2]A police officer or person in authority shall not offer or make or cause to be offered or made any inducement, threat or promise to any person charged with an offence to induce him to make any statement with reference to the charge against him:

provided that, no police officer or person in authority shall prevent or discourage by any caution or in any other way any person from making, in the course of any investigation, any statement which he may be disposed to make of his own free will.

*[Cap. 4 s. 8]*

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

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

*[Act No. 9 of 2002 Sch; Cap. 4 s. 8]*

1 Note: Section 10(3) is rearranged into subsections (3), (3A), (3B), and (3C) to bring the subsection inline with the applicable format of a legislative sentence.

2 Note: Subsection (5) is rearranged by introducing a proviso to bring it in line with the applicable standardized format.

### *(b) Arrests and warrant of arrest*

## 11. Arrest, how made

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

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

*[Cap. 4 s. 8]*

## 12. No unnecessary restraint

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

## 13. Warrant for arrest

(1) Where information under oath is laid before a magistrate, Ward Secretary or a Secretary of a Village Council, alleging that there are reasonable grounds for believing that a person has committed an offence—

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

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

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

(3) A warrant shall not be issued under subsection (1) or (2) in relation to an information unless—

(a) an affidavit has been furnished setting out the grounds on which the issue of the warrant is being sought;

(b) the informant or some other person furnishes such further information as the magistrate, Ward Secretary or Secretary of the Village Council requires concerning the grounds on which the issue of the warrant is being sought; or

(c) the magistrate, Ward Secretary or Secretary of the Village Council is satisfied that there are reasonable grounds for issuing the warrant.

(4) Where an informant furnishes information to a magistrate, Ward Secretary or Secretary of the Village Council for the purposes of subsection (3)(b) he shall furnish the information under oath.

(5) Where the magistrate, Ward Secretary or Secretary of the Village Council issues a warrant under subsection (1), he shall state on the affidavit furnished to him in accordance with subsection (3) which of the grounds (if any) specified in that affidavit and particulars of any other grounds on which he has relied to justify the issue of the warrant.

## 14. Arrest by police officer without warrant

(1) A police officer may without a warrant arrest—

(a) any person who commits a breach of the peace in his presence;

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

(c) any person in whose possession 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;

(d) any person whom he finds lying or loitering in any highway, yard or garden or other place during the night and whom he suspects upon reasonable grounds of having committed or being about to commit an offence or who has in his possession without lawful excuse any offensive weapon or housebreaking implement;

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

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

*[Cap. 368]*

(g) any person who does any act which is calculated to insult the national emblem or the national flag;

(h) any person whom he suspects of being a loiterer.

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

## 15. Procedure where police officer deputes subordinate to arrest without warrant

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

*[Cap. 4 s. 8]*

## 16. Arrest by private persons

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

(2) A person found committing an offence involving injury to property may be arrested without a warrant by the owner of the property or his servants or a person authorised by the owner of the property.

## 17. Arrest by magistrate

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

## 18. Magistrate may arrest person for an offence committed in his presence

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

*[Cap. 4 s. 8]*

## 19. Right of entry into any place in order to effect arrest

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

(2) Where entry into that house or 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 the house or place and search within it and, in order to effect entry, to break any outer or inner door or window whether that of the person to be arrested or of any other person or otherwise effect entry into such house or place, if after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance, subject to subsection (3).

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

*[Cap. 4 s. 8]*

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

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

## 21. Use of force in making arrest

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

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

## 22. Certain arrests not to be taken to be unlawful

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

## 23. Person to be informed of grounds of arrest

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

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

(3) Subsection (1) does not apply to or in relation to the arrest of a person—

(a) if, by reason of the circumstances in which he is arrested, that person ought to know the substance of the offence for which he is arrested;

(b) if, by reason of his actions, the person arrested makes it impracticable for the person effecting the arrest to inform him of the offence for which he is arrested.

### 24. Search of arrested person

Whenever a person is arrested—

(a) by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail; or

(b) without a warrant, or by a private person under a warrant, and the person arrested cannot legally be admitted to bail or cannot furnish bail,

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

### 25. Power of police to detain and search vehicles, etc.

(1) Subject to the provisions of sections 50 and 51 of this Act, any police officer may do any or all of the following things namely, stop, search and detain—

(a) any vessel, boat, aircraft or vehicle in or upon which there is reasonable cause to suspect that there are—

(i) any stolen goods;

(ii) any things used or intended to be used in the commission of an offence;

(iii) without lawful excuse, any offensive weapons, an article of disguise or any article prohibited under any law;

(b) any person who is reasonably suspected of having or conveying in any manner any of the articles mentioned in paragraph (a).

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

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

*[Cap. 4 s. 8]*

### 26. Mode of searching women

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

### 27. Power to seize offensive weapons

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

### 28. Arrest of vagabonds, habitual robbers, etc.

Any officer in charge of a police station may in like manner arrest or cause to be arrested—

(a) any person found taking precautions to conceal his presence within the limits of the station under circumstances which afford reason to believe that he is taking such precautions with a view to committing an arrestable offence;

(b) any person within the limits of the station who has no ostensible means of subsistence or who cannot give satisfactory account of himself;

(c) any person who is by repute a habitual robber, housebreaker, or thief or a habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to commit extortion habitually puts or attempts to put persons in fear of injury.

### 29. Refusal to give name and residence

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

(2) Where the true name and residence of the 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; if such person is not resident in Tanzania the bond shall be secured by a surety or sureties resident in Tanzania.

(3) [3] Where the true name and residence of that person have not been ascertained within twenty four hours from the time of arrest, or he has failed to execute the bond or, if so required, to furnish sufficient sureties, he shall forthwith be taken to a court having jurisdiction.

3 Note: Subsections (2) and (3) have been recasted to bring the subsection in line with the applicable format of a legislative sentence.

*[Cap. 4 s. 8]*

### 30. Disposal of persons arrested by police officer

A police officer making an arrest without a warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail take or send the person arrested before a court having jurisdiction in the area of the police station.

### 31. Disposal of persons arrested by private persons

(1) Any private person arresting a person without a warrant shall without unnecessary delay hand over the person so arrested to a police officer or to the nearest police station or, in the absence of either, to the Ward Secretary or the Secretary of the Village Council for the area where the arrest is made.

(2) Where there is no reason to believe that the provisions of section 14 do not apply to the person arrested, a police officer shall re-arrest him.

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

*[Act No. 5 of 1988 s. 3; Cap. 4 s. 8]*

### 32. Detention of persons arrested

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

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

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

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

### 33. Police to report apprehensions

An officer in charge of a police station shall report to the nearest magistrate, within twenty-four hours or as soon as practicable, the cases of all persons arrested without a warrant within the limits of his station, whether or not such persons have been admitted to bail.

## *(c) Escape and retaking*

### 34. Recapture of persons escaping

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

*[Cap. 4 s. 8]*

### 35. Provisions of sections 19 and 20 apply to arrest under section 34

The provisions of sections 19 and 20 shall apply to arrests under section 34 although the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest.

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

Every person is bound to assist a magistrate or police officer reasonably demanding his aid—

(a) in taking or preventing the escape of any person whom the magistrate or police officer is authorised to arrest; or

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

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

(1) Where any person suffers material loss or personal injury, or dies in consequence of taking steps or in the cause of assisting a magistrate, a police officer or any other officer of the law to stop the commission of an offence or in arresting a person who has or is reasonably suspected to have committed an offence, he shall be entitled to receive compensation for the loss or injury and where

he dies, his dependants or legal representative shall be entitled to receive the compensation that person would have received had he not died.

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

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

### *(d) Search warrants and seizure*

### 38. Power to issue search warrant or authorise search

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

(a) anything with respect to which an offence has been committed;

(b) anything in respect of which there are reasonable grounds to believe that it will afford evidence as to the commission of an offence;

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

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

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

(3) Where anything is seized in pursuance of the powers conferred by subsection (1) the officer seizing the thing shall issue a receipt acknowledging the seizure of that thing, being the signature of the owner or occupier of the premises or his near relative or other person for the time being in possession or control of the premises, and the signature of witnesses to the search, if any.

(4) Whoever, being empowered by law to order, authorise or conduct the search or any person, place, building, vessel, carriage or receptacle, vexatiously and without having reasonable grounds for doing, orders, authorises or conducts such search commits an offence and upon conviction is liable to a fine not exceeding three thousand shillings or imprisonment for a term not exceeding one year.

(5) No prosecution against any person for an offence under subsection (4) shall be instituted except with the written consent of the Director of Public Prosecutions.

*[Acts Nos. 5 of 1988 s. 4; 5 of 1993 Sch.; Cap. 4 s. 8]*

### 39. Things connected with offence

For the purposes of this Part—

(a) anything with respect to which an offence has been or is purported on reasonable grounds to have been committed;

(b) anything as to which there are reasonable grounds for believing that it will afford evidence of the commission of any offence; and

(c) anything as to which there are reasonable grounds for believing that it is intended to be used for the purpose of committing any offence,

shall be deemed to be a thing connected with the offence.

### 40. Execution of search warrant

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

### 41. Search and seizure

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

(a) in pursuance of a warrant issued under this Part;

(b) in accordance with section 24 upon taking the person into lawful custody in respect of an offence;

(c) upon stopping the person in accordance with subsection (2) of section 42;

(d) in pursuance of an order made by a court.

### 42. Searches in emergencies

(1) A police officer may—

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

(b) enter upon any land, or into any premises, vessel or vehicle, on or in which he believes on reasonable grounds that anything connected with an offence is situated, and may seize any such thing that he finds in the course of that search, or upon the land or in the premises, vessel or vehicle as the case may be—

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

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

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

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

### 43. Persons in charge of closed places to allow ingress and egress

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

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

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

*[Cap. 4 s. 8]*

### 44. Detention of property seized

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

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

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

*[Cap. 4 s. 8]*

### 45. Provisions applicable to search warrants

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

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

## B – Powers and duties of police officers when investigating offences

### *(a) Preliminary provisions*

### 46. Requirement to furnish name and address

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

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

(a) shall not refuse or fail to comply with the request;

(b) shall not furnish to the police officer a name or address that is false in any material particular; and

(c) may request the police officer to furnish to him his name, rank and ordinary place of duty.

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

(a) shall not refuse or fail to comply with the request;

(b) shall not furnish to the person a name or rank that is false in a material particular; and

(c) shall not furnish to the person as his place of duty an address other than the full and correct address of the place that is his ordinary lace of duty.

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

### 47. Police to prevent breaches of peace

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

### *(b) Duration of custodial investigation by police*

### 48. Restrict on questioning person, etc.

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

(a) ask the person questions; or

(b) take other investigative action,

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

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

(a) to make lawful the holding of the person under restraint during any period during which it would, but for those provisions, be unlawful to hold him under restraint; or

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

### 49. When person not to be taken under restraint

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

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

(b) unless a reasonable period has elapsed since the person last ceased to be under restraint.

### 50. Periods available for interviewing persons

(1) For the purpose of this Act, the period available for interviewing a person who is in restraint in respect of an offence is—

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

(b) if the basic period available for interviewing the person is extended under section 51, the basic period as so extended.

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

(a) while the person is, after being taken under restraint, being conveyed to a police station or other place for any purpose connected with the investigation;

(b) for the purpose of—

(i) enabling the person to arrange, or attempt to arrange, for the attendance of a lawyer;

(ii) enabling the police officer to communicate, or attempt to communicate with any person whom he is required by section 54 to communicate in connection with the investigation of the offence;

(iii) enabling the person to communicate, or attempt to communicate, with any person with whom he is, under this Act, entitled to communicate; or

(iv) arranging, or attempting to arrange, for the attendance of a person who, under the provisions of this Act is required to be present during an interview with the person under restraint or while the person under restraint is doing an act in connection with the investigation;

(c) while awaiting the arrival of a person referred to in subparagraph (iv) of paragraph (b); or

(d) while the person under restraint is consulting with a lawyer.

### 51. Where custodial investigation cannot be completed within four hours

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

(a) extend the interview for a period not exceeding eight hours and inform the person concerned accordingly; or

(b) either before the expiration of the original period or that of the extended period, make application to a magistrate for a further extension of that period.

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

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

(a) that the person is in lawful custody;

(b) that the investigation of the offence by the police officer has been, and is being carried out as expeditiously as possible; and

(c) that it would be proper, in all circumstances to extend the relevant period,

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

### *(c) Duties when interviewing suspects*

### 52. Questing suspect persons

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

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

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

(4) Notwithstanding the provisions of subsections (1) to (3), where a police officer in the course of interrogating any person under this section believes that there is sufficient evidence to warrant that a person being charged with an offence, he shall proceed to charge him accordingly and caution him in writing and if practicable orally in the prescribed manner, and to inform him that an inference adverse to him may be drawn from his failure or refusal to answer any question or from his failure or refusal to disclose at that stage any matter which may be material to the charge.

## 53. Persons under restraint to be informed of rights

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

(a) the police officer has told him his name and rank;

(b) the person has been informed by a police officer, in a language in which he is fluent, in writing and, if practicable, orally, of the fact that he is under restraint and of the offence in respect of which he is under restraint; and

(c) the person has been cautioned by a police officer in the following manner, namely, by informing him, or causing him to be informed, in a language in which he is fluent, in writing in accordance with the prescribed form and, if practicable, orally—

(i) that he is not obliged to answer any question asked of him by a police officer, other than a question seeking particulars of his name and address; and

(ii) that, subject to this Act, he may communicate with a lawyer, relative or friend.

## 54. Communication with lawyer, relative or friend

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

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

(a) the escape of an accomplice of the person under restraint; or

(b) the loss, destruction or fabrication of evidence relating to the offence.

## 55. Treatment of persons under restraint

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

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

(3) Where a person under restraint—

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

(b) appears to the police officer to require medical treatment, advice or assistance in respect of illness or injury,

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

### 56. Special duties when interviewing children

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

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

### *(d) Recording of interview*

### 57. Record of interview

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

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

(a) so far as it is practicable to do so, the questions asked of the person during the interview and the answers given by the person to those questions;

(b) particulars of any statement made by the person orally during the interview otherwise than in answer to a question;

(c) whether the person wrote out any statement during the interview and, if so, the times when he commenced to write out the statement;

(d) whether a caution was given to the person before he made the confession and, if so, the terms in which the caution was given, the time when it was given and any response made by the person to the caution;

(e) the times when the interview was commenced and completed; and

(f) if the interview was interrupted, the time when it was interrupted and recommenced.

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

(a) show the record to the person and ask him—

(i) to read the record and make any alteration or correction to it he wishes to make and add to it any further statement that he wishes to make;

(ii) to sign the certificate set out at the end of the record; and

(iii) if the record extends over more than one page, to initial each page that is not signed by him; and

(b) if the person refuses, fails or appears to fail to comply with that request, certify on the record under his hand what he has done and in respect of what matters the person refused, failed or appeared to fail to comply with the request.

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

(a) read the record to him, or cause the record to be read to him;

(b) ask him whether he would like to correct or add anything to the record;

(c) permit him to correct, alter or add to the record, or make any corrections, alterations or additions to the record that he requests the police officer to make;

(d) ask him to sign the certificate at the end of the record; and

(e) certify under his hand, at the end of the record, what he has done in pursuance of this subsection.

(5) An interview of a person by a police officer under this section may, if available, and subject to sections 53, 54 and 55, be undertaken by using an audio or video recording device and in such circumstances—

(a) any machine which can make an audio or video recording may be used;

(b) the person being interviewed shall be informed of the use of such recording device;

(c) a copy of the recording shall be made available to the person or his legal representative immediately after that interview; and

(d) a certificate of completion of the interview shall be filled in by the police officer in accordance with the requirements of subsection (3) and the person shall sign the certificate and be supplied with a copy of that certificate, save that, the requirement to read, initial each page of the record and sign the certificate at the end of the record shall not apply.

(6) The recording shall be used as evidence of the content and conduct of the interview without the requirement for a written record.

(7) The Chief Justice may make rules for carrying out the provisions of subsection (5).

*[Act No. 7 of 2018 s. 9]*

## 58. Statements by suspects

(1) Where a person under restraint informs a police officer that he wishes to write out a statement, the police officer shall —

(a) cause him to be furnished with any writing materials he requires for writing out the statement; and

(b) ask him, if he has been cautioned as required by paragraph (c) of section 53, to set out at the commencement of the statement the terms of the caution given to him, so far as he recalls them.

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

(a) show the statement to the person and ask him—

(i) to read the statement and make any alteration or correction to it that he wishes to make and add to it any further statement that he wishes to make;

(ii) to sign the certificate set out at the end of the statement; and

(iii) if the statement extends to more than one page, to initial each page that is not signed by him; and

(b) if the person refuses, fails or appears to fail to comply with that request, certify, under his hand, on the statement what he has done and in respect of what matters the person refused, failed or appeared to fail to comply with the request.

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

(a) read the statement to him, or cause the statement to be read to him;

(b) ask him whether he would like to correct or add anything to the statement;

(c) permit him to correct, alter or add to the statement, or make any corrections, alterations or additions to the statement that he requests the police officer to make;

(d) ask him to sign the certificate at the end of the statement; and

(e) certify under his hand, at the end of the statement, what he has done in pursuance to this subsection.

(4) Subject to the provisions of paragraph (c) of section 53, a police officer investigating an offence for the purpose of ascertaining whether the person under restraint has committed an offence may record a statement of that person and shall —

(a) show the statement to the person and ask him to read it; or

(b) read the statement to him or cause the statement to be read to him and ask him whether he would like to add or correct anything from the statement.

(5) Where a person whose statement has been written under subsection (4) wishes to correct or add anything to the statement read or shown to him, the police officer shall correct, alter or add to the statement or make any corrections, alterations or addition to the statement as requested by that person.

(6) Where a police officer is satisfied that there is no further additional statement, alteration or correction to the statement, he shall cause to be written at the end of the statement a form of certificate in accordance with prescribed form and shall—

(a) ask the person to sign the certificate set out at the end of the statement or if the statement extends to more than one page, sign each page of the statement; and

(b) certify under his hand at the end of the statement, what he has done in pursuance of this subsection.

*[Act No. 3 of 2011 s. 15; Cap 4 s. 8]*

### *(e) Other investigative actions*

### 59. Power to take fingerprints, photos, etc., of suspects

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

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

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

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

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

(a) in the case of a person who is in lawful custody upon a charge of committing an offence—

(i) if the prosecution of that person is not proceeded with; or

(ii) where prosecution is proceeded with, but he is acquitted

(b) in the case of a person referred to in subsection (2), if those measurements, prints, recordings, photographs or samples, as the case may be, are no longer required for the purpose of facilitating the investigation.

(6) There shall be established at a place to be approved by the Minister responsible for criminal investigations, an office to be known as the Criminal Records Office for the preservation, comparison and indexing of fingerprint or forms.

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

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

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

(10) Notwithstanding the provisions of subsection (5), it shall be lawful to retain all records obtained pursuant to subsections (1) and (2) of this section in respect of any person with regard to whom an expulsion order under the Expulsion of Undesirables Act has been cancelled or rescinded.

*[Cap. 39]*

## 60. Identification parades

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

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

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

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

### 61. Persons convicted on mistaken identity to be compensated

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

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

### 62. Minister to make regulations for identification parades, etc.

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

### 63. Medical examination

(1) A magistrate may, on the application of a police officer, allow a medical officer to examine a person in lawful custody in respect of an offence or may allow a medical officer to take and analyse any specimen from that person if he has reasonable grounds for believing that the examination or analysis would provide evidence relating to the offence.

(2) After the medical officer has made the examination and analysis as provided under subsection (1) he shall submit a written report on it to the court.

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

(4) A medical officer shall, after examining a person in respect of whom the court has ordered that he submits himself for medical examination in accordance with the provisions of subsection (3) transmit to the court ordering the examination a written report pertaining to the examination.

## *(f) Release and bail*

### 64. Police bail of suspect

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

(a) the police officer who arrested him believes that the person has in fact committed no offence or has no reasonable grounds on which to continue holding that person in custody;

(b) the police officer who arrested him believes that he arrested the wrong person; or

(c) after twenty four hours after the person was arrested, no formal charge has been laid against that person unless the police officer in question reasonably believes that the offence suspected to have been committed is a serious one.

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

(a) the person, though subject to prosecution, was arrested without warrant;

(b) after due inquiry, insufficient evidence in his opinion is disclosed upon which to proceed with the charge;

(c) the offence, though arrestable, is not of a serious nature; or

(d) it appears that further inquiries must be carried out, and they cannot be completed within a reasonably short time.

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

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

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

## 65. Criteria for granting police bail

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

(a) the probability of the person appearing in court in respect of the offence if granted bail, that is to say—

(i) the background and community ties or the residence, employment and family situation and his police record, if known; and

(ii) the circumstances in which the offence was committed, the nature and seriousness of the offence, the strength of the evidence against the person and other information relevant to the likelihood of his absconding;

(b) the interests of the person, that is to say—

(i) the period that the person may be obliged to spend in custody if bail is refused, and the conditions under which he would be held in custody;

(ii) the needs of the person to be free to prepare for his appearance before the court, to obtain legal advice and for other purposes; or

(iii) the need of the person for physical protection, whether the need arises because he is incapacitated by intoxication, injury or the use of drugs or arises from other causes; and

(c) the protection of the community, that is to say, the likelihood of the person interfering with evidence through intimidating witnesses or hindering police inquiries in any other way.

## 66. Conditions of police bail

A person shall be entitled to be granted police bail if—

(a) he undertakes in writing to appear before a specified court at a specified time and place, or at such other time and place as is notified to him by a police officer;

(b) he undertakes in writing to observe specified requirements as to his conduct while released on bail, not being requirements with respect to the giving of security, the depositing of money or the forfeiture of money;

(c) another person acceptable to the police officer acknowledges in writing, that he is acquainted with the person charged and regards him as a responsible person who is likely to appear in court to answer the charge;

(d) the person charged, or another person acceptable to the police officer, deposits with the police officer, a specified sum of money to be forfeited if the person charged fails to appear in court to answer the charge.

### 67. Refusal to grant police bail

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

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

(3) A person who is waiting in custody to be brought before a magistrate in accordance with subsection (2) may, at any time, request a police officer for facilities to make an application to a magistrate for bail and, if he does so, the police officer shall, within twenty four hours, or within such reasonable time as it is practicable after he makes the request, bring him before a magistrate.

### 68. Revocation of police bail

Where a police officer in charge of a police station believes on reasonable grounds that a person who has been released on bail granted under section 64—

(a) is absconding; or

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

*[Act No. 5 of 1988 s. 5]*

### 69. Breaches of conditions of bail

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

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

*[Act No. 9 of 1996 Sch.]*

## Part III – Prevention of offences

### *(a) Security for keeping the peace and for good behaviour*

### 70. Powers of magistrate to require persons to execute bonds

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

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

### 71. Security for good behaviour from persons disseminating seditious matter

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

(a) any seditious matter, that is to say, any matter the publication of which is punishable under section 53 of the Media Services Act;

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

*[Cap. 16]*

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

*[Acts Nos. 5 of 1988 s. 6; 12 of 2016]*

### 72. Security for good behaviour from suspected persons

Whenever a magistrate is informed under oath that any person is taking precautions to conceal his presence within the local limits of the magistrate's jurisdiction, and that there is reason to believe that that person is taking those precautions with a view to committing any offence, the magistrate may, in the manner provided in this Part, require him to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding one year, as the magistrate deems fit.

### 73. Security for good behavior from habitual offenders

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

(a) is by habit a robber, housebreaker or thief;

(b) is by habit a receiver of stolen property, knowing the same to have been stolen;

(c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property;

(d) habitually commits or attempts to commit, or aids or abets in the commission of, any offence punishable under Chapters XXX, XXXIII or XXXIV of the Penal Code;

*[Cap. 16]*

(e) habitually commits or attempts to commit, or aids or abets in the commission of, offences involving a breach of the peace, offences under the Drug Enforcement Control Act and offences under any other written law;

(f) is a loiterer or vagabond; or

(g) is so desperate and dangerous as to render his being at large without security hazardous to the community, the magistrate may, in the manner provided in this Part, require him to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the magistrate deems fit.

*[Act No. 7 of 2018 s. 10]*

### 74. Order to be made

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

(a) the substance of the information received;

(b) the amount of the bond to be executed;

(c) the term for which it is to be in force; and

(d) the number, character and class of sureties, if any, required.

*[Cap 4 s. 8]*

### 75. Procedure in respect of person present in court

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

*[Cap. 4 s. 8]*

### 76. Procedure in respect of person not present in court

(1) Subject to subsection (2), if the person in respect of whom an order is made is not present in court, the magistrate shall issue a summons requiring him to appear or, when that person is in custody, a warrant directing the officer in whose custody he is to bring him before the court.

(2) Whenever it appears to the magistrate, upon the report of a police officer or upon other information given on oath (the substance of which report or information shall be recorded by the magistrate), that there is reason to apprehend the commission of a breach of the peace, and that such breach of the peace cannot be prevented in any way other than by the immediate arrest of that person, the magistrate may at any time issue a warrant for his arrest.

### 77. Copy of order to accompany summons or warrant

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

### 78. Power to dispense with personal attendance

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

### 79. Inquiry as to truth of information

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

(2) An inquiry under subsection (1) shall be made, as nearly as may be practicable, in the manner prescribed by or under this Act, or the Magistrates' Courts Act, for conducting trials and recording evidence in trials before subordinate courts or primary courts.

*[Cap. 11]*

(3) For the purposes of this section, the fact that the provisions of section 73 apply to a particular person may be proved by evidence of general repute or by any other evidence.

