



## **THE CRIMINAL PROCEDURE (AMENDMENT) ACT, 2004**

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ACT NO. 7 OF 2004

I ASSENT

*Amani Abeid Karume*

{AMANI ABEID KARUME}

PRESIDENT OF ZANZIBAR

AND

CHAIRMAN OF THE REVOLUTIONARY COUNCIL

*16<sup>th</sup> AUGUST*

....., 2004

AN ACT TO AMEND AND REVISE THE CRIMINAL PROCEDURE  
DECREE, CHAPTER 14 OF THE LAWS OF ZANZIBAR

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ENACTED by the House of Representatives of Zanzibar.

Short title and  
commencement.

1. This Act may be cited as the Criminal Procedure (Amendment) Act, 2004, shall be read together with the Criminal Procedure Decree, Chapter 14 of the Laws of Zanzibar (hereinafter referred to as the Decree) and shall come into operation on the 1<sup>st</sup> day of September, 2004.

Amendment  
of the title.

2.(1) The long title of the Decree is repealed and replaced by the following new long title;



"An Act to make provision for the procedure to be followed in Criminal Cases"

(2) The Decree is amended by deleting the word "Decree" in the title and wherever it appears in the Decree and substitute therefore the word "Act".

(3) The provisions of the Decree which are not amended by this Act are hereby re-enacted as part of this Act and shall accordingly be incorporated in this Act in such order of numbering as may be appropriate.

Amendment  
of section 2.

3. Section 2 of the Decree is amended as follows:

- (a) by deleting the word "Crown" and the explanation given there from;
- (b) by replacing "and Dentist Decree" appearing in the interpretation of "medical practitioner" and substitute therefore the word and number "Act 1999";
- (c) by replacing the interpretation of "officer in charge of a police station" and substitute therefore the following:

"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 or unable from illness or other cause to perform his or her duties, the police officer present at the station who is next in rank to such officer and is above the rank of corporal or, when the Commissioner of Police so directs, any other police officer so present;



(d) by replacing "Zanzibar" in the definition of a "police officer" and substitute therefore the word "the";

(e) by deleting the words "public prosecutor" and the meaning therefore and substitute as follows:

"Director of Public Prosecutions" means the person responsible for prosecution of criminal matters appointed in accordance with the provisions of Zanzibar Constitution, 1984 and where appropriate shall include a state attorney, a public prosecutor or any person acting under the directions of the Director of Public Prosecutions;

(f) by inclusion in appropriate alphabetical order the following terms and their interpretation:

(i) "bailable offence" means an offence which the accused person may be admitted to bail by any court as provided under section 117(1) and non-bailable offence means an offence specified under section 117(1) for which bail may be admitted only by the High Court under section 117(3);

(ii) "complainant" in a private prosecution means, the private prosecutor or the person making the complaint before the court; in all public prosecutions, means the person presenting the case on behalf of the State before the court;



- (iii) "investigation" includes all proceedings under this Act for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate or under any law in this behalf.
- (iv) "Magistrate" has the meaning as assigned to it by the Magistrate's Court Act 1985;
- (v) "offence" means any act or omission made punishable by any law for the time being in force;
- (vi) "Special Departments" means departments of the Government of Zanzibar established in accordance with article 121 of the Zanzibar Constitution, 1984;
- (vii) "State" in reference to courts of Zanzibar means the Revolutionary Government of Zanzibar.

Amendment  
of section 3.

4. Section 3(3) of the Decree is amended by replacing the words "Her Majesty's High Court of Justice in England on the 31<sup>st</sup> day of December, 1934" and substitute therefor the words "the common law courts".

Amendment  
of section 4.

5.(1) Section 4 of the Decree is amended by renumbering it as section 4(1) and adding the following subsections:

"(2) The jurisdiction of a subordinate court presided over by a Regional Magistrate shall extend to include the trial of the offences falling under the





following sections of the Penal Act, namely sections 124, 130, 148, 149, 156, 157, 265, 266, 301, 319(3) and (4) and section 320.

(3) Save in the case of minimum sentences as provided in any law for the time being in force for which trial is conducted before it, the Regional Magistrate's Court shall not have jurisdiction to impose a sentence of imprisonment exceeding seven years unless such court is vested with extended jurisdiction in accordance with the Magistrate's Court Act, 1985."

Addition of new section 5A.

*"Jurisdiction in the case of juveniles.*

6. The Decree is amended by adding a new section 5A immediately after section 5 as follows:

5A. *Any offence not punishable with death or imprisonment for life committed by any person who at the date when he or she appears or is brought before the court is under the age of sixteen years, may be tried by the juvenile court."*

Repeal and replacement of section 7.

*"Sentences which Regional Magistrate Court may pass.*

7. Section 7 of the Decree is repealed and replaced as follows:

7. *A Regional Magistrate's Court may, in the cases in which such sentences are authorized by law pass the following sentences:*

- (a) *imprisonment for a term not exceeding seven years;*
- (b) *fine not exceeding four million shillings;*
- (c) *work in the community for a period not exceeding twelve months in accordance with the rules made by the Chief Justice."*



Repeal and replacement of section 8.

8. Section 8 of the Decree is repealed and replaced as follows:

*"Sentences which District Magistrate Court may pass.*

8. *A District Magistrate's court may, in the cases in which such sentences are authorized by law pass the following sentences:*

- (a) *imprisonment for a term not exceeding five years;*
- (b) *fine not exceeding two million shillings;*
- (c) *work in the community for a period not exceeding six months in accordance with the rules made by the Chief Justice."*

Repeal and replacement of section 9.

9. Section 9 of the Decree is repealed and replaced as follows:

*"Sentences which Primary Court may pass.*

9. *A Primary Court may, in the cases in which such sentences are authorized by law, pass the following sentences:*

- (a) *imprisonment for a term not exceeding three months;*
- (b) *fine not exceeding one hundred thousand shillings;*
- (c) *work in the community for a period not exceeding two months in accordance with the rules made by the Chief Justice."*

Section 10 repealed.

10. Section 10 of the Decree is repealed.



Repeal and  
replacement  
of section 11.

11. Section 11 of the Decree is repealed and replaced as follows:

*"Combination of sentences.*

*11.(1) When a person is convicted at one trial of two or more offences the Court may sentence him or her for such offences to the several punishments prescribed therefore which such Court is competent to impose; such punishments when consisting of imprisonment, to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.*

*(2) In the case of consecutive sentences it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which is competent to impose on conviction for a single offence, to send the offender for trial before a higher Court.*

*(3) If the case is tried by a Subordinate Court the aggregate punishment shall not exceed twice the amount of punishment which the court is, in the exercise of its ordinary jurisdiction, competent to impose.*

*(4) For the purposes of appeal the aggregate of consecutive sentences imposed under this section in case of convictions for two or more offences at one trial shall be deemed to be a single sentence."*

Repeal and  
replacement  
of section 12

12. Section 12 of the Decree is repealed and replaced as follows:



*"Subordinate Courts may commit convicted persons to Higher Court for sentencing.*

*12.(1) Where under the provisions of this Act a Subordinate Court convicts any person of an offence, then, if on obtaining information as to the character and antecedents of such a person or as to the circumstances and the prevalence 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 or her in any other manner, commit the offender in custody to the higher Court for sentence in accordance with the following provisions of this section.*

*(2) Where the convicted person is committed to the higher Court for sentence under the provisions of this section, that court shall enquire into the circumstances of the case and shall either remit the case for sentence to the Court which committed the offender, or deal with the offender in any manner in which he or she could have been dealt with by the higher Court if he or she had been convicted by the higher Court of the offence in question.*

