



**AN ACT TO REPEAL THE CRIMINAL PROCEDURE ACT NO. 7 OF 2004  
AND TO RE - ENACT A NEW CRIMINAL PROCEDURE AND TO PROVIDE  
FOR THE BETTER PROCEDURES FOR INVESTIGATION AND  
CONDUCT OF THE CRIMINAL TRIALS AND FOR  
OTHER MATTERS RELATED THERETO**

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**ARRANGEMENT OF SECTIONS**

**SECTIONS**

**TITLE**

**PART ONE  
PRELIMINARY PROVISIONS**

1. Short title and commencement.
2. Interpretation.
3. Trial of offences under Penal Act and other law.

**PART TWO  
POWERS OF COURTS**

4. Offences under Penal Act.
5. Offences under other laws.
6. Sentences which High Court may pass.
7. Sentences which Regional Magistrate Court may pass.
8. Sentences which District Magistrate Court may pass.
9. Sentences which Primary Court may pass.
10. Suspension of the sentence of imprisonment.
11. Subordinate Courts may commit convicted persons to higher court for sentencing.



**PART THREE  
GENERAL PROVISIONS RELATING TO ARREST,  
ESCAPE AND RETAKING**

**Arrest generally**

12. Arrest, how made.
13. Treatment of an arrested person.
14. Search of place entered by person sought to be arrested.
15. Power to break out of house or place for purposes of liberation.
16. No unnecessary restraint.
17. Search of arrested persons.
18. Power of Police Officer to detain and search vehicles, persons in certain circumstances.
19. Mode of searching women.
20. Power to seize offensive weapons.

**Arrest without warrant**

21. Arrest by Police Officer without warrant.
22. Notice of appearance before Police officer.
23. Proclamation for person absconding.
24. Attachment of property of person proclaimed.
25. Restoration of attached property.
26. Arrest of vagabonds and habitual robbers.
27. Arrest without warrant by subordinate Police Officer.
28. Refusal to give name and residence.
29. Disposal of persons arrested by Police Officer.
30. Arrest by private persons.
31. Disposal of persons arrested by private person.
32. Person arrested not to be detained more than twenty four hours.
33. Police to report apprehension.
34. Person arrested to be informed of ground of arrest and right to remain silent.
35. Obligation to inform of the arrest.
36. Restriction on questioning person.
37. When person not to be taken under restraint.
38. Periods available for interviewing person.



39. When custodial investigation cannot be completed within four hours.
40. Treatment of person under restraint.
41. Special duties when interviewing children.
42. Records of interviewing.
43. Statement by suspect.
44. Power to take finger prints, photos of suspects.
45. Identification parades.
46. Recognition of advocates.
47. Examination of accused by medical practitioner at the request of Police Officer.
48. Examination of victim or person accused of offences.

#### **Arrest by order of Magistrate**

49. Offence committed in Magistrate's presence.
50. Arrest by Magistrate.

#### **Escape and retaking**

51. Recapture of person escaping.
52. Pursuit of offenders in other jurisdiction.
53. Application of provisions of sections 14 and 15.
54. Assistance to Magistrate or Police Officer.

### **PART FOUR PREVENTION OF OFFENCES**

#### **Security for keeping the peace and for good behaviour**

55. Security for keeping the peace or being of good behaviour generally.
56. Power of other Magistrate.
57. Security for good behaviour from persons disseminating seditious matters.
58. Security for good behaviour from suspected persons.
59. Security for good behaviour from habitual offenders.
60. Making of order.
61. Procedure in respect of person present in court.
62. Procedure in respect of person not present in court.



63. Copy of order to accompany summons or warrant.
64. Power to dispense with personal attendance.
65. Inquiry as to truth of information.
66. Order to give security.
67. Discharge of persons informed against.

#### **Proceedings in all cases subsequent in order to furnish security**

68. Commencement of period for which security is required.
69. Contents and breach of bond.
70. Power to reject sureties.
71. Procedure on failure of person to give security.
72. Release of person imprisoned for failure to give security.
73. Power of High Court to cancel bond.
74. Discharge of sureties.

#### **Preventive action of the Police**

75. Police to prevent cognisable offence.
76. Information of design to commit offence.
77. Arrest to prevent offence.
78. Prevention of injury to public property.

### **PART FIVE PROVISIONS RELATING TO ALL CRIMINAL INVESTIGATIONS**

#### **Place of inquiry or trial**

79. Investigation of offence.
80. General authority of Courts of Zanzibar.
81. Accused person to be sent to district where offence committed.
82. Removal of accused person under warrant.
83. Jurisdiction of High Court.
84. Place and date of sittings of the High Court.
85. Ordinary place of inquiry and trial.
86. Trial at place where act done or consequence ensues.
87. Trial where offence is connected with another offence.



88. Trial where place of offence is uncertain.
89. Trial when offence committed on a journey.
90. Offence committed by letters.
91. Place of trial of offences triable together.
92. High Court to decide in cases of doubt.
93. Courts to be open.

#### **Transfer of cases**

94. Transfer of case where offence committed outside jurisdiction.
95. Transfer of cases between Magistrates.
96. Procedure relating to transfer of cases by Magistrate.
97. High Court to change venue.
98. Modality of invoking the powers of the High Court under section 97.

#### **Control of Director of Public Prosecutions in criminal proceedings**

99. The Director of Public Prosecutions.
100. Title of criminal cases.
101. Nolle prosequi.

#### **Conduct of prosecutions**

102. Powers of public prosecutors.
103. Withdrawal in trials before subordinate courts.

### **PART SIX INSTITUTION OF PROCEEDINGS**

#### **Making of complaint**

104. Complaint and formal charge.
105. Issue of summons or warrant.
106. Dismissal of complaint.



## **PART SEVEN PROCESSES OF COMPELING THE APPEARANCE OF ACCUSED PERSONS**

### **Summons**

107. Forms and contents of summons.
108. Service of summons.
109. Service when person summoned cannot be found.
110. Procedure when service cannot be effected as before provided.
111. Service on servant of Government.
112. Service on company.
113. Service outside jurisdiction.
114. Proof of service.

### **Warrant of arrest**

115. Warrant on disobedience to, or after issue of summons.
116. Form, contents and duration of warrant.
117. Power to direct security to be taken.
118. Warrant to whom directed.
119. Warrant may be directed to landholders.
120. Execution of warrant directed to Police Officer.
121. Notification of substance of warrants.
122. Person arrested to be brought before court.
123. Where warrant may be executed.
124. Execution of warrant outside jurisdiction.
125. Procedure in case of execution of warrant outside jurisdiction.
126. Procedure on arrest of person outside jurisdiction.
127. Irregularities in warrant.

### **Miscellaneous Provisions Regarding Processes**

128. Power to take bond for appearance.
129. Arrest for breach of bond.
130. Power to order attendance of prisoner.
131. Application of provisions relating to summonses and warrants.



## **Search Warrants**

132. Summons to produce documents or other thing.
133. Procedure as to letters and telegrams.
134. Procedure as to bank accounts.
135. Search, seizure of computer data and equipment.
136. Assisting police and authorised officer.
137. Record of an access to seize data.
138. Production of data.
139. Disclosure of stored data.
140. Preservation of data.
141. Investigation of electronic communications.
142. Investigation of traffic data.
143. Confidentiality and limitation of liability.
144. Interpretation.
145. Power to issue search warrant.
146. Search by police officer.
147. Duty of persons to allow search.
148. Conditions of executing search warrant.
149. Detention of the property seized.
150. Provisions applicable to search warrant.

## **Provisions as to Bail**

151. General power to grant bail.
152. When bail may be taken in non- bailable offence.
153. Bail bond.
154. Discharge from custody of persons bailed.
155. Deposit instead of recognisance.
156. Power to order sufficient bail.
157. Power to reject sureties.
158. Discharge of sureties.
159. Death of surety.
160. Power to commit absconding person.
161. Forfeiture of recognisance.



162. Appeal and revision of order.
163. Levy of amount due on recognizance.

### **Charges and information to the High Court**

164. Content of charge.
165. Joinder of charges or counts in a formal charge or information.
166. Joinder of two or more accused in one formal charge or information.

### **Rules for the framing of charges and information**

167. Rules for the framing of charges and information.

### **Previous Conviction or Acquittal**

168. Persons not to be tried twice for same offence.
169. Person may be tried again for separate offence.
170. Consequences supervening or incompetence of original court.
171. Mode of proof of previous conviction.

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

172. Preliminary hearing to determine matters not in dispute.

### **Compelling Attendance of Witnesses**

173. Summons for witness.
174. Warrant for witness who disobeys summons.
175. Warrant for witness in the first instance.
176. Mode of dealing with witness when arrested.
177. Power to order production of prisoner as witness.
178. Penalty for non- attendance as witness.

### **Examination of Witness**

179. Power of court to examine and re-examine.
180. Evidence to be given on oath.
181. Refractory witnesses.
182. Evidence of husband or wife of accused.
183. Special measures for vulnerable or intimidated witnesses.





### **Commissions for the Examination of Witnesses**

184. Issue of commission for examination of witnesses.
185. Parties may examine witnesses.
186. Power of magistrate to apply for issue of commission.
187. Return of commission.
188. Adjournment pending return of commission.

### **Evidence for Defence**

189. Competency of the accused and competence of husband or wife.
190. Where accused intends to rely on defence of alibi.
191. Procedure where accused is only witness called.
192. Right to reply.

### **Procedure in Case of the Mental or Other Incapacity of an Accused Person**

193. Inquiry as to mental condition of accused.
194. Procedure when person certified as capable of making his defence.
195. Resumption of trial or inquiry.
196. Defence of insanity.
197. Procedure when accused does not understand proceedings.

### **Right of Accused Person to be defended**

198. Right of accused to be defended.
199. Legal aid to accused at state expense in certain cases.

## **PART EIGHT MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS**

### **General**

200. Evidence to be taken in presence of accused.

### **Subordinate Courts**

201. Manner of recording evidence before magistrate.
202. Interpretation of evidence to accused or his advocate.



203. Remarks respecting demeanour of witness.
204. Evidence to be recorded partly by one magistrate and partly by another.

### **High Court**

205. Record of evidence in High Court.

## **PART NINE PROCEDURES IN TRIALS BEFORE SUBORDINATE COURTS**

### **Provisions relating to the hearing and determination of cases**

206. Non-appearance of complainant.
207. Appearance of both parties.
208. Withdrawal of complaint.
209. Adjournment.
210. Commencement of trial for bailable offences.
211. Non-appearance of parties after adjournment.
212. Cost of adjournment.
213. Calling upon accused to plead.
214. Procedure on plea of "not guilty."
215. Discharge of accused person when no case to answer.
216. Defence.
217. Evidence in reply.
218. Opening and close of case for prosecution and defence.
219. Variance between charge and evidence and amendment of charge.
220. Decision.
221. Drawing up of conviction or order.
222. Order of dismissal bar to further procedure.

### **Limitations and Exceptions Relating to Trials Before Subordinate Courts**

223. Limitation of time for summary trials.
224. Procedure in case of offence proving unsuitable for summary trial.



## PART TEN PROCEDURE IN TRIALS BEFORE THE HIGH COURT

- 225. Practice of the High Court in its criminal jurisdiction.
- 226. Trial to be conducted by Director of Public Prosecutions.
- 227. Prosecution to provide record of evidence.

### Mode of Trial

- 228. Trials to be with three assessors.

### List of Assessors

- 229. Preparation of list.
- 230. Duty to serve as assessors.
- 231. Exemptions from service as assessors.
- 232. Publication of list.
- 233. Revision of list.
- 234. Assessors to take oath.

### Attendance of Assessors

- 235. Summoning of assessors.
- 236. Form of summons.
- 237. Excuses from attendance.
- 238. List of assessors attending.
- 239. Penalty for non- attendance.

### Arraignment

- 240. Pleading to information.
- 241. Amendment of information, separate trial and postponement of trial.
- 242. Quashing of information.
- 243. Procedure in previous convictions.
- 244. Plea bargaining.
- 245. Consequences of plea bargain.
- 246. Notice of the agreement to the Court.



247. Similar procedure for Regional Court.
248. Effect of plea of “not guilty.”
249. Plea of autrefois acquit and autrefois convict.
250. Refusal to plead.
251. Procedure on plea of “guilty”.
252. Procedure on plea of “not guilty”.
253. Power to postpone or adjourn proceeding.

#### **Selection of Assessors**

254. Selection of assessors.
255. Absence of assessor.
256. Assessor to attend at adjourned sittings.

#### **Questions by Assessors**

257. Power of assessors to put questions.

#### **Case for the Prosecution**

258. Opening of case for prosecution.
259. Witnesses for the prosecution.
260. Non-appearance of parties after adjournment.
261. Witness may give evidence through electronic media.
262. Cross- examination of witnesses.
263. Close of case for prosecution.

#### **Case for the Defence**

264. Opening case for defence.
265. Witnesses for defence.
266. Prosecutor’s reply.
267. Where accused adduces no evidence.

#### **Close of Hearing**

268. Delivery of opinions by assessors.



## Passing Sentence

269. Calling upon the accused.
270. Motion in arrest of judgement.
271. Sentence.
272. Power to reserve decision.
273. Objections cured by finding of Court.
274. Evidence for arriving at proper sentence.

## PART ELEVEN CONVICTIONS AND JUDGEMENTS

### Convictions for Offences Other than those Charged

275. When offence proved is included in offence charged.
276. Person charged with any offence may be convicted of attempt.
277. Woman charged with murder of her child may be convicted of infanticide.
278. Person charged with child destruction may be convicted of minor offence.
279. Person charged with murder or infanticide or killing an unborn child may be convicted of concealment of birth.
280. Power to convict for reckless or dangerous driving on trial for manslaughter.
281. Person charged with rape may be convicted of an offence under other provisions of the Penal Act.
282. Person charged with incest may be convicted of unlawful carnal knowledge.
283. Person charged with defilement of boy may be convicted of an offence under other provisions of Penal Act.
284. Person charged with burglary, may be convicted of kindred offence.
285. Person charged with stealing may be convicted of receiving or obtaining by false pretences.
286. Alternative verdict in charges of being in possession of property suspected of having corruptly acquired.
287. Person charged with obtaining by false pretences may be convicted of stealing.
288. Construction of sections 275 to 287.

### Judgment

289. Mode of delivering judgement.
290. Contents of judgement.
291. Rights of accused to copy of judgement.



## **PART TWELVE SENTENCES AND THEIR EXECUTION**

### **Different Kinds of Sentences**

292. Different kinds of punishments.

#### **Sentence of Death**

293. Sentence of death.  
294. Procedure where woman convicted of capital offence alleges she is pregnant.  
295. Appeal from finding that woman is not pregnant.  
296. Accused to be informed of right to appeal.  
297. Authority for detention.  
298. Record and report to be sent to President.

#### **Sentence of Imprisonment**

299. Imprisonment.  
300. Warrant in case of sentence of imprisonment.  
301. Substitution of police custody for imprisonment in case of short sentence.  
302. Sentences cumulative unless otherwise ordered.  
303. Sentences in case of conviction of several offences at one trial.  
304. Sentence on offender already sentenced for another offence.  
305. Escaped convicts to serve unexpired sentences when recaptured.  
306. Ban of corporal punishment.

#### **Fines**

307. Fine in lieu of or in addition to imprisonment.  
308. Discretion of Court.  
309. Forfeiture.

#### **Costs**

310. Power to award costs against accused or private prosecutor.  
311. Right of appeal from order as to costs.  
312. Recovery of costs.



### **Compensation**

- 313. Court may order compensation.
- 314. Compensation in cases of sexual offences.
- 315. Power to award expenses or compensation out of fine.
- 316. Specification and recovery of compensation.

### **Enforcement of Order for Payment of Fine, Costs, or Compensation by Distress**

- 317. Warrant for levy of fine.
- 318. Objections to attachment.
- 319. Defect or want of form in proceeding not to invalidate distress.

### **Imprisonment in Default of Payment of Fine, Costs, Compensation**

- 320. Imprisonment in default of payment of fine.
- 321. Postponement of sentence of imprisonment in default of fine.
- 322. Commitment on failure of distress.
- 323. Commitment in lieu of distress.
- 324. Scale of imprisonment in default of payment of fine.
- 325. Payment in full after commitment.
- 326. Part payment after commitment.

### **Security for Keeping the Peace or for Coming up for Judgment**

- 327. Security for keeping the peace.
- 328. Security for coming up for judgement.
- 329. Provisions applicable to, and recognisances under sections 327 and 328.

### **Discharge of Offender without Conviction or on Probation**

- 330. Discharge of offender without conviction or on probation.