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

*[Cap. 4 s. 8]*

### 80. Order to give security

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

(a) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than that specified in the order made under section 74;

(b) the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;

(c) when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

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

*[Cap. 11]*

### 81. Discharge of person informed against

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

## *(b) Proceedings subsequent to order to furnish security*

### 82. Commencement of period for which security is required

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

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

*[Cap. 4 s. 8]*

### 83. Contents of bond

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

### 84. Power to reject sureties

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

### 85. Procedure on failure to give security

(1) Where any person ordered to give security does not give such security on or before the date on which the period for which the security is to be given commences, he shall, except in the case mentioned in subsection (2), be committed to prison or, if he is already in prison, be detained in prison until the period expires or until, within that period, he gives the security to the court or magistrate who made the order requiring it.

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

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

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

(5) Where 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.

*[Cap. 4 s. 8]*

### 86. Power to release persons imprisoned for failure to give security

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

### 87. Power of High Court to cancel bond

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

### 88. Discharge of sureties

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

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

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

# Part IV – Control of criminal proceedings

## A – The Director of Public Prosecutions

### 89. ***

*[Repealed by Act No. 5 of 2005 Sch.]*

### 90. ***

*[Repealed by Act No. 27 of 2008 s. 31]*

### 91. Power of Director of Public Prosecutions to enter *nolle prosequi*

(1) In any criminal case and at any stage thereof before verdict or judgment, as the case may be, the Director of Public Prosecutions may enter a *nolle prosequi*, either by stating in court or by informing the court concerned in writing on behalf of the Republic that the proceedings shall not continue; and thereupon the accused shall at once be discharged in respect of the charge for which the *nolle prosequi* is entered, and if he has been committed to prison shall be released, or if on bail his 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) Where the accused is not before the court when the *nolle prosequi* is entered, the registrar or clerk of the court shall forthwith cause notice in writing of the entry of the *nolle prosequi* to be given to the keeper of the prison in which the accused person may be detained and if the accused person has been committed for trial, to the subordinate court by which he was so committed and that court shall forthwith cause a similar notice in writing to be given to any witnesses bound over to give evidence and to their sureties (if any) and also to the accused and his sureties in case he shall have been admitted to bail.

*[Cap. 4 s. 8]*

### 92. Delegation of power by Director of Public Prosecutions

(1) The Director of Public Prosecutions may order in writing that all or any of the powers vested in him by sections 90 and 91 of and by Part VII of this Act may be exercised also by the Law Officers, a State Attorney or a Parliamentary Draftsman and the exercise of these powers by any of them shall operate as if they had been exercised by the Director of Public Prosecutions,

(2) The Director of Public Prosecutions may, in writing, revoke any order made by him under this section.

### 93. Criminal information by Director of Public Prosecutions

(1) Notwithstanding anything contained in this Act, the Director of Public Prosecutions may, with the previous sanction of the President, exhibit to the High Court, against persons subject to the jurisdiction of the High Court informations for all purposes for which the Director of Public Prosecutions may exhibit information on behalf of the Republic in the High Court in Tanzania.

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

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

*[Act No. 5 of 1988 s. 7]*

### 94. Offences by foreigners committed within territorial waters to be prosecuted only with leave of Director of Public Prosecutions

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

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

(3) It shall not be necessary to aver in any charge of information that the consent or certificate of the Director of Public Prosecutions required by this section has been given, and the fact of the same having been given shall be presumed unless disputed by the accused person at the trial.

(4) The production of a document purporting to be signed by the Director of Public Prosecutions and containing such consent and certificate shall be sufficient evidence, for the purposes of this section, of the consent and certificate required by this section.

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

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

## B – Appointment of public prosecutors and conduct of prosecutions

### 95. ***

*[Repealed by Act No. 27 of 2008 s. 31]*

### 96. ***

*[Repealed by Act No. 27 of 2008 s. 31]*

### 97. Powers of public prosecutors

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

### 98. Withdrawal from prosecution in trials before subordinate courts

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

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

(b) if it is made after the accused person is called upon to make his defence, he shall be acquitted.

### 99. Permission to conduct prosecution and title of summary proceedings

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

(2) Any person or officer referred to in subsection (1) shall have the like power of withdrawing from the prosecution as provided in section 98, and the provisions of that section shall apply to any withdrawal by such person or officer.

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

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

## Part V – Institution of proceedings

## A – Process to compel the appearance of accused persons

### *(a) Summons*

### 100. Form and contents of summons

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

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

### 101. Service of summons

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

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

### 102. Service where person summoned cannot be found

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

*[Cap. 4 s. 8]*

### 103. Procedure where service cannot be personally effected

If the service in the manner provided by section 101 or 102 cannot by the exercise of due diligence be effected, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of

the house or homestead in which the person summoned ordinarily resides and thereupon the summons shall be deemed to have been duly served.

*[Cap. 4 s. 8]*

### 104. Service on servant of Government

Where the person summoned is in the active service of any department of the Government or of a public corporation, the court issuing the summons shall ordinarily send it in duplicate to the head of the department or public corporation, as the case may be, in which the person is so employed, and the head shall thereupon cause the summons to be served in the manner provided by section 101 and shall return it to the court under his signature with the endorsement required by that section.

### 105. Service on company

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

### 106. Appearance by corporation and plea of not guilty to be entered when representative does not appear

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

### 107. Service outside local limits of jurisdiction

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

*[Cap. 4 s. 8]*

### 108. Proof of service when serving officer not present

Where the officer who has served a summons is not present at the hearing of the case, and in any case where a summons issued by a court has been served outside the local limits of its jurisdiction, an affidavit purporting to be made before a magistrate that such summons has been served, and a duplicate of the summons purporting to be endorsed, in the manner provided by this Act, 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 the contrary is proved.

### 109. Appearance by corporation

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

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

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

### *(b) Warrant of arrest*

## 110. Warrant after issue of summons

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

## 111. Disobedience to summons

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

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

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

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

*[Cap. 4 s. 8]*

## 112. Form, contents and duration of warrant of arrest

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

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

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

## 113. Power to direct security to be taken

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

(2) The endorsement shall state—

(a) the number of sureties;

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

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

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

### 114. Warrants, to whom directed

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

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

*[Cap. 4 s. 8]*

### 115. Warrant may be directed to landholders, etc.

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

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

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

*[Cap. 4 s. 8]*

### 116. Execution of warrant directed to police officer

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

### 117. Notification of substance of warrant

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

### 118. Person arrested to be brought before court without delay

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

### 119. Where warrant of arrest may be executed

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

### 120. Forwarding of warrants for execution outside jurisdiction

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

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

*[Cap. 4 s. 8]*

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

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

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

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

*[Cap. 4 s. 8]*

### 122. Procedure on arrest of person outside jurisdiction

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

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

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

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

*[Cap. 4 s. 8]*

### 123. Irregularities in warrants

Any irregularity or defect in the substance or form of the warrant of arrest and any variance between it and any written complaint or between such complaint and the evidence produced on the part of the prosecution at an inquiry to trial, shall not affect the validity of any proceedings at or subsequent to the hearing of the case, but if any variance appears to the court to be such that the accused has been thereby

deceived or misled, the court may, at the request of the accused, adjourn the hearing of the case to some future date and in the meantime remand the accused or admit him to bail.

### *(c) Miscellaneous provisions regarding process*

### 124. Power of court to bond for appearance

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

*[Cap. 4 s. 8]*

### 125. Arrest for breach of bond for appearance

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

### 126. Power of court to order prisoner to be brought before it

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

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

*[Cap. 4 s. 8]*

### 127. Provisions of this Part generally applicable to summonses and warrants; and powers of justices of peace

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

## B – Proceedings

### *(a) Making a complaint*

### 128. Institution of proceedings

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

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

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

(a) if the complaint is in writing, return it for presentation to the proper court with an endorsement to that effect; or

(b) if the complaint is not in writing, direct the complainant to present the complaint to the proper court.

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

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

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

*[Cap. 4 s. 8]*

*[Act No. 2 of 2010 s. 14]*

### 129. Power of magistrate to reject complaint or formal charge

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

### 129A. ***

*[Repealed by Act No. 3 of 2001 s. 16]*

### 130. Issue of summons or warrants

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

## *(b) The formal charge*

### 131. Persons charged to be cautioned

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

### 132. Offences to be specified in charge with necessary particulars

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

### 133. Joinder of counts in charge or information

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

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

## 134. Joinder of two or more accused in one charge or information

(1) The following persons may be joined in one charge or information and may be tried together, namely—

(a) persons accused of the same offence committed in the course of the same transaction;

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

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

(d) persons accused of any offence under Chapter XXV to XXXI 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 on abetment of or attempting to commit either of such last-named offences;

*[Cap. 16]*

(e) persons accused of any offence relating to counterfeit coin under Chapter XXXVI of the Penal Code, and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; or

*[Cap. 16]*

(f) persons accused of any economic offence under the Economic and Organised Crime Control Act.

*[Cap. 200]*

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

## 135. Mode in which offences are to be charged

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

(a) (i) a count of a charge or information shall commence with a statement of the offence charged, called the statement of the offence;

(ii) the statement of offence shall describe the offence shortly in ordinary language avoiding as far as possible the use of technical terms and without necessarily stating all the essential elements of the offence and, if the offence charged is one created by enactment, shall contain a reference to the section of the enactment creating the offence;

(iii) after the statement of the offence, particulars of such offence shall be set out in ordinary language, in which the use of technical terms shall not be necessary, save that where any rule of law limits the particulars of an offence which are required to be given in a charge or an information, nothing in this paragraph shall require any more particulars to be given than those so required;

(iv) the forms set out in the Second Schedule to this Act, or forms conforming to them as nearly as may be, shall be used in cases to which they are applicable; and in other cases forms to the like effect, or conforming to them as nearly as may be, shall be used, the statement of offence and the particulars of offence being varied according to the circumstances in each case;

(v) where a charge or an information contains more than one count, the counts shall be numbered consecutively;

(b) (i) where an enactment constituting an offence states the offence to be the doing of or the omission to do any one of any different acts in the alternative, or the doing of or the omission to do any act in any one of any different capacities, or with any one of different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matters stated in the alternative in the enactment may be stated in the alternative in the count charging the offence;

(ii) it shall not be necessary, in any count charging an offence constituted by an enactment, to negative any exception or exemption from, or qualification to, the operation of the enactment creating the offence;

(c) (iii) the description of property in a charge or an information shall be in ordinary language and such as to indicate with reasonable clarity the property referred to, and, if the property is so described, it shall not be necessary (except when required for the purpose of describing an offence depending on any special ownership of property or special value of property) to name the person to whom the property belongs or the value of the property;

*[Please note: Numbering as in original.]*

(ii) where property is vested in more than one person, and the owners of the property are referred to in a charge or an information, it shall be sufficient to describe the property as owned by one of those persons by name with the others, and if the persons owning the property are a body of persons with a collective name, such as a joint stock company or "Inhabitants", "Trustees", "Commissioners", or a "Club" or other such name, it shall be sufficient to use the collective name without naming any individual;

(iii) property belonging to or provided for the use of, any public establishment, service or department may be described as the property of the United Republic;

(iv) coins, bank notes and currency 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 persons dishonestly appropriated or obtained any coin or any bank or currency note, or any portion of the value thereof, although such coin or bank or currency note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same or to any other person, and such part shall have been returned accordingly;

(v) where a person is charged with stealing money or any other thing, it shall be sufficient to specify the gross sum or the total number or quantity of things, as the case may be, in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates;

(d) the description or designation in a charge or an information of the accused person, or of any other person to whom reference is made in the charge or information, shall be such as is reasonably sufficient to identify him without necessarily stating his correct name, or his abode, style, degree or occupation, and, if owing to the name of the person not being known or for any other reason, it is impracticable to give such a description or designation, such description or designation shall

be given as is reasonably practicable in the circumstances, or such person may be described as "a person unknown";

(e) where it is necessary to refer to any document or instrument in a charge or an information, it shall be sufficient to describe it by any name or designation by which it is usually known, or by the purport of it, without setting out any copy of it;

(f) subject to any other provision of this section, it shall be sufficient to describe any place, time, thing, matter, act or omission of any kind to which it is necessary to refer in any charge or information in ordinary language in such manner as to indicate with reasonable clarity the place, time, thing, matter, act or omission referred to;

(g) it shall not be necessary in stating any intent to defraud, deceive or injure to state an intent to defraud, deceive or injure any particular person, where the enactment creating the offence does not make an intent to defraud, deceive or injure a particular person an essential ingredient of the offence;

(h) where a previous conviction of an offence is charged in a charge or information, it shall be charged at the end of the charge or information by means of a statement that the accused person has been previously convicted of that offence at a certain time and place without stating the particulars of the offence;

(i) figures and abbreviations may be used for expressing anything which is commonly expressed by them.

### 136. Case of two or more persons charged

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

### *(c) Previous conviction or acquittal*

### 137. Persons convicted or acquitted not to be tried again for same offence

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

### 138. Person may be tried again for separate offences

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

### 139. Consequences supervening or not known at time of former trial

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

### 140. Where original court was not competent to try subsequent charge

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

### 141. Previous conviction, how proved

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

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

(b) by a certificate signed by the officer in charge of the prison in which the punishment or any part of it was inflicted;

(c) by production of the warrant of commitment under which the punishment was suffered; or

(d) by production of a final judgment of a competent court finally declaring a person to be guilty of the offence, together with, in each such case, evidence as to the identity of the accused person with the person so convicted.

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

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

(a) evidence that the fingerprints, or the photographs, of the person previously convicted are those of the accused person; or

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

(4) A certificate purporting to be given under the hand of a police officer in the country where the conviction was had and a certificate given in accordance with the provisions of paragraph (b) of subsection (3) shall, if in the case of the latter certificate it is produced by the person who took the fingerprints of the accused person, be *prima facie* evidence of all facts set forth in it without proof that the officer purporting to sign it did in fact sign it and was empowered to do so.

## *(d) Compelling attendance of witnesses*

### 142. Summons for witness

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

(2) Nothing in this section shall be deemed to affect the provisions of section 132 of the Evidence Act.

*[Cap. 6]*

*[Cap. 4 s. 8]*

### 143. Warrant for witness who disobeys summons

Where, without sufficient excuse, a witness does not appear in obedience to a summons of the court, on proof of the proper service of the summons a reasonable time before he is required to appear may issue a warrant to bring him before the court at such time and place as shall be specified in the warrant.

*[Cap. 4 s. 8]*

### 144. Warrant for witness in first appearance

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

*[Cap. 4 s. 8]*

### 145. Mode of dealing with witness arrested under warrant

Where a witness is arrested under a warrant the court may, on his furnishing security by recognisance to the satisfaction of the court for his appearance at the hearing of the case, order him to be released from custody, or shall, on his failing to furnish security, order him to be detained for production at the hearing.

*[Cap. 4 s. 8]*

### 146. Power of court to order prisoner to be brought up for examination

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

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

### 147. Penalty for non-attendance of witness

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

(2) The fine imposed under subsection (1) may be levied by attachment and sale of any movable property belonging to the witness which is within the local limits of the jurisdiction of the court.

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

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

## *(e) Provisions as to bail, recognisances and bonds*

### 148. Bail

(1) Where any person is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a court and is prepared at any time while in the custody of that officer or at any stage of the proceedings before that court to give bail the officer or the court, as

the case may be, may, subject to the following provisions of this section, admit that person to bail; save that the officer or the court may, instead of taking bail from that person, release him on his executing a bond with or without sureties for his appearance as provided in this section.

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

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

(4) Notwithstanding anything in this section contained, no police officer or court shall, after a person is arrested and while he is awaiting trial or appeal, admit that person to bail if the Director of Public Prosecutions, certifies in writing that it is likely that the safety or interests of the Republic would thereby be prejudiced; and a certificate issued by the Director of Public Prosecutions under this section shall take effect from the date it is filed in court or notified to the officer in charge of a police station and shall remain in effect until the proceedings concerned are concluded or the Director of Public Prosecutions withdraws it.

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

(a) that person is charged with—

(i) murder, treason, armed robbery, or defilement;

(ii) illicit trafficking in drugs against the Drugs and Prevention of Illicit Traffic in Drugs Act, but does not include a person charged for an offence of being in possession of drugs which taking into account all circumstances in which the offence was committed, was not meant for conveyance or commercial purpose;

*[Cap. 95]*

(iii) an offence involving heroin, cocaine, prepared opium, opium poppy (papaver setigerum), poppy straw, coca plant, coca leaves, cannabis sativa or cannabis resin (Indian hemp), methaqualone (mandrax), catha edulis (khat) or any other narcotic drug or psychotropic substance specified in the Schedule to this Act which has an established value certified by the Commissioner for National Co-ordination of Drugs Control Commission, as exceeding ten million shillings;

(iv) terrorism against the Prevention of Terrorism Act;

*[Cap. 19]*

(v) money laundering contrary to Anti-money Laundering Act;

*[Cap. 423]*

(vi) trafficking in persons under the Anti-Trafficking in Persons Act;

*[Cap. 432]*

(b) it appears to the court that it is necessary that the accused person be kept in custody for his own protection or safety;

(c) it appears that the accused person has previously been granted bail by a court and failed to comply with the conditions of the bail or absconded;

(d) it appears to the court that it is necessary that the accused person be kept in custody for his own protection or safety;

(e) the offence with which the person is charged involves actual money or property whose value exceeds ten million shillings unless that person deposits cash or other property equivalent

to half the amount or value of actual money or property involved and the rest is secured by execution of a bond:

Provided that, where the property to be deposited is immovable, it shall be sufficient to deposit the title deed, or if the title deed is not available such other evidence as is satisfactory to the court in proof of existence of the property; save that this provision shall not apply in the case of police bail.

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

(a) surrender by the accused person to the police of his passport or any other travel document; and

(b) restriction of the movement of the accused to the area of the town, village or other area of his residence.

(7) A court may, in addition to the mandatory conditions prescribed in subsection (6), impose any one or more of the following conditions which appear to the court to be likely to result in the appearance of the accused for the trial or resumption of the trial at the time and place required or as may be necessary in the interests of justice or for the prevention of crime, namely—

(a) requiring the accused to report at specified intervals to a police station or other authority within the area of his residence;

(b) requiring the accused to abstain from visiting a particular locality or premises, or associating with certain specified persons;

(c) any other condition which the court may deem proper and just to impose in addition to the preceding conditions.

*[Acts Nos. 12 of 1987; 13 of 1988; 10 of 1989 s. 2; 27 of 1991 s. 2; 12 of 1998 Sch.; 9 of 2002 Sch.; 21 of 2002 s. 49; 2 of 2007 s. 19; 6 of 2008 s. 39; Cap. 4 s. 8]*

## 149. Power of High Court to vary terms of bail by lower court

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

## 150. Change of circumstances after grant of bail

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

## 151. Warrant for witness who disobeys summons execution of bonds

Before any person is released on bail, or on his own recognisance, a bond for such sum as the court or police officer, as the case may be, thinks sufficient shall be executed by such person, and when he is released on bail, by one or more sufficient sureties, conditioned that he 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.

### 152. Discharge from custody

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

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

### 153. Deposit instead of bond

Where any person is required by any court or officer to execute a bond, with or without sureties, the court of 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 the bond.

*[Cap. 4 s. 8]*

### 154. Power to order sufficient bail when that first taken is insufficient

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

### 155. Discharge of sureties

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

(2) On an application being made the magistrate shall issue a warrant of arrest directing that the person on bail be brought before him.

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

### 156. Death of surety

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

### 157. Person bound by recognisance absconding or breaking condition of bail may be arrested

(1) A police officer may arrest without warrant any person who has been admitted to bail—

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

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

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

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

(b) in the excepted case, shall be brought before the court before which he is required for resumption of the trial.

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

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

## 159. Punishment for breaking conditions of bail or for non-appearance

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

(a) such of his property, movable or immovable, as is commensurate to the monetary value of any property involved in the case may be confiscated by attachment; and

(b) the trial in respect of that person shall continue irrespective of the stage of the trial when the accused absconds, after sufficient efforts have been made to trace him and compel his attendance.

## 160. Forfeiture of recognizance

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

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

(3) The warrant may be executed within the local limits of the jurisdiction of the court which issued it and it shall authorise the attachment and sale of the movable property belonging to that person outside such limits when endorsed by any magistrate within the local limits of whose jurisdiction that property is found.

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

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

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

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

*[Cap. 16; Cap. 4 s. 8]*

### 161. Appeal from and revision of orders

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

### 162. Power to direct levy of amount due on certain recognisances

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

### 163. Reconciliation in certain cases

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

## Part VI – Trials

### *General provisions relating to trials*

## A – Powers of courts

### *(a) Powers generally*

### 164. Offences under Penal Code

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

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

*[Cap. 16]*

### 165. Offences under laws other than Penal Code

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

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

### 166. Sentences which High Court may pass

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

### 167. Combination of sentences

(1) Any court may pass lawful sentence combining any of the sentences which it is authorised by law to pass; but where a subordinate court presided over by a magistrate other than a resident

magistrate or a senior district magistrate, imposes a sentence of corporal punishment in addition to a sentence of imprisonment, no such sentence of corporal punishment shall be carried into effect until confirmed by the High Court.

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

(3) Where a court is passing sentence under subsection (1), it may prohibit the grant of parole to a prisoner and shall indicate the reasons for such prohibition.

*[Act No. 5 of 2002 Sch.]*

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

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

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

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

(a) where the court imposes substantive sentences of imprisonment only, to impose consecutive sentences of imprisonment which exceed in the aggregate—

(i) in any case in which of any of the offences of which the offender has been convicted is an offence in respect of which a subordinate court may lawfully pass a sentence of imprisonment for a term exceeding five years, a term of imprisonment for ten years; or

(ii) in any other case, a term of imprisonment for eight years;

(b) where the court imposes sentences of fines only, to impose sentences of fines which exceed in the aggregate—

(i) in any case in which any of the offences of which the offender is convicted is an offence in respect of which a subordinate court may lawfully impose a fine exceeding ten thousand shillings, a sum equal to thrice the amount of which the subordinate court may so lawfully impose;

(ii) in any other case, a sum of thirty thousand shillings:

provided that the aggregate of consecutive sentences of imprisonment in default of payment of fines shall not exceed a term of imprisonment of eight years;

(c) where the court passes a combination of a substantive sentence or sentences of imprisonment and a fine or fines, to impose sentences which exceed—

(i) an aggregate of consecutive sentences of imprisonment whether substantive sentences of imprisonment or sentences of imprisonment in default of payment of fine, of ten years; and

(ii) a total of fines of thirty thousand shillings or where any of the offences of which the offender is convicted is an offence in respect of which a subordinate court may

lawfully impose a fine exceeding ten thousand shillings, a sum equal to twice the amount of fine which the subordinate court may so lawfully impose.

(4) For the purpose of appeal or confirmation, the aggregate imposed under this section in cases of convictions for two or more offences at one trial shall be deemed to be a single sentence.

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

(6) [4] Where a court convicts a person in a case which involves sexual offence under the Sexual Offences Special Provisions Act, the court shall pass a sentence as prescribed in that Act and in accordance with the Minimum Sentences Act.

*[Cap. 101]*

*[Cap. 90]*

*[Act No. 4 of 1998 s. 22]*

4 Note: Cap 101 is an amending Act whose provisions relating to sexual offences special provisions are transferred to the Penal Code and other respective Acts.

## 169. Exclusion of evidence illegally obtained

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

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

(a) the seriousness of the offence in the course of the investigation of which the provision was contravened, or was not complied with, the urgency and difficulty of detecting the offender and the urgency or the need to preserve evidence of the fact;

(b) the nature and seriousness of the contravention or failure;

(c) the extent to which the evidence that was obtained in contravention of in consequence of the contravention of or in consequence of the failure to comply with the provision of any law, might have been lawfully obtained; and

(d) all the circumstances of the offence, including the circumstances in which the evidence was obtained.

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

(4) The court shall, prior to exclusion of any evidence in accordance with subsection (1), be satisfied that the failure or breach was significant and substantial and that its exclusion is necessary for the fairness of the proceedings.

(5) Where the court excludes evidence on the basis of this provision it shall explain the reasons for such decision.

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

*[Act No. 7 of 2018 s. 11]*

### *(b) Subordinate courts*

### 170. Sentences which subordinate court may pass

(1) A subordinate court may, in the cases in which such sentences are authorised by law, pass any of the following sentences—

(a) imprisonment for a term not exceeding five years; save that where a court convicts a person of an offence specified in any of the Schedules to the Minimum Sentences Act which it has jurisdiction to hear, it shall have the jurisdiction to pass the minimum sentence of imprisonment;

(b) a fine not exceeding twenty million shillings;

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

*[Cap. 17]*

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

(a) a sentence of imprisonment—

(i) for a scheduled offence (as defined in subsection (5)), which exceeds the minimum term of imprisonment prescribed in respect of it by the Minimum Sentences Act;

*[Cap. 90]*

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

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

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

*[Cap. 90]*

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

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

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

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

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

*[Cap. 90]*

(6) The police officer in charge of a police station may, where he is satisfied that any person has committed an offence of which the penalty does not exceed two hundred thousand shillings by

order under his hand compound such offence by requiring such person to make payment of a sum of money:

Provided that—

(a) such sum of money shall be half the maximum fine provided for such offence;

(b) the power conferred by this subsection shall only be exercised where the person admits in writing that he has committed the offence;

(c) the police officer shall issue to the person from whom he received such sum of money a receipt thereof.

*[Acts Nos. 4 of 1998 s. 23; 9 of 2002 Sch.; 25 of 2002 Sch.; Cap. 90]*

## 171. When subordinate court may commit to High Court for sentence

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

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

*[Please note: numbering as in original]*

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

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

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

*[Cap. 4 s. 8]*

## 172. Release on bail pending confirmation and powers of confirming court

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

(2) Where —

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

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

(c) a person has been in remand custody for a period awaiting his trial,

his sentence whether it is under the Minimum Sentences Act, or any other law, shall start to run when such sentence is imposed confirmed, as the case may be, and such sentence shall take into account the period the person spent in remand.