*(3)(a) If under the provisions of subsection (2) of this section the higher Court remits the case for sentence to the Court which committed the offender, the provisions of this Decree with regard to revision, to confirmation of such sentence and to appeal against conviction or sentence shall apply as for any other case tried by a subordinate Court.*

*(b) If the higher Court imposes a sentence on the convicted person, 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.*

*(c) If the higher Court imposes a sentence on the convicted person, he or she may appeal against such sentence to the court superior to that higher*



*court in the same manner as if he or she had been convicted by the High Court and the provisions of this Act relating to appeal against sentence from the High Court to the Court of Appeal shall apply accordingly:*

*(4) The higher Court may in its discretion postpone its inquiry under the provisions of subsection (2) of this section until the expiration of the time of filing notice of appeal against conviction, and if such notice has been filed before the higher Court commences such inquiry, the High Court may at its discretion, postpone 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 the higher Court for sentence, in accordance with the provisions of subsection (1) of this section, is in custody and files a notice of appeal against his or her conviction, the higher Court or the Subordinate Court which convicted such person may, for reasons to be recorded by the Court in writing, grant bail with or without sureties pending the hearing of such appeal.*

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

*(7) For the purpose of this section the word "higher court" means the court superior in jurisdiction immediately after the court which entered the conviction."*

Amendment  
of section 21.

13. Section 21 is amended as follows:

(1) By repealing and replacing paragraphs (a), (e) and (g) thus:



- (a) any person who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his or her having been so concerned;
- (e) any person whom he or she suspects upon reasonable grounds of being a deserter from the Army or the Special Departments;
- (g) any person whom he or she suspects upon reasonable grounds of having been concerned in any act committed at any place out of Zanzibar which, if committed in Zanzibar, would have been punishable as an offence, and for which he or she is, under any law relating to extradition, liable to be apprehended and detained in Zanzibar.

(2) Except in circumstances mentioned in subsection (1), no other person shall be arrested under this Act without a warrant issued by a court of competent jurisdiction.

Repeal and replacement of section 27.

14. Section 27 of the Decree is repealed and replaced as follows:

*"Person arrested not to be detained more than twenty four hours.*

*27. No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a magistrate, exceed twenty four hours excluding holidays in which the court does not operate."*



Addition of new sections 28A-28M.

15. The Decree is amended by addition of new sections 28A, 28B, 28C, 28D, 28E, 28F, 28G, 28H, 28I, 28J, 28K, 28L and 28M immediately after section 28 as follows:

*"Person arrested to be informed of ground of arrest, right to remain silent, etc.*

*28A.(1) Every police officer or other person arresting any person without warrant shall forthwith:*

- (a) introduce himself or herself fully to the person to be arrested; and*
- (b) communicate to the person arrested full particulars of the offence for which he or she is arrested.*

*(2) The police officer shall inform the arrested person that he or she has the right to remain silent but if he or she decides to speak, then whatever he or she speaks may be used against him or her in the court of law.*

*(3) The person arrested shall further be informed of his or her right to have his or her advocate or other friend present during the interrogation.*

*(4) Where a police officer arrests without warrant any person other than a person accused of non-bailable offence, he or she shall inform the person arrested that he or she is entitled to be released on bail and that the police officer, when practicable, may assist for sureties on his or her behalf.*

*Restriction on questioning persons, etc.*

*28B.(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 or her under restraint; or*
- (b) to authorize the asking of any questions or the taking of other investigative action in relation to the person during a period during which would, but for those provisions, be unlawful to hold him or her under restraint.*

*When person not to be taken under restraint.*

*28C. 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 or she does so in consequence of matters that have come to the knowledge of the police officer in charge of investigation of the offence only after the person last ceased to be under restraint; or*
- (b) unless a reasonable period has elapsed since the person last ceased to be under restraint.*

*Periods available for interviewing person.*

*28D.(1) For the purposes of this Act, the period available for interviewing the person who is in restraint in respect of an offence is -*





- (a) *subject to paragraph (b), the basic period available for interviewing the person, that is to say, the period of four hours commencing at the time when he or she was taken under restraint in respect of the offence;*
- (b) *if the basic period available for interviewing the person is extended under section 28E the basic period as so extended;*

*in calculating the period available for interviewing a person who is under restraint in respect of an offence, the time needed to communicate with a lawyer, or a person the suspect wishes to talk or be present during interrogation, or the time the person under restraint spend waiting for the arrival of any of the above persons shall be excluded.*

*When custodial investigation cannot be completed within four hours.*

*28E.(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 or she 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 subsection (1)(a), may petition for damages or compensation against frivolous or vexatious extension of the basic period, the burden of proof of which shall lie upon him or her.

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

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

the Magistrate may extend that period for such further period as he or she may deem reasonable.

*Treatment of persons under restraint .*

28F.(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 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.*

*Special duties when interviewing children.*

*28G.(1) A police officer in charge of investigation of an offence in respect of which a child is under restraint shall, forthwith after the child becomes under restraint, cause a parent or guardian of the child to be informed that he or she is under restraint and of the offence for which he or she is under restraint.*

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

*Records of interviewing.*

*28H. 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.*

*Statement by suspects.*

*28I.(1) Where a person under restraint informs a police officer that he or she wishes to write a statement, the police officer shall caution him or her on the consequence of such statement and if the person still wishes to write a statement, the police officer shall provide him or her the writing materials for writing such a statement.*



(2) The police officer shall ask the person under restraint to sign such statement. If the statement is more than one page, the suspect shall be ordered to sign each of the pages.

*Power to take  
finger prints,  
photos, etc of  
suspects.*

28J. Any police officer in charge of a police station or any police officer investigating an offence may take or cause to be taken measurements of prints of the hand, fingers, feet or toes of, or recordings of the voice or, photographs of, or samples of the handwriting of any person who is charged with an offence, whether such person is in lawful custody of the police or otherwise where such measurements, prints, recordings, photographs or samples, as the case may be are reasonably believed to be necessary for the identification of the person with respect to, or for affording evidence as to the commission of an offence for which he or she is in custody or charged.

*Identification  
parades.*

28K.(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 who unreasonably refuses to attend and participate in



*an identification parade is guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.*

*Recognition of advocates.*

*28L. Any advocate registered by the High Court under the provisions of the Legal Practitioners Law, shall have a right under this Act to represent and defend or advise any person suspected or accused of any offence and the police, prison authorities, hospitals and other state bodies shall accord defence advocates such access and assistance as would render effective their work of defending or advising suspected persons under their custody or authority.*

*Examination of accused by medical practitioner at the request of police officer.*

*28M.(1) When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstance that there are reasonable grounds for believing that, an examination of his person will afford evidence as to the commission of an offence, it shall be lawfully for a registered medical practitioner acting at the request of a police officer not below the rank of Assistant inspector, and for any person acting in good faith in his direction to make such an examination of the person arrested as reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.*

*(2) Whenever the person of a female is to be examined under this section the examination shall be made only by or under the supervision of a female registered medical practitioner."*

*Addition of new section 31A.*

*16. The Decree is amended by adding a new section 31A immediately after section 31 as follows:*



*"Pursuit of offenders in other jurisdictions.*

*31A. A police officer may, for the purpose of executing arrest warrant against any person whom he or she is authorised to arrest under the said warrant pursue such person into any place within the United Republic of Tanzania."*

Addition of new section 31B.