### **Supervision**

- 331. Power to subject to supervision.
- 332. Requirements which may be imposed on persons subject to supervision.
- 333. Offence of failing to comply with requirements imposed on persons subject to supervision.



## **Warrants and Orders**

- 334. Who may issue warrant.
- 335. Amendments of errors and omissions.

## **PART THIRTEEN RESTITUTION OF PROPERTY**

### **Property Found on Accused Person**

- 336. Property found on accused person.

### **Restitution of Stolen Property**

- 337. Property stolen.

## **PART FOURTEEN APPEALS GENERALLY**

- 338. Interpretation.
- 339. Inherent rights of appeal.
- 340. Appeals to High Court.
- 341. Appeals to Regional Magistrate.
- 342. Appeals to the District Magistrate.
- 343. Appeals by the Director of Public Prosecutions.
- 344. Appeal in case of acquittal.
- 345. Notice of intention to appeal.
- 346. Limitation.
- 347. Petition of appeal.
- 348. Appellant in prison.
- 349. Summary rejection of appeal.
- 350. Notice of time, place and hearing.
- 351. Powers of the Appellate Court.
- 352. Order of Appellate Court to be certified to lower court.
- 353. Admission of appellant to bail and his custody pending appeal.
- 354. Power to take additional evidence.





- 355. Number of Judges on appeal.
- 356. Abatement of appeals.
- 357. Appeals to Court of Appeal.
- 358. Admission to bail pending appeal to Court of Appeal.

#### **Revision**

- 359. Power of High Court to call for records.
- 360. Power of Magistrates to call for records of inferior courts.
- 361. Powers of High Court on revision.
- 362. Discretion of Court as to hearing parties.
- 363. Number of Judges on revision.
- 364. Order on revision to be certified to lower court.

#### **Reference**

- 365. Reference to High Court.
- 366. Disposal of case according to decision of High Court.
- 367. Power to remit case to subordinate court.
- 368. Number of Judges on case referenced.

#### **Appeal from High Court**

- 369. Appeal to the Court of Appeal on conviction by High Court.

### **PART FIFTEEN INVESTIGATIONS INTO SUDDEN DEATHS AND INQUESTS**

#### **Duty to Report Crime or Accident or Death in Certain Circumstances.**

- 370. Duty to report a crime.
- 371. Duty to report finding of dead body.

#### **Investigations as to Sudden Deaths.**

- 372. Investigation and report by Police.



### **Inquest**

- 373. Duty to notify the Chief Justice.
- 374. Inquest by Magistrate.

## **PART SIXTEEN HABEAS CORPUS AND OTHER PREROGATIVE WRITS**

### **Directions in the Nature of Habeas Corpus**

- 375. Power to issue directions in the nature of habeas corpus.
- 376. Power to issue certain writs.
- 377. Power to make rules.

## **PART SEVENTEEN IRREGULAR PROCEEDINGS**

- 378. Proceeding in wrong place.
- 379. Improper admission or rejection of evidence.
- 380. Omission to take oath.
- 381. Omissions and errors in proceedings.

## **PART EIGHTEEN MISCELLANEOUS**

- 382. Persons before whom affidavits may be sworn.
- 383. Shorthand notes of proceedings.
- 384. Electronic records.
- 385. Right to copies of proceedings.
- 386. Forms to be used.
- 387. Expenses of assessors and witnesses.
- 388. General Rules.
- 389. Consequential amendment Magistrates Court Act.
- 390. Repeal of Criminal Procedure Act No. 7 of 2004.
- 391. Transitional provisions.

## **SCHEDULE**



ACT NO. 7 OF 2018

I ASSENT

{ DR. ALI MOHAMED SHEIN }  
PRESIDENT OF ZANZIBAR AND CHAIRMAN OF  
THE REVOLUTIONARY COUNCIL

*21<sup>st</sup> March*....., 2018

**AN ACT TO REPEAL THE CRIMINAL PROCEDURE ACT NO. 7 OF 2004 AND  
TO RE - ENACT A NEW CRIMINAL PROCEDURE AND TO PROVIDE  
FOR THE BETTER PROCEDURES FOR INVESTIGATION AND  
CONDUCT OF THE CRIMINAL TRIALS AND FOR  
OTHER MATTERS RELATED THERETO**

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ENACTED by the House of Representatives of Zanzibar.

**PART ONE  
PRELIMINARY PROVISIONS**

Short title and  
commence-  
ment.

1. This Act may be cited as the Criminal Procedure Act, 2018 and shall come into force upon being assented to by the President.

Interpretation.

2. In this Act, unless the context otherwise requires:

“bailable offence” means an offence which the accused person may be admitted to bail by any court or police in charge of police station as provided under section 151 (1) of this Act;

“cognisable offence” means an offence for which a police officer may, in accordance with the First Schedule or under any law for the time being in force, arrest without warrant;



- “child” means a person below the age of 18 years;
- “complaint” means an allegation made orally or in writing to a magistrate, with a view of taking action under this Act;
- “complainant” in a private prosecution means, the private prosecutor or the person making the complaint before the court, in case of public prosecutions, means the person presenting the case on behalf of the state before the court;
- “Director of Public Prosecutions” means the person responsible for prosecution of criminal matter 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;
- “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 authorised by a magistrate or by the Director of Public Prosecutions or under any law in this behalf;
- “Magistrate” has the meaning assigned to it by the Magistrate’s Court Act;
- “medical examination” includes the test or examination of breath, blood, blood stains, semen, swabs (in case of sexual offences), sputum, sweat, hair samples, finger nail clippings for the use of DNA profiling and other tests or examination which the registered medical practitioner thinks necessary in a particular case”
- “medical officer” means any medical officer in the employment of the government registered under the provisions of the Medical Practitioners and Dentists Act;
- “medical practitioner” means a medical practitioner registered under the Medical Practitioner and Dentists Act;
- “non-bailable offence” means an offence specified under section 151(1) of this Act for which bail may be admitted only by the Chief Justice under section 151(4) of this Act;
- “non-cognisable offence” means an offence for which a police officer may not arrest without warrant;
- “offence” means any act or omission made punishable by any law for the time being in force;



“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 or her duties, the police officer present at the station-house 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;

“plea bargaining” means the process provided under this Act to reach plea agreement;

“police officer” includes any member of the police force;

“police station” means a post or place appointed by the Commissioner of Police to be a police station, and includes any local area designated for such station;

“Special Department” means a department of the Revolutionary Government of Zanzibar established in accordance with section 121 of the Constitution of Zanzibar, 1984;

“State” in reference to courts of Zanzibar means the Revolutionary Government of Zanzibar;

“subordinate court” means any court subordinate to the High Court other than a Kadhi’s Court;

“summary trial” means a trial held by a subordinate court under Part Nine of this Act.

Trial of offences under Penal Act and other law.

3.-(1) All offences under the Penal Act shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

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

(3) Notwithstanding anything in this Act contained, the High Court may, subject to the provisions of any law for the time being in force in Zanzibar, in exercising its criminal jurisdiction in respect of any matter or thing to which the procedure prescribed by this Act is inapplicable, exercise such jurisdiction according to the course of procedure as may be prescribed by Courts of Commonwealth Countries.



(4) Without prejudice to the generality of subsection (2) of this section, nothing in this Act shall be deemed to affect any course of procedure or practice which may be prescribed in criminal matters under the provisions of:

- (a) the law relating to Probation of Offenders;
- (b) Children Act No. 6 of 2011;
- (c) any order relating to Magistrates' Courts made by the Chief Justice of Zanzibar under the Magistrate Court Act; or
- (d) any rules made or deemed to have been made under any of the said Acts.

## PART TWO POWERS OF COURTS

Offences under  
Penal Act.

**4.**-(1) Subject to the provisions of this Act, any offence under Penal Act may be tried by the High Court or by any subordinate court as specified under the First Schedule of this Act.

(2) The jurisdiction of a subordinate court presided over by a Regional Magistrate shall extend to and include the trial of the offences falling under sections 108, 115, 133, 134, 143, 279, 281, 319, 339, 340 and 341 of the Penal Act.

(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 fourteen years unless such court is vested with extended jurisdiction in accordance with the Magistrate's Court Act.

Offences under  
other laws.

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

(2) When no court is mentioned, it may, subject to the other provisions of this Act, be tried by the High Court, or by any subordinate court by which such offence is specified in the First Schedule of this Act to be triable.

Sentences  
which High  
Court may  
pass.

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



Sentences which Regional Magistrate Court may pass.

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

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

Sentences which District Magistrate Court may pass.

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

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

Sentences which Primary Court may pass.

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

- (a) imprisonment for a term not exceeding one year;
- (b) fine not exceeding one million shillings; or
- (c) work in the community for a period not exceeding two months in accordance with the rules made by the Chief Justice.

Suspension of the sentence of imprisonment.

10.-(1) Unless the context requires otherwise, any court which passes a sentence of imprisonment of a term of not exceeding three years for any crime, may order that the sentence shall not take effect unless during the period specified by that court the offender commits another offence, whether that offence is punishable by imprisonment, fine or both.

(2) Where offender is convicted of an offence during that specified period of suspended sentence, the sentence for the first offence convicted under subsection (1) of this section shall thereupon take effect.

(3) Where the sentence passed for the subsequent offence shall run consecutively to the sentence passed for the first offence.



Subordinate  
Courts may  
commit  
convicted  
persons  
to higher  
court for  
sentencing.

11.-(1) Where under the provisions of this Act a subordinate court convicts any person of an offence, then, if on obtained 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 greater punishment should be inflicted for the offence than the court has power to inflict, the court may, instead of dealing with convicted person in any other manner, commit convicted person in custody to the higher court for sentence in accordance with the provision of this section.

(2) Where the convicted person is committed to the higher court for sentence under the provision of this section, higher court shall inquire into the circumstances of the case and shall either remit the case for sentence to the court which committed convicted person, or deal with convicted person 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) Where under the provision of subsection (2) of this section the higher court remits the case for sentence to the court which committed convicted person, the provisions of this Act with regard to revision, confirmation of such sentence and to appeal against conviction or sentence shall apply as for any other case tried by a subordinate court.

(4) Where the higher court imposes a sentence on the convicted person, the provisions of this Act with regard to appeal against conviction only shall apply as for any other case tried by a subordinate court.

(5) Where 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 higher court and the provisions of this Act relating to the appeal against sentence of the higher court to the appellate court shall apply accordingly.

(6) 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 higher court may in 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.

(7) Where a person who has been committed to 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.





(8) 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 was under that section been reported to the higher court for orders.

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

### **PART THREE GENERAL PROVISIONS RELATING TO ARREST, ESCAPE AND RETAKING**

#### **Arrest generally**

Arrest, how made.

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

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

Treatment of an arrested person.

**13.**-(1) A person arrested shall not be subjected to any treatment against human dignity nor shall be physically or morally abused.

(2) A person arrested shall have the right to inform his or her family, or the body to which he or she belongs, and contact the same about the arrest.

(3) Where the arrested person is a child, or suffering from a mental infirmity, or any disease, in such a way that he or she may not be able to contact his or her family, or the body to which he or she belongs, the Police, Public Prosecution or the Court shall, on its own initiative, notify the family or the appropriate body.

(4) Person arrested shall have the right to obtain a reasonable amount of food stuff, clothing and cultural materials, at his or her own cost, subject to the conditions relating to security and public order.

(5) Person arrested shall always be entitled to contact or meet any advocate of his or her choice when under the custody of the Police or during interrogation and shall not be transferred, or placed in any other place except upon the order or directives of the Director of Public Prosecutions or the Court as the case may be.

Search of place entered by person sought to be arrested.

**14.**-(1) If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into or is within any place, the person residing in or being in charge of such place shall,



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

(2) If ingress to such place cannot be obtained under subsection (1) of this section, it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity to escape, for a police officer, to enter such place and search therein, and, in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person 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.

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

(4) Where a woman is to be arrested, unless the circumstance requires otherwise or unless the police officer is a female, her submission to custody on oral intimation shall be presumed and the police officer shall not touch the body of the woman for making her arrest.

(5) Nothing shall justify the use of greater force than is reasonable in the particular circumstances in which it is employed or is necessary for the arrest of, or intended or likely to cause death or grievous bodily harm to the offender.

(6) An arrest shall not be made except in accordance with the provisions of this Act and, save in exceptional circumstances, a child or a woman shall not be arrested after sunset or before sunrise.

(7) Where such exceptional circumstances specified in sub section (6) of this section **exist**, the Police Officer shall, by making a written report, obtain the prior permission of the Court within whose local jurisdiction the offence is committed or the arrest is to be made.

(8) Pursuant to this Act, any arrest made to a child must be with regard to the provisions of the Children's Act.

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

Power to break out of house or place for purposes of liberation.

No unnecessary restraint.      **16.** The person arrested shall not be subject to more restraint than is necessary to prevent his escape.

Search of arrested persons.      **17.** Whenever a person is arrested:

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

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

Power of Police Officer to detain and search vehicles, persons in certain circumstances.      **18.** A police officer may stop, search and detain any vessel, boat, aircraft or vehicle in or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found or a person who may reasonably be suspected of having in his possession or conveying in any manner anything stolen or unlawfully obtained, and may seize any such thing.

Mode of searching women.      **19.** Whenever it is necessary to cause a woman to be searched, the search shall be made by another female police officer or female public officer with strict regard to decency.

Power to seize offensive weapons.      **20.** The officer or other person making any arrest may take from the person arrested any offensive weapons which he has possessed, and shall deliver all weapons so taken 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.

#### **Arrest without warrant**

Arrest by Police Officer without warrant.      **21.-(1)** A police officer may, without an order from a magistrate and without a warrant, arrest:

- (a) a person who commits, in the presence of a police officer, a cognizable offence;

- (b) a person against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists that a person has committed or has been concerned in a cognizable offence;
- (c) a person to whom suspected 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;
- (d) a person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house breaking;
- (e) any released convict committing a breach of any provision prescribed by section 328 of this Act or of any Rules made thereunder;
- (f) a person for whom he has reasonable cause to believe a warrant of arrest has been issued.

(2) Pursuant to the provisions of paragraph (a) and (b) of subsection (1) of this section, a person shall not be arrested for a cognizable offence punishable with imprisonment of less than seven years unless:

- (a) the police officer has reason to believe on the basis of such complaint, information or suspicion that such person has committed the said offence; or
- (b) the police officer is satisfied that the arrest is necessary to prevent such person from committing any further offence or from causing the evidence of the offence to disappear or is for proper investigation of the offence.

(3) Police officer shall, in all cases where the arrest of person is not required under this section record the reasons in writing for not making the arrest.

(4) Subject to the provisions of section 24 of this Act, a person not concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of having so concerned, shall not be arrested except under the warrant issued by a court of competent jurisdiction.



Notice of appearance before Police officer.

**22.**-(1) Wherever the case falls under subsection (1) of section 21 of this Act, the police officer shall, instead of arresting the person concerned, issue to that person a notice to appear before the police issuing the notice or at such other place as may be specified therein to co-operate with the police in the investigation of the offence referred to in subsection (1) of section 21 of this Act.

(2) Where such notice is issued to a person, it shall be the duty of that person to comply with the terms of that notice issued.

(3) Where that person complies and continues to comply with that notice, that person shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police is of the opinion that the person ought to be arrested.

(4) Where that person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police may, subject to such orders passed by a competent court in this behalf, arrest that person for the offence mentioned in the notice.

Proclamation for person absconding.

**23.**-(1) If any court has reason to believe, whether after taking evidence or not, that any person against whom a warrant has been issued by it has absconded or is concealing himself so that the warrant cannot be executed the court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing the proclamation.

(2) The proclamation shall be published as follows:

- (a) it shall be publicly read in some conspicuous place of the town, village or street in or near which that person ordinarily resides;
- (b) it shall be affixed to some conspicuous part of the house or other place in which that person ordinarily resides or in some conspicuous place of the town, village or street; and
- (c) a copy thereof shall be affixed to some conspicuous part of the court.

(3) A statement in writing by the court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with and that the proclamation was published on that day.

Attachment of property of person proclaimed.

**24.**-(1) The court issuing a proclamation under section 23 of this Act, may at any time order the attachment of any property movable or immovable or both belonging to the proclaimed person.



(2) The order shall authorize the attachment of any property belonging to the person within the local jurisdiction of the court by which it is made, and it shall authorize the attachment of any property belonging to that person without such jurisdiction when indorsed by a Magistrate within whose jurisdiction the property is situate.