*[Cap. 90]*

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

*[Please note: numbering as in original]*

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

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

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

*[Cap. 90]*

*[Cap. 4 s. 8]*

### *(c) Extended jurisdiction of subordinate courts*

## 173. Extended jurisdiction

(1) The Minister may, after consultation with the Chief Justice and the Attorney General, by order published in the *Gazette*—

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

(b) invest any such magistrate with power to try any, specified case or cases of such offences and such magistrate shall, by virtue of the order, have the power, in respect of the offences specified in the order to impose any sentence which could lawfully be imposed by the High Court.

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

(3) For the purposes of any appeal from or revision of his decision in the exercise of such jurisdiction, such resident magistrate shall be deemed to be a judge of the High Court, and the court presided over by him while exercising such jurisdiction shall be deemed to be the High Court.

*[Acts Nos. 32 of 1994 Sch.; 17 of 1996 Sch.]*

## 174. Trials to be with aid of assessors

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

## 175. **

*[Repealed by Act No. 32 of 1994 Sch.]*

### 176. Record and report to be sent to President

In every case where a sentence of death is confirmed by the High Court, the judge confirming the sentence shall, as soon as may be, transmit the record of the case or a certified true copy of it to the President together with a report in writing signed by him containing any recommendation or observations which he may think fit to make and forwarding with it any recommendation or observations made by the Court which sentenced the accused; and after that the matter shall be dealt with under section 325 of this Act.

## B – Trials generally

### *(a) Place of inquiry or trial*

### 177. General authority of courts of Tanzania

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

### 178. Power of High Court to inquire into and try offences

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

### 179. Place and date of sessions of High Court

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

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

### 180. Ordinary place of inquiry and trial

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

### 181. Trial at place where act done or where consequence of offence ensued

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

*[Cap. 4 s. 8]*

### 182. Trial where offence is connected with another offence

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

*[Cap. 4 s. 8]*

### 183. Trial where place of offence is uncertain

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

### 184. Offence committed on journey

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

### 185. High Court may decide appropriate court in cases of doubt

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

### 186. Court to be open court

(1) The place in which any court is held for the purpose of inquiring into or trying any offence shall unless the contrary is expressly provided in any written law, be deemed an open court to which the public generally may have access so far as the same can conveniently contain them, save that the presiding judge or magistrate may, if he considers it necessary or expedient—

(a) in interlocutory proceedings; or

(b) in circumstances where publicity would be prejudicial to the interest of—

(i) justice, defence, public safety, public order or public morality;

(ii) the welfare of persons under the age of eighteen years or the protection of private lives of persons concerned in the proceedings, order at any stage of the inquiry into or trial of any particular case that persons generally or any particular person other than the parties thereto or their legal representative shall not have access to or be or remain in the room or building used by the court.

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

(3) Notwithstanding the provisions of any other law, the evidence of all persons in all trials involving sexual offences shall be received by the court in camera, and the evidence and witnesses involved in these proceedings shall not be published by or in any newspaper or other media, but this subsection

shall not prohibit the printing or publishing of any such matter in a *bona fide* series of law reports or in a newspaper or periodical of a technical character *bona fide* intended for circulation among members of the legal or medical professions.

*[Act No. 4 of 1998 s. 24]*

### 187. Exclusion of children from attending court proceedings

No child shall be permitted to be present in court during the trial of any other person charged with an offence or during any proceedings preliminary thereto except during such time as his presence is required as a witness or otherwise for the purposes of justice; and any child present in court when under this section he is not permitted to be present shall be ordered to be removed; but this section shall not apply to messengers, law officers, clerks and other persons required to attend to a court for the purposes connected with their employment.

### 188. Orders of court on *ex parte* application by Director of Public Prosecutions

(1) Notwithstanding any other written law, before filing a charge or information, or at any stage of the proceedings under this Act, the court may, upon an *ex parte* application by the Director of Public Prosecutions, order—

(a) a witness testimony to be given through video conferencing in accordance with the provision of the Evidence Act;

(b) non-disclosure or limitation as to the identity and whereabouts of a witness, taking into account the security of a witness;

(c) non-disclosure of statements or documents likely to lead to the identification of a witness; or

(d) any other protection measure as the court may consider appropriate.

(2) Where the court orders for protection measures under paragraph (b) and (c) of subsection (1), relevant witness statements or documents shall not be disclosed to the accused during committal or trial.

*[Cap. 4 s. 8]*

(3) The Chief Justice may make rules for better carrying out the provisions of this section.

*[Act No. 7 of 2018 s. 12]*

## *(b) Transfer of cases*

### 189. Transfer of case where offence committed outside jurisdiction

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

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

(3) Where the accused person is not continued or placed in custody as aforesaid, the court shall inform him that it has directed the transfer of the case and thereupon the provisions of subsection 2 respecting the transmission and validity of the documents in the case shall apply.

*[Cap. 4 s. 8]*

### 190. Transfer of cases between magistrates

Any district magistrate—

(a) may transfer any case of which he has taken cognizance for inquiry or trial to any subordinate court empowered to enquire into or try such case within the local limits of such magistrate's jurisdiction; and

(b) may, where the general convenience of the parties or witnesses require it, transfer any case of which he has taken cognizance for inquiry or trial to any subordinate court beyond the limits of his jurisdiction which has power to inquire into or try that case.

### 191. Power of High Court to change venue

(1) Whenever it is made to appear to the High Court—

(a) that a fair and impartial inquiry or trial cannot be had in any court subordinate thereto;

(b) that some question of law of unusual difficulty is likely to arise;

(c) that a view of the place in or near which an offence has been committed may be required for the satisfactory inquiry into or trial of the offence;

(d) that an order under this section will tend to the general convenience of the parties or witnesses; or

(e) that an order under this section will tend to the general convenience of the parties or witnesses; or it may order—

(i) that any offence be inquired into or tried by any court not empowered under sections 164 to 190 but in other respects competent to inquire into or try such offence;

(ii) that any particular criminal case or class of cases be transferred from court subordinate to its authority to any other court of equal or superior jurisdiction;

(iii) that an accused person be committed for trial to itself.

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

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

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

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

## *(c) Accelerated trial and disposal of cases*

### 192. Preliminary hearing to determine matters not in dispute

(1) Notwithstanding the provisions of sections 229 and 283, if an accused person pleads not guilty the court shall as soon as is convenient, hold a preliminary hearing in open court in the presence of the accused and his advocate (if he is represented by an advocate) and the public prosecutor to consider such matters as are not in dispute between the parties and which will promote a fair and expeditious trial.

(2) In ascertaining such matters that are not in dispute the court shall explain to an accused who is not represented by an advocate about the nature and purpose of the preliminary hearing and may put questions to the parties as it thinks fit; and the answers to the questions may be given without oath or affirmation.

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

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

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

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

(a) delaying the summoning of witnesses until it is ascertained whether they will be required to give evidence on the trial or not;

(b) the giving of notice to witnesses warning them that they may be required to attend court to give evidence at the trial.

*[Acts Nos. 19 of 1992 s. 2; 3 of 2001 s. 17]*

### 193. Person charged with warrant offence may plead guilty without court appearance

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

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

(3) Where in any case in which under this section the attendance of an accused person is dispensed with, previous convictions are alleged against him and are not admitted in writing or through such

person's advocate the magistrate may adjourn the proceedings and direct the personal attendance of the accused and, if necessary, enforce his attendance in the manner provided under this Act.

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

*[Cap. 4 s. 8]*

## 194. Procedure where accused desires to plead guilty to non-warrant offence or intends to rely on defence of alibi

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

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

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

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

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

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

*[Cap. 4 s. 8]*

## 194A. Plea bargaining

(1) A public prosecutor, after consultation with the victim or investigator where the circumstances so permit, may at any time before the judgment, enter a plea bargaining arrangement with the accused and his advocate if represented or, if not represented, a relative, friend or any other person legally competent to represent the accused

(2) The accused or his advocate or a public prosecutor may initiate a plea bargaining and notify the court of their intention to negotiate a plea agreement.

(3) The court shall not participate in plea negotiations between a public prosecutor and the accused.

(4) Where prosecution is undertaken privately, no plea agreement shall be concluded without the written consent of the Director of Public Prosecutions.

*[Act No. 11 of 2019 s. 16]*

### 194B. Consequence of plea bargaining

Where, consequent to a plea bargaining arrangement, a plea agreement is entered into between a public prosecutor and an accused person

(a) the public prosecutor may charge the accused with a lesser offence, withdraw other counts or take any other measure as appropriate depending on the circumstances of the case;

(b) the accused may enter a plea of guilty to the offence charged or to a lesser offence or to a particular count or counts in a charge with multiple counts in exchange for withdrawal of other counts; or

(c) the accused may be ordered to pay compensation or make restitution or be subjected to forfeiture of the proceeds and instrumentalities that were used to commit the crime in question.

*[Act No. 11 of 2019 s. 16]*

### 194C. Requirements of plea agreement

(1) A plea agreement shall be in writing witnessed by advocate of the accused or, if not represented, a relative, friend or any other person legally competent to represent the accused, and shall—

(a) state fully the terms of the agreement, the substantial facts of the matter and all other relevant facts of the case and any admissions made by the accused person;

(b) be read and explained to the accused person in a language that he understands;

(c) accepted by the accused person; and

(d) be signed by the prosecutor, the accused person and his advocate, if represented or, if not represented, a relative, friend or any other person legally competent to represent the accused.

(2) Where an accused person has negotiated with a prosecutor through an interpreter, the interpreter shall certify that he is proficient in that language and that he interpreted accurately during the negotiations and in respect of the contents of the agreement.

(3) Without prejudice to the requirements set out under subsections (1) and (2), a plea agreement shall not be entered between a prosecutor and accused, without prior written consent of the Director of Public Prosecutions or any other officer authorized by him in writing.

*[Act No. 11 of 2019 s. 16]*

### 194D. Registration of plea agreement

(1) Any plea agreement entered into in accordance with the provisions of sections 194A and 194B shall be registered by the court.

(2) The court shall, before it registers any such agreement, satisfy itself that the agreement was voluntarily obtained and the accused was competent to enter into such agreement.

(3) The court may pronounce a decision based on plea agreement or make such other orders as it deems necessary including an order to reject the plea agreement for sufficient reasons, except that, such rejection shall not operate as a bar to any subsequent negotiations preferred by the parties.

(4) Where the court accepts a plea agreement—

(a) the agreement shall become binding upon the prosecution side and the accused; and

(b) the agreement shall become part of the record of the court.

(5) Where a plea agreement entered into in accordance with sections 194A and 194B is accepted by the court, the court shall proceed to convict an accused person accordingly.

*[Act No. 11 of 2019 s. 16]*

### 194E. Procedure for registration of plea agreement

Before the court records a plea—

(a) the accused shall be placed under oath; and

(b) the court shall address the accused person in court in a language he understands and shall inform him of his rights and that—

(i) by accepting a plea agreement, he is waiving his right to a full trial;

(ii) by entering into a plea agreement, he is waiving the right to appeal except as to the extent or legality of sentence; and

(iii) the prosecution has the right, in the case of prosecution for perjury or false statement, to use any statement that he gives in the agreement against him.

*[Act No. 11 of 2019 s. 16]*

### 194F. Offences which plea state shall not apply

Plea agreements shall not be entered into in any of the following offences—

(a) sexual offences whose punishment exceeds five years or involving victims under eighteen years;

(b) treason and treasonable offences;

(c) possession or trafficking in narcotic drugs whose market value is above twenty million shillings;

(d) terrorism;

(e) possession of Government trophy whose value is above twenty million shillings without the consent, in writing, of the Director of Public Prosecutions; and

(f) any other offence as the Minister may, upon consultation with other relevant authority and by order published in the *Gazette*, prescribe.

*[Act No. 11 of 2019 s. 16]*

### 194G. Application to set aside conviction and sentence relating to plea bargaining

(1) The Director of Public Prosecutions may, in matters relating to plea bargaining and in the public interest and the orderly administration of justice, apply to the court which passed the sentence to have the conviction and sentence procured on the grounds of fraud or misrepresentation pursuant to a plea agreement be set aside.

(2) An accused person who is a party to a plea agreement may apply to the court which passed the sentence to have the conviction and sentence procured involuntarily or by misrepresentation pursuant to a plea agreement be set aside.

*[Act No. 11 of 2019 s. 16]*

### 194H. Power to make rules

Subject to the provisions of this part, the Chief Justice may make rules and give directives for better carrying out the provisions of this Part relating to plea bargaining.

*[Act No. 11 of 2019 s. 16]*

## C – Examination of witnesses

### *(a) General provisions*

### 195. Power to summon material witness or examine person present

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

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

### 196. Evidence to be taken in presence of accused

Except as otherwise expressly provided, all evidence taken in any trial under this Act shall be taken in the presence of the accused, save where his personal attendance has been dispensed with.

### 197. Evidence may be given in absence of accused in certain cases

Notwithstanding the provisions of section 196, evidence may be taken in any trial under this Act in the absence of the accused if—

(a) the examining judge or magistrate considers that by reason of his disorderly conduct before him it is not practicable for the evidence to be given in his presence; or

(b) he cannot be present for reasons of health but is represented by counsel and has consented to the evidence being given in his absence,

and it shall be lawful for the court to continue with the trial and give judgment in the absence of the accused.

*[Act No. 5 of 1988 s. 8]*

### 198. Evidence to be given on oath

(1) Every witness in a criminal cause or matter shall, subject to the provisions of any other written law to the contrary, be examined upon oath or affirmation in accordance with the provisions of the Oaths and Statutory Declarations Act.

(2) Where an accused person, upon being examined, elects to keep silent the court shall have the right to draw an adverse inference against him and the court and the prosecution may comment on the failure by the accused to give evidence.

*[Cap. 34]*

### 199. Refractory witness

(1) Whenever any person, appearing either in obedience to a summons or by virtue verbally required by the court to give evidence—

(a) refuses to be sworn or affirmed;

(b) having been sworn or affirmed, refuses to answer any question put to him;

(c) refuses or neglects to produce any document or thing which he is required to produce; or

(d) refuses to sign his depositions,

without, in any case, offering sufficient excuse for such refusal or neglect, the court may adjourn the case for a period not exceeding eight days and may in the meantime commit him to prison, unless the sooner consents to do what is required of him.

(2) Where such person, upon being brought before the court at or before an 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 he consents to do what is so required of him.

## 200. Procedure where accused is only witness called for defence

Where the only witness to the facts of the case called by the defence is the person charged, he shall be called as a witness after the close of the evidence for the prosecution, but it shall be lawful for the court in its discretion to adjourn the hearing of the case to a certain time and place to be then appointed and stated in the presence and hearing of the person charged.

## 201. Right of reply

In cases where the right of reply under section 296 depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply save that the Attorney-General, the Deputy Attorney-General and the Director of Public Prosecutions or a person acting under his instruction for the prosecution shall in all cases have the right to reply.

*[Act No. 27 of 2008 s. 31]*

## 202. Certificate regarding preparation of photographic prints, etc., receivable in evidence

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

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

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

*[Cap. 4 s. 8]*

## 203. Report of Government analyst

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

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

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

(4) In this section "Government analyst" includes a senior pathologist, a pathologist and any person appointed by the Minister responsible for health to perform the duties of a Government analyst under this section.

### 204. Report of fingerprint expert

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

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

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

*[Cap. 4 s. 8]*

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

### 205. Report of handwriting expert

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

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

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

### 205A. Matter or thing duly submitted for examination or analysis

(1) Any document purporting to be a report under the hand of a cyber-forensic expert, ballistic expert or any other expert over any matter or thing duly submitted to him for examination or analysis in the course of any proceedings under this Act may be used as evidence in any inquiry, trial or other proceedings under this Act.

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

*[Act No. 7 of 2018 s. 13]*

## *(b) Issue of commission for examination of witnesses*

### 206. Issue of commission

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

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

### 207. Parties may examine witnesses

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

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

### 208. Return of commission

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

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

*[Cap. 6]*

### 209. Adjournment of proceedings

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

## *(c) Taking and recording of evidence*

### 210. Manner of recording evidence before magistrate

(1) In trials, other than trials under section 213, by or before a magistrate, the evidence of the witnesses shall be recorded in the following manner—

(a) the evidence of each witness shall be taken down in writing in the language of the court by the magistrate or in his presence and hearing and under his personal direction and superintendence and shall be signed by him and shall form part of the record; and

(b) the evidence shall not ordinarily be taken down in the form of question and answer but, subject to subsection (2), in the form of a narrative.

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

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

### 211. Interpretation of evidence to accused or his advocate

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

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

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

*[Cap. 4 s. 8]*

## 212. Remarks respecting demeanour of witness

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

## 213. Procedure in case of minor offences

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

(a) the serial number;

(b) the date of the commission of the offence;

(c) the date of the complaint;

(d) the name of the complainant;

(e) the name, parentage and residence of the accused;

(f) the offence complained of and the offence (if any) proved, and, in cases under paragraph (c), (d) or (e) 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; and

(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 one thousand shillings;

(b) common assault under section 240 of the Penal Code;

*[Cap. 16]*

(c) theft under Chapter XXVII of the Penal Code where the value of the property stolen does not exceed one hundred shillings;

*[Cap. 16]*

(d) receiving or retaining stolen property under Chapter XXXII of the Penal Code where the value of such property does not exceed one hundred shillings;

*[Cap. 16]*

(e) malicious injury to property where the value of such property does not exceed one hundred shillings;

(f) aiding, abetting, counselling or procuring the commission of any of offences referred to in this subsection;

(g) attempting to commit any of the offences referred to in this subsection.

(h) any other offence which the Chief Justice may, by order published in the *Gazette*, direct to be tried in accordance with the provisions of this section.

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

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

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

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

(2) Whenever the provisions of subsection (1) apply the High Court may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the magistrate before the conviction was had, if it is of the opinion that the accused has been materially prejudiced thereby and may order a new trial.

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

*[Acts Nos. 5 of 1988 s. 9; 9 of 2002 Sch.]*

### 215. Manner of recording evidence in High Court

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

## D – Procedure in case of the insanity or incapacity of an accused person

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

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

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

(3) Where at the close of the evidence in support of the charge it appears to the court that a case has been made out against the accused person, it shall then proceed to inquire into the fact of the unsoundness of mind of the accused and, for this purpose, may order him to be detained in a mental hospital for medical examination or, in case where bail may be granted, may admit him to bail on sufficient security as to his personal safety and that of the public and on condition that he submits himself to medical examination or observation by a medical officer as may be directed by the court.

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

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

(6) Where the court having considered any written report admitted in evidence under subsection (5) and any other evidence that may be available to it regarding the state of mind of the accused is of the opinion that the accused is of unsound mind and consequently incapable of making his defence it shall record a finding to that effect, postpone further proceedings in the case, order the accused to be detained as a mentally disorder defender in a mental hospital or other suitable place of custody until released or otherwise dealt with in the manner provided for in sections 217 or 218.

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

*[Acts Nos. 9 of 2002 Sch.; 21 of 2008 s. 43; Cap. 98; Cap. 4 s. 8; Cap. 98]*

### 217. Procedure where accused certified as capable of making defence

(1) Where an accused person detained in pursuance of a warrant issued under section 216 or section 281 is found by the medical officer in whose charge he is to have recovered his soundness of mind sufficiently to be capable of making his defence, the medical officer shall forthwith forward to the respective court a certificate stating therein also whether the accused would, but for the charge against him, be fit to stand trial, and a certified copy of such certificate to the Director of Public Prosecutions.

(2) Where the Director of Public Prosecutions intends to continue proceedings against the accused, he may within fourteen days from the date of receiving a certified copy of a certificate issued under subsection (1), inform the court which issued the warrant under section 216 or 218 that he wishes to continue proceedings against the accused.

(3) Where the court receives a certificate provided for in subsection (1), or where the court is informed by the Director of Public Prosecutions that the Republic intends to continue proceedings against the accused, it shall order removal of the person from the place where he is detained and shall cause him to be brought before it in the manner provided by section 218.

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

(a) in cases where the certificate provided for in subsection (1) states that the accused is fit for unconditional discharge forthwith, make an order for his discharge; or

(b) in all other cases, record the fact that proceedings have been discontinued, discharge the accused of the charge and forthwith proceed to deal with him under section 8 of the Mental Health Act as a person deemed to have been brought before it under that Act.

*[Cap. 98]*

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

*[Act No. 9 of 2002 Sch.]*

## 218. Resumption of trial or inquiry

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

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

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

## 219. Defence of insanity at trial

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

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

(3) When a special finding pursuant to subsection (2) is made by the court it shall—

(a) where the person against whom a special finding is made was charged with an offence under the Penal Code involving physical violence or damage to property for which, but for his insanity, at the time of doing the act or making the omission he would on conviction be liable to sentence of death or to suffer imprisonment for a term not less than seven years, order the person to be kept in a mental hospital, prison or other suitable place of custody as a mentally disordered offender ;

*[Cap. 16]*

(b) in any other case, in its discretion, either proceed to deal with the person under section 8 of the Mental Health Act or discharge or otherwise deal with him, subject to such conditions as

his remaining under supervision in any place or by any person and to such other condition for ensuring his safety and welfare and that of the public as the court shall think fit.

*[Cap. 98]*

(4) The superintendent of a mental hospital, prison or other place in which any mentally disordered offender is detained by an order of the court under subsection (3)(a), shall make a report in writing to the Minister of the condition, history and circumstances of any such lunatic at the expiration of a period of three years from the period of the court's order and thereafter at the expiration of a period of two years from the date of the last report.

(5) On the consideration of a report under subsection (5), the Minister may order that the mentally disordered offender be discharged or otherwise dealt with, subject to such conditions as to his remaining under supervision in any place or by any person and to such other conditions for ensuring the safety and welfare of the mentally disordered offender and the public, as the Minister shall think fit.

(6) Notwithstanding the provisions of subsection (4) of this section, any person authorised by the Minister may at any time, after a mentally disordered offender has been detained, report to the Minister on the condition, history and circumstances of that mentally disordered offender and the Minister, on consideration of the report, may order that the mentally disordered offender be discharged or otherwise dealt with, subject to such conditions as to his remaining under supervision in any place or by any person and to such other conditions for ensuring the safety and welfare of the said mentally disordered offender and the public as the Minister shall think fit.

(7) The court may, at any time, order that a mentally disordered offender be transferred from a mental hospital to a prison or from any place in which he is detained or remains under supervision to either a prison or a mental hospital.

*[Acts Nos. 9 of 2002 Sch.; 11 of 2019 s. 17; Cap. 4 s. 8]*

## 220. Court's power to inquire into insanity

(1) Where any act or omission is charged against any person as an offence and it appears to the court during the trial of such person for that offence that such person may have been insane so as not to be responsible for his action at the time when the act was done or omission made, a court may, notwithstanding that no evidence has been adduced or given of such insanity, adjourn the proceedings and order the accused person to be detained in a mental hospital for medical examination.

(2) A medical officer in charge of the mental hospital in which an accused person has been ordered to be detained pursuant to subsection (1) shall, within forty two days of the detention prepare and transmit to the court ordering the detention a written report on the mental condition of the accused setting out whether, in his opinion, at the time when the offence was committed the accused was insane so as not to be responsible for his action and such written report purporting to be signed by the medical officer who prepared it may be admitted as evidence unless it is proved that the medical officer purporting to sign it did not in fact sign it.

(3) Where the court admits an medical report signed by the medical officer in charge of the mental hospital where the accused was detained the accused and the prosecution shall be entitled to adduce such evidence relevant to the issue of insanity as they may consider fit.

(4) Where on the evidence on record, it appears to the court that the accused did the act or made the omission charged but was insane so as not to be responsible for his action at the time when the act was done or omission made, the court shall make a special finding in accordance with the provisions of subsection (2) of section 219 and all the provisions of section 219 shall apply to every such case.

*[Cap. 4 s. 8]*

### 221. Procedure when accused does not understand proceedings

(1) Where the accused, though not insane, cannot be made to understand the proceedings—

(a) in cases tried by a subordinate court, the court shall proceed to hear the evidence and, if at the close of the evidence for the prosecution and, if the defence has been called upon, at the close of any evidence for the defence, the court is of the opinion that the evidence which it has heard would justify a conviction, it shall sentence the accused to be detained during the President's pleasure; but if the evidence does not justify a conviction it shall acquit and discharge the accused;

(b) in cases which are the subject of committal proceedings by a subordinate court and of trial by the High Court, the subordinate court, shall commit the accused for trial by the High Court and either admit him to bail or send him to prison for safe keeping, and the High Court shall, if the Director of Public Prosecutions has filed an information, proceed to hear all the evidence available both for the prosecution and the defence, and if satisfied that the accused is guilty of the offence charged shall sentence him to be detained during the President's pleasure; or

(c) if the Director of Public Prosecutions states to the committing court that he does not intend to file information, the accused shall be at once discharged in respect of the charge made against him and, if he has been committed to prison, shall be released or, if on bail, his recognisance shall be discharged; but such discharge of the accused shall not operate as a bar to any subsequent proceedings against him on account of the same facts.

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

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

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

*[Cap. 4 s. 8]*

## Part VII – Procedure in trials before subordinate courts

### *(a) Provisions relating to the hearing and determination of cases*

### 222. Non-appearance of complainant at hearing

Where in any case which a subordinate court has jurisdiction to hear and determine, the accused person appears in obedience to the summons served upon him at the time and place appointed in the summons for the hearing of the case, or is brought before the court under arrest, then, if the complaint, having had notice of the time and place appointed for the hearing of the charge does not appear, the court shall dismiss the charge and discharge the accused person, unless for some reason, it shall think it proper to adjourn hearing, of the case until some other date and, pending the adjourned hearing, either admit the accused person to bail or remand him to prison, or take such security for his appearance as the court thinks fit.