17. The Decree is amended by adding a new section 31B immediately after section 31A as follows:

*"Control of prosecution against members of the Army.*

*31B. Notwithstanding anything contained in sections 21 to 31A (both inclusive), no member of the Armed Forces or member of the Special Departments shall be prosecuted for anything done or purported to be done by him or her in the discharge of his or her official duties except with the consent of the Director of Public Prosecutions."*

Amendment of section 35.

18. Section 35(1) of the Decree is amended by replacing the words "one year" and substitute therefore the words "two years".

Addition of new section 59A.

19. The Decree is amended by adding a new section 59A immediately after section 59 as follows:

*"Investigation of offence.*

*59A.(1) Investigation of offence committed under any law shall be conducted by any of the following:*

- (a) by the Police if the law does not mention specific investigator of such offence;*
  - (b) by an officer authorized under any law to conduct investigation in respect of a particular offence;*
  - (c) by an officer authorized by the Director of Public Prosecutions.*
- (2) Evidence collected in any investigation*



*mentioned under paragraphs (a) to (c) above shall be capable to be used in any trial before any court."*

Addition of new section 68A.

20. The Decree is amended by adding new sections 68A and 68B immediately after section 68 as follows:

*"Offences committed by letters, etc.*

*68A. Any offence which includes cheating may, if the deception is practised by means of letters or telecommunication messages, be inquired into or tried by any Court within whose local jurisdiction such letters or messages were sent or were received; and any offence of cheating and dishonestly inducing delivery of property may be inquired into or tried by a Court within whose local jurisdiction the property was delivered by the person deceived or was received by the accused person.*

*Place of trial for offences triable together.*

*68B. Where-*

- (a) the offences committed by any person are such that he or she may be charged with, and tried at one trial for, each such offence by virtue of the provisions of section 129; or*
- (b) the offence or offences committed by several persons are such that they may be charged and tried together by virtue of the provisions of section 130,*

*the offences may be inquired into or tried by any Court competent to inquire or try any of the offences."*

Amendment of the subheading.

21. The Decree is amended by deleting the words "Crown in" which appears in the subheading immediately before section 75.



Addition of new sections 75 – 75A.

*"The Director of Public Prosecutions.*

22. New sections 75 and 75A are added immediately after the subheading as follows:

*75.(1) There shall be the Director of Public Prosecutions who shall be a public officer in the Government whose appointment and powers shall be as provided in the Constitution.*

*(2) The Director of Public Prosecutions is vested with the right of prosecuting all crimes and offences committed in Zanzibar and where appropriate, outside Zanzibar.*

*(3) The Director of Public Prosecutions may take over any criminal case at any stage of the proceedings and thereafter the case shall be under the control of the Director of Public Prosecutions as if he or she had been the original complainant or prosecutor.*

*Title of Criminal Cases.*

*75A.(1) Every criminal case and every criminal appeal shall be in the name of the Director of Public Prosecutions against the accused person or persons or respondent as the case may be.*

*(2) Where the prosecutor is a private person, his name shall also appear in the title of the proceeding as the prosecutor."*

Section 75 renumbered.

23.(1) Section 75 of the Decree is renumbered section 75B.

(2) Section 75 of the Decree is amended by adding the words "whether instituted by the Director of Public Prosecutions or any other officer or person" between the words "case" and "and".

Repeal of section 76.

24. Section 76 of the Decree is hereby repealed.





Amendment  
of section 77.

25. Section 77 is amended by replacing "Crown Counsel" and substitute therefore the words "State Attorneys".

Repealed and  
replacement of  
section 82.

26.(a) Subsection (1) of section 82 of the Decree is repealed and replaced as follows:

*"Permission to  
conduct private  
prosecution.*

*82.(1) The Director Public Prosecutions may on application or suo motto permit the prosecution or an appeal of any case to be conducted by a private person.*

*(2) Where the Director of Public Prosecutions does not allow such application, he or she shall inform the applicant in writing the reasons for his or her refusal.*

*(3) If the applicant is not satisfied with the decision of the Director of Public Prosecutions, the applicant may appeal to the High Court for review of the decision of the Director of Public Prosecutions.*

*(4) Any application to conduct a private prosecution must be supported by an affidavit of the applicant and attached with a brief of evidence which may establish a prima facie case.*

*(5) No appeal against the decision of the Director of Public Prosecutions to refuse private person to conduct an appeal of a case originally conducted by the Director of Public Prosecutions shall be entertained."*

(b) Subsections (2) and (3) of section 82 are renumbered (6) and (7) respectively.

Addition of  
new section 84A.

27. The Decree is amended by adding a new section 84A immediately after section 84 as follows:



"Dismissal of  
complaint.

84A. If, after considering the statements on oath (if any) of the complainant and or of the witnesses and the result of the inquiry or investigation (if any), the magistrate is of opinion that there is no sufficient ground for proceeding, he or she shall dismiss the complaint, and in every such case the Magistrate shall briefly record his or her reasons for so doing."

Addition of  
new sections  
111A – 111M.

28. The Decree is amended by adding new sections 111A, 111B, 111C, 111D, 111E, 111F, 111G, 111H, 111I, 111J, 111K, 111L and 111M immediately after subheading "Search Warrants" as follows:

"Summons to  
produce  
document or  
other thing.

111A.(1) Whenever the Director of Public Prosecutions or any competent Court considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Act, the Director of Public Prosecutions or such court may issue a written order or summons to the person in whose possession or power such document or thing is believed to be, requiring him or her to attend and produce it at the time and place stated in the summons, or produce it to a police officer or other officer named in the written order or summons.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the order or summons if he or she causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed -

(a) to affect the provisions of the Evidence Decree, relating to evidence as to affairs of the State or official communication; or



- (b) *to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraphic authority.*

*Procedure as to letters and telegrams.*

*111B. If any document, parcel, bill or thing in the custody of a postal, telephone or telegraph authority is, in the opinion of the Regional Magistrate, wanted for the purposes of any investigation, inquiry or other proceeding under this Act, such Magistrate may require the postal, telephone or telegraph authority, as the case may be, to deliver the document, parcel, bill or thing to such person as the Magistrate directs.*

*Procedure as to bank accounts.*

*111C. Whenever the Director of Public Prosecutions considers it necessary that a bank account or accounts or any other financial transaction should be investigated in connection with any crime alleged to have been committed, the Director of Public Prosecutions may, by order in writing, authorize a police officer of a rank not below assistant inspector or any other person to investigate the said account or the said financial transaction and may order the bank to temporarily suspend the operation of such account pending such investigation.*

*Search seizure of computer data and equipment.*

*111D.(1) If a magistrate is satisfied on the basis of information on oath that there are reasonable grounds to suspect that there may be in a place a thing or computer data:*

- (a) *that may be material as evidence in proving an offence; or*
- (b) *that has been acquired by a person as a result of an offence;*



*the magistrate may issue a warrant authorizing a police or any authorized person to enter the place to search the thing or computer data.*

*(2) In this section*

*"thing" includes:*

- (a) computer system or part of a computer system; and*
- (b) a computer data storage medium.*

*Assisting Police and authorized officer.*

*111E.(1) A person who is in possession or control of a computer data storage medium or computer system that is the subject of a search under section 111D must permit, and assist if required, the person making the search to:*

- (a) access and use a computer system or computer data storage medium to search any computer data available to or in the system; and*
- (b) obtain and copy that computer data; and*
- (c) use equipment to make copies; and*
- (d) obtain an intelligible output from a computer system in a plain text format that can be read by a person.*

*(2) A person who fails without lawful excuse or justification to permit or assist the person making the search shall be guilty of an offence and shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.*