(3) If the property ordered to be attached consists of debts or other movable property the attachment shall be made:

- (a) by seizure;
- (b) by the appointment of a receiver;
- (c) by an order in writing prohibiting the delivery of the property to the proclaimed person or to any one on his behalf; or
- (d) by all or any two of such methods as the court thinks fit.

(4) If the property ordered to be attached is immovable, the attachment under this section shall be made through the Director for Lands and Registration; and upon the receipt of an order of attachment the said Director or any officer authorized on his behalf shall execute the same:

- (a) by taking possession;
- (b) by the appointment of a receiver;
- (c) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or
- (d) by all or any two of such methods as he thinks fit.

(5) Such attachment of any land held under a title required by law to be registered shall not take effect until the order of attachment is duly registered under the law for the registration.

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under rules of court in force for the time being.

(7) If the proclaimed person does not appear within the time specified in the proclamation the property shall be at the disposal of the Government, but it shall not be sold until the expiration of six months from the date of the attachment unless it is subject to speedy and natural decay, or the court considers that the sale would be for the benefit of the owner, in either of which cases the court may cause it to be sold whenever it thinks fit.



(8) A person other than the person proclaimed may appear before the court which made the order of attachment and claim, stating his interest or title thereto, the property or any part thereof attached or ordered to be attached provided that such claim is made within three months from the order of attachment.

(9) The court shall record the claim so made and shall cause a copy thereof to be served upon the Public Prosecutor together with a notice requiring him to attend before the court on a day and at a time to be stated therein to show cause why the property, if attached, should not be released, or why the order of attachment should not be cancelled so far as it relates to the property so claimed.

(10) At the hearing the court shall proceed to inquire into the truth and justice of the claim so made and to take such evidence as may be necessary.

(11) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed under this Act, for conducting trials in summary cases before Magistrates.

(12) The court shall, if satisfied of the truth and justice of the claim, direct such property to be released or such order to be cancelled, or if satisfied as aforesaid as to part only of the claim shall direct such part to be released or so much of the order as relates thereto to be cancelled.

Restoration  
of attached  
property.

**25.** If within two years from the date of the attachment any person whose property is or has been at the disposal of the Government under section 24 of this Act, appears voluntarily is apprehended and brought before the court by whose order the property was attached and proves to the satisfaction of the court that he did not abscond, or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, the property or, if the same has been sold, the net proceeds of the sale or, if part only thereof has been sold, the net proceeds of the sale and the residue of the property shall, after satisfying there out all costs incurred in consequence of the attachment, be delivered to him.

Arrest of  
vagabonds  
and habitual  
robbers.

**26.** An officer in charge of a police station may in like manner arrest or cause to be arrested:

- (a) a person found taking precautions to conceal his presence within the limits of such station under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognisable offence;
- (b) a person within the limits of such station who has no ostensible means of subsistence or who cannot give a satisfactory account of himself;



- (c) a person who is by repute an habitual robber, house breaker or thief or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury.

Arrest without  
warrant by  
subordinate  
Police Officer.

27. When an officer in charge of a police station requires any officer subordinate to him to arrest without a warrant, otherwise than in such subordinate officer's presence, a person who may lawfully be arrested without a warrant, under the provisions of section 21 of this Act, 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.

Refusal to  
give name  
and residence.

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

(2) When the true name and residence of such person have been ascertained he shall be released on his executing a bond, with or without sureties, to appear before a magistrate if so required.

(3) If such person is not resident in Zanzibar the bond shall be secured by a surety or sureties resident in Zanzibar.

(4) If the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest, or if he fails to execute the bond or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest magistrate having jurisdiction.

Disposal  
of persons  
arrested by  
Police Officer.

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

Arrest by  
private  
persons.

30.-(1) A private person may arrest a person who in his presence commits a cognisable offence, or whom he reasonably suspects of having committed an offence.

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





Disposal of person arrested by private person.

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

(2) If there is reason to believe that such person comes under the provisions of section 27 of this Act, a police officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognisable offence, and he refuses on the demand of a police officer to give his name or residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 28 of this Act, if there is no sufficient reason to believe that he has committed any offence he shall be at once released.

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

**32.** A person arrested without warrant shall not be detained for a longer period than is reasonable and such period shall not in the absence of the order from the Magistrate exceed twenty four hours, excluding holidays in which the court does not operate.

Police to report apprehension.

**33.** Officers in charge of police station shall report to the nearest magistrate the cases of all persons arrested without warrant within the limits of their respective stations, whether such persons have been admitted to bail or not.

Person arrested to be informed of ground of arrest and right to remain silent.

**34.**-(1) A police officer or other person arresting a 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.



Obligation to inform of the arrest.

**35.**-(1) Police officer or other person making any arrest under this Act shall forthwith inform of such arrest and place where the arrested person is being held to any of his relatives, friends or any other persons as may be disclosed by the arrested person for the purpose of giving such information.

(2) Record of the fact as to whom has been informed of the arrest of such person shall be made in a book to be kept in the Police Station in such form as may be prescribed in that behalf by the arresting officer.

(3) Record shall be attested and signed by at least one witness, who is a family of the person arrested or member of the locality where the arrest is made.

(4) The court shall satisfy itself that the requirements of subsections (1), (2) and (3) of this section, have been complied with in respect of such arrested person.

Restriction on questioning person.

**36.**-(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.

(3) A statement of a woman against whom an offence of rape, gang rape or attempted rape is alleged to have been committed or attempted shall be recorded, as far as possible, by a woman police officer.

When person not to be taken under restraint.

**37.** 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, and
- (b) unless a reasonable period has elapsed since the person last ceased to be under restraint.

Periods available for interviewing person.

**38.**-(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) of this section, 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) where the basic period available for interviewing the person is extended under section 39 of this Act, 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.

**39.**-(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 a person in respect of whose interview the basic period is extended pursuant to subsection (1) (a) of this section, may file 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 subsection (1) of this section, 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 that:

- (a) the person is in lawful custody;
- (b) the investigation of the offence by the police officer has been, and is being carried out as expeditiously as possible; and
- (c) 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 person under restraint.

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

(2) A person shall not, 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.

**41.**-(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 of the offence for which he or she is under restraint.

(2) The mode of interviewing children shall be pursuant to the provisions of the Children's Act in relation to children in conflict with law.



Records of interviewing.

**42.**-(1) A police officer who interviews a person for the purpose of ascertaining whether the person has committed an offence shall cause the interview to be recorded.

(2) If demanded by the accused, the record under subsection (1) of this section, shall be recorded whether by audio or video or any electronic device as the case may be.

Statement by suspect.

**43.**-(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, and if the statement is more than one page, the suspect shall be ordered to sign each of the pages.

Power to take finger prints or photos of suspects.

**44.** A police officer in charge of a police station or a police officer investigating an offence may take or cause to be taken measurements or prints of the hand, fingers, feet or toes of, or recordings of the voice or, photographs of, or samples of the handwriting of a 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.

**45.**-(1) A 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) The police officer shall ensure that the identification parade is so conducted that unfairness to the person concerned cannot afterwards be alleged, otherwise the value of the identification as evidence will depreciate considerably.

(3) A 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.

(4) A person who is required under subsection (3) of this section, to attend and participate in an identification parade shall not be entitled to refuse or object to attend and participate in an identification parade.



(5) A 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 Five Hundred Thousand Shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Recognition of advocates.

**46.** An advocate registered by the High Court under the provisions of the legal practitioners legislation, shall have a right under this Act to represent and defend or advise a person suspected or accused of any offence, and the police, prison authorities, hospitals or 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.

**47.-(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 lawful 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.

Examination of victim or person accused of offences.

**48.-(1)** When there are reasonable grounds for believing that the examination of the victim and, or the accused person will afford evidence as to the commission of offences, the registered medical practitioner shall examine the victim and, or the accused person and prepare, without delay, a report of the examination giving the following particulars:

- (a) name and address of the victim or the accused and the person by whom the victim or the accused person was brought;
- (b) the age of the victim and, or accused person;
- (c) marks of injury, if any, on the body of the victim or accused person;
- (d) the description of material taken from the body of the victim or accused person;



- (e) the general mental condition and consent of the victim to such examination;
- (f) other material particulars in reasonable detail;
- (g) the reasons for each conclusion arrived at; and
- (h) the note of the exact time of commencement and completion of the examination.

(2) A Registered Medical Practitioner shall, furnish the copy of the examination report to the investigation officer, victim and arrested person or any person nominated by the victim or arrested person.

#### **Arrest by order of magistrate**

Offence committed in Magistrate's presence.

**49.** When an offence is committed in the presence of a magistrate within the local limits of his jurisdiction he may himself arrest or order a person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

Arrest by Magistrate.

**50.** A magistrate may at any time arrest or direct the arrest in his presence, within the local limits of his jurisdiction, of a person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

#### **Escape and retaking**

Recapture of person escaping.

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

Pursuit of offenders in other jurisdiction.

**52.** A police officer may, for the purpose of executing arrest warrant against a 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.

Application of provisions of sections 14 and 15.

**53.** The provisions of sections 14 and 15 of this Act, shall apply to arrests under section 51 of this Act, although the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest.

Assistance to Magistrate or Police Officer.

**54.** A person is bound to assist a magistrate or police officer reasonably demanding his aid:



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

## PART FOUR PREVENTION OF OFFENCES

### Security for keeping the peace and for good behaviour

Security for keeping the peace or being of good behaviour generally.

**55.**-(1) A magistrate empowered to hold a subordinate court, upon complaint of a person, may, in the manner hereinafter provided, require a person to show cause why he should not be ordered to execute a bond, with or without sureties, to keep the peace or be of good behaviour for such period, not exceeding two years, as the magistrate thinks fit.

(2) Proceedings shall not be taken under this section unless either the person against whom the complaint is made or the place where the subject matter thereof has occurred is within the local limits of the magistrate's jurisdiction.

Power of other Magistrate.

**56.**-(1) When any magistrate not empowered to proceed under section 55 of this Act, is informed that a person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such magistrate may, after recording his reasons, issue a warrant for his arrest, if he is not already in custody or before the court, and shall send him before a magistrate empowered to deal with the case, with a copy of his reasons.

(2) A magistrate before whom a person is sent under this section may in his discretion detain such person in custody until the completion of the inquiry hereinafter prescribed.

Security for good behaviour from persons disseminating seditious matters.

**57.** Whenever a magistrate empowered to hold a subordinate court has information that there is within the limits of his jurisdiction a person who, within or without such limits, either orally or in writing or in any other manner, disseminates, or attempts to disseminate, or in any wise abets the dissemination of:

- (a) any seditious matter, that is to say, any matter the publication of which is punishable under the Registration of News Agents, Newspapers and Books Act; or





- (b) any matter concerning a Judge which amounts to libel under Act No. 5 of 1988,

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

Security for good behaviour from suspected persons.

**58.** Whenever a magistrate empowered to hold a subordinate court is informed on oath that a person is taking precautions to conceal his presence within the local limits of such magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, such magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding one year, as the magistrate thinks fit.

Security for good behaviour from habitual offenders.

**59.** Whenever a magistrate empowered to hold a subordinate court is informed on oath that any person is taking precautions to conceal his presence within the local limits of such magistrate's jurisdiction:

- (a) is by habit a robber, house breaker 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 in or abets the commission of, any offence punishable under Parts Twenty Eight, Thirty One or Thirty Three of the Penal Act which deal with false pretences, offences causing injury to property, and offences relating to coin and notes respectively;
- (e) habitually commits or attempts to commit, or aids in or abets the commission of, offences involving the breach of the peace; or
- (f) is so desperate and dangerous as to render his being at large without security hazardous to the community,

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



Making of order.

**60.** When a magistrate acting under section 55, 57, 58 or 59 of this Act deems it necessary to require any person to show cause under such sections, he shall make an order in writing setting forth:

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

Procedure in respect of person present in court.

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

Procedure in respect of person not present in court.

**62.**-(1) If such person is not present in court, the magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the court.

(2) Whenever it appears to the such magistrate upon the report of a police officer or upon other information that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the magistrate may at any time issue a warrant for his arrest.

(3) The substance of the report or information referred to in subsection (2) of this section, shall be recorded by the magistrate.

Copy of order to accompany summons or warrant.

**63.** Every summons or warrant issued under section 62 of this Act, shall be accompanied by a copy of the order made under section 60 of this Act, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with or arrested under the same.

Power to dispense with personal attendance.

**64.** The magistrate may, where there is sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by an advocate.

Inquiry as to truth of information.

**65.**-(1) When an order under section 60 of this Act, has been read or explained under section 61 of this Act 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 62 of this Act, the magistrate shall proceed to inquire into the truth of the complaint or information upon which the action has been taken, and to take such further evidence as may appear necessary.



(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trials and recording evidence in trials before subordinate courts.

(3) For the purposes of this section, the fact that a person comes within the provisions of section 59 of this Act, may be proved by evidence of general repute or otherwise.

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

Order to give security.

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

- (a) a person shall not 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 60 of this Act;
- (b) the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive; and
- (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) A person ordered to give security for keeping the peace or for maintaining good behaviour under this section may appeal to the High Court, and the provisions of Part Fourteen of this Act relating to appeals, shall apply to every such appeal.

Discharge of persons informed against.

**67.** If on an inquiry under section 65 of this Act it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.



Commence-  
ment of  
period for  
which  
security is  
required.

### **Proceedings in all cases subsequent in order to furnish security**

**68.**-(1) If a person in respect of whom an order requiring security is made under section 60 and section 66 of this Act is, at the time such order is made, sentenced to or undergoing a sentence of imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

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

Contents and  
breach of bond.

**69.** The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the later 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.

Power to reject  
sureties.

**70.** 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, such surety is an unfit person.

Procedure  
on failure of  
person to give  
security.

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

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

(3) The High Court, after examining such proceedings and requiring from the magistrate any further information or evidence which it thinks fit or necessary, and after giving the concerned person a reasonable opportunity of being heard, may make such order in the case as it thinks fit.

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



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

Release of person imprisoned for failure to give security.

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

Power of High Court to cancel bond.

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

Discharge of sureties.

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

(2) On such application being made under subsection (1) of this section, the magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

(3) When such person appears or is brought before the magistrate, such magistrate shall cancel the bond and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security.

(4) Such order under subsection (3) of this section, shall, for the purposes of sections 69, 70, 71 and 72 of this Act, be deemed to be an order made under section 66 of this Act.

### **Preventive action of the police**

Police to prevent cognisable offence.

75. A police officer may interpose for the purpose of preventing, and shall to the best of his ability prevent, the commission of any cognisable offence.

Information of design to commit offences.

76. A police officer receiving information of a design to commit any cognisable offence shall communicate such information to the police officer to whom he is subordinate, and to any other officer whose duty is to prevent or take cognisance of the commission of any such offence.



Arrest to prevent offence.

77. A police officer knowing of a design to commit any cognisable offence may arrest, without orders from a magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot otherwise be prevented.

Prevention of injury to public property.

78. A police officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, movable or immovable, or the removal of or injury to any public landmark or buoy or other mark used for navigation.

## PART FIVE PROVISIONS RELATING TO ALL CRIMINAL INVESTIGATIONS

### Place of inquiry or trial

Investigation of offence.

79.-(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 a person authorized by the Director of Public Prosecutions; or
- (d) by a person authorised by a magistrate.

(2) Evidence collected in any investigation mentioned under paragraph (a) to (d) in subsection (1) of this section, shall be capable to be used in any trial before any court.

General authority of Courts of Zanzibar.

80. A 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 Zanzibar or which according to law may be dealt with as if it had been committed within Zanzibar, and to deal with the accused person according to its jurisdiction.

Accused person to be sent to district where offence committed.

81. Where a person accused of having committed an offence within Zanzibar has escaped or moved from the district within which the offence was committed and is found within another district, the court within whose jurisdiction he is found shall cause him to be brought before it and shall, unless authorised to proceed in the case, send him in custody to the court within whose jurisdiction the offence is alleged to have been committed, or require him to give security for his surrender to that court there to answer the charge and to be dealt with according to law.