*[Act No. 3 of 2011 s. 18; Cap. 4 s. 8]*

### 223. Appearance of both parties

Where at a time appointed for hearing of the case both the complainant and the accused person appear before the court which is to hear and determine the charge, or if the complainant appears and the personal attendance of the accused person has been dispensed with under section 193, the court shall proceed to hear the case.

*[Cap. 4 s. 8]*

### 224. Withdrawal of complaint

Where a complainant, at any time before a final order is passed in any case under this Part, satisfies the court that there are sufficient grounds for permitting him to withdraw his complaint, against the accused or, if there be more than one accused person, or any of them, the court may permit him to withdraw the complaint and shall thereupon acquit the accused against whom the complaint is so withdrawn; save that this section shall apply only in cases of minor offences.

*[Cap. 4 s. 8]*

### 224A. Abatement of trial in subordinate courts

Every trial under this Part shall abate on the death of the accused person.

*[Act No. 9 of 2002 Sch.]*

### 225. Adjournment and remand of accused

(1) Subject to subsections (3) and (6), 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.

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

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

(a) for not more than three clear days if there is no prison within five miles of the court house and may from time to time further commit the accused person to police custody for a period of not more than fifteen days in the aggregate;

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

(c) at the request of the accused person, for not more than fifteen clear days.

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

(a) wherever a certificate by a Regional Crimes Officer is filed in court stating the need and grounds for adjourning the case, the court may adjourn the case for a further period not

exceeding an aggregate of sixty days in respect of offences stated in the First Schedule to this Act;

(b) wherever a certificate is filed in court by the State Attorney stating the need and grounds for seeking a further adjournment beyond the adjournment made under paragraph (1), the court shall adjourn the case for a further period not exceeding, in the aggregate, sixty days; case for a further period not exceeding, in the aggregate, sixty days;

(c) wherever a certificate is filed in court by the Director of Public Prosecutions or a person authorised by him in that behalf stating the need for and grounds for a further adjournment beyond the adjournment made under paragraph (b), the court shall not adjourn such case for a period exceeding an aggregate of twenty four months since the date of the first adjournment given under paragraph (a).

(5) Where no certificate is filed under the provisions of subsection (4), the court shall proceed to hear the case or, where the prosecution is unable to proceed with the hearing discharge the accused in the court save that any discharge under this section shall not operate as a bar to a subsequent charge being brought against the accused for the same offence.

(6) Nothing in this section shall be construed as providing for the application of this section to any proceedings in a subordinate court in relation to any offence triable only by the High Court under the Economic and Organised Crime Control Act.

*[Cap. 200]*

*[Act No. 5 of 1988 s. 10]*

## 226. Non-appearance of parties after adjournment

(1) Where at the time or place to which the hearing or further hearing is adjourned, the accused person does not appear before the court in which the order of adjournment was made, it shall be lawful for the court to proceed with the hearing or further hearing as if the accused were present; and if the complainant does not appear, the court may dismiss the charge and discharge the accused with or without costs as the court thinks fit.

(2) Where the court convicts the accused person in his absence, it may set aside the 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 merit.

(3) Any sentence passed under subsection (1) shall be deemed to commence from the date of apprehension and the person effecting such apprehension, shall endorse the date thereof on the back of the warrant of commitment.

(4) The court, in its discretion, may refrain from convicting the accused in his absence, and in every such case the court shall issue a warrant for the apprehension of the accused person and cause him to be brought before the court.

(5) Where the court dismisses the charge and discharges an accused person under section 222 or 226, the complainant may, within thirty days from the date of dismissal, file an application for re-institution of the charge.

(6) The court may, upon being satisfied that the complainant's absence was due to reasons to which the complainant had no control or could not, within the circumstance have control, grant, application for re-institution of the charge and proceedings, if any.

*[Act No. 3 of 2011 s. 18; Cap. 4 s. 8]*

## 227. Accused may be convicted and sentenced notwithstanding his absence

Where in any case to which section 226 does not apply, an accused being tried by a subordinate court fails to appear on the date fixed for the continuation of the hearing after the close of the prosecution case or on the date fixed for the passing of sentence, the court may, if it is satisfied that the accused's attendance

cannot be secured without undue delay or expense, proceed to dispose of the case in accordance with the provisions of section 231 as if the accused, being present, had failed to make any statement or adduce any evidence or, as the case may be, make any further statement or adduce further evidence in relation to any sentence which the court may pass:

Provided that —

(a) where the accused so fails to appear but his advocate appears, the advocate, subject to the provisions of this Act, be entitled to call any defence witness and to address the court as if the accused had been or is convicted, and the advocate shall be entitled to call any witness and to address the court on matters relevant to any sentence which the court may pass; and

(b) where the accused appears on any subsequent date to which the proceedings may have been adjourned, the proceedings under this section on the day or days on which the accused was absent shall not be invalid by reason only of his absence.

## 228. Accused to be called upon to plead

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

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

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

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

(5) [5] Where the accused pleads—

(a) that he has been previously acquitted of the same offence; or

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

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

*[Cap. 4 s. 8]*

(5A) Where the court holds that the evidence adduced in support of such plea does not sustain the plea, or if it finds that such plea is false in fact, the accused person shall be required to plead to the charge.

(6) After the accused has pleaded to the charge read to him in court under this section, the court shall obtain from him his permanent address and shall record and keep it.

*[Act No. 4 of 1991 s. 2; Cap. 4 s. 8]*

5 Note: Subsection (5) is rearranged into subsections (5) and (5A) to bring the subsection in line with the applicable format of a legislative provision.

## 229. Procedure on plea of "not guilty"

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

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

(3) Where the accused person does not employ an advocate, the court shall, at the close of the examination of each witness for the prosecution, ask the accused person whether he wishes to put any questions to that witness or make any statement.

(4) Where the accused person asks any question, the magistrate shall record the answer and, if he makes a statement the magistrate shall, if he thinks it desirable in the interest of the accused person, put the substance of such statement to the witness in the form of a question and record his answer.

*[Cap. 4 s. 8]*

## 230. Discharge of accused person when no case to answer

Where at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence either in relation to the offence with which he is charged or in relation to any other offence of which, under the provisions of sections 300 to 309 of this Act, he is liable to be convicted the court shall dismiss the charge and acquit the accused person.

*[Cap. 4 s. 8]*

## 231. Defence

(1) At the close of the evidence in support of the charge, if it appears to the court that a case is made against the accused person sufficiently to require him to make a defence either in relation to the offence with which he is charge or in relation to any other offence of which, under the provisions of sections 300 to 309 of this Act, he is liable to be convicted the court shall again explain the substance of the charge to the accused and inform him of his right—

(a) to give evidence whether or not on oath or affirmation, on his own behalf; and

(b) to call witness in his defence,

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

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

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

(4) Where 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 likelihood that they could, if present, give material evidence on behalf of the accused person, the court may adjourn the trial and issue process or take other steps to compel attendance of such witnesses.

*[Cap. 4 s. 8]*

## 232. Evidence in reply

Where the accused person examines any witnesses or gives any evidence other than as to his general character, the court may grant leave to the prosecutor to give or adduce evidence in reply.

*[Cap. 4 s. 8]*

## 233. Order of speeches

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

### 234. Variance between charge and evidence and amendment of charge

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

(2) Subject to subsection (1), where a charge is altered under that subsection—

(a) the court shall thereupon call upon the accused person to plead to the altered charge;

(b) the accused may demand that the witnesses or any of them be recalled and give their evidence afresh or be further cross-examined by the accused or his advocate and, in such last mentioned event, the prosecution shall have the right to re-examine any such witness on matters arising out of such further cross-examination; and

(c) the court may permit the prosecution to recall and examine, with reference to any alteration of or addition to the charge that may be allowed, any witness who may have been examined unless the court for any reason to be recorded in writing considers that the application is made for the purpose of vexation, delay or for defeating the ends of justice.

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

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

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

### 235. Decision

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

(2) Where the court acquits the accused, it shall require him to give his permanent address for service in case there is an appeal against his acquittal and the court shall record or cause it to be recorded.

*[Acts Nos. 10 of 1989 s. 2; 3 of 2011 s. 20; Cap. 4 s. 8]*

### 236. Evidence relative to proper sentences or order

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

### 237. Taking other offences into consideration

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

(a) if it has been explained by the court to the accused person in ordinary language that the sentence to be passed upon him for the offence of which he has been convicted in those proceedings may be greater if the other offence is taken into consideration; and

(b) after the explanation the accused person—

(i) admits the commission of the other offence; and

(ii) asks the court to take the other offence into consideration.

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

*[Please note: numbering as in original]*

### 238. Drawing conviction or acquittal orders

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

### 239. Order of dismissal of further charges

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

### 240. Statements by medical witnesses

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

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

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

*[Cap. 4 s. 8]*

## *(b) Limitations and exceptions relating to trials before subordinate courts*

### 241. Limitation of time for summary trials in certain cases

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

### 242. Procedure in case of offence proving unsuitable for summary trial

Where in the course of a trial it appears to the magistrate at any stage of the proceedings that the case is one which ought to be tried by the High Court, he shall stop further proceedings and commit the accused person for trial upon information before the High Court, and in that case he shall apply the procedure provided in this Act in relation to committal of accused persons for trial to the High Court.

*[Cap. 4 s. 8]*

## Committal of accused persons by subordinate courts to the High Court for trial

### *(a) Provisions relating to committal of accused persons for trial to the High Court*

### 243. Power to commit for trial

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

(2) Where, at any time during trial before a subordinate court, but Procedure on arrest before conviction, the facts of the case reveal that the accused had committed an offence for which he would have been charged under the Economic and Organised Crime Control Act, the magistrate shall stop the proceedings, direct the prosecutor of the case to frame a fresh charge under the appropriate section of the Economic and Organised Crime Control Act, and then proceed to deal with him in accordance with sections 29 and 30 of that Act.

*[Cap. 200]*

*[Act No. 12 of 1987 s. 25]*

### 244. Courts to hold commital proceedings

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

### 245. Procedure on arrest

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

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

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

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

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

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

(6) Where the Director of Public Prosecutions or that other public officer, after studying the police case file and the statements of the intended witnesses, decides that the evidence available, or the case as such, warrants putting the suspect on trial, he shall draw up or cause to be drawn up an information in accordance with law and, when signed by him, submit it together with three copies of each of the statements of witnesses sent to him under subsection (4), including any document containing the substance of the evidence of any witness who has not made a written statement.

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

*[Cap. 4 s. 8]*

### 246. Committal for trial by court

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

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

(3) After complying with the provision of subsections (1) and (2) the court shall address the accused person in the following words or words to the like effect:

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

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

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

(6) When the record of the statement, if any, made by the accused person is confirmed to be what he declares is the truth, the record shall be attested by the magistrate who shall certify that the

statement was taken in his presence and hearing and contains accurately the whole statement made by the accused person; and the accused person shall sign or attest the record by his mark but if he refuses the court shall record his refusal and the record may be used as if the accused had signed or attested it.

### 247. Witnesses for prosecution and defence

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

### 248. Adjournment of proceedings

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

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

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

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

### 249. Accused entitled to copy of proceedings

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

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

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

### 250. Court may bind witness to appear at trial

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

(2) Upon an application being made under subsection (1) the court shall summon the person in respect of whom the application is made to appear before it and, when he so appears, the court shall bind him by recognisance with or without sureties as it may deem requisite, to appear at the trial in compliance with any summons issued in accordance with section 263.

### 251. Refusal to be bound over

Where a person required to enter into recognisance under section 250 refuses to enter into such recognisance, the court may commit him to prison or into the custody of any other officer of the court,

there to remain until such time as the trial has taken place or the case against the accused is otherwise disposed of, unless in the meantime he enters into recognizance as required by the court.

*[Cap. 4 s. 8]*

### *(b) Preservation of testimony in certain cases*

### 252. Witnesses for prosecution and defence

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

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

### 253. Notice to be given

(1) Where any person is under a charge or has been committed for trial in respect of the offence to which a statement referred to in section 252 is expected to relate (in sections 257 and 258 referred to as "the accused person"), reasonable notice shall be given of intention to take that statement both to the prosecutor and to that person.

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

### 254. Opportunity for cross-examination and transmission of statements

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

### 255. Use of statements in evidence

(1) Every statement made under section 252 and duly subscribed and certified by the magistrate in the manner required by that section shall, without further proof, be admissible in evidence at any trial, whether before the High Court or a subordinate court in which the accused person is charged with the offence to which the statement relates if—

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

(b) the accused received notice of the court to take the statement has been provided in section 253 and had, or might have had if he had chosen to be present, full opportunity of cross-examining the deponent.

(2) When any case in the court of which such statement has been admitted in evidence is finally disposed of, the statement shall be returned to the magistrate who recorded it for filing in accordance with the provisions of section 252.

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

*[Cap. 6]*

### *(c) Proceedings after committal for trial*

### 256. Transmission of records to High Court

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

### 256A. Trial by resident magistrate with extended jurisdiction

(1) The High Court may direct that the taking of a plea and the trial of an accused person committed for trial by the High court, be transferred to, and be conducted by a resident magistrate upon whom extended jurisdiction has been granted under subsection (1) of section 173.

(2) For avoidance of doubt, any proceedings or decision conducted or made by a resident magistrate with extended jurisdiction, prior to the coming into, effect of the provisions of this subsection, shall be deemed to have been conducted or made in accordance with the provisions of subsection (1) of this section.

(3) The provisions of this Act which governs the exercise by the High Court of its original jurisdiction shall, *mutatis mutandis*, and to the extent that they are relevant, govern proceedings before a resident magistrate under this section in the same manner as they govern like proceedings before the High Court.

*[Acts Nos. 2 of 1996 Sch.; 17 of 1996 Sch.]*

### 257. Notice of trial

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

"A.B.

Take notice that you will be tried in the information whereof this is a true copy at the sessions of the High Court to be held at..... on the..... day of 20.....".

### 258. Copy of information and notice of trial to be served

The Registrar shall deliver or cause to be delivered to the officer of the court or police officer serving the information a copy thereof with the notice of trial endorsed on or annexed thereto and, if there are more accused persons committed for trial than one, as many copies as there are accused persons; and the officer of the court or police office shall, as soon as may be after having received the copy or copies of the information and the 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 has been admitted to bail and cannot readily be found, he shall leave a copy of the 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 copy and

notice to the outer or principal door of the dwelling house or dwelling houses of the accused person or of any f his bail:

Provided that, nothing herein shall prevent any person committed for trial, and in custody at the opening of or during any sessions to be so tried thereat if he gives his consent and no special objection is made on the part of the Republic.

### 259. Returns of service

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

### 260. Postponement of trial

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

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

### 261. Information to be signed by Director of Public Prosecutions

All informations drawn up in pursuance of section 257 shall be in the name of and, subject to the provisions of section 92, signed by the Director of Public Prosecutions.

### 262. Form of information

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

"In the High Court of Tanzania

The ___ day of ___ 20__ At the sessions held at ___ on the ___ day of ___20 ___ the Court is informed by the Director of Public Prosecutions on behalf of the United Republic that *A.B.* is charged with the following offence (or offences)".

### 263. Witnesses to be summoned

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

## Part VIII – Procedure in trials before the High Court

### *(a) Practice and the mode of trial*

### 264. Practice of High Court in its criminal jurisdiction

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

### 265. Trial before High Court to be with aid of assessors

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

### *(b) Assessors*

### 266. Liability to serve as assessor

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

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

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

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

### 267. Exemptions

The following persons are exempt from liability to serve as assessors, namely—

(a) Ministers and Members of National Assembly;

(b) Judges and Magistrates;

(c) persons actively discharging the duties of priests or ministers of their respective religions;

(d) physicians, surgeons, dentists and apothecaries in actual practice;

(e) legal practitioners in actual practice;

(f) officers and men in the Armed Forces of the United Republic;

(g) persons exempted from personal appearance in court under the provisions of the Civil Procedure Code or any rules made thereunder;

*[Cap. 33]*

(h) persons disabled by mental or bodily infirmity;

(i) officers of the Police and Prisons services;

(j) such other officers of the Government and such persons as may be exempted by the Chief Justice from liability to serve.

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

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

### *(c) Attendance of assessors*

### 269. Summoning of assessors

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

(2) Where in accordance with the provisions of subsection (1), a resident or district magistrate is directed to summon assessors, he shall select and summon persons whom he considers to be suitable and to be liable under section 266 to serve as assessors.

(3) Subject to the provisions of subsections (1) and (2), a resident or district magistrate if so directed by the Registrar may delegate such selection to an administrative officer having jurisdiction in the same district or region.

### 270. Form of summons

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

### 271. Objections to summons to serve as assessor

(1) Any person who has been served with a summons issued under section 269 may, if he is of the opinion that he is not liable under section 267 to serve as an assessor, appear without delay before a district or resident magistrate prior to the date when he is required by summons to attend and object to the summons and if the magistrate is satisfied that the said person is not liable to serve as an assessor he shall thereupon rescind the summons and discharge him from attendance.

(2) Appearance before a district or resident magistrate under the provisions of subsection (1) shall be by the person objecting personally except in the case of a person objecting under the provisions of paragraph (g) of section 267 in which case a person who satisfies the magistrate that he is duly authorised to appear may appear on his behalf

### 272. Excuses from attendance

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

### 273. List of assessors attending

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

### 274. Penalty for non-attendance of assessors

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

(2) The fine imposed under subsection (1) shall be levied by the district or resident magistrate on movable property belonging to the assessor within the local limits of jurisdiction of the magistrate.

(3) For good cause shown, the High Court may remit or reduce any fine imposed under subsection (1).

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

### *(d) Arraignment*

## 275. Pleading to information

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

(2) After the accused has pleaded to the charge read to him in court under this section, the court shall obtain from him his permanent address and shall record and keep it.

*[Act No. 4 of 1991 s. 2]*

## 276. Orders for amendment of information, separate trial and postponement of trial

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

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

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

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

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

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

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

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

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

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

## 277. Quashing of information

(1) Where an information does not state, and cannot, by an amendment authorised by section 276, be made to state any offence of which the accused has had notice, it shall be quashed either on a motion made before the accused pleads or on a motion made in arrest of judgment.

(2) A written statement of every motion under subsection (1) shall be delivered to the Registrar or other officer of the court by or on behalf of the accused and shall be entered upon the record.

*[Cap. 4 s. 8]*

## 278. Procedure in case of previous convictions

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

(a) the part of the information stating the previous conviction shall not be read out in court, nor shall the accused be asked whether he has been previously convicted as alleged in the information, unless and until he has either pleaded guilty to or been convicted of the subsequent offence;

(b) if he pleads guilty to or is convicted of the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the information; and

(c) if he answers that he has been previously convicted, the judge may proceed to pass sentence on him accordingly; but if he denies that he has been so previously convicted, or refuses to or does not answer such question, the court shall then hear evidence concerning such previous conviction.

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

*[Cap. 4 s. 8]*

## 279. Plea of "not guilty"

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

## 280. Plea of autrefois acquit and autrefois convict

(1) Any accused person upon whom an information is filed may plead—

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

(b) that he has obtained a pardon at law for his offence.

(2) Where either of any plea referred to in subsection (1) is pleaded in any case and disputed by the prosecution to be true in fact, the court shall try whether such plea is true in fact or not.

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

*[Cap. 4 s. 8]*

### 281. Refusal to plead

(1) Where any accused person being arraigned upon any information stands mute of malice, or neither will, nor by reason of infirmity can, answer directly to the information, the court if it thinks fit, shall order the Registrar or other officer of the court to enter a plea of "not guilty" on behalf of such accused person, and the plea so entered shall have the same force and effect as if the accused person had actually pleaded the same, or else the court shall thereupon proceed to try whether the accused person is of sound or unsound mind, and, if he is found to be of sound mind, shall proceed with the trial, and if he is found to be of unsound mind and consequently incapable of making his defence shall order the trial to be postponed, and the accused person to be kept meanwhile in safe custody in such place and manner as the court thinks fit and shall transmit the court record to the Attorney-General for consideration by the Minister; and the Minister may order the accused person to be detained in a mental hospital or other suitable place of safe custody.

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

*[Cap. 4 s. 8]*

### 282. Plea of "guilty"

Where the accused person pleads "guilty", the plea shall be recorded and he may be convicted thereon.

*[Cap. 4 s. 8]*

### 283. Proceedings after plea of "not guilty"

Where the accused person pleads "not guilty" or if the plea of "not guilty" is entered in accordance with the provisions of section 281, the court shall proceed to choose assessors, as provided in section 285, and to try the case.

*[Cap. 4 s. 8]*

### 284. Power to postpone or adjourn proceedings

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

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

(3) The court may on remand admit the accused to bail.

*[Cap. 4 s. 8]*

### 284A. Abatement of trial before High Court

Every trial before the High Court shall abate on the death of the accused person.

*[Act No. 9 of 2002 Sch.]*

#### *(e) Selection of assessors*

### 285. Selection of assessors

(1) Where a trial is to be held with the aid of assessors, the assessors shall be selected by the court.

(2) An assessor may aid in more than one trial, successively.

### 286. Absence of assessor

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

*[Cap. 4 s. 8]*

### 287. Assessors to attend at adjourned sittings

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

*[Cap. 4 s. 8]*

## *(f) Case for the prosecution*

### 288. Opening case for prosecution

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

### 289. Additional witnesses for prosecution

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

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

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

### 290. Cross-examination of witnesses for prosecution

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

### 291. Statements by medical witnesses

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

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

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

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

### 292. Statement of evidence of accused

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

### 293. Close of case for prosecution

(1) Where the evidence of the witnesses for the prosecution has been concluded, and the statement, if any, of the accused person before the committing court has been given in evidence, the court, if it considers after hearing the advocates for the prosecution and for the defence, that there is no evidence that the accused or any one of several accused committed the offence or any other offence of which, under the provisions of sections 300 to 309 of this Act he is liable to be convicted, shall record a finding of not guilty.

(2) Where the evidence of the witnesses for the prosecution has been concluded and the statement, if any, of the accused person before the committing court has been given in evidence, the court, if it considers that there is evidence that the accused person committed the offence or any other offence of which, under the provisions of sections 300 to 309 he is liable to be convicted, shall inform the accused person of his right—

(a) to give evidence on his own behalf; and

(b) to call witnesses in his defence,

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

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

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

*[Act No. 13 of 1988 s. 2; Cap. 4 s. 8]*

## *(g) Case for the defence*

### 294. Case for defence

(1) The accused person or his advocate may then open his case stating the fact or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution.

(2) The accused person may then give evidence on his own behalf and he or his advocate may examine his witnesses, if any, and after their cross-examination or re-examination, if any, may sum up his case.

### 295. Additional witnesses for defence

(1) In addition to the witnesses summoned pursuant to the provisions of section 263 the accused shall be allowed to examine any witness who is in attendance at the trial.

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

### 296. Prosecutor's reply

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

*[Cap. 4 s. 8]*

### 297. Where accused person does not give evidence

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

*[Cap. 4 s. 8]*

## *(h) Close of hearing*

### 298. Delivery of opinion by assessors and giving of judgment

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

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

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

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

*[Cap. 4 s. 8]*

### 299. Conviction where proceedings heard partly by one judge and partly by another

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

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

## Part IX – Convictions, judgment, sentences and their execution in the subordinate courts and High Court

### A – Miscellaneous provisions relating to convictions

#### 300. Where offence proved is included in offence charged

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

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

(3) For the purpose of this section, the offences specified in section 222 of the Penal Code shall, where a person is charged with the offence of attempted murder under section 211 thereof, be deemed to be minor offences.

*[Cap. 16]*

*[Cap. 4 s. 8]*

#### 301. Person charged with offence may be convicted of attempt

Where a person is charged with an offence, he may be convicted of having attempted to commit that offence although he was not charged with the attempt.

*[Cap. 4 s. 8]*

#### 302. Alternative verdicts in various charges involving the homicide of children

(1) Where a woman is charged with the murder of her newly born child and the court is of the opinion that she, by any wilful act or omission, caused its death but at the time of the act or omission she had not fully recovered from the effect of giving birth to the child and that by reason thereof or by reason of the effect of lactation consequent upon the birth of the child, the balance of her mind was then disturbed, she may, notwithstanding that the circumstances were such that but for the provisions of section 199 of the Penal Code she might be convicted of murder, be convicted of the offence of infanticide although she was not charged with it.

*[Cap. 16]*

(2) Where a person is charged with the murder or manslaughter of any child or with infanticide, or with an offence under section 150 or section 151 of the Penal Code (relating to the procuring of abortion or miscarriage), and the court is of the opinion that he is not guilty of murder, manslaughter or infanticide or of an offence under section 150 or section 151 of the Penal Code, but that he is guilty of the offence of child destruction under section 219 of the Penal Code, he may be convicted of that offence although he was not charged with it.

*[Cap. 16]*

(3) Where a person is charged with the offence of child destruction and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence under either section 150 or section 151 of the Penal Code, he may be convicted of that offence although he was not charged with it.

*[Cap. 16]*

(4) Where a person is charged with the murder or infanticide of any child or with child destruction and the court is of the opinion that he is not guilty of any of the said offences but that he is guilty of the offence of concealment of birth, he may be convicted of that offence although he was not charged with it.

### 303. Alternative verdicts under road traffic act in certain manslaughter cases

Where a person is charged with manslaughter in connection with the driving of a motor vehicle by him and the court is of the opinion that he is not guilty of that offence, but that he is guilty of an offence under section 50 of the Road Traffic Act (relating to reckless or dangerous driving or careless driving), he may be convicted of an offence under either of those sections although he was not charged with it.

*[Cap. 168; Cap. 4 s. 8]*

### 304. Alternative verdicts in charges of rape and kindred offences

(1) Where a person is charged with an offence under section 130 or section 132 of the Penal Code and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence under section 135, 140 or 158 of the Penal Code, he may be convicted of that offence although he was not charged with it.