*Record of and  
access to seize  
data.*

*(3) In this section "assist" includes providing passwords, encryption keys and other information necessary to access a computer or computer system.*

*111F.(1) If a computer system or computer data has been removed or rendered inaccessible, following a search or a seizure under section 111E, the person who made the search must, at the time of the search or as soon as practicable after the search:*

- (a) make a list of what has been seized or rendered inaccessible, with the date and time of seizure; or*
- (b) give a copy of that list to:
  - (i) the occupier of the premises; and*
  - (ii) the person in control of the computer system.**

*(2) Subject to subsection (3), on request, a police officer or authorized person must:*

- (a) permit a person who had the custody or control of the computer system, or someone acting on their behalf to access and copy computer data on the system; or*
- (b) give the person a copy of the computer data.*

*(3) The police officer or another authorized person may refuse to give access or provide copies if he or she has reasonable grounds for believing that giving the access, or providing the copies:*

- (a) would constitute a criminal offence; or*



(b) *would prejudice:*

- (i) *the investigation in connection with which the search was carried out; or*
- (ii) *another ongoing investigation; or*
- (iii) *any criminal proceedings that are pending or that may be brought in relation to any of those investigations.*

*Production of data.*

*111G. If the Director of Public Prosecutions is satisfied that specified computer data, or a printout or other information, is reasonably required for the purpose of a criminal investigation or criminal proceedings he may, by order in writing that:*

- (a) *a person in control of a computer system produce from the system specified computer data or a printout or other intelligible output of that data; and*
- (b) *an internet service provider or other service provider produce information about persons who subscribe to or otherwise uses the service.*

*Disclosure of stored data.*

*111H. If the Director of Public Prosecutions is satisfied that specified data stored in a computer system is reasonably required for the purpose of a criminal investigation or criminal proceedings, the Director of Public Prosecutions may by order in writing direct that a person in control of the computer system disclose sufficient traffic data about a specified communication to identify:*

- (a) *the service providers; and*



*Preservation of data.*

(b) *the path through which the communication was transmitted.*

*111I.(1) If a police officer is satisfied that:*

- (a) *data stored in a computer system is reasonably required for the purposes of a criminal investigation; and*
- (b) *there is a risk that the data may be destroyed or rendered inaccessible;*

*the police officer or other authorized person may, by written notice given to a person in control of the computer system, require the person to ensure that the data specified in the notice be preserved for a period of up to seven days as specified in the notice.*

*(2) The period prescribed under subsection (1) may be extended if the judge or magistrate authorizes an extension for a further period of time specified in the order.*

*Interpretation of electronic communications.*

*111J. If a judge or magistrate is satisfied on the basis of affidavit that there are reasonable grounds to suspect that the content of electronic communications is reasonably required for the purposes of a criminal investigation, the judge or magistrate shall:*

- (a) *order an internet service provider whose service is available through application of technical means to collect or record or to permit or assist competent authorities with the collection or recording of content data associated with specified communications transmitted by means of a computer system; or*



- (b) *authorize a police officer to collect or record that data through application of technical means.*

*Interpretation of traffic data.*

*111K.(1) If a police officer is satisfied that traffic data associated with a specified communication is reasonably required for the purposes of a criminal investigation, the police officer may, by written notice given to a person in control of such data, request that person to:*

- (a) *collect or record traffic data associated with a specified communication during a specified period; and*
- (b) *permit and assist a specified police officer to collect or record that data.*

*(2) If a magistrate is satisfied on the basis of affidavit that there are reasonable grounds to suspect that traffic data is reasonably required for the purposes of a criminal investigation, the magistrate may authorize a police officer to collect or record traffic data associated with a specified communication during a specified period through application of technical means.*

*Confidentiality and limitation of liability.*

*111L.(1) An internet service provider who without lawful authority discloses:*

- (a) *the fact that an order under section 111D, 111E, 111F, 111G, 111H, 111I and 111K has been made; or*
- (b) *anything done under the order; or*
- (c) *any data collected or recorded under the order;*





*commits an offence and, on conviction, shall be liable to imprisonment for a period not exceeding one year, or a fine not exceeding one million shillings, or both.*

*(2) An internet service provider or any other service provider is not liable under a civil or criminal law for the disclosure of any data or other information that he or she discloses under this Act.*

*Interpretation.*

*111M. Words and terms used in sections 111D to 111M shall be given the same interpretation given to them under the Penal Act."*

Amendment  
of section 117.

29. Section 117 of the Decree is amended as follows:

- (a) by repealing subsection (1) and replacing the same with the following new subsection:

"(1) When any person, other than a person accused of murder or treason or armed robbery or possession of firearms or drug trafficking, 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 such officer or at any stage of the proceedings before such court to give bail, such person may be admitted to bail.

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

- (b) by adding new subsection (4) immediately after subsection (3) as follows:



"(4) Where a person has failed to comply with the conditions of the bail bond as regards the time and place of attendance, the Court may refuse to release him or her on bail when on a subsequent occasion in the same case he or she appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof."

Addition of new section 117A.

*"When bail may be taken in non-bailable offences.*

30. The Decree is amended by adding a new section 117A immediately after section 117 as follows:

*117A.(1) The hearing of case in which a person is charged with non-bailable offence must commence within nine months from the date when a person so charged was arrested. If the hearing does not commence within the said period of nine months, the accused person shall be admitted to bail unless the Court, for reasons to be recorded in writing, direct otherwise.*

*(2) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him or her of a bond without sureties for his or her appearance to hear the judgement to be delivered.*

*(3) Any Court which has released a person on bail under subsection (1) or (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him or her to custody."*

Repeal and replacement of section 128.

31. Section 128 of the Decree is repealed and replaced as follows:



"Contents of charge.

128.(1) Every charge under this Act shall state the offence with which the accused is charged with brief particulars of the offence.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter which he or she is charged.

(4) The charge shall state the law and section of the law against which the offence is said to have been committed.

(5) The charge shall be written in the language of the Court.

(6) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of different kind for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to impose for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed."

Section 131 deleted.

32. Section 131(h) of the Decree is deleted and section 131(i) is renumbered 131(h).

Repeal and replacement of section 137.

33. Section 137 of the Decree is repealed and replaced as follows:



### **Accelerated trial and disposal of cases**

"Preliminary hearing to determine matters not in dispute.

137.(1) Notwithstanding the provision of section 176(1), if the accused person who is legally represented pleads not guilty, the court shall as soon as is convenient hold a preliminary hearing in open court in the presence of the accused and his advocate and of the public prosecutor to consider such matters as are not in dispute between the parties and which will promote a fair expeditious trial.

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

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

(4) Any fact or document admitted or agreed (whether such fact or document is mentioned in the summary of evidence or not) in a memorandum filed under this section, shall be deemed to have been duly proved save that if, during the course of the trial the court is of the opinion that, the interest 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 witness or any other cause, nothing in this section shall be construed as requiring the same judge or



magistrate who held preliminary hearing under this section to preside at the trial.

(6) The Chief Justice may by order published in the gazette make rules for the better carrying out of the purpose of this section and without prejudice to generality of the foregoing, such rules may provide for:

- (a) delaying the summoning of witness until it is ascertained whether they will be required to give evidence on the trial or not;
- (b) the giving of notice to witness warning them that they may be required to attend the court to give evidence at the trial."
- (c) Procedure or mechanism means intended to expedite the hearing and disposal of criminal proceedings.

Amendment of section 147.

34. Section 147 of the Decree is amended -

- (a) by deleting the dash appearing after the word "person" and adding a full stop therefore;
- (b) by deleting paragraphs (a), (b) and (c).