- Removal of accused person under warrant. **82.**-(1) Where a person is to be sent in custody in pursuance of section 81 of this Act, a warrant shall be issued by the court within whose jurisdiction he is found, and that warrant shall be sufficient authority to any person to whom it is directed to receive and detain the person therein named and to carry him and deliver him up to the court within whose district the offence was committed or may be inquired into or tried.
- (2) The person to whom the warrant is directed shall execute it according to its tenor without delay.
- Jurisdiction of High Court. **83.** The High Court may inquire into and try any offence subject to its jurisdiction at any place where it has power to hold sittings.
- Place and date of sittings of the High Court. **84.**-(1) For the exercise of its 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 such sittings.
- Ordinary place of inquiry and trial. **85.** Subject to the provisions of section 83 of this Act and to the powers of transfer conferred by sections 95 and 97 of this Act, an offence shall ordinarily be inquired into or tried by a court within the local limits of whose jurisdiction it was committed.
- Trial at place where act done or consequence ensues. **86.** When a person is accused of the commission of any offence by reason of anything which has been done or of any consequence which has ensued, such offence may be inquired into or tried by a court within the local limits of whose jurisdiction any such thing has been done or any such consequence has ensued.
- Trial where offence is connected with another offence. **87.** When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first mentioned offence may be inquired into or tried by a court within the local limits of whose jurisdiction either act was done.
- Trial where place of offence is uncertain. **88.** 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 an offence is a continuing one, and continues to be committed in more local areas than one; or when it consists of several acts done in different local areas, it may be inquired into or tried by a court having jurisdiction over any of such local areas.
- Trial when offence committed on a journey. **89.** An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a court through or into the local limits of whose jurisdiction the offender or the person against whom or the thing in respect of which the offence was committed passed in the course of that journey or voyage.



Offence committed by letters.

**90.** An 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 of offences triable together.

**91.** 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 165 of this Act; 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 166 of this Act,

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

High Court to decide in cases of doubt.

**92.**-(1) Whenever any doubt arises as to the court by which any offence should be inquired into or tried, any court entertaining such doubt may, in its discretion, report the circumstances to the High Court, and the High Court shall decide by which court the offence shall be inquired into or tried.

(2) Any such decision of the High Court shall be final and conclusive, except that it shall be open to an accused person to show that no court in Zanzibar has jurisdiction in the case.

Courts to be open.

**93.**-(1) The place in which any criminal court is held for the purpose of inquiring into or trying any offence shall be deemed an open court to which the public generally may have access, so far as the same can conveniently contain them.

(2) The presiding judge or magistrate may, if he thinks fit, order at any stage of the inquiry into or trial of any particular case that the public generally or any particular person shall not have access to or be or remain in the room or building used by the court.

(3) Notwithstanding anything contained in subsection (1) of this section, the inquiry into and trial of rape, gang rape, attempted rape, defilement of boys, or defilement of persons with mental disability shall be conducted in camera.





(4) The presiding judge or magistrate may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the court.

(5) A person shall not print or publish any matter of any proceedings held under subsection (3) of this section except with the previous permission of the court.

### Transfer of cases

Transfer of case where offence committed outside jurisdiction.

**94.**-(1) If upon the hearing of any complaint it appears that the cause of complaint arose outside the limits of the jurisdiction of the court before which such complaint has been brought, the court shall, on being satisfied that it has no jurisdiction, direct the case to be transferred to the court having jurisdiction where the cause of complaint arose.

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

(3) Where the accused person is not detained or placed in custody as aforesaid, the court shall inform him that it has directed the transfer of the case as aforesaid, and thereupon the provisions of subsection (2) of this section respecting the transmission and validity of the documents in the case shall apply.

Transfer of cases between magistrates.

**95.** A magistrate in charge holding a subordinate court may:

- (a) transfer any case of which he has taken cognisance for inquiry or trial to any magistrate holding a subordinate court empowered to inquire into or try such case within the local limits of such subordinate court's jurisdiction; and
- (b) direct or empower any subordinate court which has taken cognisance of any case, and whether evidence has been taken in such case or not, to transfer it for inquiry or trial to himself or to any other specified court within the local limits of his jurisdiction which is competent to try the accused or commit him for trial, and such court may dispose of the case accordingly.



Procedure relating to transfer of cases by Magistrate.

**96.** If in the course of any inquiry or trial before a magistrate the evidence appears to warrant a presumption that the case is one which should be tried or committed for trial by some other magistrate, he shall stay proceedings and submit the case with a brief report thereon to a magistrate in charge holding a subordinate court, empowered to direct the transfer of the case under section 95 of this Act.

High Court to change venue.

**97.** Whenever it is made to appear to the High Court:

- (a) that a fair and impartial inquiry or trial cannot be had in any criminal 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 any offence has been committed may be required for the satisfactory inquiry into or trial of the same;
- (d) that an order under this section will tend to the general convenience of the parties or witnesses; or
- (e) that such an order is expedient for the ends of justice or is required by any provision of this Act, it may order that:
  - (i) any offence be inquired into or tried by any court not empowered under the preceding sections of this Part but in other respects competent to inquire into or try such offence;
  - (ii) any particular criminal case or class of cases be transferred from a criminal court subordinate to its authority to any other such criminal court of equal or superior jurisdiction; or
  - (iii) an accused person be committed for trial to itself.

Modality of invoking the powers of the High Court under section 97.

**98.**-(1) 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.

(2) The exercise of the power conferred by section 97 of this Act, shall be made by application which shall, except when the applicant is the Director of Public Prosecutions, be supported by affidavit.

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



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

### **Control of Director of Public Prosecutions in criminal proceedings**

The Director  
of Public  
Prosecutions.

**99.**-(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.

**100.**-(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.

Nolle  
prosequi.

**101.**-(1) In any criminal case whether instituted by the Director of Public Prosecutions or any other officer or person and at any stage thereof before judgement the Director of Public Prosecutions may enter a *nolle prosequi*, either by stating in court or by informing the court in writing that the Director of Public Prosecutions intends that the proceedings shall not continue, and thereupon the accused shall be at once discharged in respect of the charge for which the *nolle prosequi* is entered, and if he has been committed to prison shall be released, or if on bail his recognisance's shall be discharged; but such discharge of an accused person shall not operate as a bar to any subsequent proceedings against him on account of the same facts.

(2) If the accused is not before the court when such *nolle prosequi* is entered, the registrar or clerk of such court shall forthwith cause notice in writing of the entry of such *nolle prosequi* to be given to the keeper of the prison in which such accused may be detained, and also to the accused and his sureties in case he shall have been admitted to bail.



## Conduct of prosecutions

Powers of public prosecutors.

**102.** 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.

Withdrawal in trials before subordinate courts.

**103.** 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 judgement is pronounced, withdraw from the prosecution of any accused person; and upon such withdrawal:

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

## PART SIX INSTITUTION OF PROCEEDINGS

### Making of complaint

Complaint and formal charge.

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

(2) A person who believes from a reasonable and probable cause that an offence has been committed by a person may make a complaint thereof to a magistrate having jurisdiction.

(3) 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.

(4) The magistrate, upon receiving any such complaint, shall draw up or cause to be drawn up and shall sign a formal charge containing a statement of the offence or offences with which the accused is charged.



(5) Subject to subsection (4) of this section, the magistrate may require a public prosecutor to prosecute the case against the accused or with reasons to be recorded in writing, and without prejudice to the power of the Director of Public Prosecutions under section 56A (3) (b) and (c) of the Constitution of Zanzibar, may allow the complainant or his advocate to prosecute the case against the accused.

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

Issue of  
summons or  
warrant.

**105.**-(1) Upon receiving a complaint and having signed the charge in accordance with the provisions of section 104 of this Act, 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.

(2) 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.

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

(4) Any summons or warrant may be issued and executed between the hours of sunrise and sunset on any day of the week including holiday, but the court may by warrant, authorize the police officer or other person to whom it is addressed to execute it at any hour.

Dismissal of  
complaint.

**106.** 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.



**PART SEVEN  
PROCESSES OF COMPELING THE APPEARANCE  
OF ACCUSED PERSONS**

**Summons**

Forms and contents of summons.

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

(2) The summons shall be directed to the person summoned and shall require him to appear at a time and place to be therein appointed before a court having jurisdiction to inquire into and deal with the complaint or charge.

(3) The summons shall state shortly the offence with which the person against whom it is issued is charged and the particulars of such offence.

Service of summons.

**108.**-(1) The summons shall be served by a police officer, by an officer of the court issuing it, or by 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) A person on whom a summons is so served shall, if so required by the serving officer, sign a receipt thereof on the back of the other duplicate.

Service when person summoned cannot be found.

**109.** 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 his servant residing with him or with his employer or Sheha; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Procedure when service cannot be effected as before provided.

**110.** When service in the manner provided by sections 108 and 109 of this Act cannot by the exercise of due diligence be effected, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides, and thereupon the summons shall be deemed to have been duly served.

Service on servant of Government.

**111.** Where the person summoned is in the active service of any department of the Government, the court issuing the summons shall ordinarily send it in duplicate to the head of the department in which such person is employed, and such head shall thereupon cause the summons to be served in the manner provided by section 108



of this Act and shall return it to the court under his signature with the endorsement required by that section, such signature shall be evidence of the service.

Service on company.

**112.**-(1) Service of a summons on an incorporated company or other body corporate may be effected by serving it on the secretary, local manager or other principal officer of the corporation at the registered office of such company or body corporate or by registered letter addressed to the chief officer of the corporation in Zanzibar.

(2) In the latter case, service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

Service outside jurisdiction.

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

Proof of service.

**114.**-(1) 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 indorsed in the manner hereinbefore provided by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

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

### Warrant of arrest

Warrant on disobedience to, or after issue of summons.

**115.**-(1) A court shall call an accused person through a summons.

(2) If the accused does not appear at the time and place appointed in and by the summons, the court may issue a warrant to apprehend him and cause him to be brought before such court.

(3) Notwithstanding the issue of a summons, a warrant may be issued at any time before or after the time appointed in the summons for the appearance of the accused.

(4) A warrant shall not be issued under subsection (2) or (3) of this section, unless a complaint or charge has been made upon oath.



Form,  
contents and  
duration of  
warrant.

**116.**-(1) A warrant of arrest shall be under the hand of the Judge or magistrate issuing the same and shall bear the seal of the court.

(2) A warrant shall state shortly the offence with which the person against whom it is issued is charged and the particulars of such offence 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 therein mentioned and to be further dealt with according to law.

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

Power  
to direct  
security to be  
taken.

**117.**-(1) A court issuing a warrant for the arrest of a person in respect of an offence other than murder, treason, drug trafficking, armed robbery or possession of fire arms, an offence relating to large quantity of drugs, rape, unnatural offence, defilement of boy, gang rape or incest, may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the court at a specified time and thereafter until otherwise directed by the court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

(2) The endorsement shall state:

- (a) the number of sureties;
- (b) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound; and
- (c) the time at which he is to attend before the court.

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

Warrant,  
to whom  
directed.

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





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

Warrant may be directed to landholders.

**119.**-(1) A magistrate empowered to hold a subordinate court may direct a warrant to any landholder, farmer or manager of land within the local limits of his jurisdiction for the arrest of any escaped convict, or person who has been accused of a cognisable offence and has eluded pursuit.

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

(3) When the person against whom such warrant is issued is arrested, he shall be made 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 117 of this Act.

Execution of warrant directed to police officer.

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

Notification of substance of warrants.

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

Person arrested to be brought before court.

**122.** The police officer or other person executing a warrant of arrest shall, subject to the provisions of section 117 of this Act as to security, without unnecessary delay, bring the person arrested before the court before which he is required by law to produce such person.

Where warrant may be executed.

**123.** A warrant of arrest may be executed at any place in Zanzibar.

Execution of warrant outside jurisdiction.

**124.**-(1) When a warrant of arrest is to be executed outside the local limits of the jurisdiction of the court issuing the same, 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 indorse his name thereon and, if practicable, cause it to be executed in the manner hereinbefore provided within the local limits of his jurisdiction.



Procedure  
in case of  
execution  
of warrant  
outside  
jurisdiction.

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

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

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

Procedure  
on arrest of  
person outside  
jurisdiction.

**126.**-(1) When a warrant of arrest is executed outside the local limits of the jurisdiction of the court by which it was issued, the person arrested shall, unless the court which issued the warrant is within twenty miles of the place of arrest, or is nearer than the magistrate within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 117 of this Act, 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 his removal in custody to such court.

(3) If the person has been arrested for an offence other than murder, treason, drug trafficking, armed robbery, possession of fire arms, an offence relating to large quantity of drugs, rape, unnatural offence, defilement of boy, gang rape or incest, and he is ready and willing to give bail to the satisfaction of such magistrate, or if a direction has been indorsed under section 117 of this Act on the warrant and such person is ready and willing to give the security required by such direction, the magistrate shall take such bail or security, as the case may be, and shall forward the bond to the court which issued the warrant.

(4) Nothing in this section shall be deemed to prevent a police officer from taking security under section 117 of this Act.

Irregularities  
in warrant.

**127.**-(1) An irregularity or defect in the substance or form of a warrant, and any variance between it and the written complaint or information, or between either and



the evidence produced on the part of the prosecution at any inquiry or trials, shall not affect the validity of any proceedings at or subsequent to the hearing of the case.

(2) If any variance appears to the court to be such that the accused has been thereby deceived or misled, such court may, at the request of the accused, adjourn the hearing of the case to some future date, and in the meantime remand the accused or admit him to bail.

### Miscellaneous Provisions Regarding Processes

Power to take bond for appearance.

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

Arrest for breach of bond.

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

Power to order attendance of prisoner.

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

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

Application of provisions relating to summonses and warrants.

**131.** The provisions contained in this Part relating to a summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Act, or in any other law if they are not inconsistent with those other laws.

### Search Warrants

Summons to produce documents or other thing.

**132.**-(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 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) A 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 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 law of evidence relating 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.

**133.** Where 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.

**134.** Whenever the Director of Public Prosecutions considers it necessary that, a bank account 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.

**135.-(1)** Where 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 and seize 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 authorised officer.

**136.**-(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 135 of this Act, 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;
- (b) obtain and copy that computer data;
- (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.

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

Record of an access to seize data.

**137.**-(1) If a computer system or computer data has been removed or rendered inaccessible, following a search or a seizure under section 135 of this Act, 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) of this section, on request, a police officer or authorized person shall:

- (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 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.

**138.** Where the Director of Public Prosecutions is satisfied that specified computer data, or a print out or other information, is reasonably required for the purpose of a criminal investigation or criminal proceedings, he may 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 use the service.

Disclosure of stored data.

**139.** Where 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 discloses sufficient traffic data about a specified communication to identify:

- (a) the service providers; and
- (b) the path through which the communication was transmitted.

Preservation of data.

**140.**-(1) Where 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) of this section, may be extended if the Judge or Magistrate authorizes an extension for a further period of time specified in the order.

Investigation of electronic communications.

**141.** 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.

Investigation of traffic data.

**142.**-(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.

**143.**-(1) An internet service provider who without lawful authority discloses:

- (a) the fact that an order under sections 135, 136, 137, 138, 139, 140 and 142 of this Act, 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 lawful disclosure of any data or other information that he discloses under this Act.

Interpretation.

**144.** Words and terms used in sections 136 to 143 of this Act, shall be given the same interpretation given to them under the Penal Act.

Power to issue search warrants.

**145.**-(1) Where it is proved on oath to a court that in fact or according to reasonable suspicion anything upon, by or in respect of which an offence has been committed or anything which is necessary for the purposes of an investigation of any offence is in any building, vessel, carriage, box, receptacle or place, the court may by warrant, called "a search warrant", authorise a police officer or other person therein named to search the building, vessel, carriage, box, receptacle or place which shall be named or described in the warrant for any such thing and, if anything searched for be found, to seize it and carry it before the court issuing the warrant or some other court to be dealt with according to law.

(2) Subject to subsection (1) of this section, the substantial content and format of the search warrant shall be as prescribed in the Sixth Schedule of this Act.

Search by police officer.

**146.**-(1) Where a police officer in charge of a police station is satisfied that there are reasonable grounds for suspecting that, there is in any building, vessel, carriage, box, receptacle or place:

- (a) anything with respect to which any 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 any offence;
- (c) anything in respect of which there are reasonable grounds to believe that it is intended to be used for the purposes of committing any offence, and the officer is satisfied that any delay would result in the removal or destruction of that thing, or would endanger life or property,





he may search or issue a written authority to any police officer under him to search the building, vessel, carriage, box, receptacle, or place, as the case may be.

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

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

(4) A police officer in charge of a police station, being empowered by law to order, authorise or conduct the search on any person, place, building, vessel, carriage or receptacle, vexatiously and without having reasonable grounds for doing so, orders, authorises or conducts such search, is guilty of an offence and is liable to a fine not less than One Million Shillings or imprisonment for a term not exceeding one year or both.

(5) A prosecution against any person for an offence under subsection (4) of this section shall not be instituted except with the written consent of the Director of Public Prosecutions.

Duty of persons to allow search.