*[Cap. 16]*

(2) Where a person is charged with an offence under section 158 of the Penal Code and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence under section 137 of the Penal Code, he may be convicted of that offence although he was not charged with it.

*[Cap. 16]*

(3) Where a person is charged with an offence under section 136 of the Penal Code and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under subsection (1) or subsection (3) of section 135 or under section 140 of the Penal Code, he may be convicted of that offence although he was not charged with it.

*[Cap. 4 s. 8]*

### 305. Person charged with burglary, etc., may be convicted of kindred offence

Where a person is charged with an offence under one of the sections 294 to 298 of the Penal Code and the court is of the opinion that he is not guilty of that offence but that he is guilty of any other offence under another of the said sections he may be convicted of that other offence although he was not charged with it.

*[Cap. 16; Cap. 4 s. 8]*

### 306. Alternative verdicts in charges of stealing and kindred offences

(1) Where a person is charged with stealing anything and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence in respect of that thing under one of the sections 302, 304, 311 and 312 of the Penal Code, he may be convicted of that offence although he was not charged with it.

(2) Where a person is charged with an offence under section 304 of the Penal Code and the court is of the opinion that he is not guilty of that offence but that he is guilty of the offence of stealing the

thing in respect of which he is charged, he may be convicted of that offence although he was not charged with it.

*[Cap. 16]*

(3) Where a person is charged with an offence under section 302 of the Penal Code and the court is of opinion the that he is not guilty of that offence but that he is guilty of an offence under section 304 of the Penal Code, he may be convicted of that offence although he was not charged with it; and where a person is charged with an offence under section 304 of the Penal Code and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence under section 302 of the Penal Code, he may be convicted of that offence although he was not charged with it.

*[Cap. 16]*

(4) Where a person is charged under section 311 of the Penal Code with the offence of receiving anything and the court is of the opinion that he is not guilty of that offence but that he is guilty of retaining the thing, and when a person is charged under the said section with the offence of retaining anything and the court is of the opinion that he is not guilty of that offence but that he is guilty of receiving the thing, then he may be convicted under the provisions of the said section of retaining or receiving, as the case may be, although he was not so charged.

*[Cap. 16]*

*[Cap. 16; Cap. 4 s. 8]*

### 307. Alternative verdicts in charges of being in possession of property suspected of having been corruptly acquired

Where any person is charged with an offence under subsection (1) of section 27 of the Prevention and Combating of Corruption Act and the court is of the opinion that he did not corruptly acquire or receive the property but that he is guilty of an offence under section 312 of the Penal Code in respect of that property, the court may convict him of the latter offence although he was not charged with it.

*[Caps. 329 and 16]*

### 308. Construction of sections 300 to 307

The provisions of sections 300 to 307 shall be construed as in addition to, and not derogation of, the provisions of any other Act and the other provisions of this Code, and the provisions of sections 301 to 307 shall be construed as being without prejudice to the generality of the provisions of section 300.

### 309. Person charged with a warrant offence not to be acquitted if non-warrant offence proved

Where in any trial for a warrant offence the facts proved in evidence amount to a non-warrant offence, the accused shall not for that reason be acquitted of such a warrant offence; and no person tried for such warrant offence shall be liable afterwards to be prosecuted for a warrant offence on the same facts, unless the court shall think fit, in its discretion, to direct such person to be prosecuted for a non-warrant offence, whereupon such person may be dealt with as if he had previously been put on trial for a warrant offence.

*[Cap. 4 s. 8]*

### 310. Right of accused to be defended

Any person, accused before any criminal court, other than a primary court, may of right be defended by an advocate of the High Court subject to the provisions of any written law relating to the provision of professional services by advocate.

## B – Judgment generally

### 311. Mode of delivering judgment

(1) The decision of every trial of any criminal case or matter shall be delivered in an open court immediately or as soon as possible after termination of trial, but in any case not exceeding ninety days, of which notice shall be given to the parties or their advocates, if any, but where the decision is in writing at the time of pronouncement, the Judge or Magistrate may, unless objection to that course is taken by either the prosecution or the defence, explain the substance of the decision in an open court in lieu of reading such decision in full.

(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 dispersed with and the sentence is one of fine only or he is acquitted.

(3) Subject to subsection (2), where there is more than one accused person, and one or more of them does not attend the court on the date on which the judgment is to be delivered, the judge or magistrate may, in order to avoid undue delay in the disposal of the case, deliver the judgment notwithstanding his or their absence.

(4) No judgment delivered by any court shall be deemed to be invalid by reason only of the absence of any party or his advocate on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their advocates, or any of them, the notice of such day and place.

(5) Nothing in this section shall be construed as to limit in any way the provisions of section 299.

*[Act No. 2 of 2005 s. 46]*

### 312. Content of judgement

(1) Every judgment under the provisions of section 311 shall, except as otherwise expressly provided by this Act, be written by or reduced to writing under the personal direction and superintendence of the presiding judge or magistrate in the language of the court and shall contain the point or points for determination, the decision thereon and the reasons for the decision, and shall be dated and signed by the presiding officer as of the date on which it is pronounced in open court.

(2) In the case of conviction the judgment shall specify the offence of which, and the section of the Penal Code or other law under which, the accused person is convicted and the punishment to which he is sentenced.

(3) In the case of an acquittal the judgment shall state the offence of which the accused person is acquitted and shall direct that he be set at liberty.

(4) Where at any stage of the trial, a court acquits an accused person, it shall require him to give his permanent address for service in case there is an appeal against his acquittal and the court shall record or cause it to be recorded.

*[Act No. 01 of 1989 s. 2]*

### 313. Copy of judgment, etc., to be given to accused or interested party on application

(1) On the application of the accused person a copy of the judgment or, when he so desires, a translation in his own language, if practicable, shall be given to him without delay and free of cost.

(2) Any interested party or person affected by the judgment may be provided with a copy of the judgment on application if he pays the prescribed fee unless the court, if it thinks fit for some reason, gives it to him free of cost.

## C – Sentences

### *(a) Passing sentence in the High Court*

### 314. Calling upon accused

Where the judge convicts the accused person or if he pleads guilty, it shall be the duty of the Registrar or other officer of the court to ask him whether he has anything to say why sentence should not be passed upon him according to law, but the omission so to ask him shall have no effect on the validity of the proceedings.

*[Cap. 4 s. 8]*

### 315. Motion in arrest of judgment

(1) The accused person may, at any time before sentence, whether on plea of guilty or otherwise, move in arrest of judgment on the ground that the information does not, after any amendment which the court is willing and has power to make, state any offence which the court has power to try.

(2) The court may, in its discretion, either hear and determine the matter during the same sitting or adjourn the hearing thereof to a future time to be fixed for that purpose.

(3) If the court decides in favour of the accused he shall be discharged from that information.

### 316. Sentence

Where no motion in arrest of judgment is made or if the court decides against the accused person upon such motion, the court may sentence the accused person at any time during the sessions.

### 317. Power to reserve decisions on questions raised at trial

The court before which any person is tried for an offence may reserve the giving of its final decision on questions raised at the trial and its decision whenever given shall be considered as given at the time of trial.

### 318. Power to reserve questions arising in course of trial

(1) Where any person has, in a trial before the High Court, been convicted of an offence, the judge may reserve and refer for the decision of a court consisting of two or more judges of the High Court any question which has arisen in the course of trial and the determination of which would affect the event of the trial.

(2) Where the judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded in prison or, if the judge thinks fit, be admitted to bail and the High Court shall have power to review the case or such part thereof as may be necessary and finally determine such question and thereupon to alter the sentence passed by the trial judge and to pass such judgment or order as the High Court may think fit.

*[Cap. 4 s. 8]*

### 319. Objectives cured by judgment

No judgment shall be stayed or reserved on the ground of any objection which, if stated after the information was read over to the accused person or during the progress of the trial, might have been cured by amendment by the court, nor for any informality in swearing the witnesses or any of them.

### 320. Evidence for arriving at proper sentence

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

### 321. Taking other offences into consideration

(1) Without prejudice to the generality of section 320 the High Court may, subject to the provisions of this section, for the purpose of assessing the proper sentence to be passed, take into consideration any other offence committed by the accused person but of which he has not been convicted.

(2) The High Court shall not take any offence into consideration unless—

(a) it has been explained by the court to the accused person in ordinary language that the sentence to be passed upon him for the offence of which he has been convicted in those proceedings may be greater if the other offence is taken into consideration; and

(b) after that explanation the accused person—

(i) admits the commission of the other offence; and

(ii) asks the court to take the other offence into consideration.

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

## *(b) Sentence of death*

### 322. Sentence of death

(1) Where any person is sentenced to death, he shall suffer death by hanging.

(2) Where any person is sentenced to death the sentence shall direct that he suffers death by hanging.

*[Cap. 4 s. 8]*

### 323. Accused to be informed of right of appeal

Where an accused person is sentenced to death, the court shall inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

*[Cap. 4 s. 8]*

### 324. Authority for detention

A certificate under the hand of the Registrar or other officer of the court that sentence of death has been passed, and naming the condemned person, shall be sufficient authority for the detention of that person.

### 325. Report and record to be sent to President

(1) As soon as conveniently may be after sentence of death has been pronounced, if no appeal from a sentence of death passed by the High Court is preferred or if an appeal from any sentence of death is preferred and the sentence is upheld on appeal, then as soon as conveniently may be after the determination of the appeal the presiding judge or magistrate exercising powers conferred on him by section 173 shall forward to the President a copy of the notes of evidence taken on the trial with a report in writing signed by him containing any recommendation or observations on the case he may think fit to make.

(2) After the report has been considered, the President shall communicate to the said judge or magistrate or his successor in office, the terms of any decision to which he has made, and such judge or magistrate shall cause the tenor and substance of that decision to be entered in the records of the court.

(3) [6] The President shall issue a death warrant, or an order of the sentence of death to be commuted, or a pardon, under his hand and the seal of the United Republic to give effect to that decision.

(3A) Where the sentence of death is to be carried out, the warrant shall state the place where and the time when execution is to be had, and shall give directions as to the place of burial of the body of the person executed.

(3B) Where the sentence is commuted for any other punishment, the order shall specify that punishment.

(3C) Where the person sentenced is pardoned, the pardon shall state whether it is free or to what conditions, if any, it is subject.

(4) Subject to subsections (3) and (3A), the warrant may direct that the execution shall take place at such time and at such place and that the body of the person executed shall be buried or cremated at such place, as shall be appointed by some officer specified in the warrant.

(5) The warrant or order, or pardon of the President shall be sufficient authority in law to all persons to whom it is directed to execute the sentence of death or other punishment awarded and to carry out the directions therein given in accordance with its terms.

6 Note: Subsection (3) is rearranged into subsections (3), (3A), (3B) and (3C) to bring the subsection in line with the applicable format of a legislative provision.

### *(c) Other sentences*

## 326. Conditional discharge

(1) Where any court thinks that the charge is proved but is of the opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged or to the trivial nature of the offence or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or that it is expedient to discharge the offender conditionally as hereinafter provided, the court may, without proceeding to convict, either —

(a) order the offender to be discharged after such admonition as to the court as shall seem fit; or

(b) discharge the offender conditionally on his executing a bond, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the order of the court.

(2) An order under subsection (1) shall, for the purpose of revesting or restoring stolen property, or in respect of matters relating to the restitution or delivery of property to the owner, have the like effect as a conviction.

(3) A bond executed under this section may contain such conditions as the court may, having regard to the particular circumstances of the case, order to be inserted therein with respect to all or any of the following matters—

(a) for prohibition of the offender from associating with undesirable warrant persons or from frequenting undesirable places;

(b) as to abstention from intoxicating liquor, where the offence is connected with drunkenness or an offence committed under the influence of drink;

(c) generally for securing that the offender shall lead an honest and industrious life;

(d) providing that the offender with his surety or sureties, if any, shall appear in chambers before the judge of the court at such intervals as may be specified in the order.

### *(d) Execution of sentences*

### 327. Warrant in case of sentence of imprisonment

A warrant under the hand of the judge or magistrate by whom any person is to be sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within Tanzania Mainland, shall be issued by the sentencing judge or magistrate, and shall be full authority to the officer in charge of such prison and to all other persons for carrying into effect the sentence described in such warrant, not being a sentence of death; and every sentence shall be deemed to commence from, and to, include the whole of the day of the date on which it was pronounced, except where otherwise provided in this Act or in the Penal Code.

*[Cap. 16]*

### 328. Warrant for levy of fine

(1) Where a court orders money to be paid by an accused person or by a prosecutor or complainant for fine, penalty, compensation, costs, expenses or otherwise, the money may be levied on the movable and immovable property of the person ordered to pay the same by distress and the sale under warrant; but if he shows sufficient movable property to satisfy the order his immovable property shall not be sold.

(2) A person ordered under subsection (1) to pay money may pay or tender to the officer having the execution of the warrant the sum therein mentioned, together with the amount of the expenses of the distress up to the time of payment or tender, and thereupon the officer shall cease to execute the same.

(3) A warrant under this section may be executed within the local limits of jurisdiction of the court issuing it, and it shall authorise the distress and sale of any property belonging to such person when endorsed by a district or resident magistrate within the local limits of whose jurisdiction such property is found.

### 329. Objections to attachment

(1) Any person claiming to be entitled to have a legal or equitable interest in whole or part of any property attached in execution of a warrant issued under section 327 may, at any time prior to the receipt by the court of the proceeds of sale of such property, give notice in writing to the court of his objection to the attachment of the property and the notice shall set out shortly the nature of the claim which the person (in this section called "the objector") makes to the whole or part of the property attached and certify the value of the property claimed by him, such value being supported by an affidavit which shall be filed with the notice.

(2) Upon receipt of a valid notice given under subsection (1), the court shall, by an order in writing addressed to the officer having the execution of the warrant, direct a stay of the execution proceedings.

(3) Upon the issue of an order under subsection (2) the court shall, by notice in writing, direct the objector to appear before such court and establish his claim upon a date to be specified in the notice.

(4) A notice shall be served upon the person whose property was, by the warrant issued under section 328, directed to be attached and, unless the property is to be applied to the payment of a fine, upon the person entitled to the proceeds of the sale of property and the 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 that 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 subsection (4).

(6) Where upon investigation of the claim, the court is satisfied that the property, attached was not, when attached, in the possession of the person ordered to pay the money or of some person in trust for him, or in the occupancy of a tenant, or other person paying rent to him, or that, being in the possession of the person ordered to pay the money 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 party on his own account and partly on account of some other person, the court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.

(7) Where upon the date fixed for his appearance, the objector fails to appear or if, upon investigation of the claim in accordance with subsection (5), the court is of the opinion that the objector has failed to establish his claim, the court shall order the attachment and execution to proceed and shall make such order as to costs as it deems proper.

(8) Nothing in this section shall be deemed to deprive a person who has failed to comply with the requirements of subsection (1) of the right to take any other proceedings which, apart from the provisions of this section, may lawfully be taken by a person claiming an interest in property attached under a warrant.

*[Cap. 4 s. 8]*

## 330. Suspension of execution of sentence of imprisonment in default of fine

(1) Where an offender has been sentenced to a fine only and to imprisonment in default of payment of the fine, the court may suspend the execution of the sentence of imprisonment and may release the offender on his executing a bond, with or without sureties, as the court thinks fit, conditioned for his appearance before such court on a date not being more than fifteen days from the time of executing the bond; and in the event of the fine not having been realised the court may direct the sentence of imprisonment to be carried into execution at once or may from time to time extend the operation of the bond for a further period of not more than fifteen days.

(2) In any case in which an order for the payment of money has been made the court may require the person ordered to make such payment to enter into a bond as prescribed in subsection (1), and in default of his so doing may at once pass sentence of imprisonment as if the money had not been recovered.

(3) Without prejudice to the provisions of subsections (1) and (2), in any case in which an order for the payment of money has been made, and whether or not any order has been made for imprisonment in default of payment, the court may, in its direction, either at the time such order is made or subsequently, direct that the money may be paid by instalments at such times and in such amounts as the court may think fit.

(4) Where under subsection (3), the court directs that money may be paid by instalments the whole of the amount outstanding shall, unless the court extends the period within which such instalments is to be paid, become due and payable and all the provisions of this Act and of the Penal Code applicable in the case of non-payment of a fine shall apply to and in respect of the amount outstanding.

*[Cap. 16]*

*[Cap. 4 s. 8]*

### 331. Commitment for warrant of distress

Where the officer having the execution of a warrant of distress reports that he can find no property or not sufficient property whereupon to levy the money mentioned in the warrant with expenses, the court may by the same or a subsequent warrant commit the person ordered to pay to prison for a time specified in the warrant, unless the money and all expenses of the distress, to be specified in the warrant, are sooner paid.

*[Cap. 4 s. 8]*

### 332. Commitment in lieu of distress

Where it appears to the court that distress and sale of property would be ruinous to the person ordered to pay the money or his family or (by his confession or otherwise) that he has no property whereon the distress may be levied, or when 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.

*[Cap. 4 s. 8]*

### 333. Payment in full after commitment

Any person committed for non-payment may pay the sum mentioned in the warrant, with the amount of expenses therein authorised, if any, to the person in whose custody he is and that person shall thereupon release him if he is in custody for no other matter.

### 334. Part payment after commitment

(1) Where any person who is confined in any prison for non-payment of any sum adjudged by a court in its criminal jurisdiction to be paid under this Act or under any other Act, pays any sum in part satisfaction of the sum adjudged to be paid, the term of his imprisonment shall be reduced by a number of days bearing nearly as possible the same proportion to the total number of days for which such person is committed as the sum paid bears to the sum for which he is liable.

(2) The officer in charge of a prison in which a person is confined who is desirous of taking advantage of the provisions of the subsection (1) shall, on application being made to him by such person, at once take him before a court and such court shall certify the amount by which the term of imprisonment originally awarded is reduced by such payment in part satisfaction, and shall make such order as is required in the circumstances.

*[Cap. 4 s. 8]*

### 335. Who may issue warrant

Every warrant for the execution of any sentence may be issued either by the judge or magistrate who passed the sentence or by his successor in office or jurisdiction.

### 336. Limitation of imprisonment after commitment

No commitment for non-payment shall be for a longer period than six months unless the law under which the conviction has taken place enjoins or allows a longer period.

## D – Miscellaneous provisions for dealing with offenders

### *(a) First offenders*

### 337. Power to release upon probation instead of sentencing to punishment

(1) In any case in which a person is convicted before any court of an offence not punishable with death and no previous conviction is proved against him, if it appears to the court before which he is convicted that, having regard to the youth, character, antecedents, health or mental condition, of the offender or to the trivial nature of the offence or to any extenuating circumstances under which the offence was committed, it is expedient to release the offender on probation the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, and during that period (not exceeding three years, as the court may direct), to appear and receive sentence when called upon and in the meantime to keep the peace and be of good behaviour.

(2) An order under this section may be made by the High Court when exercising its power of revision.

### 338. Provisions in case of offender failing to observe conditions of his recognizance

(1) Where at any time the court which convicted the offender is satisfied that the offender has failed to observe any of the conditions of his recognisance, it may issue a warrant for his arrest.

(2) An offender when arrested on a warrant under subsection (1) shall be brought forthwith before the court by which the warrant was issued and the court may either remand him in custody until the case is heard or admit him to bail with sufficient surety conditioned for his appearing for sentence and the court may, after hearing the case, pass sentence.

*[Cap. 4 s. 8]*

### 339. Conditions as to abode of offender

The court, before directing the release of an offender under section 330, shall be satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place for which the court acts, or in which the offender is likely to live during the period named for his observance of the condition.

### 339A. Release of offender on community service

(1) In cases in which a person is convicted before any court of any offence not punishable with death either on its own motion, or application by the offender or any other competent authority, it appears to the court before which he is convicted that, having regard to the youth, character, antecedents, or health condition of the offender or to the trivial nature of the offence, or to any extenuating circumstances under which the offence was committed, it is expedient to release the offender on community service under the Community Service Act, the court may instead of committing the offender to prison, direct that he be released to community service on his entering into a bond, with or without sureties, and for a period to be specified by the court in the community service order.

*[Cap. 291]*

(2) Nothing under subsection (1) of this section shall preclude the court from making an order under this section on an application for review under this Act or the Magistrates' Courts Act.

*[Cap. 11]*

(3) An order under this section may be made by any other court in the exercise of its appellate or revision powers over the case.

(4) For the purposes of this section, the term "competent authority" has the same meaning ascribed to it under the Community Service Act.

*[Cap. 291]*

### 340. Sections 337, 338 and 339 not to apply in certain circumstances

Sections 337, 338 and 339 of this Act shall not apply in any area of Mainland Tanzania to which the Probation of Offenders Act applies.

*[Cap. 247]*

### *(b) Offenders with previous conviction*

### 341. Power to subject to police supervision

(1) Where any person—

(a) has been convicted of any offence against sections 59 or 60 of the Penal Code or section 25, 26 or 27 of the Societies Act; or

(b) having been convicted of any offence punishable with imprisonment for a term of three years or more or of an offence under section 343 of this Act,

the court may, if it thinks fit, at the time of passing sentence of imprisonment on such person, also order that he shall be subject to police supervision as hereinafter provided for a period not exceeding five years from the date of his release from prison.

(2) Where the conviction is set aside on appeal or for any other reason, the order shall become void.

(3) An order under this section may be made by the High Court when exercising its powers of revision.

(4) Every order made under this section shall be made out in the prescribed form and in addition be stated in the warrant of commitment.

*[Cap. 16; Cap. 337; Cap. 4 s. 8]*

### 342. Requirements from person subject to police supervision

(1) A court may at any time direct that a person shall, whilst subject to police supervision and at large in Tanzania, comply with all or any of the following requirements and may vary any such direction at any time—

(a) to reside within the limits of any specified district;

(b) not to transfer his residence to any other district without the written consent of the administrative officer or police officer in charge of the district where he resides;

(c) not to leave the district in which he resides without the written consent of the administrative officer or police in charge of such district;

(d) at all times to keep the police officer or, if there is no police officer, the administrative officer in charge of the district in which he resides notified of the house or place in which he resides;

(e) to present himself, whenever called upon so to do by the administrative officer or police officer in charge of the district in which he resides, at any place in such district.

(2) For the purpose of giving any directions or of varying any directions under subsection (1) of this section, a court may issue a summons to a person to whom the subsection relates and who is within the jurisdiction of that court requiring his attendance before it at such time and place as may be specified; and the provisions of sections 143, 144, 145, 146 and 147 of this Act shall apply *mutatis mutandis* to him as they apply to a witness.

(3) The Minister may make rules for carrying out the provisions of this section.

### 343. Failure to comply with requirements under section 342

Where any person subject to police supervision who is at large in Tanzania refuses or neglects to comply with any requirement prescribed by section 342 or by any rules made thereunder he shall, unless he proves to the satisfaction of the court before which he is tried that he did his best to act in conformity with the law, be guilty of an offence and liable to imprisonment for a term not exceeding six months or, on a second or subsequent conviction for such offence, to imprisonment for a term not exceeding twelve months.

*[Cap. 4 s. 8]*

#### *(c) Defects in orders of warrant*

### 344. Errors and omissions in orders and warrants

The court may at any time amend any defect in substance or in form in any order or warrant and no omission or error as to time and place and no defect in form in any order or warrant given under this Act, shall be held to render void or unlawful any act done or intended to be done by virtue of such order or warrant, provided that it is therein mentioned or may be inferred therefrom that it is founded on a conviction or judgment and there is a valid conviction or judgment to sustain the order or warrant.

## E – Miscellaneous powers of the court to order compensation, costs, forfeiture, etc.

#### *(a) Costs and compensation*

### 345. Costs against accused

(1) It shall be lawful for a judge of the High Court or any magistrate to order any person convicted before him of an offence to pay to the public or private prosecutor, as the case may be, such reasonable costs as to the judge or magistrate may see fit, in addition to any other penalty imposed.

(2) It shall be lawful for a judge of the High Court or any magistrate who acquits or discharges a person accused of an offence, if the prosecution for such offence was originally instituted on a summons or warrant issued by a court on the application of a private prosecutor, to order the private prosecutor to pay to the accused such reasonable costs as to the judge or magistrate may see fit.

(3) The costs awarded under this section may be awarded in addition to any compensation awarded under section 347.

(4) In this section

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

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

*[Act No. 3 of 2011 s. 21]*

### 346. Order to pay costs appealable

An appeal shall lie against any order awarding costs under section 345 if made by a magistrate, to the High Court and, if by a judge, to the Court of Appeal and the court to which the appeal is made shall have power to give such costs of the appeal as it shall deem reasonable.

### 347. Compensation in cases of frivolous or vexatious charge

Where on the acquittal of an accused person a court is of the opinion that the charge was frivolous or vexatious, the court may order the complainant to pay to the accused person a reasonable sum as

compensation for the trouble and expense to which he may have been put by reason of such charge, in addition to his costs.

### 348. Power to order accused to pay compensation

(1) Where an accused person is convicted by any court of any offence not punishable with death and it appears from the evidence that some other person, whether or not he is the prosecutor or a witness in the case, has suffered material loss or personal injury in consequence of the offence committed and that substantial compensation is, in the opinion of the court, recoverable by that person by civil suit, the court may, in its discretion and in addition to any other lawful punishment, order the convicted person to pay to that other person such compensation, in kind or in money, as the court deems fair and reasonable.

(2) Where any person is convicted of any offence under Chapters XXVII to XXXII of the Penal Code, the power conferred by subsection (1) shall be deemed to include a power to award compensation to any *bona fide* purchaser of any property in relation to which the offence was committed for the loss of such property if the property is restored to the possession of the person entitled thereto.

*[Cap. 16]*

(3) Any order for compensation under this section shall be subject to appeal if an order for the payment of a fine of a similar amount would have been subject to appeal and no payment of compensation shall be made before the period allowed for presenting the appeal has elapsed or, if an appeal is presented, before the decision on the appeal.