Addition of new section 153A.

35. The Decree is amended by adding a new section 153A immediately after section 153 as follows:

*"Where accused intends to rely on defence of alibi.*

*153A.(1) Where an accused person intends to rely upon an alibi in his or her defence he shall give to the court and the prosecutor notice of his intention to rely on such evidence before the hearing of the case.*

*(2) Where an accused person does not give notice of his intention to rely on the defence of alibi*



*before hearing of the case, he shall furnish the prosecution with particulars of the alibi at anytime before the case for the prosecution is closed.*

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

Amendment  
of section 156.

36. Section 156 of the Decree is amended as follows:

- (a) by deleting the words "Chief Secretary for consideration by the British Resident" which appears in subsection (4) and substitute therefor the words "Chairperson of the Mental Health Board for the consideration by the Board";
- (b) by deleting subsection (5) and replacing as follows:

"(5) Upon consideration of the Court records and after conducting its own examination of the matter, the Board shall advise the Court on the proper course to take and the Court may confine or otherwise deal with the accused as it deems fit until such time when the Court orders the accused to be brought before it again in the manner provided by sections 157 and 158."

Repeal of  
section 159.

37. Section 159 of the Decree is hereby repealed.

Addition of new  
section 162A.

38. The Decree is amended by adding a new section 162A immediately after section 162 as follows:



*"Legal Aid to accused at State expense in certain cases.*

*162A. Where in any trial involving a capital punishment, the accused is not represented by an advocate, and where it appears to the High Court that the accused has not sufficient means to engage an advocate, the Court may assign an advocate for his or her defence at the expense of the State."*

Repeal and replacement of section 169.

39. Section 169 of the Decree is repealed and replaced as follows:

*"Record of evidence in High Court.*

*169. Subject to the directions given by the Chief Justice from time to time, the procedure for recording evidence in the High Court shall, as far as practicable, be the same as the procedure for recording evidence in the Subordinate Courts."*

Amendment of section 173.

40.(1) Section 173 of the Decree is amended by adding a proviso at the end of the section as follows:

"Provided further that when witnesses are in attendance, no adjournment shall be granted without examining them, except on reasonable grounds to be recorded in writing.

(2) Adding a new section 173A immediately after section 173 as follows:

*"Trial for bailable offence to commence within four months.*

*173A.(1) Hearing of a case in bailable offence shall commence within four months.*

*(2) If hearing does not commence within four months, the court may discharge the accused person but the discharge shall not be a bar to future trial on the same facts.*

*(3) In computing the period provided under subsection (2), the period within which the accused absconds or is absent from Zanzibar and such absence*



*has affected or delayed investigation, shall be excluded.*

*(4) If hearing for any offence is not commenced within three years after the accused is discharged by the court under subsection (2) or withdrawn by the prosecution under section 81(a) or by nolle prosequi, no charge shall be brought before the court on the same facts except after the prior permission of the court to be granted upon application by the prosecutor.*

*(5) For avoidance of doubt it is expressly provided that the provision of this section shall not apply to any criminal investigation the charge of which has not been filed in any court."*

Amendment  
of section 174.

41. Section 174 of the Decree is amended  
by:

- (a) deleting the commas and words ", unless the accused person is charged with a felony" which appears in subsection (1);
- (b) deleting subsection (4).

Addition of new  
Section 174A.

42. The Decree is amended by adding a new section 174A immediately after section 174 as follows:

*"Cost of  
adjournment.*

*174A. If at the time and place to which the hearing or further hearing shall be adjourned, the accused advocate does not appear or appear and request an adjournment, the Court, unless reasonable cause for the adjournment is given, may order the advocate to pay costs not exceeding shillings one hundred thousand."*

Amendment  
of section 176.

43. Section 176(1) of the Decree is amended by adding proviso at the end of the section as follows:





"Provided that the prosecution need not call a medical officer or other expert witness who has submitted his or her report to the court if the accused person or his or her counsel does not desire to cross exam such a witness."

Part VII of the Decree replaced.

44. The Decree is amended by deleting the whole of Part VII which relates to the provisions relating to committal of accused person by subordinate courts to the High Court for trial and substitute therefor the following new Part VII:

#### **PART VII** **TRIAL BEFORE THE HIGH COURT**

*"Trial to be conducted by Director of Public Prosecutions.*

*187. In every trial before a High Court, the prosecution shall be conducted by the Director of Public Prosecutions, a State Attorney or any other person authorised by the Director of Public Prosecutions.*

*Prosecution to provide record of evidence.*

*187A.(1) On the first day set for hearing of the case, the prosecution will provide a complete file of the record of evidence which it intends to rely to the accused person or to each of the accused persons or their advocates as the case may be.*

*(2) The Court shall thereafter adjourn the case to a future date not later than one month as it shall deem appropriate giving reasonable time to the defence to prepare itself for trial.*

*Opening case for prosecution.*

*187B. When the accused person appears or is brought before the Court in pursuance of the provisions of this Act, the prosecutor shall open his or her case by describing the charge brought against the accused and stating by what evidence he or she proposes to prove the guilt of the accused.*



*Discharge.*

*187C. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he or she shall discharge the accused and record his or her reasons for so doing.*

*Framing of charge.*

*187D.(1) If, after such consideration and hearing as aforesaid the Judge is of opinion that there is ground for presuming that the accused has committed an offence which -*

- (a) is not exclusively triable by the High Court, he may, frame a charge against the accused and, by order, transfer the case for trial to the Regional or District Magistrate, and thereupon the Regional or District Magistrate shall try the offence in accordance with the procedure for the trial at the Magistrates Court;*
- (b) is exclusively triable by the Court, the Judge shall frame in writing a charge against the accused.*

*(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he or she pleads guilty of the offence charged or claims to be tried.*

*Conviction on plea of guilty.*

*187E. If the accused pleads guilty, the Judge shall record the plea and may, in his or her discretion, convict him or her thereon.*

*Date for prosecution evidence.*

*187F. If the accused refuses to plead, or does not plead, or claims to be tried or is not convicted under section 187E, the Judge shall fix a date for the*



*examination of witnesses, and may, on the application of the prosecution, issue any process for compelling the attendance of any witness or the production of any document or other thing.*

*Evidence for prosecution.*

*187G.(1) On the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution.*

*(2) The Judge may, in his or her discretion, permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.*

*Acquittal.*

*187H. If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal.*

*Entering upon defence.*

*187I.(1) Where the accused is not acquitted under section 187H, he or she shall be called upon to enter on his or her defence and adduce any evidence he or she may have in support thereof.*

*(2) If the accused puts in any written statement, the Judge shall file it with the record.*

*(3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he or she considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.*



*Arguments.*

*187J.(1) When the examination of the witnesses (if any) for the defence is complete, the prosecutor shall sum up his or her case and the accused or his or her advocate shall be entitled to reply.*

*(2) Where any point of law is raised by the accused or his or her advocate, the prosecutor may, with the permission of the Judge, make his or her submission in regard to such point of law.*

*Judgement of acquittal or conviction.*

*187K.(1) After hearing arguments and points of law (if any), the Judge shall pronounce a judgement in the case.*

*(2) If the accused is convicted, the Judge shall hear the accused on the question of sentence, and then pass sentence on him or her according to law.*

*Previous conviction.*

*187L.(1) In case where a previous conviction is charged under the provisions of sub-section (6) of section 128, and the accused does not admit that he or she has been previously convicted as alleged in the charge, the Judge may, after he or she has convicted the said accused under section 187E or section 187K, take evidence in respect of the alleged previous conviction, and shall record a finding thereon.*

*(2) No such charge shall be read out by the Judge nor shall the accused be asked to plead thereto nor shall the previous conviction be referred to by the prosecution or in any evidence adduced by it, unless and until the accused has been convicted under section 187E or section 187K."*

*Repeal and replacement of section 219.*

*45. The Decree is amended by repealing section 219 and replacing therefor the following:*



*"Practice of the High Court in its criminal jurisdiction.*

219. *The practice of the High Court of Zanzibar in its criminal jurisdiction shall, for matters not expressly provided for in this Act, be assimilated as nearly as circumstances will admit to the practice of the Court of Justice of Common Law Courts in their criminal jurisdiction."*

Repeal and replacement of section 222.