**147.**-(1) Whenever any building or other place liable to search is closed, any person residing in or being in charge of such building or place shall, on demand of the police officer or other person executing the search warrant or the holder of a written authority, and on production of the warrant or the written authority, allow him free ingress thereto and egress therefrom and afford all reasonable facilities for a search therein.

(2) If ingress into or egress from such building or other place cannot be so obtained, the police officer or other person executing the search warrant or the holder of the written authority, may proceed in the manner prescribed by section 14 or 15 of this Act.

(3) Where a person in or about such building or place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched.

(4) If such person is a woman, the provisions of section 19 of this Act shall be observed.



Conditions  
of executing  
search warrant.

**148.**-(1) Before making a search under section 145, 146 or 147 of this Act, the officer or other person about to make it, shall call upon two or more respectable inhabitants of the locality in which the building or other place to be searched is situate to attend and witness the search, and may issue an order in writing to them or any of them so to do.

(2) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but a person witnessing a search under this section shall not be required to attend the court as a witness of the search unless specially summoned by it.

(3) The occupant of the building or other place searched, or some person on his behalf, shall, if present, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person at his request.

(4) When a person is searched under the provisions of subsection (3) of section 147 of this Act, a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person at his request.

(5) A person who without reasonable cause refuses or neglect to attend and witness a search under this section when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed the offence of disobedience of a lawful order punishable under section 99 of the Penal Act.

(6) A search warrant may be issued on any day, including holiday, and may be executed on any day, including holiday, between the hours of sunrise and sunset, but the court may, by the warrant, in its discretion, authorise the police officer or other person to whom it is addressed to execute it at any hour.

Detention of  
the property  
seized.

**149.**-(1) When any such thing is seized and brought before a court, it may be detained until the conclusion of the case or the investigation, reasonable care being taken for its preservation.

(2) If any appeal is made, the court may order such thing to be further detained for the purpose of the appeal.

(3) If no appeal is made, or no person has been charged with an offence, the court shall direct such thing 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 otherwise.



Provisions applicable to search warrant.

**150.** The provisions of sections 116 (1) and (3), 118, 120, 123, 124 and 125 of this Act shall, so far as may be, apply to all search warrants issued under section 145 of this Act.

### Provisions as to Bail

General power to grant bail.

**151.**-(1) When any person, other than a person accused of murder, treason, armed robbery, possession of firearms, drug trafficking, an offence relating to large quantity of drugs, rape, unnatural offence, defilement of boy, gang rape or incest, 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.

(2) Such officer in charge of police station 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.

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

(4) Notwithstanding anything contained in subsection (1) of this section, the Chief Justice may in any case direct that any person be admitted to bail.

(5) The High Court may, in case ofailable offences, direct that any person be admitted to bail or that conditions of bail required by a subordinate court or police officer be reduced.

(6) 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.

(7) Violation of police bail bond may be enforced in court by using the provisions of this Act.

When bail may be taken in non-ailable offence.

**152.**-(1) The hearing of case in which a person is charged with non-ailable offence must commence within six months from the date when a person so charged was arrested.



(2) If the hearing does not commence within the said period of six months, the accused person shall be admitted to bail unless the court, for reasons to be recorded in writing, direct otherwise.

(3) 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 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.

(4) A court which has released a person on bail under subsection (2) or (3) of this section, may, if it considers it necessary so to do, direct that such person be arrested and commit him or her to custody.

Bail bond.

**153.** Before a 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 such person shall attend at the time and place mentioned in the bond and shall continue so to attend until otherwise directed by the court or police officer, as the case may be.

Discharge from custody of persons bailed.

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

(2) Nothing in this section or in section 152 of this Act shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

Deposit instead of recognisance.

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

Power to order sufficient bail.

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



Power to reject sureties.

**157.** A court may refuse to accept any surety for reasons to be recorded, on the ground that, such surety is an unfit person.

Discharge of sureties.

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

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

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

Death of surety.

**159.** 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.

Power to commit absconding person.

**160.** If it is made to appear to any court, by information on oath, that any person bound by recognisance is about to leave Zanzibar, the court may cause him to be arrested and may commit him to prison until the end of the trial, unless the court deems fit to admit him to bail upon further recognizance.

Forfeiture of recognisance.

**161.**-(1) Whenever it is proved to the satisfaction of a court by which a recognisance under this Act has been taken, or when the recognisance has been taken by a police officer for appearance before the court, that to the satisfaction of such court, that such recognisance has been forfeited, the court shall record the grounds of such proof, and may call upon any person bound by such 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 or immovable property belonging to such person.

(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 such person outside such limits, when indorsed by any magistrate within the local limits of whose jurisdiction such property is found.



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

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

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

Appeal and revision of order.

**162.** All orders passed under section 161 of this Act by any magistrate shall be appealable to and may be revised by the High Court.

Levy of amount due on recognizance.

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

### **Charges and information**

Content of charge.

**164.**-(1) A charge under this Act shall state the offence with which the accused is charged with brief particulars of the offence.

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

(3) Where 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) Where the accused, having been previously convicted of an 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.

Joinder of charges or counts in a formal charge or information.

**165.**-(1) Charges for any offences, may be joined together in the same formal charge or information if those charges are founded on the same facts or form or are a part of a series of offences of the same or a similar character.

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

(3) Where, before trial, or at any stage of a trial, the court is of opinion that a person accused may be embarrassed in his defence by reason of being charged with more than one offence in the same formal 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 such offences the court may order a separate trial of one or more of such charges or counts.

Joinder of two or more accused in one formal charge or information.

**166.** The following persons may be joined in one formal charge or information and may be tried together:

- (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 abetment, or of an attempt to commit such offence;
- (c) persons accused of more offences than one of the same kind, that is to say, offences punishable with the same amount of punishment under the same section of the Penal Act or of any other Act or law, committed by them jointly within the period of twelve months;
- (d) persons accused of different offences committed in the course of the same transaction;
- (e) persons accused of an offence, which deal with theft, offences allied to stealing, robbery, extortion, burglary, house-breaking and similar offences, and false pretences, and persons accused of receiving or retaining property, possession of which is alleged to have been transferred by any such offence committed by the first named persons, or of abetment of or attempting to commit any such last named offence; and



- (f) persons accused of any offence relating to counterfeit coin, and persons accused of any other offence relating to the same coin, or of abetment of or attempting to commit any such offence.

### **Rules for the framing of charges and information**

Rules for the framing of charges and information.

**167.**-(1) The rules under this section shall apply to all charges and information and, notwithstanding any rule of law or practice, a charge or 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 Act.

- (2) The following shall be a mode in which offences are to be charged:
- (a) a charge or count shall commence with a statement of the offence charged, called the statement of offence;
  - (b) 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;
  - (c) 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;
  - (d) where any rule of law or any Act limits the particulars of an offence which are required to be given in a charge or information, nothing in this paragraph shall require any more particulars to be given than those so required;
  - (e) the forms set out in the Second Schedule to this Act or forms conforming thereto as nearly as may be shall be used in cases to which they are applicable; and in other cases forms to the like effect or conforming thereto as nearly as may be shall be used, the statement of offence and the particulars of offence being varied according to the circumstances in each case;
  - (f) where a formal charge or information contains more than one charge or count, such charges or counts shall be numbered consecutively.





(3) The following are provisions as to statutory offences:

- (a) where an enactment constituting an offence states the offence to be the omission to do any one of any different acts in the alternative, or the doing or the omission to do any act in any one of any different capacities, or with any one of different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matters stated in the alternative in the enactment, may be stated in the alternative in the charge or count charging the offence;
- (b) it shall not be necessary, in any charge or 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.

(4) Description of property shall be in the following manner:

- (a) the description of property in a charge or information shall be in ordinary language, and such as to indicate with reasonable clearness the property referred to, and, if the property is so described, it shall not be necessary, except when required for the purpose of describing an offence depending on any special ownership of property or special value of property, to name the person to whom the property belongs or the value of the property;
- (b) where property is vested in more than one person, and the owners of the property are referred to in a charge or information, it shall be sufficient to describe the property as owned by one of those persons by name with others, and if the persons owning the property are a body of persons with a collective name, such as a joint stock company or "Inhabitants", "Trustees", "Commissioners", or "Club" or other such name, it shall be sufficient to use the collective name without naming any individual;
- (c) property belonging to or provided for the use of any public establishment, service or department may be described as the property of the Revolutionary Government of Zanzibar;
- (d) coin and bank notes may be described as money; and any allegation as to money, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank or currency note, although the particular species of coin of which such amount



was composed, or the particular nature of the bank or currency note, shall not be proved; and in cases of stealing and defrauding by false pretences, by proof that the accused person dishonestly appropriated or obtained any coin or any bank or currency note, or any portion of the value thereof, although such coin or bank 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;

- (e) when a person is charged with any offence under section 261, 262, 263, or 264 of the Penal Act, which deal with stealing by persons in the public service, clerks, servants, directors, or officers of companies, agents, and holders of powers of attorney, it shall be sufficient to specify the gross sum 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.

(5) The description or designation, in a charge or information, of the accused person, or of any other person to whom reference is made therein, shall be such as is reasonably sufficient to identify him, without necessarily stating his correct name, or his abode, style, degree, or occupation; and if, owing to the name of the person not being known, or for any other reason, it is impracticable to give such a description or designation, such description or designation shall be given as is reasonably practicable in the circumstances, or such person may be described as "a person unknown".

(6) Where it is necessary to refer to any document or instrument in a charge or information, it shall be sufficient to describe it by any name or designation by which it is usually known, or by the purport thereof, without setting out any copy thereof.

(7) Subject to any other provisions of this section, it shall be sufficient to describe any place, time, thing, matter, act or omission whatsoever to which it is necessary to refer in any charge or information in ordinary language in such a manner as to indicate with reasonable clearness the place, time, thing, matter, act or omission referred to.

(8) 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.



(9) Figures and abbreviations may be used for expressing anything which is commonly expressed thereby.

### Previous Conviction or Acquittal

Persons not to be tried twice for same offence.

**168.** A person who has been once 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.

Person may be tried again for separate offence.

**169.** 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 165 of this Act.

Consequences supervening or incompetence of original court.

**170.-(1)** 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 acquitted or convicted.

(2) A person convicted or acquitted of an offence constituted by any acts 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.

Mode of proof of previous conviction.

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

- (a) by an extract certified, under the hand of the officer having the custody of the records of the court in which such conviction was had, to be a copy of the sentence or order; or
- (b) by a certificate signed by the officer in charge of the prison in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered,

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



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

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

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

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

Preliminary hearing to determine matters not in dispute.

172.-(1) Notwithstanding the provision of section 214 (1) of this Act, 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; or
- (b) the giving of notice to witness warning them that they may be required to attend the court to give evidence at the trial.

(7) In this section, procedure or mechanism aims to expedite the hearing and disposal of criminal proceedings.

### **Compelling Attendance of Witnesses**

Summons for witness.

**173.**-(1) If it is made to appear that material evidence can be given by or is in the possession of any person who will not voluntarily attend to give it or will not voluntarily produce the same, it shall be lawful for a court having cognisance of any criminal cause or matter to issue a summons to such person requiring his attendance before such court or requiring him to bring and produce to such court for the purpose of evidence all documents and other things of any kind whatsoever 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 Evidence Act which deal with evidence as to affairs of state and official communications.

Warrant for witness who disobeys summons.

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

Warrant for witness in the first instance.

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



Mode of dealing with witness when arrested.

**176.** When 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 such security, order him to be detained for production at such hearing.

Power to order production of prisoner as witness.

**177.**-(1) A 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 such prison requiring him to bring such 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 such order, shall act in accordance therewith and shall provide for the safe custody of the prisoner during his absence from the prison for the purpose aforesaid.

Penalty for non-attendance as witness.

**178.**-(1) A 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, is liable to a fine not exceeding five hundred thousand shillings.

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

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

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

### **Examination of Witness**

Power of court to examine and re-examine.

**179.** A court may, at any stage of any inquiry, trial or other proceeding under this Act call any person as a witness, or recall and re-examine any person already examined; and the court shall examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

Evidence to be given on oath.

**180.**-(1) A witness in any criminal cause or matter shall be examined upon oath or affirmation, and the court before which any witness shall appear shall have full power and authority to administer the usual oath or affirmation.



(2) The court may, at any time if it thinks just and expedient and for reasons to be recorded in the proceedings, take without oath the evidence of a person declaring that the taking of an oath whatever is according to his religious belief unlawful, or who by reason of immature age or want of religious belief, ought not, in the opinion of the court, to be admitted to give evidence on oath; the fact of the evidence having been so taken being also recorded in the proceedings.

Refractory witnesses.

**181.**-(1) Whenever a person, appearing either in obedience to a summons or by virtue of a warrant, or being present in court and being verbally required by the court to give evidence:

- (a) refuses to be sworn;
- (b) having been sworn, 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 deposition, without in any such case offering any sufficient excuse for such refusal or neglect,

the court may adjourn the case for any period not exceeding eight days, and may in the meantime commit such person to prison, unless he sooner consents to do what is required of him.

(2) If the person, upon being brought before the court at or before such adjourned hearing, again refuses to do what is required of him, the court may, if it deems fit, again adjourn the case and commit him for the like period, and so again from time to time until such person consents to do what is so required of him.

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

Evidence of husband or wife of accused.

**182.** In any inquiry or trial the wife or husband of the person charged shall be a competent witness for the prosecution or defence without the consent of such person.

Special measures for vulnerable or intimidated witnesses.

**183.**-(1) A party, in relation to the witness, shall give a notice to the court that he intends to invoke the use of special measures as regards a vulnerable or intimidated witness.



(2) The court, after being notified under subsection (1) of this section, shall ensure that relevant arrangements are made available in the area in which it appears to the court that the proceedings may take place.

### Commissions for the Examination of Witnesses

Issue of commission for examination of witnesses.

**184.**-(1) Whenever in the course of any proceeding under this Act, the High Court or a magistrate empowered to hold a subordinate court 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, under the circumstances of the case, would be unreasonable, the court or magistrate may issue a commission to any magistrate, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

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

Parties may examine witnesses.

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

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

Power of magistrate to apply for issue of commission.

**186.** Whenever in the course of any proceeding under this Act before any magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence 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, under the circumstances of the case, would be unreasonable, such magistrate shall apply to the High Court, stating the reasons for the application; and the High Court may either issue a commission in the manner hereinbefore provided or reject the application.

Return of commission.

**187.**(1) After any commission issued under section 184 or 186 of this Act, has been duly executed it shall be returned, together with the deposition of the witness examined thereunder, to the High Court, or to the Regional magistrate, 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) A deposition so taken, if it satisfies the conditions prescribed by section 36 of the Evidence Act, may also be received in evidence at any subsequent stage of the case before another court.

Adjournment pending return of commission.

**188.** In a case in which a commission is issued under section 184 or 186 of this Act the proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

### Evidence for Defence

Competency of the accused and competence of husband or wife.

**189.** A person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person, provided as follows:

- (a) a person so charged shall not be called as a witness in pursuance of this section except upon his own application;
- (b) the failure of a person charged with an offence, or of the wife or husband, as the case may be, of the person so charged, to give evidence shall not be made the subject of any comment by the prosecution;
- (c) the wife or husband of the person charged shall not, save as hereinbefore mentioned, be called as a witness except upon the application of the person so charged;
- (d) nothing in this section shall make a husband compellable to disclose any communication made to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage;
- (e) a person charged and being a witness in pursuance of this section may be asked any question in cross-examination notwithstanding that it would tend to incriminate him as to the offence charged;
- (f) a person charged and called as a witness in pursuance of this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of, or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless:



- (i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged;
- (ii) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establishing his own good character, or has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the complainant or the witnesses for the prosecution; or
- (iii) he has given evidence against any other person charged with the same offence;
- (g) a person called as a witness in pursuance of this section shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses have given their evidence;
- (h) nothing in this section shall affect right of the person charged to make a statement without being sworn.

Where accused intends to rely on defence of alibi.

**190.**-(1) If 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 any time 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.

Procedure where accused is only witness called.

**191.** 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 immediately after the close of the evidence for the prosecution.

Right to reply.

**192.**-(1) In cases where the right of reply 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.



(2) The Director of Public Prosecutions or State Attorney when appearing personally as advocate for the prosecution shall in all cases have the right to reply.

### **Procedure in Case of the Mental or Other Incapacity of an Accused Person**

Inquiry as to mental condition of accused.

**193.**-(1) When in the course of a trial, the court has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, it shall inquire into the fact of such unsoundness.

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

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

(4) Where the case is one in which bail may not be taken or if sufficient security is not given, the court shall order the accused to be detained in safe custody in such place and manner as it may think fit and shall transmit the court record or a certified copy thereof to the Chairperson of the Mental Health Board for the consideration of the Board.