*[Act No. 2 of 1979]*

### 348A. Compensation in case of sexual offences

(1) Notwithstanding the provisions of section 348 of this Act, when a court convicts, an accused person of a sexual offence, it shall in addition to any penalty which it imposes make an order requiring the convict to pay such effective compensation as the court may determine to be commensurate to possible damages obtainable by a civil suit by the victim of the sexual offence for injuries sustained by the victim in the course of the offence being perpetrated against him or her.

(2) For the purposes of this section "sexual offence" means any of the offences created in Chapter XV of the Penal Code.

*[Cap. 16]*

*[Act No. 4 of 1998 s. 25]*

### 349. Costs and compensation to be specified in order, and how recoverable

The sums allowed for costs or compensation shall in all cases be specified in the conviction or order, and they shall be recoverable in like manner as any penalty may be recoverable under this Act; and in default of payment of such costs or compensation and in default of distress as hereinafter provided the person in default shall be liable to imprisonment for a term not exceeding six months unless the costs or compensation are sooner paid.

### 350. Power of courts to award expenses or compensation out of fine

(1) Where a court imposes a fine or confirms, on appeal, revision or otherwise, a sentence of fine, or a sentence of which a fine forms part the court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

(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) Where 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 is presented, before the decision of the appeal.

(3) At the time of awarding any compensation in any subsequent civil suit relating to the same matter, the court hearing the civil suit shall take into account any compensation paid or recovered under section 348.

*[Cap. 4 s. 8]*

### *(b) Forfeiture*

### 351. Power to order for forfeiture of property

(1) Where a person is convicted of an offence and the court which passes sentence is satisfied that any property which was in his possession or under his control at the time of his apprehension—

(a) has been used for the purpose of committing or facilitating the commission of any offence; or

(b) was intended by him to be used for that purpose, that property shall be liable to forfeiture and confiscation and any property so forfeited under this section shall be disposed of as the court may direct.

(2) Where the court orders the forfeiture or confiscation of any property as provided in subsection (1) of this section but does not make an order for its destruction or for its delivery to any person, the court may direct that the property shall be kept or sold and that the property or, if sold, the proceeds thereof shall be held as it directs until some person establishes to the court's satisfaction a right thereto; but if no person establishes such a right within six months from the date of forfeiture or confiscation, the property or the proceeds thereof shall be paid into and form part of the Consolidated Fund.

(3) The power conferred by this section upon the court shall include the power to make an order for the forfeiture or confiscation or for the destruction or for the delivery to any person of such property, but shall be exercised subject to any special provisions regarding forfeiture, confiscation, destruction, detention or delivery contained in the written law under which the conviction was had or in any other written law applicable to the case.

(4) Where an order is made under this section in a case in which an appeal lies the order shall not, except when the property is livestock or is subject to speedy and natural decay, be carried out until the period allowed for presenting the appeal has passed or, when an appeal has been presented, until the disposal of the appeal.

(5) In this section any reference to—

(a) "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which it is exchanged and anything acquired by such conversion or exchange, whether immediately or otherwise;

(b) facilitating the commission of an offence includes the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection.

### 352. Warrant of search for forfeited or confiscated articles

Where a court has made an order for the forfeiture or confiscation of an article the court or any justice of the peace may, if satisfied on information on oath—

(a) that there is reasonable cause to believe that the article is to be found in any place or premises; and

(b) that admission to the place or premises has been refused or that a refusal of such admission is apprehended, issue a warrant of search which may be executed according to law.

### *(c) Disposal of exhibits*

## 353. Disposal of exhibits

(1) Where anything which has been tendered or put in evidence in any criminal proceedings before any court has not been claimed by any person who appears to the court to be entitled thereto within a period of twelve months after the final disposal of the proceedings or if any appeal is entered in respect thereof, the thing may be sold, destroyed or otherwise disposed of in such manner as the court may by order direct and the proceeds of its sale shall be paid into the general revenues of the Republic.

(2) Where anything which has been tendered or is intended to be tendered or put in evidence in any criminal proceedings before any court is subject to speedy and natural decay the court may, at any stage of the proceedings or at any time after the final disposal of such proceedings, order that it be sold or otherwise disposed of but shall hold the proceeds of the sale and, if unclaimed at the expiration of a period of twelve months after the final disposal of such proceedings or any appeal entered in respect thereof, shall pay such proceeds into the general revenues of the Republic.

(3) Notwithstanding the provisions of subsection (1), the court may, if it is satisfied that it would be just and equitable so to do, order that anything tendered, or put or intended to be put in evidence in criminal proceedings before it should be returned at any stage of the proceedings or at any time after the final disposal of such proceedings to the person who appears to be entitled thereto, subject to such conditions as the court may see fit to impose.

(4) Any order of a court made under the provisions of subsection (1) or (2) shall be final and shall operate as a bar to any claim by or of any interest in the thing by virtue of any title arising prior to the date of the order.

(5) Where an order is made under this section in a case in which an appeal has been lodged the order shall not (except when the property is livestock or is subject to speedy and natural decay) be carried out until the period allowed for lodging an appeal has elapsed or, when an appeal is lodged, until the appeal has been disposed of.

(6) In this section the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party but also any property into or for which it has been converted or exchanged and anything acquired by such conversion or exchange whether immediate or otherwise.

(7) For the purpose of this section, court includes court before which an accused person appears before he is committed for his trial.

*[Acts Nos 2 of 2010 s. 6; 3 of 2011 s. 22; Cap. 4 s. 8]*

## 354. Disposal of obscene or defamatory publications or noxious or adulterated food, etc.

(1) On a conviction in respect of any obscene or defamatory publication, the court may order destruction of all the copies of the thing in respect of which the conviction was had and which are in the custody of the court or remain in the possession or power of the person convicted.

(2) The Court may in like manner on a conviction in respect of any noxious or adulterated food, drink, drug or medical preparation order the thing in respect of which the conviction was had to be destroyed.

### 355. Person dispossessed of property may have it restored

(1) Where any person is convicted of any offence attended by criminal force and it appears to the court that by such force any person has been dispossessed of any movable property the court may, if it thinks fit, order that the property be restored to the possession of that other person.

(2) No order made under subsection (1) shall prejudice any right or interest in the movable property which any person may be able to establish in a civil suit.

### 356. Public officer connected with sale of property not to purchase or bid for property

(1) No public officer having any duty connected with the sale of any property under this Act shall, directly or indirectly, purchase or bid for that property.

(2) A public officer who, contrary to subsection (1), purchases or bids for any property commits an offence and liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a period of two years or both.

*[Act No. 9 of 1996 Sch.]*

## F – Restitution of property

### 357. Property found on accused person

Where, upon the apprehension of a person charged with an offence, any property is taken from him, the court before which he is charged may order—

(a) that the property or part thereof be restored to the person who appears to the court to be entitled thereto and, if he is the person charged, that it be restored either to him or to such other person as he may direct; or

(b) if the property belongs to him, 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.

### 358. Property stolen

(1) Where any person guilty of an offence mentioned in Chapters XXVII to XXXII of the Penal Code, involving stealing, taking, obtaining, extorting, converting, or disposing of, or knowingly receiving any property, is prosecuted to conviction by or on behalf of the owner of such property, the property shall be restored to the owner or his representative.

(2) In every case referred to in this section the court before which an offender is convicted shall have power to award from time to time writs of restitution for the property or to order its restitution in a summary manner, save that—

(a) where goods, as defined in the Sale of Goods Act, have been obtained by fraud or other wrongful means not amounting to stealing, the property in such goods shall not revest in the person who was the owner of the goods or his personal representative by reason only of the conviction of the offender; and

*[Cap. 214]*

(b) nothing in this section shall apply to the case of any valuable security which has been in good faith paid or discharged by some person liable to the payment thereof or which being a negotiable instrument, has been in good faith taken or received by transfer or delivery by some person for just and valuable consideration without any notice or without reasonable cause to suspect that the same has been stolen.

(c) *[Please note: text of subsection (c) omitted in original]*

(3) On the restitution of any stolen property if it appears to the court by the evidence that the offender has sold the stolen property to any person and that such other person has had no knowledge that the same was stolen, and that money has been found in possession of and taken from the offender on his apprehension the court may, on application of the purchaser, order that out of that money a sum not exceeding the amount of the proceeds of the sale be delivered to the purchaser.

(4) The operation of any order under this section shall, unless the court before which conviction takes place directs to the contrary in any case in which the title to the property is not in dispute, be suspended—

(a) in any case, until the time for appeal has elapsed; and

(b) [7] in any case where an appeal is lodged, until the determination of the appeal and, in cases where the operation of the order is suspended, until the determination of the appeal the order shall not take effect as to property in question if the conviction is quashed on appeal.

*[Cap. 4 s. 8]*

(4A) The High Court may make provision by rules for securing the safe custody of any property, pending the suspension of the operation of any such order.

(5) Any person aggrieved by an order made under this section may appeal to the High Court and upon the hearing of the appeal the court may, by order, annul or vary any order made on a trial for the restitution of any property to any person, although the conviction is not quashed; and the order, if annulled, shall not take effect and, if varied, shall take effect as so varied.

*[Cap. 16; Cap. 4 s. 8]*

7 Note: Subsection (4)(b) is rearranged by splitting paragraph (b) and introducing subsection (4A) to bring the subsection in line with the applicable format of a legislative provision.

## Part X – Appeals

### *(a) Appeals generally*

### 359. Appeal to High Court

(1) Save as hereinafter provided, any person aggrieved by any finding, sentence or order made or passed by a subordinate court other than a subordinate court exercising its extended powers by virtue of an order made under section 173 of this Act may appeal to the High Court and the subordinate court shall at the time when such finding, sentence or order is made or passed, inform that person of the period of time within which, if he wishes to appeal, he is required to give notice of his intention to appeal and to lodge his petition of appeal.

(2) Any appeal to the High Court may be on a matter of fact as well as on a matter of law.

(3) Notwithstanding the provisions of subsections (1) and (2), no appeal shall lie against or be made in respect of any preliminary or interlocutory decision or order of a subordinate court unless such decision or order has the effect of finally determining the criminal charge.

*[Act No. 25 of 2002 Sch.]*

### 360. No appeal on plea of guilty

(1) No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by a subordinate court except as to the extent or legality of the sentence.

(2) Except with the leave of the High Court, no appeal shall be allowed in cases in which a subordinate court has passed a sentence of a fine not exceeding one thousand shillings only, or of corporal

punishment only imposed on a person under sixteen years of age, or from a sentence of imprisonment in default of the payment of a fine if no substantive sentence of imprisonment has been passed.

(3) No sentence which would not otherwise be liable to appeal shall be appealable on the ground that the person convicted is ordered to find security to keep the peace.

### 361. Limitation

(1) Subject to subsection (2), no appeal from any finding, sentence or order referred to in section 359 shall be entertained unless the appellant—

(a) has given notice of his intention to appeal within ten days from the date of the finding, sentence or order or, in the case of a sentence of corporal punishment only, within three days of the date of such sentence; and

(b) has lodged his petition of appeal within forty five days from the date of the finding, sentence or order, save that in computing the period of forty five days the time required for obtaining a copy of the proceedings, judgment or order appealed against shall be excluded.

(2) The High Court may, for good cause, admit an appeal notwithstanding that the period of limitation prescribed in this section has elapsed.

*[Act No. 9 of 2002]*

### 362. Petition of appeal

(1) Every appeal shall be made in the form of a petition in writing presented by the appellant or his advocate, and every petition shall, unless the High Court otherwise directs, be accompanied by a copy of the proceedings judgment or order appealed against.

(2) The petition shall contain particulars of the matters of law or of fact in regard to which the subordinate court appealed from is alleged to have erred.

*[Act No. 9 of 2002 Sch.]*

### 363. Appellant in prison

Where the appellant is in prison, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the prison, who shall thereupon forward the petition and copies to the Registrar of the High Court.

*[Cap. 4 s. 8]*

### 364. Summary rejection of appeal

(1) On receiving the petition and copy required by section 362, the High Court shall peruse them and—

(a) if the appeal is against sentence and is brought on the grounds that the sentence is excessive and it appears to the court that there is no material in the circumstances of the case which could lead it to consider that the sentence ought to be reduced;

(b) if the appeal is against conviction and the court considers that the evidence before the lower court leaves no reasonable doubt as to the accused's guilt and that the appeal is frivolous or is without substance; or

(c) if the appeal is against conviction and the sentence and the court considers that the evidence before the lower court leaves no reasonable doubt as to the accused's guilt and that the

appeal is frivolous or is without substance and that there is no material in the judgment for which the sentence ought to be reduced,

the court may forthwith summarily reject the appeal by an order certifying that upon perusing the record, the court is satisfied that the appeal has been lodged without any sufficient ground of complaint.

(2) Notice of any order made under the provisions of this section shall be forthwith given to the Director of Public Prosecutions.

## 365. Notice of time and place of hearing

(1) Where the High Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his advocate, and to the Director of Public Prosecutions, of the time and place at which the appeal will be heard and shall furnish the Director of Public Prosecutions with a copy of the proceedings and of the grounds of appeal; save that notice need not be given to the appellant or his advocate if it has been stated in the petition of appeal that the appellant does not wish to be present and does not intend to engage an advocate to represent him at the hearing of the appeal.

(2) Where notice of time, place of hearing cannot be served on any person because he cannot be found through the address obtained from him by the court under section 228 or 275, the notice shall be brought to his attention in the manner prescribed by section 381.

*[Act No. 10 of 1989 s. 2; Cap. 4 s. 8]*

## 366. Powers of High Court on appeal and right of appellant to appear

(1) At the hearing of the appeal, the appellant or his advocate may address the court in support of the particulars set out in the petition of appeal and the public prosecutor, if he appears, may then address the court and thereafter, the court may invite the appellant or his advocate to reply upon any matters of law or of fact raised by the public prosecutor in his address and the court may then, if it considers there is no sufficient ground for interfering, dismiss the appeal or may—

(a) in an appeal from a conviction—

(i) reverse the finding and sentence and acquit the accused or discharge him under section 38 of the Penal Code or order him to be retried by a court of competent jurisdiction or direct the subordinate court to hold committal proceedings;

*[Cap. 16]*

(ii) alter the finding, maintaining the sentence or, with or without altering the finding, reduce or increase the sentence; or

(iii) with or without such reduction or increase of sentence and with or without altering the finding, alter the nature of the sentence

(b) in an appeal against sentence, increase or reduce the sentence or alter the nature of the sentence;

(c) in an appeal from any other order, alter or reverse such order and, in any such case, may make any amendment or any consequential or incidental order that may appear just and proper.

(2) An appellant, whether in custody or not, shall be entitled to be present at the hearing of his appeal.

(3) The right of an appellant who is in custody to be present at the hearing of the appeal shall be subject to his paying all expenses incidental to his transfer to and from the place where the court sits for the determination of the appeal; save that the court may direct that the appellant be brought before the court in any case in which, in the opinion of the court, his presence is desirable for the due determination of the appeal, in which case such expenses shall be defrayed by the Government.

(4) Nothing in this section shall be construed as precluding the court from inflicting a greater punishment than the punishment which might have been inflicted by the court which imposed the sentence.

### 367. Order of High Court to be certified to lower court

(1) Where a case is decided on appeal by the High Court, it shall certify its judgment or order to the court by which the conviction, sentence or order appealed against was recorded or passed.

(2) The court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court and, if necessary, the records shall be amended accordingly.

*[Cap. 4 s. 8]*

### 368. Suspension of sentences and admission to bail pending appeal

(1) After the entering of an appeal by a person entitled to appeal, the High Court or the subordinate court which convicted or sentenced such person may, for reasonable cause to be recorded by it in writing—

(a) in the case of a person sentenced to a term of imprisonment, order—

(i) that such person be released on bail with or without sureties pending the hearing of his appeal; or

(ii) that the execution of the sentence appealed against be suspended pending the hearing of his appeal in which case he shall be treated as a remand prisoner pending the hearing of his appeal; and

(b) in any other case, order that the execution of the sentence or order appealed against be suspended pending the hearing of his appeal.

(2) Where the appeal is ultimately dismissed and the original sentence (being a sentence of imprisonment) is 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.

### 369. Further evidence

(1) In dealing with an appeal from a subordinate court, the High Court if it thinks additional evidence is necessary, shall record its reasons and may either take such evidence itself or direct it to be taken by a subordinate court.

(2) When the additional evidence is taken by a subordinate court, that court shall certify the evidence to the High Court which shall thereupon proceed to dispose of the appeal.

(3) Unless the High Court otherwise directs, the appellant or his advocate shall be present when the additional evidence is taken.

(4) Evidence taken in pursuance of this section shall be taken as if it were evidence taken at a trial before a subordinate court.

### 370. Number of judges on appeal by appellant

(1) Appeals from subordinate courts shall be heard by one judge of the High Court except when in any particular case the Chief Justice directs that an appeal be heard by two or more judges of the High Court and such direction shall be given before the hearing of the appeal or at any time before judgment is delivered.

(2) Where on the hearing of an appeal the High Court is equally divided in opinion the appeal shall be dismissed.

*[Cap. 4 s. 8]*

### 371. Withdrawal of appeal

(1) An appeal may be withdrawn at any time before hearing by a written notice to the Registrar signed by the appellant or his advocate, and upon that notice being given the appeal shall be marked withdrawn.

(2) When any appeal is withdrawn, the Registrar shall forthwith notify the respondent and the subordinate court in which that case originated.

(3) An appeal which has been withdrawn may be restored by leave of the court on the application of the appellant if the court is satisfied that there are sufficient reasons that the appeal be heard.

*[Act No. 9 of 2002 Sch.]*

### 371A. Abatement of appeal on death of appellant

Every appeal from a subordinate court (except an appeal from a sentence of fine) shall abate on the death of the appellant.

*[Act No. 9 of 2002 Sch.]*

## *(b) Revision*

### 372. Power of High Court to call for records

(1) The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any subordinate court.

(2) Notwithstanding the provisions of subsection (1), no application for revision shall lie or be made in respect of any preliminary or interlocutory decision or order of a subordinate court unless such decision or order has the effect of finally determining the criminal charge.

*[Cap. 4 s. 8]*

*[Act No. 25 of 2002 Sch.]*

### 373. Power of High Court on revision

(1) In the case of any proceedings in a subordinate court, the record of which has been called for or which has been reported for orders or which otherwise comes to its knowledge, the High Court may —

(a) in the case of conviction, exercise any of the powers conferred on it as a court of appeal by sections 366, 368 and 369 and may enhance the sentence; or

(b) in the case of any other order other than an order of acquittal, alter or reverse such order, save that for the purposes of this paragraph a special finding under subsection (1) of section 219 of this Act shall be deemed not to be an order of acquittal.

(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence; save that an order reversing an order of a magistrate made under section 129 shall be deemed not to have been made to the prejudice of an accused person within the meaning of this subsection.

(3) Where the sentence dealt with under this section has been passed by a subordinate court, except if the matter involved a sexual offence, the High Court shall not inflict a greater punishment for the offence, which in the opinion of the High Court the accused has committed, than might have been inflicted by the court which imposed the sentence.

(4) Nothing in this section shall be deemed to preclude the High Court converting a finding of acquittal into one of conviction where it deems necessary so to do in the interests of justice.

(5) Where the High Court revises the record of proceedings in a subordinate court involving a sexual offence, it may if it considers that the justice of the case so requires inflict a punishment greater than that which the convicting court might have imposed but which the High Court could impose if the matter were to come to it on appeal as if the matter were in fact on appeal.

(6) In this section the term "sexual offence" means any of the offences created in Chapter XV of the Penal Code.

*[Cap. 16]*

*[Act No. 4 of 1998 s. 26]*

### 374. Discretion of court as to hearing parties

No party has any right to be heard either personally or by advocate before the High Court when exercising its power of revision; save that the 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 373.

### 375. Number of judges on revision

All proceedings of the High Court in the exercise of its revisional jurisdiction may be heard and any judgment or order thereon may be made or passed by one judge:

Provided that, when the court is composed of more than one judge and is equally divided in opinion, the sentence or order of the subordinate court shall be upheld.

### 376. High Court order to be certified to lower court

Where a case is revised by the High Court it shall certify its decision or order to the court by which the sentence or order so revised was recorded or passed, and the court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision certified and, if necessary, the record shall be amended in accordance therewith.

*[Cap. 4 s. 8]*

## *(c) Appeals by Director of Public Prosecutions*

### 377. Interpretation

In the following section of this Part unless the context otherwise requires—

"**Director of Public Prosecutions**" includes any officer subordinate to him acting in accordance with his general or special instructions;

"**respondent**" means the person who was the accused in the proceedings to which the appeal under section 378 relates and who may be affected by any order of the High Court on such appeal.

### 378. Appeals by Director of Public Prosecutions

(1) Where the Director of Public Prosecutions is dissatisfied with an acquittal, finding, sentence or order made or passed by a subordinate court, other than a subordinate court exercising its extended powers by virtue of an order made under section 173 of this Act, he may appeal to the High Court.

(2) An appeal to the High Court under this section may be on a matter of fact as well as on a matter of law.

(3) Notwithstanding the provisions of subsection (1) and (2), no appeal shall lie against or be made in respect of any preliminary or interlocutory decision or order of a subordinate court unless such decision or order has the effect of finally determining the criminal charge.

*[Act No. 25 of 2002 Sch.]*

### 379. Limitation

(1) Subject to subsection (2), no appeal under section 378 shall be entertained unless the Director of Public Prosecutions or a person acting under his instructions—

(a) has given notice of his intention to appeal to the subordinate court within thirty days of the acquittal, finding, sentence or order against which he wishes to appeal and the notice of appeal shall institute the appeal; and

(b) has lodged his petition of appeal within forty five days from the date of such acquittal, finding, sentence or order; save that in computing the said period of forty five days the time requisite for obtaining a copy of the proceedings, judgment or order appealed against or of the record of proceedings in the case shall be excluded.

(2) The High Court may, for good cause, admit an appeal notwithstanding that the periods of limitation prescribed in this section have elapsed.

*[Acts Nos. 5 of 1988 s. 11; 10 of 1989 s. 2; 9 of 2002 Sch.; 27 of 2008 s. 31]*

### 380. Petition of appeal

(1) Every appeal under section 378 shall be made in the form of a petition in writing presented by the Director of Public Prosecutions and shall, unless the High Court otherwise directs, be accompanied by a copy of the proceedings, judgment or order appealed against.

(2) The petition shall contain particulars of the matters of law or fact in regard to which the subordinate court appealed from is alleged to have erred.

*[Act No. 9 of 2002 Sch.]*

### 381. Notice of time and place of hearing

(1) Where a petition of appeal is lodged with the High Court in accordance with the provisions of section 380 the High Court shall cause notice to be given to the respondent or to his advocate, and every such notice shall state the time and place at which the appeal will be heard and shall be accompanied by a copy of the petition of appeal and a copy of the proceedings, judgment or order appealed against.

(2) Where notice of time, place and hearing cannot be served on the respondent because he cannot be found through the address obtained by the court under sections 228 and 275 the notice shall be brought to his attention through publication in a newspaper three times, and at the end of that service the court shall proceed with the appeal in the absence of the respondent.

*[Act No. 9 of 2002 Sch.]*

### 382. Director of Public Prosecutions may address court

(1) At the hearing of an appeal under section 378 the Director of Public Prosecutions may address the court in support of the particulars set out in the petition of appeal and the respondent or his advocate may then address the court and thereafter the court may invite the Director of Public Prosecutions to reply upon any matter of law or fact raised by the respondent or his advocate and the court may then, if it considers there is not sufficient ground for interfering, dismiss the appeal or may—

(a) in an appeal from acquittal—

(i) reverse the finding, convict the respondent of the offence with which he could have been convicted by the subordinate court, and either proceed to sentence him or remit the case to the subordinate court for passing the sentence;

(ii) order the respondent to be tried by a court of competent jurisdiction; or

(iii) direct the subordinate court to hold committal proceedings;

(b) in an appeal against sentence, increase or reduce the sentence or alter the nature of the sentence; or

(c) in an appeal from any other order, alter or reverse such order and, in any case, may make any amendment or any consequential or incidental order that may appear just and proper.

### 383. Non-attendance of parties

(1) Where, on the day fixed for the hearing of an appeal under sections 366 and 378 or any other date on which the hearing may be adjourned, the appellant or his advocate as the case may be, does not appear when the appeal is called on for hearing, the High Court may make an order that the appeal be dismissed.

(2) Where the appellant or his advocate as the case may be on an appeal brought under sections 366 and 378 does not appear and the High Court is satisfied that the respondent or his advocates as the case may be was duly served with the notice of hearing, the High Court may proceed to hear the appeal *ex parte* or may adjourn the hearing to another date and give notice thereof to the respondent.

(3) Where an appeal is dismissed under subsection (1) the appellant or his advocate, as the case may be, may apply to the court for re-admission of the appeal and, where he satisfies the court that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the court may re-admit the appeal.

(4) Where at the hearing of an appeal the respondent does not appear personally the High Court may make an order requiring the personal attendance of the respondent and, if the respondent fails to comply with such order, may issue a warrant for the arrest and production of the respondent before the High Court on a date and time specified in the warrant.

*[Act No. 3 of 2011 s. 23]*

### 384. Further evidence

(1) In dealing with an appeal under section 378 the High Court, if it thinks additional evidence is necessary, shall record its reasons and may either take such evidence itself or direct it to be taken by a subordinate court.

(2) Where the additional evidence is taken by a subordinate court that court shall certify the evidence to the High Court which shall thereupon proceed to dispose of the appeal.

(3) No additional evidence shall be taken under this subsection save in the presence of the respondent or his advocate and such evidence shall be taken as if it were evidence taken at a trial before a subordinate court.

*[Cap. 4 s. 8]*

### 385. Number of judges on appeal by Director of Public Prosecutions

The provisions of section 370 shall apply to appeals under section 378.