46. Section 222 of the Decree is repealed and replaced as follows:

*"Duty to serve as assessor.*

222. *Save as provided by section 223 of this Act, all persons between the ages of twenty one and sixty are competent to serve as assessors at any trial held by the High Court within Zanzibar."*

Amendment of section 223.

47. Section 223 of the Decree is amended by replacing the words "British Resident " and substitute therefore the words "Chief Justice".

Amendment of section 230.

48. Section 230(1) of the Decree is amended by replacing the words "four hundred" and substitute with "one hundred thousand".

Addition of New sections 234A – 234D.

49. The Decree is amended by adding new sections 234A, 234B, 234C and 234D immediately after 234 as follows:

*"Plea bargaining.*

234A. (1) *At any stage during investigation of a crime or at the time of the trial, the Director of Public Prosecutions or any person authorised in writing in that behalf, may enter into a plea bargain process with the accused or his or her advocate.*

(2) *The advocate of the accused may initiate a plea bargain with the Director of Public Prosecutions on any matter which involves his or her client.*



*Consequences of pleas bargain.*

234B. A plea bargain may result to an agreement by the Director of Public Prosecutions not to charge the accused, or to a plea of guilty by the accused to a reduced or lesser charge, or to a plea of guilty by the accused to a particular charge in exchange for a dismissal of other charges.

*Notice of the agreement to the Court.*

234C.(1) Any agreement entered in accordance with the provisions of the two proceeding sections shall be registered with the High Court.

(2) The High Court shall, before it registers any agreement, satisfy itself that the plea was not induced by threats or coercion, or was based on unfulfilled promises, or that the accused was not mentally competent to enter into such agreement.

(3) The Court may pronounce a decision based on the plea agreement or make such other orders as it deems necessary including an order to nullify the agreement and require the parties to go into a trial.

*Similar procedure for Regional Court.*

234D. The procedure stated in sections 234A to 234C all inclusive shall mutatis mutandis apply to cases in the Regional Magistrate's Courts."

Amendment of section 240.

50. Section 240 of the Decree is amended as follows:

- (a) by deleting subsection (2) and renumber subsection (1) accordingly;
- (b) by adding the following proviso immediately after section 240:

"Provided that no proceedings shall be stayed and no new trial shall be held due to the fact that one or more of the assessors, for any reason whatsoever,



was prevented from attending or absent themselves from the proceedings."

Section 246 replaced.

51. Section 246 of the Decree is repealed and replaced as follows:

*"Witnesses for the Prosecution.*

*246.(1) The prosecution shall be entitled to call all or any number of witnesses that they deem appropriate for the purpose of proving the offence or offences the accused stand charged.*

*(2) The prosecution need not call a medical officer or other expert witness who has submitted his or her report to the Court, if the accused or his or her advocate does not desire to cross examine such a witness."*

Addition of new Section 246A.

52. A new section 246A is added immediately after section 246 of the Decree as follows:

*"Witness may give evidence through electronic media.*

*246A.(1) The Court may in appropriate case allow evidence to be adduced by witness through electronic media.*

*(2) The Court may allow witness to give evidence through electronic media only in the following circumstances:*

- (a) where identity of a witness may be ascertained;*
- (b) where examination and cross examination may be conducted without hinderance."*

Repeal of section 248.

53. Section 248 of the Decree is hereby repealed.

Repeal and replacement of Section 253.

54. Section 253 of the Decree is repealed and replaced as follows:



*"Witnesses for  
defence.*

*253. The accused person shall be allowed to  
call witnesses for his or her defence and examine  
them."*

Amendment  
of section 260.

55. Section 260 of the Decree is amended by  
adding a proviso immediately after the full stop as  
follows:

"Provided that under no circumstances the  
decision shall be reserved for more than sixty days at  
the prejudice of the accused."

Amendment  
of section 275.

56. Section 275(1) of the Decree is amended  
by adding the words "not in any case exceeding sixty  
days" immediately after the word "time".

Amendment  
of section 278.

57. Section 278 of the Decree is amended as  
follows:

(a) by deleting paragraph (c) and substitute  
therefore the following:

"(c) work in the community;"

(b) by deleting paragraph (j) and  
renumbered the remaining paragraphs  
accordingly.

Amendment  
of section 280.

58. Section 280 of the Decree is amended as  
follows:

(a) by deleting subsection (2);

(b) by renumbering subsection (3) as  
subsection (2).

Addition of new  
Section 289A.

59. The Decree is amended by adding a new  
section 289A immediately after section 289 as follows:





"Sentence on offender already sentenced for another offence.

289A.(1) *When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he or she has been previously convicted, unless the court directs that the subsequent sentence shall run concurrently with such previous sentence.*

(2) *When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence."*

Repeal and replacement of section 291.

60. Section 291 of the Decree is repealed and replaced as follows:

*"Ban of corporal punishment.*

291. *No court of law or judicial tribunal established by law shall inflict a corporal punishment to any person in Zanzibar."*

Amendment of section 295.

61. Section 295 of the Decree is amended as follows:

- (a) by deleting the provision to subsection (1) and substitute therefore the following:

"Provided that such costs shall not exceed two hundred thousand shillings in the case of the High Court or one hundred thousand shillings in the case of a subordinate court."

- (b) by deleting the words "of the first, second or third class" which appear immediately after the word "court" in subsection (2);



- (c) by deleting the proviso to subsection (2) and substitute therefore the following:

"Provided that such costs shall not exceed three hundred thousand shillings in the case of an acquittal or discharge by the High Court or two hundred thousand shillings in the case of an acquittal or discharge by a subordinate court:"

Repeal and replacement of section 298.

62. Section 298 of the Decree is repealed and replaced as follows.

*"Director of Public Prosecutions to ask for compensation.*

*298.(1) It shall be lawful for the Director of Public Prosecutions to request the Court which has convicted an accused person to order the convict to make compensation to any person injured by the offence committed by such convict.*

*(2) Such compensation may be either in addition to or in substitution for any other punishment provided under any law."*

Amendment of section 299.

63. Section 299 of the Decree is amended as follows:

- (a) by adding the words "and or any police officer involved in the institution of the case" immediately after the word "complainant";
- (b) adding the following proviso immediately after the full stop.

"Provided that no police officer shall be ordered by the Court to pay such compensation if it is proved that the officer acted in good faith."



Amendment  
of section 309.

64. Section 309(1) of the Decree is amended by deleting the scale therein and substitute therefor the following:

<b>Amount</b>		<b>Maximum Period</b>
Not exceeding shs. 50,000		15 days
<b>Exceeding .....</b>	<b>But not exceeding .....</b>	
Shs. 50,000	Shs. 100,000	30 days
Shs. 100,000	Shs. 200,000	60 days
Shs. 200,000	Shs. 300,000	90 days
Shs. 300,000	Shs. 500,000	120 days
Shs. 500,000	Shs. 700,000	150 days
Shs. 700,000	Infinity	180 days

Amendment of  
section 315.