(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 194 and 195 of this Act.

Procedure when person certified as capable of making his defence.

**194.**-(1) If a person confined in a mental hospital or other place of custody under section 193 of this Act is found by the medical officer in charge of such mental hospital or place to be capable of making his defence, such medical officer shall forthwith forward a certificate to that effect to the Director of Public Prosecutions.

(2) The Director of Public Prosecutions shall thereupon inform the court which recorded the finding against such person whether it is the intention of the Director of Public Prosecutions that the proceedings against such person shall continue or otherwise.



(3) In the former case such court shall thereupon order the removal of such person from the place where he is detained and shall cause him to be brought in custody before it in the manner described by section 195 of this Act; otherwise, the court shall forthwith issue an order for the immediate release from custody of such person.

Resumption  
of trial or  
inquiry.

**195.**-(1) Whenever any trial is postponed under section 193 of this Act, the court may at any time, subject to the provisions of section 194 of this Act, resume the trial and require the accused to appear or be brought before such court, when if the court considers him capable of making his defence, the trial shall proceed, or begin *de novo*, as to the court may appear expedient.

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

(3) Any certificate given to the Director of Public Prosecutions under section 194 of this Act may be given in evidence in any proceedings under this section without further proof unless it is proved that the medical officer purporting to sign it did not in fact sign it.

Defence of  
insanity.

**196.**-(1) Where any act or omission is charged against any person as an offence and it is given in evidence on the trial of such person for that offence that he was insane, so as not to be responsible for his actions at the time when the act was done or omission made, then, if it appears to the court before which such person is tried that he did the act or made the omission charged but was insane as aforesaid at the time when he did or made the same, the court shall make a special finding to the effect that the accused was guilty of the act or omission charged but was insane as aforesaid when he did the act or made the omission.

(2) When such special finding is made the court shall report the case for the order of the President, and shall meanwhile order the accused to be kept in custody as a convicted person of unsound mind in such place and in such manner as the court shall direct.

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

(4) The superintendent of a mental hospital, prison or other place in which any convicted person of unsound mind is detained by an order of the President under subsection (3) of this section, shall make a report to the Chief Secretary of the Revolutionary Government of Zanzibar on the condition, history and circumstances of every such convicted person of unsound mind at the expiration of a period of three years from the date of the President order and thereafter at the expiration of periods of two years from the date of the last report.



(5) On the consideration of any such report the President may order that the convicted person of unsound mind be discharged either absolutely or on such conditions as to the duration of such discharge and otherwise as the President may impose.

(6) Notwithstanding the provisions of subsections (4) and (5) of this section, the Prison Commissioner or the Director of Medical Services may, at any time after a convicted person of unsound mind has been detained in any place by an order of the President, make a special report to the Chief Secretary to the Revolutionary Government of Zanzibar on the condition, circumstances and history of any such convicted person of unsound mind, and the President, on a consideration of any such report, may order that the convicted person of unsound mind be discharged either absolutely or on such conditions as to the duration of such discharge and otherwise as the President may impose.

(7) The President may, at any time, order that a convicted person of unsound mind be transferred from a mental hospital to a prison, or from a prison to a mental hospital, or from any place in which he is detained to either a prison or a mental hospital.

Procedure when accused does not understand proceedings.

197. If the accused, though not insane, cannot be made to understand the proceedings, the court may proceed with trial; and, in the case of a court other than the High Court if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances, and the High Court shall make thereon such order as it thinks fit.

#### **Right of Accused Person to be defended**

Right of accused to be defended.

198. In the absence of any provision in any other law to the contrary, a person accused before any criminal court, or against whom proceedings are instituted under this Act, in any such court may of right be defended by an advocate.

Legal aid to accused at state expense in certain cases.

199. 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.



**PART EIGHT**  
**MODE OF TAKING AND RECORDING EVIDENCE**  
**IN INQUIRIES AND TRIALS**

**General**

Evidence to be taken in presence of accused.

**200.** Except as otherwise expressly provided, all evidence taken in any inquiry or trial under this Act shall be taken in the presence of the accused, or, when his personal attendance has been dispensed with, in the presence of his advocate.

**Subordinate Courts**

Manner of recording evidence before magistrate.

**201.**-(1) In inquiries and trials, 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 the magistrate, and shall form part of the record;
- (b) such evidence shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative, provided that the magistrate may, in his discretion, take down or cause to be taken down any particular question and answer.

(2) The magistrate shall inform each witness that he is entitled to have his evidence read over to him.

(3) Where the witness asks that his evidence be read over to him the magistrate shall cause such evidence to be read over to him in a language which he understands.

(4) The court may record evidence by using any electronic devices.

Interpretation of evidence to accused or his advocate.

**202.**-(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 which he understands.

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



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

Remarks respecting demeanour of witness.

**203.** 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 such witness whilst under examination.

Evidence to be recorded partly by one magistrate and partly by another.

**204.**-(1) Where any magistrate, after having heard and recorded the whole or any part of the evidence in any enquiry or trial conducted in whole is for any reason unable to complete in any enquiry or trial within a reasonable time, another magistrate who has and who exercises jurisdiction shall take over and continue the enquiry or trial, as the case may be, and the magistrate so taking over shall act on the evidence or proceeding recorded by his predecessor.

(2) Nothing in subsection (1) of this section 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.

### High Court

Record of evidence in High Court.

**205.** 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.

## PART NINE PROCEDURES IN TRIALS BEFORE SUBORDINATE COURTS

### Provisions relating to the hearing and determination of cases

Non-appearance of complainant.

**206.** If, in any case which a subordinate court has jurisdiction to hear and determine, the accused person appears in obedience to the summons served upon him at the time and place appointed in the summons for the hearing of the case, or is brought before the court under arrest, then, if the complainant, having had notice of the time and place appointed for the hearing of the charge, does not appear, the court may dismiss the charge, unless for some reason it shall think it proper to adjourn the hearing of the case until some other date, upon such terms as it shall think fit, in which event it may, pending such adjourned hearing, either admit the accused to bail or remand him to prison, or take such security for his appearance as the court shall think fit.



- Appearance of both parties. **207.** If at the time appointed for the hearing of the case both the complainant and the accused person appear before the court which is to hear and determine the charge, the court shall proceed to hear the case.
- Withdrawal of complaint. **208.** If a private prosecutor, 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, the court may permit him to withdraw the same and shall thereupon acquit the accused.
- Adjournment. **209.**-(1) 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, 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) Such adjournment shall not 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) When witnesses are in attendance, an adjournment shall not be granted without examining them, except on reasonable grounds to be recorded in writing.
- Commencement of trial for bailable offences. **210.**-(1) Hearing of a case in bailable offence shall commence within three months.
- (2) If hearing does not commence within three 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) of this section, 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) of this section or withdrawn by the prosecution under section 103(a) of this Act 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.





Non-  
appearance of  
parties after  
adjournment.

**211.**-(1) If at the time and place to which the hearing or further hearing shall be adjourned, the accused person shall not appear before the court which shall have made the order of adjournment, it shall be lawful for such court, to proceed with the hearing or further hearing as if the accused were present, and if the complainant shall not appear the court may dismiss the charge and discharge the accused with or without costs as the court shall think fit.

(2) If the court convicts the accused person in his absence, it may set aside such conviction upon being satisfied that his absence was from causes over which he had no control, and that he had a probable defence on the merits.

(3) A sentence passed under subsection (1) of this section, shall be deemed to commence from the date of apprehension, and the person effecting such apprehension shall indorse the date thereof on the back of the warrant of commitment.

Cost of  
adjournment.

**212.** If at the time and place to which the hearing or further hearing shall be adjourned, the advocate of the accused 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 less than one hundred thousand shillings but not exceeding five hundred thousand shillings.

Calling upon  
accused to  
plead.

**213.**-(1) The substance of the charge or complaint 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) If the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words used by him, and the court shall convict him and pass sentence upon or make an order against him, unless there shall appear to it sufficient cause to the contrary.

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

(4) If the accused person refuses to plead, the court shall record a plea of "not guilty".

Procedure on  
plea of "not  
guilty."

**214.**-(1) If the accused person does not admit the truth of the charge, the court shall proceed to hear the complainant and his witnesses and other evidence, if any.

(2) The prosecution need not call a medical officer or other expert witness who has submitted his report to the court if the accused person or his counsel does not desire to cross examine such a witness.



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

(4) If the accused person does not employ an advocate, the court shall, at the close of the examination of each witness for the prosecution, ask the accused person whether he wishes to put any questions to that witness and shall record his answer.

(5) If the accused, when invited to cross-examine any such witness, makes a statement such statement need not be recorded but the court shall, on behalf of the accused, put to the witness any question arising out of such statement.

Discharge of accused person when no case to answer.

**215.** If at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence, the court shall dismiss the charge and discharge the accused person.

Defence.

**216.**-(1) At the close of the evidence in support of the charge, if it appears to the court that a case is made out against the accused person sufficiently to require him to make a defence, the court shall explain the substance of the charge to the accused and shall inform him of his rights:

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

and shall then ask the accused or his advocate if he intends to exercise any of the rights under paragraph (a) or (b) of this section 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) If the accused person states that he has witnesses to call but that they are not present in court, and the court is satisfied that the absence of such witnesses is not due to any fault or neglect of the accused person, and that there is likelihood that they could, if present, give material evidence on behalf of the accused person, the court may adjourn the trial and issue process, or take other steps, to compel the attendance of such witnesses.



Evidence in reply.

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

Opening and close of case for prosecution and defence.

**218.**-(1) The prosecutor or his advocate shall be entitled to address the court at the commencement of his case and the accused person or his advocate shall be entitled to address the court at the commencement or in conclusion of his case as he thinks fit.

(2) Except with the leave of the court, the prosecutor or his advocate shall not in any case be allowed to address the court after the close of the accused's case nor shall the accused person or his advocate without such leave as aforesaid be entitled to address the court on evidence adduced by the prosecutor in reply.

Variance between charge and evidence and amendment of charge.

**219.**-(1) Where, at any stage of a trial before the close of the case for the prosecution, it appears to the court that the charge is defective, either in substance or form, the court may make such order for the alteration of the charge either by way of amendment of the charge or by the substitution or addition of a new charge as the court thinks necessary to meet the circumstances of the case.

(2) Where, at any stage of a trial before the close of the case for the prosecution, it appears to the prosecutor that the charge is defective, either in substance or form, the prosecutor may apply for a permission of the court to alter the charge.

(3) Where a charge is altered as aforesaid, the court shall thereupon call upon the accused person to plead to the altered charge.

(4) Where a charge is altered under this section 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.

(5) 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.

Decision.

**220.** The court, having heard both the complainant and the accused person and their witnesses and evidence, shall either convict the accused and pass sentence upon, or make an order against him according to law, or acquit the accused, or shall dismiss the charge under section 330.



Drawing up of conviction or order.

**221.** The conviction or order may, if required, be afterwards drawn up and shall be signed by the court making the conviction or order, or by the Registrar.

Order of dismissal bar to further procedure.

**222.** The production of a copy of the order of dismissal, certified by the Registrar, shall without other proof be a bar to any subsequent information or complaint for the same matter against the same accused person.

### **Limitations and Exceptions Relating to Trials Before Subordinate Courts**

Limitation of time for summary trials.

**223.** 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 not exceeding Five Hundred Thousand Shillings, or both such imprisonment and fine, shall be triable by a subordinate court, unless the charge or complaint relating to it is laid within twelve months from the time when the matter of such charge or complaint arose.

Procedure in case of offence proving unsuitable for summary trial.

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

## **PART TEN PROCEDURE IN TRIALS BEFORE THE HIGH COURT**

Practice of the High Court in its criminal jurisdiction.

**225.**-(1) 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 Courts of Commonwealth Countries in their criminal jurisdiction.

(2) All preliminary matters relating to a criminal case in the High Court shall be conducted before a Judge.

Prosecution to be conducted by Director of Public Prosecutions.

**226.** 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.

**227.**-(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.

### Mode of Trial

Trials to be with three assessors.

**228.**-(1) In the High Court, all trials of offences which attract capital punishment shall be with the aid of assessors, the number of whom shall be three.

(2) Other trials of offences, which do not attract capital punishment, shall not be with the aid of assessors.

### List of Assessors

Preparation of list.

**229.** The Registrar of the High Court shall before the first day of March in each year, and subject to such Rules as the Chief Justice of Zanzibar may from time to time prescribe, prepare a list of suitable persons in Zanzibar competent to serve as assessors.

Duty to serve as assessors.

**230.** Save as provided under section 231 of this Act, all persons from the age of forty are competent to serve as assessors at any trial held with the aid of assessors by the High Court within Zanzibar.

Exemptions from service as assessors.

**231.**-(1) The persons set out in the Fourth Schedule are exempted from service as assessors.

(2) The Chief Justice of Zanzibar may by notification in the Gazette add any other officers of the Government or any other persons to the list of persons set out in the Fourth Schedule.

Publication of list.

**232.**-(1) A copy of the list made by the Registrar of persons liable to serve as assessors shall be published in the Gazette in the first issue thereof in March, and extracts therefrom containing the names of the persons competent to serve as assessors residing in each district shall be displayed for public inspection at the offices of the District Commissioner of each district.

(2) To every such copy or extract shall be subjoined a notice stating that objections to the list will be heard and determined by a Judge of the High Court and such magistrate as the High Court may appoint at a time and place to be mentioned in such notice.

Revision of list.

**233.**-(1) For the hearing of objections to the list a Judge of the High Court shall sit with the Magistrate, and shall, at the time and place mentioned in the notice, revise



the list and hear the objections, if any, of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgement to serve as an assessor, or who may establish his right to any exemption from service given by section 231 of this Act, and insert the name of a person omitted from the list whom they deem qualified for such service.

(2) In the event of a difference of opinion between the Judge and the Magistrate, the name of the proposed assessor shall be omitted from the list.

(3) A copy of the revised list shall be signed by the Judge and Magistrate and sent to the Registrar of the High Court.

(4) An order of the Judge and Magistrate as aforesaid in preparing and revising the list shall be final.

(5) Any exemption not claimed under this section shall be deemed to be waived until the list is next revised.

(6) The list so prepared and revised shall be again revised once in every year.

Assessors to  
take oath

**234.**-(1) Before commencing their duties, assessors shall take oath before a Judge of the High Court.

(2) The oath under subsection (1) of this section, shall be in the form and manner as prescribed in the Seventh Schedule.

#### **Attendance of Assessors**

Summoning  
of assessors.

**235.**-(1) The Registrar of the High Court shall ordinarily, seven days at least before the day which from time to time may be fixed for holding a sitting of the High Court, send a letter to a magistrate holding a subordinate court, having jurisdiction in the district in which such sittings are to be held, requesting him to summon as many persons as seem to the Judge who is to preside at the sittings to be needed at the said sittings.

(2) In the case of persons named in the list, the names of the persons to be summoned shall be drawn by lot by such magistrate in open court, excluding those who have served within six months unless the number cannot be made up without them.

Form of  
summons.

**236.** A summons to an assessor shall be in writing, and shall require his attendance as an assessor, at a time and place to be therein specified.



Excuses from attendance.

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

List of assessors attending.

**238.**-(1) At each sitting of the High Court, the Chief Justice of Zanzibar shall cause to be made a list of the names of those who have attended as assessors at such sittings, and such list shall be kept with the list of the assessors as revised under section 233 of this Act.

(2) A reference shall be made in the margin of the revised list to each of the names which are mentioned in the list prepared under this section.

Penalty for non-attendance.

**239.**-(1) A 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 one hundred thousand shillings.

(2) Such fine unless paid shall be levied by a Magistrate of a subordinate court by attachment and sale of any movable property belonging to such assessor within the local limits of the jurisdiction of such Magistrate.

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

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

### **Arraignment**

Pleading to information.

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



Amendment  
of  
information,  
separate trial  
and  
postponement  
of trial.

**241.**-(1) An objection to an information for any formal defect on the face thereof shall be taken immediately after the information has been read over to the accused person and not later.

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

(3) Such amendments shall be made upon such terms as to the court shall deem just.

(4) Where an information is so amended, a note of the order for amendment shall be indorsed 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.

(5) Where, before a trial upon information or at any stage of such trial, the court is of 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 other 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 of any count or counts of such information.

(6) Where, before a trial upon information or at any stage of such trial, the court is of 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.

(7) 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 shall 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 found in a separate information, and the procedure on 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 recognisance and otherwise as the court thinks fit.

(8) A 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.

Quashing of information.