### 386. Withdrawal of appeal by Director of Public Prosecutions

(1) The Director of Public Prosecutions may at any time before the hearing withdraw an appeal by a written notice to the Registrar, and upon that notice being given the appeal shall be marked withdrawn.

(2) Where an appeal is withdrawn, the Registrar shall forthwith notify the respondent and the subordinate court in which that case originated.

(3) An appeal withdrawn under subsection (2), may be restored by leave of the court on the application by the Director of Public Prosecutions if the court is satisfied there are sufficient reasons that the appeal be heard.

*[Act No. 9 of 2002 Sch.]*

### 386A. Abatement of appeal on death of respondent

Every appeal under section 378 shall abate on the death of the respondent.

*[Act No. 9 of 2002 Sch.]*

## Part XI – Supplementary provisions

### *(a) Irregular proceedings*

### 387. Proceedings in wrong place

No finding, sentence or order of any criminal court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong region, district or other local area, unless it appears that such error has in fact occasioned a failure of justice.

### 388. Finding or sentence, when reversible by reason of error or omission in charge or other proceedings

(1) Subject to the provisions of section 387, no finding sentence or order made or passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or in any inquiry or other proceedings under this Act; save that where on appeal or revision, the court is satisfied that such error, omission or irregularity has in fact occasioned a failure of justice, the court may order a retrial or make such other order as it may consider just and equitable.

### 389. Distress not illegal nor distrainer a trespasser for defect or want of form in proceedings

No distress made under this Act shall be deemed unlawful, nor shall a person making it be deemed a trespasser on account of any defect or want of form in the summons, conviction, warrant of distress or other proceeding relating thereto.

### *(b) Directions in the nature of habeas corpus and writs*

### 390. Power to issue directions of nature of *habeas corpus*

(1) The High Court may, whenever it thinks fit, direct—

(a) that any person within the limits of Mainland Tanzania be brought up before the court to be dealt with according to law;

(b) that any person illegally or improperly detained in public or private custody within such limits be set at liberty;

(c) that any prisoner detained in any prison situate within such limits be brought before the court to be there examined as a witness in any matter pending or to be inquired into in such court;

(d) that any prisoner detained as aforesaid be brought before a court-martial or any commissioner acting under the authority or any commission from the President for trial or be examined touching any matter pending before such court-martial or commissioner 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 High Court may from time to time make rules to regulate the procedure in cases under this section.

### 391. Power of High Court to issue writs

The High Court may in the exercise of its criminal jurisdiction, issue any writ which may be issued by such court.

### *(c) Miscellaneous*

### 392. Persons before whom affidavits may be sworn

Affidavits and affirmation to be used before the High Court may be sworn and affirmed before a judge of the High Court or any magistrate or the Registrar of Deputy Registrar of the High Court or any justice of the peace or commissioner for oaths.

### 392A. Applications

(1) Every application under this Act shall be made before a court either orally or in written form.

(2) An application made in written form shall be by way of a chamber summons supported by affidavit.

(3) The applicant shall —

(a) in case of written applications, serve the respondent with a copy of application within thirty days from the date the application was filed;

(b) in case of oral application, the respondent shall reply to the application within the time as the court may determine.

*[Act No. 3 of 2001 s. 24]*

### 393. Copies of proceedings

Where any person affected by any judgment or order passed in any proceedings under this Act desires to have a copy of the judgment or order or any deposition or other part of the record he shall, on applying for such copy, be furnished therewith; provided, as respects any deposition or part of the record other than the judgment or order, he pays for it unless the court for some special reason thinks fit to furnish it free of cost.

*[Cap. 4 s. 8]*

### 394. Forms

Such forms as the High Court may from time to time approve, with such variations as the circumstances of each may require, may be used for the respective sufficient.

### 395. Expenses of assessors, witnesses, etc.

Subject to any rules which may be made by the Minister, any court may order payment on the part of Government of the reasonable expenses of any assessor, complainant or witness attending before the court for the purposes of an inquiry, trial or other proceedings under this Act.

### 395A. Sexual offender's indices

For the purpose of enforcement of sexual offences prescribed under the Penal Code, the Minister may make rules for keeping computerised DNA database system containing indices of DNA profiles for a crime scene index, missing or unidentified sexual offenders' index, unidentified deceased persons' index and any other statistical indices which may be necessary within the circumstances.

*[Cap. 16; Act No. 2 of 2010 s. 7]*

### 396. Repeal of Act No. 5 of 1945

Repeals the Criminal Procedure Code with savings.

## First Schedule (Sections 2, 164, 165 and 225)

| | |
|---|---|
| Acts Nos.<br>2 of 1972;<br>3 of 1976;<br>4 of 2004;<br>11 of 2010;<br>3 of 2011 | |

| | |
|---|---|

## Part A – Offences under the Penal Code

| | |
|---|---|
| Cap. 16 | *Explanatory Note.* - The entries in the second and fourth columns of this Schedule, headed respectively "Offence" and "Punishment under the Penal Code", are not intended as definitions of the offences and punishments described in the several corresponding sections of the Penal Code or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column. |

### *Chapter V Parties to offences*

| 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|
| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
| 22... | Aiding, abetting, counselling, or procuring the commission of an offence | May arrest without warrant if arrest for the offence aided, abetted, counselled, or procured may be made without warrant but not otherwise. | Same punishment as for the offence aided, abetted, counselled or procured. | Any court by which the offence aided, abetted, counselled, or procured would be triable. |

## Division I. Offences against public order

### *Chapter VII Treason and other offences against the Republic*

| 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|
| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |

| | | | | |
|---|---|---|---|---|
| 39... | Treason | May arrest without warrant. | Death. | |
| 40... | Treasonable felony. | do. | do. | |
| 41... | Misprision of treason. | do. | Imprisonment for life. | |
| 43... | Promoting warlike undertaking. | do. | do. | |
| 45... | Inciting to mutiny. | do. | do. | |
| 46... | Aiding in acts of mutiny. | Shall not arrest without warrant. | Imprisonment for two years. | A Subordinate court. |
| 47... | Inducing desertion. | do. | Imprisonment for six months. | do. |
| 48(a) | Aiding prisoner of war to escape. | May arrest without warrant. | Imprisonment for life. | do. |
| (b)... | Permitting prisoners of war to escape. | Shall not arrest without warrant. | Imprisonment for two years. | do. |
| 59... | Administering or taking oath to commit capital offence. | May arrest without warrant | Imprisonment for life. | A subordinate court. |
| 60... | Administering or taking other unlawful oaths. | do. | Imprisonment for seven years. | do. |
| 62(1).. | Unlawful drilling. | do. | do. | do. |
| (2) | Being unlawfully drilled | do. | Imprisonment for two years. | |
| 63 B... | Raising discontent and ill will for unlawful purposes. | Shall not arrest without warrant. | Imprisonment for twelve months. | |

***Chapter VIII Offences affecting relations with foreign states and external tranquillity***

| 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|
| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. Also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
| 65... | Foreign enlistment. | Shall not arrest without warrant | Imprisonment for two years. | A subordinate court. |
| 66... | Piracy. | May arrest without warrant. | Life imprisonment | High Court. |

### *Chapter IX Unlawful assemblies, riots, and other offences against public tranquility*

| 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|
| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
| 74... | Unlawful assembly. | May arrest without warrant. | Imprisonment for one year. | A Subordinate court. |
| 74... | Riot. | do. | Imprisonment for two years. | do. |
| 79... | Rioting after proclamation. | do. | Imprisonment for five years. | do. |
| 80... | Obstruction proclamation | do. | Imprisonment for five or ten years. | do. |
| 81... | Rioters destroying buildings. | do. | Imprisonment for life. | |
| 82... | Rioters injuring buildings | do. | Imprisonment for seven years. | do. |

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|---|---|---|---|---|
| 83... | Riotously interfering with railway, etc. | May arrest without warrant. | Imprisonment for two years. | A Subordinate court. |
| 84... | Going armed in public. | do. | do. | do. |
| 85... | Forcible entry. | do. | do. | do. |
| 86... | Forcible detainer. | do. | do. | do. |
| 87... | Committing affray. | do. | Imprisonment for six months. | do. |
| 88... | Challenging to fight a duel. | Shall not arrest without warrant. | Imprisonment for two years. | do. |
| 89(1).. | Abusive language and brawling. | May arrest without warrant. | Imprisonment for six months | do. |
| 89(2).. | Threatening violence. | do. | Imprisonment for one year. | do. |
| | If the offence is committed in the night. | do. | Imprisonment for two years. | do. |
| 89A... | Watching or besetting. | do. | Imprisonment for six months. | A Subordinate court. |
| 89B... | Intimidation | Shall not arrest without warrant. | Imprisonment for one year. | do. |
| 89C... | Dissuading persons from assisting with self-help schemes. | Shall not arrest without warrant. | Fine of one thousand shillings or imprisonment for six months or both. | |
| 90... | Assembling for purpose of smuggling. | do. | Imprisonment for two years. | do. |

## Division II Offences against the administration of lawful authority

### *Chapter X Abuse of office*

| 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|
| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
| 94… | Officer discharging duties in respect of property in which he has a special interest | Shall not arrest without warrant. | Imprisonment for one year. | A Subordinate court. |
| 95… | False claims by officials. | do. | Imprisonment for two years. | do. |
| | Abuse of office. | do. | do. | do. |
| 96… | Abuse of office (if for purposes of gain). | do. | Imprisonment for three years | do. |
| 97… | False certificates by public officers. | do. | Imprisonment for two years. | do. |
| 98… | Unauthorised administration of oaths. | do. | Imprisonment for one year. | do. |
| 99… | False assumption of authority. | do. | Imprisonment for two years. | do. |
| 100… | Personating public officers. | May arrest without warrant. | do. | do. |
| 101 | Threat of injury to persons employed in the public service. | Shall not arrest without warrant. | do. | do. |

***Chapter XI Offences relating to the administration of justice***

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 103... | False statements by interpreters. | Shall not arrest without warrant. | The same punishment as for perjury | A Subordinate court. |
| 104... | Perjury or subornation of perjury. | do. | Imprisonment for seven years. | do. |
| 106... | Fabricating evidence. | do. | do. | do. |
| 107... | False swearing | do. | Imprisonment for two years. | do. |
| 108... | Deceiving witnesses. | do. | do. | do. |
| 109... | Destroying evidence. | do. | do. | do. |
| 110... | Conspiracy to defeat justice and interference with witnesses | do. | Imprisonment for five years. | do. |
| 111... | Compounding offences. | do. | Imprisonment for two years. | do. |
| 112.... | Compounding penal actions. | do. | do. | do. |
| 113... | Advertising for stolen property | do. | do. | do. |
| 114(1). | Contempt of court. | do. | Imprisonment for six months or a fine of fifty thousand shillings. | do. |

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|---|---|---|---|---|
| 114(2). | Contempt of court (if committed in view of court) | May arrest without warrant. | Fine of four hundred shillings or in default of payment imprisonment for one month. | do. |
| 114A... | Preventing or obstructing service or execution of process. | May arrest without warrant | Imprisonment for one year. | A Subordinate court. |

### *Chapter XII Rescues, escapes, and obstructing officers of court of law*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 115... | Rescue– | | | |
| (a).. | If person rescued is under sentence of death or imprisonment for life or charged with offence punishable with death or imprisonment for life; | May arrest without warrant. | Imprisonment for life. | |
| (b).. | If person rescued is imprisoned on a charge or under sentence for<br>any other offence; | do. | Imprisonment for seven years. | A subordinate court. |
| (c).. | In any other case. | do. | Imprisonment for two years. | do. |
| 116... | Escape. | do. | do. | do. |
| 116A(1) | Absence from extramural employment. | do. | Imprisonment for two years or a fine or both. | do. |

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|---|---|---|---|---|
| 117... | Aiding prisoners to escape. | do. | Imprisonment for seven years. | do. |
| 118... | Removal etc. of property under lawful seizure. | do. | Imprisonment for three years. | do. |

### *Chapter XIII Miscellaneous offences against public authority*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 120... | Frauds and breaches of trust by public officers. | Shall not arrest without warrant | Imprisonment for seven years. | do. |
| 121... | Neglect of official duty. | do. | do. | do. |
| 122... | False information to persons employed in the public service. | do. | Imprisonment for six months or fine of one thousand shillings. | do. |
| 123... | Disobedience of statutory duty. | do. | Imprisonment for two years. | do. |
| 124... | Disobedience of lawful orders. | do. | do. | do. |

## Division III. Offences injurious to the public in general

### *Chapter XIV Offences relating to religion*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 125... | Insult to religion of any class. | May arrest without warrant. | Imprisonment for two years. | A Subordinate court. |

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|---|---|---|---|---|
| 126... | Disturbing religious assemblies. | do. | do. | do. |
| 127... | Trespassing on burial places. | do. | do. | do. |
| 128... | Hindering burial of dead body, etc. | do. | do. | do. |
| 129... | Uttering words with intent to wound religious feelings. | Shall not arrest without warrant. | Imprisonment for one year. | do. |

### *Chapter XV Offences against morality*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 131... | Rape. | May arrest without warrant. | Imprisonment for life with or without corporal punishment. | A Subordinate court. |
| 132... | Attempted rape. | do. | Imprisonment for a term of not less than thirty years with or<br>without corporal punishment. | do. |
| 133... | Abduction. | do. | Imprisonment for seven years | do. |
| 134... | Abduction of girl under sixteen. | do. | Imprisonment for two years. | do. |

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|---|---|---|---|---|
| 135(1) | Sexual assault on persons and indecent assault on women | do. | Imprisonment for a period not exceeding five years or a fine not exceeding three hundred thousand shillings. | do. |
| (3)... | Insulting the modesty of a woman. | do. | Imprisonment for one year. | do. |
| 136(1) | Defilement of girl under twelve. | do. | Imprisonment for life, with or without corporal punishment. | do. |
| (2)... | Attempted defilement of girl under twelve. | do. | Imprisonment for fourteen years with or without corporal punishment. | do. |
| 137... | Defilement of an idiot or imbecile. | do. | do. | do. |
| 138(1) | Defilement by husband of wife under twelve. | do. | Imprisonment for five years. | |
| (2)... | Parent or guardian parting with possession of girl under twelve in order that she may be carnally known by her husband. | May arrest without warrant. | Imprisonment for two years. | A Subordinate court. |
| 138A | Acts of gross indecency between persons | do. | Imprisonment for a term not less than ten years, corporal punishment and compensation. | do. |
| 138B | Sexual exploitation of Children | do. | Imprisonment for a term of not less than five years and not exceeding twenty years. | do. |

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|---|---|---|---|---|
| 138C | Grave Sexual abuse | do. | Imprisonment for a term of not less than twenty years and not<br>exceeding thirty years. | do. |
| 138D | Sexual harassment | do. | Imprisonment for a term not exceeding five years or a fine not<br>exceeding two hundred thousand shillings or both fine and imprisonment and<br>compensation. | do. |
| 139... | Procuration for prostitution. | May arrest without warrant. | Imprisonment for a term of not less than ten years and not<br>exceeding twenty years or to a fine of not less than one hundred thousand<br>shillings and not exceeding three hundred thousand shillings. | do. |
| 139A | Trafficking of persons | do. | Imprisonment for a term of not less than ten years and not<br>exceeding twenty years or to a fine of not less than hundred thousand<br>shillings and not exceeding three hundred thousand shillings. | do. |

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|---|---|---|---|---|
| (3)... | Procuring girl under twelve in order that she may be carnally<br>known by her husband. | do. | do. | do. |
| 140... | Procuring defilement | do. | Imprisonment for a term of not less than ten years and not<br>exceeding twenty years or to a fine of not less than hundred thousand<br>shillings and not exceeding three hundred thousand shillings or to both and<br>compensation. | do. |
| 141... | Householder permitting defilement of girl under twelve on his<br>premises. | do. | Imprisonment for five years. | do. |
| 142... | Householder permitting defilement of girl under sixteen on his premises. | do. | Imprisonment for two years. | do. |
| 143... | Detention with unlawful intent or in brothel. | do. | do. | do. |
| 145... | Male person living on earnings of prostitution or persistently<br>soliciting. | do. | do. | do. |

| | | | | |
|---|---|---|---|---|
| 146... | Woman aiding etc. for gain prostitution of another woman. | do. | do. | do. |
| 148... | Keeping a brothel. | do. | do. | do. |
| 149... | Conspiracy to defile. | do. | Imprisonment for three years. | do. |
| 150... | Attempt to procure abortion. | do. | Imprisonment for fourteen years. | do. |
| 151... | Woman attempting to procure her own abortion. | do. | Imprisonment for seven years. | do. |
| 152... | Supplying drugs or instruments to procure abortion. | do. | Imprisonment for three years. | do. |
| 154(1)... | Unnatural offences. | do. | Imprisonment for life and any case imprisonment for a term of not<br>less than thirty years. | do. |
| (2)... | do. | do. | Imprisonment for life. | do. |
| 155... | Attempt to commit unnatural offence. | do. | Imprisonment for a term not less than thirty years. | do. |
| 156 (1)... | Indecent assault of boy under fourteen. | do. | Imprisonment for life. | do. |
| (2)... | do. | do. | Imprisonment for fifteen years. | do. |
| 157... | Indecent practices between males. | do. | Imprisonment for five years. | do. |

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|---|---|---|---|---|
| 158(1)(a) | Incest by males(if a female is less than eighteen years). | do. | imprisonment for a term of not less than thirty years. | A subordinate court. |
| (1)(b)... | Incest by males (if a female is eighteen years and above). | do. | Imprisonment for term not less than twenty years or to a fine not<br>exceeding three hundred shillings or to both the fine and imprisonment and<br>compensation. | do. |
| 160... | Incest by females. | do. | Imprisonment for life or imprisonment for a term not less than<br>thirty years and compensation. | A subordinate court. |

### *Chapter XVI Offences relating to marriage and domestic obligations*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 163... | Fraudulent pretence of marriage. | May arrest without warrant. | Imprisonment for ten years. | do. |
| 165... | Dishonestly or fraudulently going through ceremony of marriage. | Imprisonment for five years. | | |
| 166... | Desertion of children. | Shall not arrest without warrant. | Imprisonment for two years. | |
| 167... | Neglecting to provide food, etc., for children. | do. | do. | A Subordinate court. |

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|---|---|---|---|---|
| 168... | Master not providing for servants or apprentices. | do. | do. | do. |
| 169... | Child stealing. | May arrest without warrant. | Imprisonment for seven years. | do |
| 169A. | Cruelty to children. | do. | Imprisonment for a term of not less than five years and not<br>exceeding fifteen years. | do. |

### *Chapter XVII Nuisances and offences against health and convenience*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 170... | Committing common nuisance. | Shall not arrest without warrant. | Imprisonment for one year. | A Subordinate court. |
| 171(3). | Keeping common gaming house. | do. | Imprisonment for two years. | do. |
| (4)... | Being found in common gaming house. | do. | Fine of one hundred shillings for first offence, and for each<br>subsequent offence a fine of four hundred shillings or imprisonment for three<br>months or both. | do. |
| 171A | Pyramid and other similar offences. | Shall not arrest without warrant. | Fine not exceeding five million shillings or imprisonment for a<br>term not exceeding five years. | A subordinate court. |

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|---|---|---|---|---|
| 171B | Prohibition against inducement. | Shall not arrest without warrant. | Fine not exceeding five million shillings or imprisonment for a term not exceeding five years. | A subordinate court. |
| 172... | Keeping or permitting the keeping of a common betting house. do. | do. | Imprisonment for one year. | do. |
| 173B.. | Chain letters. | do. | Fine of four thousand shillings or imprisonment for six months or both. | do. |
| 175... | Trafficking in obscene publications. | May arrest without warrant. | Imprisonment for two years or a fine of two thousand shillings. | do. |
| 176... | Being an idle or disorderly person. | do. | Imprisonment for three months or a fine not exceeding five hundred shillings or both. | do. |
| 176A... | Harbouring common prostitutes. | Shall not arrest without warrant. | Fine of five hundred shillings for first offence, and of one thousand shillings for subsequent offences. | do. |
| 177... | Being a rogue or vagabond. | May arrest without warrant. | Imprisonment for three months for first offence and for each subsequent offence imprisonment for one year. | A Subordinate court. |

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|---|---|---|---|---|
| 177A... | Failure to account for money collected by public subscription. | do. | Imprisonment for two years for first offence. Imprisonment for three years for subsequent offence. | do. |
| 178(1) | Wearing uniform without authority. | do. | Imprisonment for one month or a fine of two hundred shillings. | A Subordinate court. |
| (2)... | Bringing contempt on uniform. | do. | Imprisonment for three months or a fine of four hundred shillings. | do. |
| (3)... | Importing or selling uniform without authority. | do. | Imprisonment for six months or a fine of two thousand shillings. | do. |
| 179... | Doing any act likely to spread infection of dangerous disease. | do. | Imprisonment for two years. | do. |
| 180... | Adulteration of food or drink intended for sale. | Shall not arrest without warrant. | do. | do. |
| 181... | Selling, or offering or exposing for sale, noxious food or drink. | do. | do. | do. |
| 182... | Adulteration of drugs intended for sale. | do. | do. | do. |
| 183... | Selling adulterated drugs. | do. | do. | do. |
| 184... | Fouling water of public spring or reservoir. | May arrest without warrant. | do. | do. |

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|---|---|---|---|---|
| 185... | Making the atmosphere noxious to health. | Shall not arrest without warrant. | do. | do. |
| 186... | Carrying on offensive trade. | do. | Imprisonment for one year. | do. |

## Division IV. Offences against the person

### *Chapter XX Murder and manslaughter*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 197... | Murder. | May arrest without warrant. | Death. | |
| | Murder (if woman convicted is pregnant). | do. | Imprisonment for life. | |
| 198... | Manslaughter. | do. | do. | |
| 199... | Infanticide | do. | do. | |

### *Chapter XXI Offences connected with murder and suicide*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 213... | Being accessory after the fact to murder. | do. | Imprisonment for seven years. | |
| 214... | Sending written threat to murder. | do. | do. | A subordinate court |

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|---|---|---|---|---|
| 215... | Conspiracy to murder. | do. | Imprisonment for fourteen years. | |
| 216... | Aiding suicide. | do. | Imprisonment for life. | |
| 217... | Attempted suicide. | do. | Imprisonment for two years. | A Subordinate court. |
| 218... | Concealing the birth of a child. | do. | do. | do. |
| 219... | Child destruction. | do. | Imprisonment for life. | |

### *Chapter XXIII Offences endangering life or health*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 220... | Disabling in order to commit offence. | May arrest without warrant. | Imprisonment for life. | |
| 221... | Stupefying in order to commit felony or misdemeanour | do. | Imprisonment for life. | |
| 222... | | Acts intended to cause grievous harm or prevent arrest. | do. | do. |
| 222A | Possession of human being. | May arrest without warrant. | Imprisonment for a term not exceeding thirty years. | do. |
| 223... | Preventing escape from wreck. | do. | do. | |

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|---|---|---|---|---|
| 224(1) | Intentionally endangering safety of persons travelling by railway. | do. | Imprisonment for life. | |
| (2)... | Endangering without intent. | do. | Imprisonment for two years. | A Subordinate court |
| 225... | Doing grievous harm. | do. | Imprisonment for seven years. | A Subordinate court. |
| 226... | Attempting to injure by explosive substances. | do. | Imprisonment for fourteen years. | |
| 227... | Administering poison with intent to harm. | do. | do. | |
| 228... | Wounding and similar acts. | do. | Imprisonment for three years. | A Subordinate court. |
| 229... | Failing to provide necessaries of life. | do | do | do |

### *Chapter XXIV Criminal recklessness and negligence*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 233... | Rash and negligent acts. | May arrest without warrant. | Imprisonment for two years. | A Subordinate court. |
| 234... | Other negligent acts causing harm. | do. | Imprisonment for six months. | do. |
| 235... | Handling of poisonous substances in negligent manner. | Shall not arrest without warrant. | Imprisonment for six months or a fine of two thousand shillings. | do. |

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|---|---|---|---|---|
| 237... | Exhibiting false light, mark, or buoy. | May arrest without warrant. | Imprisonment for seven years. | A Subordinate court. |
| 238... | Conveying person by water for hire in unsafe or overloaded vessel. | do. | Imprisonment for two years. | do. |
| 239... | Causing danger or obstruction in public way or line of navigation. | Shall not arrest without warrant. | Fine. | do. |

### *Chapter XXV Assaults*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 240... | Common assault. | Shall not arrest without warrant. | Imprisonment for one year. | A Subordinate court. |
| 241... | Assault occasioning actual bodily harm. | May arrest without warrant. | Imprisonment for five years. | do. |
| 242... | Assaulting person protecting wreck. | do. | Imprisonment for seven years. | do. |
| 243... | Various assaults. | do. | Imprisonment for five years. | do. |

### *Chapter XXVI Offences against liberty*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 247... | Kidnapping. | May arrest without warrant. | Imprisonment for seven years. | A subordinate court. |

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|---|---|---|---|---|
| 248... | Kidnapping or abducting in order to murder. | do. | Imprisonment for ten years. | |
| 249... | Kidnapping or abducting with intent to confine a person. | do. | Imprisonment for seven years. | A Subordinate court. |
| 250... | Kidnapping or abducting in order to subject person to grievous harm, slavery, etc. | do. | Imprisonment for ten years. | |
| 251... | Wrongfully concealing or keeping in confinement a kidnapped or abducted person. | do. | Same punishment as for kidnapping or abduction. | |
| 252... | Kidnapping or abducting child under fourteen with intent to steal from its person. | do. | Imprisonment for seven years | A Subordinate court |
| 253... | Punishment for wrongful confinement. | do. | Imprisonment for one year or a fine of three thousand shillings. | |
| 254... | Buying or disposing of any person as a slave. | do. | Imprisonment for seven years. | |
| 255... | Habitually dealing in slaves. | do. | Imprisonment for ten years. | |
| 256... | Unlawful compulsory labour. | do. | Imprisonment for two years. | A Subordinate court. |