65. Section 315(1) is amended by deleting therefrom the words "before a subordinate court".

Amendment  
of sections  
317 and 318.

66. Sections 317 and 318 of the Decree are amended by deleting the words "Mudiria" and "Mudir" wherever they appear and replace them with "Shehia" and "Sheha" respectively.

Amendment  
of Part XII.

67. Part XII of the Decree is amended by deleting all the titles and subtitles and substitute therefore a new title "APPEALS GENERALLY".

Addition of  
new sections  
322A-322B.

68. The Decree is amended by adding new sections 322A and 322B immediately after the title "APPEALS GENERALLY" as follows:

*"Interpretation.*

*322A. In this Part-*



*"Appellate Court" means the High Court, the Regional Magistrate's Court or the District Magistrate's Court as the case may be;*

*"Appellant" unless otherwise stated, means the Director of Public Prosecutions or any other person who has the right under this Act to file an appeal.*

*Inherent rights of Appeal.*

*322B. Every person aggrieved by any decision of any court shall have the right to appeal subject to the provisions of this Act."*

Repeal and replacement of section 323.

69. Section 323 of the Decree is repealed and replaced as follows:

*"Appeals to High Court.*

*323.(1) Save as hereinafter provided, any person aggrieved by a decision of a Regional Magistrate's Court may appeal to the High Court and shall be so informed by the Magistrate at the time the sentence is passed.*

*(2) An appeal to the High Court may be on a matter of fact as well as on a matter of law."*

Addition of new sections 323A -323B.

70. New sections 323A and 323B are added in the Decree as follows:

*"Appeals to Regional Magistrate.*

*323A.(1) Any person aggrieved by a decision of a District Magistrate's Court may appeal to the Regional Magistrate's Court and shall be so informed by the Magistrate.*

*(2) An appeal to the Regional Magistrate's Court may be on a matter of fact as well as on a matter of law.*



*Appeals to the District Magistrate.*

*323B.(1) Save as hereinafter provided, any person aggrieved by a decision of a Primary Court Magistrate may appeal to the District Magistrate's Court and shall be so informed by the Primary Court Magistrate.*

*(2) An appeal to the District Magistrate's Court may be on a matter of fact as well as on a matter of law."*

Amendment of section 324.

71. The Decree is amended by repealing section 324 and substitute therefore sections 324, 324A and 324B as follows:

*"Appeals by the Director of Public Prosecutions.*

*324.(1) Subject to the limitations of appeals provided in this Part, the Director of Public Prosecutions may, in any case of conviction on a trial held by any criminal court, direct any state attorney or other officer to present an appeal to an appropriate court against the sentence on the ground of inadequacy.*

*(2) When an appeal has been filed against an inadequacy of sentence, the court hearing the appeal shall not enhance the sentence except after giving the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, may plead for his or her acquittal or for the reduction of the sentence.*

*Appeal in case of acquittal.*

*324A. The Director of Public Prosecutions may, in any case direct a state attorney, or any other officer in that behalf, to present an appeal to any court from an original or appellate order of acquittal passed by any lower court or from an order of acquittal passed on revision by a Regional or District Magistrates Court.*



*Security to be provided by the respondent in the appeal.*

*324B.(1) Where the accused is acquitted or discharged in any case or trial and the prosecutor is not satisfied with that decision he may tender oral or written notice of intention to appeal immediately after pronouncement of the judgment or ruling.*

*(2) Where such notice is tendered the court shall record the same and shall require the acquitted person to furnish security for appearance in the appeal on such terms as the court shall determine.*

*(3) Where notice of appeal is tendered after the day of the ruling or judgment the court shall immediately summon the respondent to furnish security for appearance on the proceeding of appeal."*

Amendment  
of section 325.

72. Subsection (1) of section 325 of the Decree is repealed and replaced as follows:

*"Limitation.*

*325.(1) No appeal from any finding, sentence or order shall be entertained unless the appellant-*

- (a) shall have given a notice of appeal within fifteen days from the date of the finding, sentence or order;*
- (b) shall have lodged his or her petition of appeal within forty-five days from the date of the finding, sentence or order.*

*(2) In computing the said period of forty-five days, the time required to obtain a copy of the judgement or order appealed against shall be excluded.*

*(3) The High Court or the Regional Magistrate's Court may, for good cause, admit any appeal notwithstanding that any period of limitation prescribed in this section has elapsed."*



Amendment  
of section 327.

73. Section 327 of the Decree is amended as follows:

- (a) by renumbering it as 327(1); and
- (b) by adding a new subsection (2) thus:

"(2) Upon receiving any petition of appeal the Registrar shall forward the petition and accompanying records to:

- (i) the Chief Justice for allocation in case of High Court appeals;
- (ii) to appropriate Magistrate for appeals other than High Court appeals."

Amendment  
of section 328.

74. Section 328 of the Decree is amended by deleting the words "High Court" which appears in subsection (1) and substitute therefore the words "appellate court".

Repeal and  
replacement  
of Section 329.

75. Section 329 of the Decree is repealed and replaced as follows:

*"Notice of time,  
place and  
hearing.*

*329. If the appellate court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his or her advocate, and to the Director of Public Prosecutions, of the time and place at which such appeal will be heard and shall furnish the respondent with a copy of the proceedings and of the grounds of appeal; save that such notice need not be given to the appellant or his or her 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 or her at the hearing of the appeal."*



Repeal and  
replacement  
section 330.

76. Section 330 of the Decree is repealed and replaced as follows:

*"Powers of the  
Appellate Court.*

*330.(1) After perusing such records and hearing the appellant or his or her advocate, if he or she appears, and the Director of Public Prosecutions, if he or she appears, the Appellate Court, if it considers that there is no sufficient ground to interfering, dismiss the appeal, or may:*

- (a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him or her guilty and pass sentence on him or her according to law;*
- (b) in an appeal against a conviction-*
  - (i) reverse the finding and sentence and acquit or discharge the accused, or order him or her to be re-tried by a court of competent jurisdiction subordinate to such appellate court or committed for trial, or*
  - (ii) alter the finding, maintaining the sentence, or*
  - (iii) with or without altering the finding, alter the nature of the extent, or the nature and the extent, of the sentence;*
- (c) in an appeal for enhancement of sentence:*





- (i) *reverse the finding and sentence and acquit or discharge the accused, or order him or her to be re-tried by a court competent to try the offence, or*
  - (ii) *alter the finding, maintaining the sentence, or*
  - (iii) *with or without altering the finding, alter the nature of the extent, or the nature and the extent, of the sentence so as to enhance or reduce the same;*
- (d) *in an appeal from any other order, alter or reverse such order;*
- (e) *make any amendment or any consequential or incidental order that may be just or proper:*

(2) *Nothing in this section shall be construed as precluding the appellate court from inflicting a greater punishment than the punishment which might have been inflicted by the court which imposed the sentence.*

(3) *The sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement."*

77. Section 331 of the Decree is repealed and replaced as follows:

Repeal and replacement of section 331.

*"Order of Appellate Court to be certified to lower court.*

*331.(1) Whenever a case is decided by an appellate court under this Part, it shall certify its judgment or order to the court by which the finding, sentence or order appealed against was recorded or passed.*



(2) *The court to which the appellate court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the appellate court, and, if necessary the record shall be amended in accordance therewith."*

Repeal and replacement of section 333.