**242.**-(1) If an information does not state, and cannot by any amendment authorised by section 241 of this Act be made to state, any offence of which the accused has had notice, it shall be quashed either on an application made before the accused pleads or on a motion made in arrest of judgement.

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

Procedure in previous convictions.

**243.**-(1) Where an information contains a count charging an accused person with having been previously convicted of any offence, the procedure shall be as follows:

- (a) the part of the information stating the previous conviction shall not be read out in court, nor shall the accused be asked whether he has been previously convicted as alleged in the information, unless and until he has either pleaded guilty to or been convicted of the subsequent offence;
- (b) if he pleads guilty to or is convicted of the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the information;
- (c) if he answers that he has been so previously convicted, the court may proceed to pass sentence on him accordingly;
- (d) 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 the trial of a person for any such subsequent offence such person shall give evidence of his own good character, it shall be lawful for the advocate for the prosecution, in answer thereto, to give evidence of the conviction of such person for the previous offence or offences before he is convicted of such subsequent offence, and the court shall inquire concerning such previous conviction or convictions at the same time that it inquires concerning such subsequent offence.



Plea bargaining.

**244.**-(1) At any stage during investigation of a crime or at the time of the trial, the Director of Public Prosecutions or a person authorised in writing in that behalf, in consultation with a victim or his next of kin, 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 plea bargain.

**245.** 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.

**246.**-(1) An agreement entered in accordance with the provisions of the sections 244 and 245 of this Act, 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.

**247.** The procedure stated in sections 244, 245 and 246 of this Act, shall apply to cases in the Regional Magistrate's Courts.

Effect of plea of "not guilty."

**248.** An 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.

Plea of *autrefois acquit* and *autrefois convict*.

**249.**-(1) An accused person against 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 pardon of the President of Zanzibar for the offence.

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



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

Refusal to plead.

**250.**-(1) If an 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:

- (a) enter a plea of “not guilty” and the plea so entered shall have the same force and effect as if such accused person had actually pleaded the same; or
- (b) proceed to try whether the accused person be of sound or unsound mind as the following:
  - (i) if he shall be found of sound mind, the court shall proceed with the trial; or
  - (ii) if he shall be found of unsound mind, and consequently incapable of making his defence, the court 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 report the case for the order of the President.

(2) Pursuant to subsection (1) (b) (ii) of this section, the President may order the accused person to be confined in a mental hospital, prison or other suitable place of safe custody.

Procedure on plea of “guilty”.

**251.** If the accused pleads “guilty” the plea shall be recorded and he may be convicted thereon.

Procedure on plea of “not guilty”.

**252.**-(1) If the accused pleads “not guilty”, or if a plea of “not guilty” is entered in accordance with the provisions of section 250 of this Act, the court shall proceed to choose assessors if needed, as hereinafter directed, and to try the case.

(2) Subject to the right of objection hereinafter mentioned, the same assessors may aid in the trial of as many accused persons successively as the court thinks fit.

Power to postpone or adjourn proceeding.

**253.**-(1) If, from the absence of witnesses or any other reasonable cause to be recorded in the proceedings, the court considers it necessary or advisable to postpone the commencement of or to adjourn any trial, the court may from time to time postpone



or adjourn the same on such terms as it thinks fit for such time as it considers reasonable, and may by warrant remand the accused to some prison or other place of security.

(2) Proceedings shall not be stayed and new trial shall not be held due to the fact that one of the assessors, for any reason whatsoever, was prevented from attending or absent himself from the proceedings.

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

(4) The court may, on a remand, admit the accused to bail.

### **Selection of Assessors**

Selection of assessors.

**254.** When a trial is to be held with the aid of assessors, the court shall select three from the list of those summoned to serve as assessors at the sittings.

Absence of assessor.

**255.**-(1) If, in the course of a trial with the aid of assessors, at any time before the finding, any assessor is from any sufficient cause prevented from attending throughout the trial, or absents himself, and it is not practicable immediately to enforce his attendance, the trial shall proceed with the aid of the other assessors.

(2) If two or more of the assessors are prevented from attending, or absent themselves, the proceedings shall be stayed and a new trial shall be held with the aid of fresh assessors.

Assessor to attend at adjourned sittings.

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

### **Questions by Assessors**

Power of assessors to put questions.

**257.** The assessors may put any questions to the witnesses, through or by the leave of the Judge, which the Judge himself might put and which he considers proper.

### **Case for the Prosecution**

Opening of case for prosecution.

**258.** In the trial of case with the aid assessors, when the assessors have been chosen, the prosecution side shall open the case against the accused person, and shall call witnesses and adduce evidence in support of the charge.



Witnesses  
for the  
prosecution.

**259.**-(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.

Non-  
appearance of  
parties after  
adjournment.

**260.**-(1) If at the time and place to which the hearing or further hearing shall be adjourned, the accused person shall not appear before the court which shall have made the order of adjournment, it shall be lawful for such court, to proceed with the hearing or further hearing as if the accused were present, and if the complainant shall not appear the court may dismiss the charge with or without costs as the court shall think fit.

(2) If the court convicts the accused person in his absence, it may set aside such conviction upon being satisfied that his absence was from causes over which he had no control, and that he had a probable defence on the merits.

(3) A sentence passed under subsection (1) of this section, shall be deemed to commence from the date of apprehension, and the person effecting such apprehension shall indorse the date thereof on the back of the warrant of commitment.

Witness may  
give evidence  
through  
electronic  
media.

**261.**-(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; or

(b) where examination and cross examination may be conducted without hindrance.

Cross-  
examination  
of witnesses.

**262.** 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.

Close of  
case for  
prosecution.

**263.**-(1) When the evidence of the witnesses for the prosecution has been concluded, 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, shall record a finding of not guilty.



(2) When the evidence of the witnesses for the prosecution has been concluded, the court if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each accused person of the following rights:

- (a) to give evidence on his own behalf, or to make an unsworn statement; and
- (b) to call witnesses in his defence.

(3) The court shall then ask the accused person, or his Advocate, if it is intended to exercise any of the rights under subsection (2) of this section and shall record the answer.

(4) The court shall then call on the accused person to enter on his defence save where the accused person does not wish to exercise either of the rights under subsection (2) of this section.

#### Case for the Defence

Opening case for defence.

**264.**-(1) The accused person or his advocate may then open his case, stating the facts 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 and re-examination, if any, may sum up his case.

Witnesses for defence.

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

Prosecutor's reply.

**266.** If the accused person, or any one of several accused persons, adduces any evidence of good character, the advocate for the prosecution shall be entitled to reply.

Where accused adduces no evidence.

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



### Close of Hearing

Delivery of opinions by assessors.

**268.**-(1) When the case on both sides is closed, the Judge shall sum up the evidence for the prosecution and the defense, and shall then require each of the assessors to state his opinion orally, and shall record such 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) If the accused person is convicted, the Judge shall pass sentence on him according to law.

(4) Nothing in this section shall be read 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.

(5) If the case was heard without the aid of assessors, the judge shall proceed to give judgement.

### Passing Sentence

Calling upon the accused.

**269.** If the Judge convicts the accused person or if the accused person pleads guilty, it shall be the duty 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.

Motion in arrest of judgement.

**270.**-(1) The accused person may, at any time before sentence, whether on his plea of guilty or otherwise, move in arrest of judgment on the ground that the information does not, after any amendment which the court has made and had 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.

Sentence.

**271.** If no motion in arrest of judgment is made, or if the court decides against the accused person upon such motion, the court may sentence the accused person at any time during the sittings.



Power to reserve decision.

**272.**-(1) 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.

(2) Under no circumstances the decision shall be reserved for more than sixty days at the prejudice of the accused.

Objections cured by finding of Court.

**273.** A judgment shall not be stayed or reversed 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 amended by the court, no for any informality in swearing the witnesses or any of them.

Evidence for arriving at proper sentence.

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

## PART ELEVEN CONVICTIONS AND JUDGEMENTS

### Convictions for Offences Other Than Those Charged

When offence proved is included in offence charged.

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

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

Person charged with any offence may be convicted of attempt.

**276.** When a person is charged with an offence, he may be convicted of having attempted to commit that offence, although he was not charged with the attempt.

Woman charged with murder of her child may be convicted of infanticide.

**277.**-(1) When a woman is charged with the murder of her child, being a child under the age of twelve months, and the court is of opinion that:

- (a) she by any willful act or omission caused its death but at the time of the act or omission she had not fully recovered from the effect of giving birth to such child; and





- (b) 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 187 of the Penal Act, she might be convicted of murder, be convicted of the offence of infanticide although she was not charged with it.

Person charged with child destruction may be convicted of minor offences.

**278.** When a person is charged with child destruction and the court is of opinion that the person is not guilty of that offence but that the person is guilty of an offence relating to attempt to procure abortion or abortion by women with child, that person may be convicted of attempt to procure abortion or abortion by women with child, although that person was not charged with it.

Person charged with murder or infanticide or killing an unborn child may be convicted of concealment of birth.

**279.** When a person is charged with the murder or infanticide of any child or with killing an unborn child and the court is of opinion that he is not guilty of any of the said offences but if it shall appear in evidence that the child had recently been born and that such person did, by some secret disposition of the dead body of the child, endeavour to conceal the birth of that child, he may be convicted of the offence of endeavouring to conceal the birth of that child although he was not charged with it.

Power to convict for reckless or dangerous driving on trial for manslaughter.

**280.** Upon the trial of a person who is charged with manslaughter in connection with the driving of a motor vehicle by him, if the court is satisfied that such person is guilty of an offence of reckless or dangerous driving under the Road Transport Act, he may be found guilty of such offence whether or not the requirements of the last mentioned Act, which relates to notices of prosecutions, have been satisfied as regards the offence.

Person charged with rape may be convicted of an offence under other provisions of the Penal Act.

**281.** When a person is charged with rape and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under provisions of the Penal Act, which relate to offences involving indecent assaults upon or insults to females, procuring illicit sexual intercourse and incest, he may be convicted of that offence, although he was not charged with it.

Person charged with incest may be convicted of unlawful carnal knowledge.

**282.** When a person is charged with the offence of incest under the Penal Act and the court is of the opinion that he is not guilty of that offence, but that he is guilty of an offence of defilement of a person with mental disability or indecent assault under the said Act, he may be convicted of that offence, although he was not charged with it.



Person charged with defilement of boy may be convicted of an offence under other provisions of Penal Act.

**283.** When a person is charged with defilement of boy and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence of indecent assault or insult or of procuring illicit sexual intercourse under the Penal Act, he may be convicted of that offence, although he was not charged with it.

Person charged with burglary, may be convicted of kindred offence.

**284.** When a person is charged with any offence under the Penal Act relating to burglary, house-breaking or similar offences, and the court is of the opinion that he is not guilty of that offence but that he is guilty of any other offence of similar nature, he may be convicted of that other offence, although he was not charged with it.

Person charged with stealing may be convicted of receiving or obtaining by false pretences.

**285.**-(1) When a person is charged with stealing anything and:

- (a) it is proved that he received or retained the thing knowing or having reason to believe the same to have been stolen, he may be convicted of the offence of receiving or retaining the thing, as the case may be, although he was not charged with it; or
- (b) it is proved that he obtained the thing in any such manner as would amount, under the provisions of the Penal Act, to obtaining it by false pretences with intent to defraud, he may be convicted of the offence of obtaining it by false pretences although he was not charged with it.

(2) When a person is charged with receiving anything knowing the same to have been stolen, and it is proved that he retained the thing knowing the same to have been stolen, he may be convicted of the offence of retaining although he was not charged with it.

(3) When a person is charged with retaining anything knowing the same to have been stolen and it is proved that he received the thing knowing the same to have been stolen he may be convicted of the offence of receiving although he was not charged with it.

Alternative verdict in charges of being in possession of property suspected of having corruptly acquired.

**286.** Where a person is charged with an offence under the provisions of the Zanzibar Anti-Corruption and Economic Crimes Act which relate to corrupt acquisition or receipt of property, 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 the provisions of the Penal Act in respect of dishonest misappropriation of property, the court may convict him of such offence although he was not charged with it.



Person charged with obtaining by false pretences may be convicted of stealing.

**287.** When a person is charged with obtaining anything capable of being stolen by false pretences with intent to defraud, and it is proved that he stole the thing, he may be convicted of the offence of stealing although he was not charged with it.

Construction of sections 275 to 287.

**288.** The provisions of sections 275 to 287 of this Act, both inclusive, shall be construed as in addition to, and not in derogation of the provisions of any other Act and the other provisions of this Act, and the provisions of sections 277 to 285 of this Act, both inclusive, shall be construed as being without prejudice to the generality of the provisions of section 276 of this Act.

### Judgment

Mode of delivering judgement.

**289.**-(1) The judgment, in every trial in any criminal court in the exercise of its original jurisdiction shall be pronounced, or the substance of such judgment shall be explained, in open court either immediately after the conclusion of the trial or at some subsequent time not, in any case, exceeding sixty days of which notice shall be given to the parties and their advocates, if any.

(2) The whole judgment shall be read out by the presiding Judge or magistrate if he is requested so to do either by the prosecution or the defense.

(3) The accused person shall, if in custody, be brought up, or, if not in custody, be required by the court to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with or he is acquitted.

(4) Judgment delivered by any court shall not 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 to limit in any way the provisions of section 381 of this Act.

Contents of judgement.

**290.**-(1) Every such judgment shall, except as otherwise expressly provided by this Act, be written by the presiding officer of the court in the language of the court, and shall contain the point or points for determination, the decision thereon and the reasons for the decision, and shall be dated and signed by the presiding officer in open court at the time of pronouncing it.



(2) In the case of a conviction, the judgment shall specify the offence of which and the section of the Penal Act 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.

Rights of  
accused  
to copy of  
judgement.

**291.**-(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.

(2) On the application of the Director of Public Prosecutions, a copy of the judgment, shall be given to him without delay.

(3) Such copy or translation shall be given free of cost.

## PART TWELVE SENTENCES AND THEIR EXECUTION

### Different Kinds of Sentences

Different  
kinds of  
punishments.

**292.** The following punishments may be inflicted by a court:

- (a) death;
- (b) imprisonment;
- (c) work in the community;
- (d) fine;
- (e) forfeiture;
- (f) payment of costs;
- (g) payment of compensation;
- (h) finding security to keep the peace and be of good behaviour, or to come up for judgment;
- (i) supervision;
- (j) cancellation or suspension of driving licence under the Road Transport Act;
- (k) conditional release under the Probation of Offenders Decree;



- (l) an approved school order under the Children's Act;
- (m) any other sentence provided by the Penal Act or any other Act.

### Sentence of Death

Sentence of death.

**293.**-(1) When any person is sentenced to death, the sentence shall direct that he shall be hanged by the neck until he is dead.

(2) Sentence of death shall not be pronounced on or recorded against :

- (a) a woman found to be pregnant in accordance with the provisions of section 294 of this Act, but in lieu thereof the court shall sentence such woman to imprisonment for life;
- (b) a person who in the opinion of the court was, at the time when the offence was committed, under eighteen years of age, but in lieu thereof the court shall sentence such person to be detained during the President's pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the President may direct, and whilst so detained shall be deemed to be in legal custody.

(3) When a person has been sentenced to be detained during the President's pleasure under paragraph (b) of subsection (2) of this section, the presiding Judge 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 as he may think fit to make.

Procedure where woman convicted of capital offence alleges she is pregnant.

**294.**-(1) Where a woman convicted of an offence punishable with death alleges that she is pregnant, or where the court before whom a woman is so convicted thinks fit so to order, the question whether or not the woman is pregnant shall, before sentence is passed on her, be determined by the court.

(2) The question whether the woman is pregnant or not shall be determined by the court on such evidence as may be laid before it either on the part of the woman or on the part of the Director of Public Prosecutions, and the court, as the case may be, shall find that the woman is not pregnant unless it is proved affirmatively to its satisfaction that she is pregnant.



Appeal from finding that woman is not pregnant.

**295.** Where on proceedings under section 294 of this Act, the court finds that the woman in question is not pregnant, the woman may appeal to the Court of Appeal and that court, if satisfied that for any reason the finding should be set aside, shall quash the sentence passed on her and instead thereof pass on her a sentence of imprisonment for life.

Accused to be informed of right to appeal.

**296.** When an accused person is sentenced to death, the court shall inform him of his right of appeal and the period within which, if he wishes to appeal, his appeal should be preferred.

Authority for detention.

**297.** A certificate under the hand of the Judge or Registrar that sentence of death has been passed, and naming the person condemned, shall be sufficient authority for the detention of such person.

Record and report to be sent to President.