## Division V Offences relating to property

### *Chapter XXVII Theft*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 258... | Theft. | May arrest without warrant. | Imprisonment for three years. | A Subordinate court. |
| 266... | Stealing wills. | do. | Imprisonment for ten years. | do. |
| 268... | Stealing certain animals. | do. | Imprisonment for fifteen years. | do. |
| 269... | Stealing from the person, in a dwelling-house, in transit, etc. | do. | Imprisonment for ten years. | do. |
| 270... | Stealing by persons in the public service. | do. | Imprisonment for fourteen years | |
| 271... | Stealing by clerks and servants. | do. | Imprisonment for ten years. | do. |
| 272... | Stealing by directors or officers of companies. | do. | Imprisonment for fourteen years. | do. |
| 273... | Stealing by agents, etc. | do. | Imprisonment for ten years. | do. |
| 274... | Stealing by tenants or lodgers. | do. | Imprisonment for seven years. | do. |
| 275... | Stealing after previous conviction. | do. | Imprisonment for fourteen years. | do. |

***Chapter XXVIII Offences allied to stealing***

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 276... | Concealing registers. | May arrest without warrant. | Imprisonment for ten years. | |
| 277... | Concealing wills. | do. | do. | |
| 278... | Concealing deeds. | do. | Imprisonment for three years. | |
| 279... | Killing animals with intent to steal. | do. | Same punishment as if the animal had been stolen. | Any court by which the theft of the animal would be triable. |
| 281... | Severing with intent to steal. | do. | Same punishment as if the thing had been stolen. | Any court by which the theft of the thing would be triable. |
| 280... | Fraudulent disposition of mortgaged goods. | do. | Imprisonment for two years. | A subordinate court. |
| 282... | Fraudulently dealing with ore or minerals in mines. | do. | Imprisonment for five years. | do. |
| 283... | Fraudulent appropriation of mechanical or electrical power. | do. | do. | do. |
| 284... | Conversion not amounting to theft. | do. | Imprisonment for six months or a fine of one thousand shillings. | do. |

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|---|---|---|---|---|
| 284A... | Loss occasioned to Government or parastatal organisation by employees. | Shall not arrest without warrant. | Fine not exceeding five hundred thousand shillings or imprisonment for two years. | A Subordinate court. |

### *Chapter XXIX Robbery and extortion*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 286... | Robbery. | May arrest without warrant. | Imprisonment for twenty years. | A Subordinate court. |
| 286... | Robbery with violence. | do. | Imprisonment for life, with or without corporal punishment. | do. |
| 287... | Attempted robbery. | do. | Imprisonment for not less than seven years and not exceeding twenty years. | do. |
| 287... | Attempted robbery with violence. | do. | Imprisonment for life, or imprisonment for not less than fifteen years with corporal punishment. | do. |
| 288... | Assault with intent to steal. | do. | Imprisonment for not less than five years nor more than fourteen years with corporal punishments. | do. |
| 289... | Demanding property by written threats. | do. | Imprisonment for fourteen years. | do. |

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|---|---|---|---|---|
| 290... | Threatening with intent to extort. | do. | do. | do. |
| 290... | In certain specified cases and in any other case. | do. | Imprisonment for three years. | A Subordinate court. |
| 291... | Procuring execution of deeds etc. by threats. | do. | Imprisonment for fourteen years. | do. |
| 292... | Demanding property with menace with intent to steal. | do. | Imprisonment for five years. | A Subordinate court. |

### *Chapter XXX Burglary, housebreakings, and similar offences*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 294 (1) | Housebreaking. | May arrest without warrant. | Imprisonment for fourteen years. | A Subordinate court. |
| (2) | Burglary. | do. | Imprisonment for twenty years. | do. |
| 295... | Entering dwelling-house with intent to commit felony | do. | Imprisonment for ten years. | do. |
| 295... | If offence is committed in the night. | do. | Imprisonment for fourteen years. | do. |
| 296... | Breaking into building and committing an offence. | do. | Imprisonment for ten years. | do. |
| 297... | Breaking into building with intent to commit an offence | do. | Imprisonment for five years. | do. |

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|---|---|---|---|---|
| 298… | Being found armed, etc., with intent to commit an offence. | do. | Imprisonment for five years. | do. |
| 298… | If offender has been previously convicted of an offence relating to property. | do. | Imprisonment for fourteen years. | do. |
| 299… | Criminal trespass. | do. | Imprisonment for three months. | do. |
| 299… | If the property upon which offence is committed is a building used as human dwelling or as a place of worship or as a place for custody of property. | do. | Imprisonment for one year. | do. |

### *Chapter XXXI False pretences*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 302… | Obtaining property by false pretence. | May arrest without warrant. | Imprisonment for seven years. | A Subordinate court. |
| 303… | Obtaining execution of a security by false pretence. | do. | do. | do. |
| 304… | Cheating | do. | Imprisonment for three years. | do. |

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|---|---|---|---|---|
| 305... | Obtaining credit, etc., by false pretence. | do. | Imprisonment for five years | |
| 306... | Conspiracy to defraud. | do. | Imprisonment for five years. | A Subordinate court. |
| 307... | Frauds on sale or mortgage of property. | do. | Imprisonment for five years. | do. |
| 308... | Pretending to tell fortunes. | do. | Imprisonment for two years. | do. |
| 309... | Obtaining registration, etc., by false pretence. | do. | Imprisonment for two years. | do. |
| 310... | False declaration for passport. | Shall not arrest without warrant. | Imprisonment for two years. | |

### *Chapter XXXII Receiving property stolen or unlawfully obtained and like offences*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 311... | Receiving or retaining property stolen or unlawfully obtained. | May arrest without warrant. | Imprisonment for ten years. | A Subordinate court. |
| 312... | Failing to account for possession of property suspected to be<br>stolen or unlawfully obtained. | do. | Imprisonment for three years. | A Subordinate court. |
| 312A(2) | Unlawful possession of Government and Railway stores. | do. | Imprisonment for two years. | do. |

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|---|---|---|---|---|
| (3)... | Unlawful possession of service stores. | do. | do. | do. |
| 313... | Receiving goods stolen outside Tanzania. | do. | Imprisonment for seven years. | do. |

### *Chapter XXXIII Frauds by trustees and persons in a position of trust, and false accounting*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 314... | Fraudulently disposing of trust property. | May arrest without warrant. | Imprisonment for seven years. | A Subordinate court. |
| 315... | Directors and officers of corporations fraudulently appropriating<br>property, or keeping fraudulent accounts, or falsifying books or accounts. | do. | Imprisonment for fourteen years. | do. |
| 316... | False statements by officials of corporations. | do. | Imprisonment for seven years. | do. |
| 317... | Fraudulent false accounting by clerk or servant. | do. | Imprisonment for fourteen years. | do. |
| 318... | False accounting by public officer. | do. | Imprisonment for seven years. | do. |

## Division VI. Malicious injury to property

### *Chapter XXXIV Offences causing injury to property*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 319... | Arson. | May arrest without warrant. | Imprisonment for life. | A Subordinate court. |
| 320... | Attempt to commit arson. | do. | Imprisonment for fourteen years. | do. |
| 321... | Setting fire to crops or growing plants. | do. | Imprisonment for fourteen years. | do. |
| 322... | Attempting to set fire to crops or growing plants. | do. | Imprisonment for seven years. | A Subordinate court. |
| 323... | Casting away a vessel. | do. | Imprisonment for fourteen years. | |
| 324... | Attempt to cast away a vessel. | do. | Imprisonment for seven years. | A Subordinate court. |
| 325... | Injuring animals. | do. | Imprisonment for two years. | do. |
| 326(1) | Destroying or damaging property in general | do. | Imprisonment for seven years. | do. |
| (2)... | Destroying or damaging dwelling house or a vessel with explosives | do. | Imprisonment for life. | |
| (3) | Destroying or damaging river bank or wall or navigation works, or<br>bridges. | do. | Imprisonment for life. | |

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|---|---|---|---|---|
| 3(c) | Destroying or damaging Tanzania-Zambia pipeline or property thereof | do. | A Subordinate court | |
| (4)... | Destroying or damaging wills or registers. | do. | Imprisonment for fourteen years. | A Subordinate court. |
| (5)... | Destroying or damaging wrecks. | do. | Imprisonment for seven years. | do. |
| (6)... | Destroying or damaging railways. | do. | Imprisonment for fourteen years. | do. |
| (7)... | Destroying or damaging property used for supply of electricity. | May arrest without warrant. | Imprisonment for fourteen years if offence likely to result in danger to human life, otherwise imprisonment for seven years. | A Subordinate court. |
| (8)... | Destroying or damaging property of special value. | do. | Imprisonment for seven years. | do. |
| (9)... | Destroying or damaging deeds or records. | do. | do. | do. |
| 327... | Attempt to destroy or damage property by use of explosives. | do. | Imprisonment for fourteen years. | do. |
| 328... | Communicating infectious disease to animals. | do. | Imprisonment for seven years. | do. |
| 329... | Removing boundary marks with intent to defraud. | do. | Imprisonment for three years. | A Subordinate court |

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|---|---|---|---|---|
| 331... | Injuring or obstructing railway works, etc. | do. | Imprisonment for three months or a fine of four hundred shillings. | A Subordinate court. |
| 332... | Threatening to burn any building, etc. or to kill or wound any cattle. | do | Imprisonment for seven years. | A Subordinate court. |
| 332A... | Defacing bank/ notes. | Shall not arrest without warrant. | Fine of five thousand shillings for each note defaced or in default to imprisonment for one year. | A Subordinate court. |
| 332B | Kite flying offences. | Shall not arrest without warrant. | Imprisonment For a term not exceeding ten years. | A subordinate court. |

## Division VII. Forgery, coining, counterfeiting and similar offences

### *Chapter XXXV Punishments for forgery*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 337... | Forgery (where no special punishment is provided). | May arrest without warrant. | Imprisonment for seven years. | A Subordinate court. |
| 338... | Forgery of a will document of title, security, cheque, etc. | do. | Imprisonment for life. | do. |
| 339... | Forgery of judicial or official document. | do. | Imprisonment for seven years. | do. |

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| 340... | Forgery, etc., of stamps. | do. | do. | do. |
| 341... | Making or having in possession paper or implements for forgery of currency banknotes, etc. | do. | Imprisonment for seven years. | do. |
| 342... | Uttering false document. | do. | Same punishment as for forgery of document. | Any court by which forgery of document would be triable. |
| 343... | Uttering cancelled or exhausted document. | do. | do. | do. |
| 344... | Procuring execution of document by false pretence. | do. | do. | do. |
| 345... | Obliterating or altering the crossing on a cheque. | do. | Imprisonment for seven years. | do. |
| 346... | Making or executing document without authority. | do. | do. | do. |
| 347... | Demanding property upon forged testamentary instrument. | do. | Same punishment as for forgery of instrument. | Any court by which forgery of instrument would be triable. |
| 348... | Purchasing or receiving forged bank-note. | do. | Imprisonment for seven years. | A Subordinate court. |

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| 349... | Falsifying warrant for money payable under public authority. | do. | do. | do. |
| 350... | Permitting falsification of register or record. | do. | do. | do. |
| 351... | Sending false certificate of marriage to registrar. | do. | do. | do. |
| 352... | Making false statement for insertion in register of births, deaths, or marriages. | do. | Imprisonment for three years. | A Subordinate court. |
| 352A... | Wrongful issue of notes. | do. | Imprisonment for five years. | A Subordinate court. |

### *Chapter XXXVI Offences relating to coin*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 354... | Counterfeiting coin. | May arrest without warrant. | Imprisonment for life. | |
| 355... | Making preparations for coining. | do. | do. | |
| 356... | Clipping coin. | do. | Imprisonment for seven years. | A Subordinate court |
| 359... | Being in possession of clippings. | do. | do. | do. |

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| 360... | Uttering counterfeit coin. | do. | Imprisonment for two years. | do. |
| 361... | Repeated uttering of counterfeit coin. | do. | Imprisonment for three years. | do. |
| 362... | Uttering piece of metal as coin. | do. | Imprisonment for one year. | do. |
| 363... | Exporting counterfeit coin. | do. | Imprisonment for two years | do. |

### *Chapter XXXVII Counterfeit stamps*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 365... | Being in possession, etc., of die or paper used for purpose of<br>making revenue stamps. | May arrest without warrant. | Imprisonment for seven years. | A Subordinate court. |
| 366... | Being in possession, etc., of die or paper used for postage<br>stamps. | do. | Imprisonment for one year or fine of one thousand shillings. | do. |

### *Chapter XXXVIII Counterfeiting trade marks*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 367... | Counterfeiting, etc., trade mark. | Shall not arrest without warrant. | Imprisonment for two years. | A Subordinate court. |

### *Chapter XXXIX Personation*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 368... | Personation in general. | May arrest without warrant. | Imprisonment for two years. | A Subordinate court. |
| | If representation is that the offender is a person entitled by will or operation of law to any specific property and he commits the offence to obtain such property. | do. | Imprisonment for seven years. | A Subordinate court. |
| 370... | Falsely acknowledging deeds, recognisances, etc. | do. | Imprisonment for two years. | A Subordinate court. |
| 371... | Personation of a person named in a certificate. | do. | Same punishment as for forgery of certificate. | Any court by which forgery of certificate would be triable. |
| 372... | Lending etc. certificate for purposes of personation. | do. | Imprisonment for two years. | A Subordinate court. |
| 373... | Personation of person named in a testimonial character | do | Imprisonment for one year. | do. |
| 374... | Lending, etc., testimonial of character for purposes of personation. | do. | Imprisonment for two years. | do. |

## Division IX. Attempts and conspiracies to commit crimes and accessories after the fact

### *Chapter XLI Attempts*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 381... | Attempt to commit an offence. | According as to whether or not the offence is one for which the police may arrest without a warrant. | Imprisonment for two years. | Any court by which the offence attempted would be triable. |
| 382... | Attempt to commit an offence punishable with death or imprisonment for fourteen years or more. | May arrest without warrant. | Imprisonment for seven years. | Any court by which the offence attempted would be triable. |
| 383... | Neglecting to prevent commission or completion of an offence. | Shall not arrest without warrant. | Imprisonment for two years. | A Subordinate court. |

### *Chapter XLII Conspiracies*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 384... | Conspiracy to commit an offence. | May arrest without warrant. | Imprisonment for seven years. | Any court by which the offence would be triable. |

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|---|---|---|---|---|
| 385... | Conspiracy to commit an offence. | According as to whether or not the offence is one for which the police may arrest without warrant. | Imprisonment for two years. | Any court by which the offence would be triable. |
| 386... | Conspiracy to effect certain specified purposes. | Shall not arrest without warrant. | Imprisonment for two years. | A Subordinate court |

### *Chapter XLIII - Accessories after the fact*

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| 388... | Being an accessory after the fact to an offence. | May arrest without warrant. | Imprisonment for seven years. | A Subordinate court. |
| 389... | Being an accessory after the fact to an offence. | Shall not arrest without warrant. | Imprisonment for two years. | do. |
| 390... | Soliciting or inciting the commission of an offence. | May arrest without warrant. | Imprisonment for two years. | do. |

## Part B – Offences under laws other than the Penal Code

Act No. 13 of 1972 s. 9

| *Section* | *Offence* | *Whether a police officer may arrest without warrant or not* | *Punishment under the Penal Code, (N.B. Vide. also sections 27 and 35, Penal Code)* | *Court (in addition to the High Court) by which offence is triable* |
|---|---|---|---|---|
| | If punishable with death or imprisonment for more than fifteen years. | May arrest without warrant. | - | |

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|---|---|---|---|---|
| | If punishable with imprisonment of two years or more, but not more than 15 years. | | - | A Subordinate court. |
| | If punishable with imprisonment of less than two years or with fine only. | May not arrest without warrant unless the written law creating the offence specifically provides otherwise. | - | A Subordinate court. |

## Second Schedule (Section 135)

## Forms of stating offences in information

### 1. Murder

Murder, contrary to section 196 of the Penal Code.

PARTICULARS OF OFFENCE

*A.B.* did on the..... day of..... in the region of....., murder J.S.

### 2. Accessory after the fact to murder

Accessory after the fact to murder, contrary to section 213 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., knowing that one H.C., did on the..... day of..... 20..... in the..... region, murder C.C., did on..... the..... in the..... region and on other days thereafter receive or assist the said H.C. in order to enable him to escape punishment.

### 3. Manslaughter

Manslaughter, contrary to section 195 of the Penal Code.

PARTICULARS OF OFFENCE

***A.B.,*** on the..... day of..... in the region of unlawfully killed J.S.

### 4. Rape

Rape, contrary to section 130 of the Penal Code.

PARTICULARS OF OFFENCE

*A.B.*, on the..... day of..... in the region of..... had carnal knowledge of E.F., without her consent.

### 5. Wounding

*First Count.* — Wounding with intent, contrary to section 222 of the Penal Code.

*A.B.,* on the..... day of..... in the region of..... wounded C.D., with intent to maim, disfigure or disable, or to do some grievous harm, or to resist the lawful arrest of him the said A.B.

*Second Count.* — Wounding, contrary to section 228 of the Penal Code.

PARTICULARS OF OFFENCE

*A.B.,* on the..... day of..... in the region of..... unlawfully wounded C.D.

### 6. Theft

*First Count.* — Stealing, contrary to section 265 of the Penal Code.

PARTICULARS OF OFFENCE

*A.B.,* on the..... day of..... in the region of..... stole a bag.

*Second Count.* — Receiving stolen goods, contrary to section 311 of the Penal Code.

PARTICULARS OF OFFENCE

*A.B.,* on the..... day of..... in the region of..... did receive bag knowing the same to have been stolen.

### 7. Theft by clerk

Stealing, by clerk and servants, contrary to sections 265 and 271 of the Penal Code.

PARTICULARS OF OFFENCE

*A.B.,* on the..... day of..... in the region of..... being clerk or servant to *M.N.,* stole from the said *M.N.* 10 yards of cloth.

### 8. Robbery

Robbery with violence, contrary to section 285 of the Penal Code.

PARTICULARS OF OFFENCE

*A.B.,* on the..... day of..... in the region of..... stole a watch and at or immediately before or immediately after the time of such stealing did use personal violence to C.D.

### 9. Burglary

Burglary, contrary to section 294, and stealing, contrary to section 269 of the Penal Code.

PARTICULARS OF OFFENCE

*A.B.,* in the night of..... day of..... in the region of..... did break and enter the dwelling house of C.D., with intent to steal therein, and did steal therein one watch, the property of S.T, the said watch being of the value of two hundred shillings.

### 10. Threats

Demanding property by written threats, contrary to section 289 of the Penal Code.

PARTICULARS OF OFFENCE

*A.B.,* on the..... day of..... in the region of..... with intent to extort money from C.D., caused the said C.D. to receive a letter containing threats of injury or detriment to be caused to E.F.

### 11. Attempts to extort

Attempt to extort by threats, contrary to section 290 of the Penal Code.

PARTICULARS OF OFFENCE

*A.B.,* on the..... day of..... in the region of..... with intent to extort money from C.D., accused or threatened to accuse the said C.D. of an unnatural offence.

### 12. False pretences

Obtaining goods by false pretences, contrary to section 302 of the Penal Code.

PARTICULARS OF OFFENCE

*A.B.,* on the..... day of in the region of..... with intent to defraud, obtained from S.P. 5 metres of cloth by falsely pretending that the said A.B. was a servant to J.S. and that he, the said A.B., had then been sent by the said J.S. to S.P., for the said cloth, and that he, the said A.B. was then authorised by the said J.S. to receive the said cloth on behalf of the said J.S.

### 13. Conspiracy to defraud

Conspiracy to defraud, contrary to section 306 of the Penal Code.

PARTICULARS OF OFFENCE

*A.B.,* and *C.D.* on the..... day of..... and on divers days between that day and the day of..... in the region of..... conspired together with intent to defraud by means of an advertisement inserted by them, the said *A.B.* and *C.D.,* in the *H.S.* newspaper, falsely representing that *A.B.* and //C. D.// were then carrying on a genuine business as jewellers at..... in the region and that they were then able to supply certain articles of jewellery to whomsoever would remit to them the sum of forty shillings.

### 14. Arson

Arson, contrary to section 319 of the Penal Code.

PARTICULARS OF OFFENCE

*A.B.,* on the..... day of..... in the region of..... wilfully and unlawfully set fire to a house.

### 15. Damage

Damaging trees, contrary to section 326 of the Penal Code.

PARTICULARS OF OFFENCE

*A.B.,* on the..... day of..... in the region of..... wilfully and unlawfully damaged a mango tree there growing.

### 16. Forgery

*First Count.* — Forgery, contrary to section 338 of the Penal Code.

PARTICULARS OF OFFENCE

*A.B.,* on the..... day of in the region with intent to defraud or deceive, forged a certain will purporting to be the will of *C.D.*

*Second Count.* — Uttering a false document, contrary to section 342 of the Penal Code.

PARTICULARS OF OFFENCE

*A.B.,* on the..... day of..... in the region of..... knowingly and fraudulently uttered a certain forged will purporting to be the will of *C.D.*

### 17. Uttering counterfeit coin

Uttering counterfeit coin, contrary to section 360 of the Penal Code.

PARTICULARS OF OFFENCE

*A.B.,* on the..... day of..... at..... market in the region of..... uttered a counterfeit shilling, knowing the same to be counterfeit

### 18. Perjury

Perjury, contrary to section 102 of the Penal Code.

PARTICULARS OF OFFENCE

*A.B.,* on the..... day of..... in the region of..... being a witness upon the trial of an action in the High Court of Tanzania at Dar es Salaam in which one..... was plaintiff, and one..... was defendant, knowingly gave false testimony that he saw one M.W. in the street called the..... on the day..... of.....

### 19. Defamatory libel

Publishing defamatory matter, contrary to section 187 of the Penal Code.

*[Omitted: Section 187 of the Penal Code repealed by Act No. 3 of 1976.]*

### 20. False accounting

*First Count.* — Fraudulent false accounting, contrary to section 317 of the Penal Code.

PARTICULARS OF OFFENCE

*A.B.,* on the..... day of in the region of....., being a clerk or servant to *C.D.,* with intent to defraud, made or was privy to making a false entry in a cash book belonging to the said *C.D.,* his employer, purporting to show that on the said day two thousand shillings had been paid to *L.M.*

*Second Count.* — Same as first count.

PARTICULARS OF OFFENCE

*A.B.,* on the..... day of..... in the region of....., being a clerk or servant to *C.D.,* with intent to defraud, omitted or was privy to omitting from a cash book belonging to the said *C.D.* his employer, a material particular, that is to say, the receipt on the said day of one thousand shillings from *H.S.*

### 21. Theft by agent

*First Count.* — Stealing by agents and others, contrary to section 273 of the Penal Code.

PARTICULARS OF OFFENCE

*A.B.,* on the..... day of..... in the region of....., stole two thousand shillings which had been entrusted to him by H.S. for him, the said A.B., to retain in safe custody.

*Second Count.* — Stealing by agents and others, contrary to section 273 of the Penal Code.

PARTICULARS OF OFFENCE

*A.B.,* on the..... day of..... in the region of....., stole two thousand shillings which had been received by him, for and on account of L.M.

### 22. Previous conviction

(section 275 of the Penal Code)

Prior to the commission of the said offence, the said *A.B.* had been previously convicted of..... on the..... day of..... at the held at.....

## Third Schedule (Section 202)

## Certificate regarding photographic prints

### *The Criminal Procedure Act*

I,..... of..... being an officer appointed under section 202 of the Criminal Procedure Code, hereby certify as follows:

(1) On the day..... of..... 20..... at..... received a sealed packet by hand..... of numbered..... purporting to be sent by..... which contained exposed/and processed photographic film(s), under cover of a letter No..... dated purporting to be signed by..... requesting that I should process the said film(s) and/prepare therefrom photographic print(s) and enlargement(s).

(2) The said letter and packet were each signed and dated by me and are attached hereto as annexures..... and..... respectively.

(3) In pursuance of the said request I processed the said film(s) and/prepared therefrom photographic print(s) and/enlargement(s) each of which I have signed and attached hereto as annexure(s)..... and.....

(4) The photographic print(s) and/enlargement(s) attached hereto as annexure(s) is/are,..... as nearly as may be, exact reproduction(s) from the exposed/and processed film(s) submitted to me as aforesaid and have in no way been retouched, altered or otherwise interfered with in the process of their preparation.

Given at..... under my hand this..... day of 20.....

Signed.....

## Fourth Schedule (Section 205)

## Report of handwriting expert

### *The Criminal Procedure Act*

I,..... of..... being an officer appointed under section 154c of the Criminal Procedure Act under Government Notice No..... of..... 20....., hereby certify as follows:

(1) On the..... day of..... 20..... at..... I received a sealed packet, numbered..... purporting to be sent by..... which contained..... under cover of a letter No..... dated.... purporting to be signed by..... The said packet, letter and..... were each signed and dated by me and are attached hereto as annexures....., and..... respectively.

(2) On the..... day of..... 20..... at..... I received 1 a sealed packet, numbered..... purporting to be sent by..... which contained (2 in the same package)..... 3 under cover of a letter No..... dated..... purporting to be signed by.....

The said....., 4 and the said packet and letter were each signed and dated by me and are attached hereto as annexures..... and.....

(3) I have examined and compared the handwriting on the said annexure..... and the handwriting on the said annexures..... and have prepared as annexure.... 5 a photographic representation (6 a schedule) of comparisons and similarities between the handwriting on the said annexures..... and..... together with my comments thereon.

And I hereby state that, in my opinion,.....

Given at..... under my hand this..... day of 20.....

Signed.....