*"Power to take additional evidence.*

78. Section 333 of the Decree is repealed and replaced as follows:

*333.(1) In dealing with appeals, the appellate court, if it thinks additional evidence is necessary, shall records its reasons, and may either take such evidence itself or direct it to be taken by a court subordinate to it.*

(2) *When the additional evidence is taken by a subordinate court, such court shall certify such evidence to the appellate court which shall thereupon proceed to dispose off the appeal.*

(3) *Unless the appellate court otherwise directs, the appellant and respondent or their advocates, where appropriate, must be present when the additional evidence is taken."*

Repeal and replacement of section 334.

*"Number of Judges on appeal.*

79. Section 334 of the Principal Decree is repealed and replaced as follows:

*334.(1) Unless required by any law for the time being in force or directed by the Chief Justice, all appeals under this Act shall be heard by a single Judge.*

(2) *Where an appeal has been commenced before one Judge, the Chief Justice may direct that the appeal be heard by three Judges and such direction may be given at any time before judgment is delivered.*



(3) *If, after hearing the appeal, the court is divided in opinion, the decision shall be by majority.*

Repeal and replacement of section 335.

80. Section 335 of the Decree is repealed and replaced as follows:

*"Abatement of Appeals.*

*335.(1) Every appeal by the Director of Public Prosecutions shall abate on the death of the accused.*

*(2) Every other appeal under this Part (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.*

*(3) Where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of the appellant's member of the family may, within thirty days from the death of the appellant, apply to the appellate court for leave to continue the appeal and if leave is granted, the appeal shall not abate."*

Amendment of subtitle.

81. The Decree is amended by deleting the subtitle "Case stated" which appears immediately before section 344 and substitute therefore the sub title "Reference".

Repeal and replacement of section 344.

82. Section 344 of the Decree is repealed and replaced as follows:

*"Reference to High Court.*

*344.(1) Where any court is satisfied that a case pending before it involves a question as to the validity of any Law, Act, Rule or Regulation, or any provision contained in the Law, Act, Rule or Regulation, the determination of which is necessary for the disposal of the case, and is of the opinion that such Law, Act, Rule, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court, the*



*court shall state a case setting out its opinion and the reasons therefore and refer the same for the decision of the High Court.*

*(2) Any Court making a reference to the High Court under subsection (1) may, pending the decision of the High Court thereon, either commit the accused to jail or release him or her on bail to appear when called upon."*

Repeal and replacement of section 345.

*"Disposal of case according to decision of High Court.*

83. Section 345 of the Decree is repealed and replaced as follows:

*345.(1) When a question has been so referred in terms of section 344, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Court by which the reference was made, which shall dispose off the case conformably to the said order.*

*(2) The High Court may direct by whom the costs of such reference shall be paid."*

Repeal of sections 346, 347 and 348.

84. Sections 346, 347 and 348 of the Decree are hereby repealed.

Repeal of section 350, 351 and 352

85. Sections 350, 351 and 352 of the Decree are hereby repealed.

Amendment of section 353.

86. Section 353 of the Decree is amended by deleting the word "stated" in the marginal notes and subsection (1) and substitute for it the word "referenced".

Repeal of section 354.

87. Section 354 of the Decree is hereby repealed.



Amendment  
of section 355.

88. Subsection (2) of section 355 of the Decree is repealed and replaced as follows:

"(2) Every such appeal shall be subject to such conditions as may be prescribed by Rules made by the Tanzania Court of Appeal.

Repeal and  
replacement  
of section 359.

89. Section 359 of the Decree is repealed and replaced as follows:

*"Duty to notify  
the Chief Justice.*

*359.(1) The Chief Justice shall appoint any Regional or District Magistrate or any public officer who is knowledgeable in law or experienced in criminal investigation to hold an inquest either generally or for specific inquest.*

*(2) When any person dies while in the custody of the police, or of a prison officer, or in a prison, it shall be the duty of the Commissioner of Police or Commissioner of Prisons as the case may be, to immediately notify the Chief Justice of such death.*

*(3) Where a Magistrate or public officer empowered to hold inquest is already appointed and known, it shall be the duty of the Police Officer Commanding the District in which death has occurred immediately to inform such Magistrate or public officer of the death and the Magistrate or public officer shall proceed under section 360 of the Act."*

Amendment  
of section 360.

90. Section 360 of the Decree is amended as follows:

(a) by replacing subsection (1) and substitute therefore the following;

"(1) When any person dies in circumstances mentioned in section 358(1) and 359(1), any Magistrate or Public officer so empowered by the Chief



Justice, may hold an inquiry into the cause of death, either instead of or in addition to the investigation held by the police or prison, and in doing an inquiry under this section, the Magistrate shall have all the powers which he or she would have in holding an inquiry into an offence."

- (b) by replacing the words "Commissioner of Police" which appears in subsection (4) and substitute therefor the words "Director of Public Prosecutions".

Amendment of section 362.

91. Section 362 of the Decree is amended by deleting the words "by the High Court of Judicature in England" and substitute therefore the words "by the common law courts."

Sections 363 replaced.

92. Section 363 of the Decree is repealed and replaced as follows:

*"Power to make rules.*

*363. The Chief Justice may from time to time make Rules for the proper carrying out the provisions of this Act."*

Amendment of the First Schedule.

93. The First Schedule to the Decree is amended to reflect all changes brought by this Act and the Amendment of the Penal Act.

Amendment of the Second Schedule.

94. The Second Schedule to the Decree is amended by deleting the word "Decree" wherever it appears after the word "Penal" and substitute therefore the word "Act".

Amendment of the Third Schedule.

95. The Third Schedule to the Decree is amended to reflect all changes brought by this Act.



Amendment  
of Fourth  
Schedule.

96. The Fourth Schedule to the Decree is amended as follows:

(a) Item (6) is deleted and replaced as follows:

(6) Officers of the Tanzania People's Defence Forces, National Security and officers of the Special Departments.

(b) Item (8) is deleted and replaced as follows:

"(8) Private Secretaries to the President of Zanzibar, the Chief Minister and all other Ministers and Members of the Revolutionary Council."

(c) Item (9) is deleted and replaced as follows:

"(9) All Principal Secretaries, Commissioners and Directors in the Government Service.

(d) Item (10) is amended by deleting the words "Legal Department" and substitute therefore the words "Attorney General's Chambers, Judiciary, Office of the Director of Public Prosecutions and the Ministry responsible for Legal Affairs."

(d) Item (12) is deleted.

(e) Item (13) is repealed and replaced as follows:

"(13) Person with mental disability."



Consequential amendment.

97. The provisions of the Magistrate Court Act relating to Criminal Jurisdiction of the Magistrate Courts are hereby repealed and replaced by the provisions of this Act relating to the same.

Repeal of Criminal Procedure Decree, Cap.14.

98. Criminal Procedure Decree, Chapter 14 is hereby repealed.

Transitional provision.

99.(1) Notwithstanding the repeal of the Decree any matter pending in any court before the commencement of this Act the disposal of which is affected by the amendments made to the Decree, shall be dealt with and disposal under the Decree as if no amendment is made to the Decree.

(2) Notwithstanding the provision of subsection (1) where the Chief Justice is of the opinion that no miscarriage of justice shall be occasioned, he may order such pending matter be dealt with and disposed under the provisions of this Act.

**PASSED in the House of Representatives on the 6<sup>th</sup> day of April, 2004.**

*Khande*

**KHAMIS JUMA CHANDE  
CLERK OF THE HOUSE OF REPRESENTATIVES**