**298.**-(1) As soon as conveniently may be after sentence of death has been pronounced, if no appeal from the sentence is preferred, or if such appeal is preferred and the sentence is affirmed, then as soon as conveniently may be after such affirmation, the presiding Judge 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 as he may think fit to make.

(2) The court shall, on receiving the order of confirmation of sentence or other order by President, as the case may be, issue a warrant or take such other steps as may be necessary to carry such order or orders into effect.

### **Sentence of Imprisonment**

Imprisonment.

**299.** A person liable to imprisonment for life or any other period may be sentenced for any shorter term.

Warrant in case of sentence of imprisonment.

**300.**-(1) A warrant under the hand of the Judge or Magistrate by whom a person shall be sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within Zanzibar, 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.

(2) Except where otherwise provided in this Act, every sentence shall be deemed to commence from, and to include the whole of the day and date on which it was pronounced.



Substitution of police custody for imprisonment in case of short sentence.

**301.**-(1) Notwithstanding anything contained in section 300 of this Act, no sentence of imprisonment for a period of less than five days, whether awarded as a substantive sentence or in default of payment of money on the non-recovery of which imprisonment may be awarded, shall be carried out in any prison within Zanzibar.

(2) The court may, if any suitable places provided and certified in manner hereinafter appearing are available for the purpose, order the person to be detained therein for such period not exceeding four days as the court thinks fit, and the order shall be delivered with the offender to the person in charge of the place where the offender is to be detained, and shall be sufficient authority for his detention in that place in accordance with the tenor thereof.

(3) The expenses of the maintenance of persons detained under this section shall be defrayed in like manner as the expenses of the maintenance of prisoners in prisons to which the Offenders Education Act applies.

(4) The President may, on the application of the Commissioner of Police, certify any building to be a suitable place for the detention of persons sentenced to detention under this section, and may make regulations for the inspection of places so provided, the treatment of persons detained therein, and generally for carrying this section into effect.

(5) The place so certified shall not be used for the detention of females unless provision is made for their supervision by a woman.

Sentences cumulative unless otherwise ordered.

**302.**-(1) Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence, other than a sentence of death, which is passed upon him under the subsequent conviction, shall be executed after the expiration of the former sentence, unless the court directs that it shall be executed concurrently with the former sentence or any part thereof.

(2) It shall not be lawful for a court to direct that a sentence of imprisonment in default of payment of a fine shall be executed concurrently with a former sentence under section 320 of this Act.

Sentences in case of conviction of several offences at one trial.

**303.**-(1) When a person is convicted at one trial of two or more distinct offences the court may sentence him, 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 it is competent to impose on conviction of a single offence, to send the offender for trial before a higher court, provided as follows:

- (a) in no case other than one in which a person is convicted of an offence punishable with imprisonment for life shall such person be sentenced to imprisonment for a longer period than fourteen years;
- (b) if the case is tried by subordinate court the aggregate punishment shall not exceed twice the amount of punishment which the court is, in the exercise of its original jurisdiction, competent to impose.

(3) For the purpose of appeal, the aggregate of consecutive sentences imposed under this section on conviction of two or more offences at one trial shall be deemed to be a single sentence.

Sentence on offender already sentenced for another offence.

**304.**-(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 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.

Escaped convicts to serve unexpired sentences when recaptured.

**305.** When sentence is passed on an escaped convict, such sentence, if of death or fine, shall, subject to the provisions of this Act, take effect immediately, and if of imprisonment shall take effect according to the following rules:

- (a) if the new sentence is severer in its kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately; or
- (b) when the new sentence is not severer in kind than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.





Ban of  
corporal  
punishment.

**306.** A court of law or judicial tribunal established by law shall not inflict a corporal punishment to a person in Zanzibar.

### Fines

Fine in lieu  
of or in  
addition to  
imprisonment.

**307.**-(1) A person liable to imprisonment for an offence against any law may be sentenced:

- (a) to pay a fine in addition to imprisonment; or
- (b) to pay a fine instead of imprisonment for offences attracting punishment which does not exceed two years.

(2) In any case where a fine is specified as an alternative to imprisonment such person shall not be liable to both fine and imprisonment unless such liability is expressly so stated.

Discretion  
of Court.

**308.** Where a fine is imposed under any law, then in the absence of express provisions relating to such fine in such law, the following provisions shall apply:

- (a) where no sum is expressed to which the fine may extend the amount of the fine which may be imposed is unlimited, but shall not be excessive;
- (b) in the case of an offence punishable with a fine or a term of imprisonment the imposition of a fine or a term of imprisonment shall be a matter for the discretion of the court;
- (c) in the case of an offence punishable with imprisonment as well as a fine in which the offender is sentenced to a fine with or without imprisonment, and in every case of an offence punishable with fine only in which the offender is sentenced to a fine, the court passing sentence may, in its discretion:
  - (i) direct by its sentence that in default of payment of the fine the offender shall suffer imprisonment for a certain term, which imprisonment shall be in addition to any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of sentence; or
  - (ii) issue a warrant for the levy of the amount on the immovable property or movable property of the offender by distress and sale under warrant.



Forfeiture.

**309.**-(1) The court may, upon the conviction of a person of an offence under the Penal Act, order that any article carried or used by such person in connection with the commission of the offence shall be forfeited to the Government of Zanzibar.

(2) When any person is convicted of any of the following offences under the Penal Act namely:

- (a) compounding an offence under section 84; or
- (b) compounding a penal action under section 85,

the court may, in addition to or in lieu of, any penalty which may be imposed, order the forfeiture to the Revolutionary Government of Zanzibar of any property which has passed in connection with the commission of the offence, or, if such property cannot be forfeited or cannot be found, of such sum as the court shall assess as the value of the property.

(3) Payment of any sum so ordered to be forfeited may be enforced in the same manner and subject to the same incidents as in the case of the payment of a fine.

### Costs

Power to award costs against accused or private prosecutor.

**310.**-(1) It shall be lawful for a Judge of the High Court or a magistrate of a subordinate court to order a person convicted before him of an offence to pay to the private prosecutor such reasonable costs as to such Judge or magistrate may deem fit, in addition to any other penalty imposed.

(2) If the prosecution is conducted by private prosecutor, it shall be lawful for a Judge of the High Court or a magistrate of a subordinate court who acquits or discharges a person accused of an offence, to order such private prosecutor to pay to the accused such reasonable costs as to such Judge or magistrate may deem fit.

(3) Such order under subsection (2) of this section, shall not be made if the Judge or magistrate considers that the private prosecutor had reasonable grounds for making his complaint.

(4) The costs awarded under this section may be awarded in addition to any compensation awarded under section 314 of this Act.

Right of appeal from order as to costs.

**311.**-(1) An appeal shall lie from any order awarding costs under section 310 of this Act, if made by a magistrate to the High Court and if by a Judge to the Court of Appeal.

(2) The appellate court shall have power to give such costs of the appeal as it shall deem reasonable.



Recovery of costs.

**312.** The sum allowed for costs shall, in all cases, be specified in the conviction or order, and the same shall be recoverable in like manner as any penalty may be recoverable under this Act.

### Compensation

Court may order compensation.

**313.**-(1) The court which has convicted an accused person may or at the request of the Prosecution, order the convict to compensate the victim.

(2) Such compensation may be in addition to any other punishment provided under any law.

Compensation in cases of sexual offences.

**314.** When a court convicts an accused person of 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 whether physical or psychological sustained by the victim in the course of the offence being perpetrated against him or her.

Power to award expenses or compensation out of fine.

**315.**-(1) Whenever any 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) If the fine is imposed in a case which is subject to appeal no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

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

Specification and recovery of compensation.

**316.** The sum allowed for compensation shall, in all cases, be specified in the sentence or order, and the same shall be recoverable in like manner as any penalty may be recovered under this Act.



### **Enforcement of Order for Payment of Fine, Costs, or Compensation by Distress**

Warrant  
for levy of  
fine.

**317.**-(1) Subject to the provisions of subsection (5) of this section, when a court orders money to be paid by an accused person or by private prosecutor 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 sale under warrant.

(2) If the accused person or private prosecutor shows sufficient movable property to satisfy the order, his immovable property shall not be sold.

(3) Such person may pay or tender to the officer having the execution of the warrant the sum therein mentioned, together with the amount of the expenses of the distress up to the time of payment or tender, and thereupon the officer shall cease to execute the same.

(4) A warrant under this section may be executed within the local limits of the jurisdiction of the court issuing the same, and it shall authorise the distress and sale of any property belonging to such person without such limits when indorsed by a magistrate holding a subordinate court within the local limits of whose jurisdiction such property was found.

(5) If a sentence directs that in default of payment of fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no court shall issue a distress warrant unless for special reasons to be recorded in writing it considers it necessary.

Objections to  
attachment.

**318.**-(1) A person claiming to be entitled to or to have a legal or equitable interest in the whole or part of any property attached in execution of a warrant issued under section 317 of this Act may, at any time prior to the payment out of court of the proceeds of sale of such property, give notice in writing to the court of his objection to the attachment of such property.

(2) Such notice shall set out shortly the nature of the claim which such person, hereinafter in this section called "the objector", makes to the whole or part of the property attached, and shall certify the value of the property claimed by him, and such value shall be deposed to on affidavit, which shall be filed with the notice.

(3) Upon receipt of a valued notice given under subsection (1) of this section, the court shall direct a stay of the execution proceedings, and, if the proceeds of sale of the property have not been received by the court, shall give notice in writing thereof to the officer having the execution of the warrant.



(4) When a stay of the execution of proceedings is directed under subsection (3) of this section, 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.

(5) A notice shall be served upon the person whose property was, by the warrant issued under section 317 of this Act, directed to be attached, and, unless the property is to be applied to the payment of a fine, upon the person entitled to the proceeds of the sale of such property.

(6) Such notice shall specify the time and place fixed for the appearance of the objector and shall direct the person upon whom the notice is served to appear before the court at the same time and place if he wishes to be heard upon the hearing of the objection.

(7) Upon the date fixed for the hearing of the objection the court shall inquire the claim and, for such purpose, may hear any evidence which the objector may give or adduce and any evidence given or adduced by a person served with a notice in accordance with subsection (5) of this section.

(8) If, upon inquiry 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 partly on his own account and partly on account of some other person, the court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.

(9) If, upon the date fixed for his appearance, the objector fails to appear, or if, upon inquiry of the claim in accordance with subsection (7) of this section, the court is of opinion that the objector has failed to establish his claim, the court shall order the attachment and execution to proceed, and shall make such order as to costs as it deems proper.

(10) Nothing in this section shall be deemed to deprive a person who has failed to comply with the requirements of subsections (1) and (2) of this section 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.

Defect or  
want of form  
in proceeding  
not to  
invalidate  
distress.

**319.** No distress made under this Act shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress or other proceedings relating thereto.



### **Imprisonment in Default of Payment of Fine, Costs or Compensation**

Imprisonment in default of payment of fine.

**320.** In the case of an offence punishable with imprisonment as well as a fine in which the offender is sentenced to a fine with or without imprisonment, and in every case of an offence punishable with fine only in which the offender is sentenced to a fine, the court in passing sentence may, in its discretion, direct by its sentence that in default of payment of the fine the offender shall suffer imprisonment for a certain term, which imprisonment shall be in addition to any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of sentence.

Postponement of sentence of imprisonment in default of fine.

**321.-(1)** In any case in which an order for the payment of money is made on non-recovery of which imprisonment may be awarded, and the money is not paid forthwith, the court, notwithstanding anything contained in paragraph (c) of section 308 of this Act shall not on that occasion impose on the person ordered to make such payment a period of imprisonment in default of the payment of that sum unless:

- (a) the court is satisfied that he is possessed of sufficient means to enable him to pay the same forthwith;
- (b) upon being asked by the court whether he desires that time should be allowed for payment, he does not express any such desire, or fails to satisfy the court that he has a fixed abode within its jurisdiction; or
- (c) the court determines that for special reason, whether having regard to the gravity of the offence, to the character of the person ordered to make such payment, or to other special circumstances,

it is expedient that he should be imprisoned without further inquiry in default of payment.

(2) Where any such person desires to be allowed time for payment the court in deciding what time shall be allowed shall consider any representation made by him, but the time allowed shall not be less than seven clear days.

(3) If before the expiration of the time allowed such person surrender himself to the court and states that he prefers immediate committal to awaiting the expiration of the time allowed, the court may if it thinks fit forthwith issue a warrant committing him to prison.

(4) Where time has been allowed for payment of any sum to which this section applies, the court may require the person ordered to make such payment to enter into 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 thirty days from the time of executing the bond, and in default of his so doing may at once pass sentence of imprisonment as if time had not been allowed for payment.

(5) Where time has been allowed for the payment as aforesaid, further time may, subject to any condition that the court may think fit to impose, be allowed by the court, or, such court may, subject as aforesaid, direct that any money to which this section applies may be paid by instalments at such time as the court may deem fit.

(6) In all cases where time is not allowed for payment, the court shall record the reasons for the immediate committal.

(7) The provisions of this section shall not apply in the case of any person convicted of any offence and sentenced for such offence to both imprisonment and fine, or of a person in prison.

Commitment  
on failure of  
distress.

**322.** If the officer having the execution of a warrant of distress reports that he could find no property or not sufficient property whereon 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, commitment and conveyance to prison to be specified in the warrant, are sooner paid.

Commitment  
in lieu of  
distress.

**323.** When it appears to the court that distress and sale of property would be ruinous to the person ordered to pay the money or his family, or by his confession or otherwise, that he has no property whereon the distress may be levied, or other sufficient reason appears to the court, the court may if it thinks fit, instead of or after issuing a warrant of distress, commit him to prison for a time specified in the warrant, unless the money and all expenses of the commitment and conveyance to prison, to be specified in the warrant, are sooner paid.

Scale of  
imprisonment  
in default of  
payment  
of fine.

**324.**-(1) The term of imprisonment ordered by a court in respect of the non-payment of any sum of money adjudged to be paid on a conviction or in respect of the default of a sufficient distress to satisfy any such sum shall be such term as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any case the maximum fixed by the scale under the Third Schedule.

(2) In default of payment of costs or compensation or of distress in respect of such costs or compensation the person in default shall be liable to imprisonment for a term not exceeding three months unless such costs or compensation shall be sooner paid.



(3) A commitment for non-payment shall not be for a longer period than six months, unless the law under which the conviction has taken place enjoins or allows a longer period.

Payment  
in full after  
commitment.

**325.** A person committed for non-payment may pay the sum mentioned in the warrant, with the amount of expenses therein authorized, if any, to the court, and the court shall thereupon discharge him if he is in custody for no other matter.

Part payment  
after  
commitment.

**326.**-(1) If a person committed to prison for non-payment shall pay any sum in part satisfaction of the sum adjudged to be paid, the term of his imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which such person is committed, as the sum so paid bears to the sum for which he is liable.

(2) The officer in charge of a prison in which a person is confined who is desirous of taking advantage of the provisions of the subsection (1) of this section shall, on application being made to him by such prisoner, at once take him before a court, and such court shall certify the amount by which the term of imprisonment originally awarded is reduced by such payment in part satisfaction, and shall make such order as is required in the circumstances.

### **Security for Keeping the Peace or for Coming up for Judgment**

Security for  
keeping the  
peace.

**327.**-(1) A person convicted of an offence not punishable with death or punishable with imprisonment not exceeding three years, may, instead of, or in addition to, any punishment to which he is liable, be ordered to enter into his own recognisance with or without sureties, in such amount as the court thinks fit, conditioned, that he shall keep the peace and be of good behaviour for a time to be fixed by the court.

(2) The court may order the accused to be imprisoned until such recognisance, with sureties is entered into.

(3) The imprisonment for not entering into the recognisance shall not extend for a term longer than one year and shall not, together with the fixed term of imprisonment, if any, extend for a term longer than the longest term for which he might be sentenced to be imprisoned without fine.

Security for  
coming up for  
judgment.

**328.**-(1) When a person is convicted of any offence not punishable with death or punishable with imprisonment not exceeding three years, the court may, instead of passing sentence, discharge the convicted person upon his entering into his own recognisance, with or without sureties, in such sum as the court may think fit, conditioned that he shall appear to receive judgment at some future sitting of the court or when called upon.





(2) Nothing in this section shall be deemed to affect the power of any court of releasing an offender after his conviction on probation under the provisions of the law on the probation of offenders.

Provisions applicable to, and recognisances under sections 327 and 328.

**329.**-(1) The provisions of sections 158, 159 and 161 of this Act shall apply *mutatis mutandis* to all recognisance entered into under section 327 or 328 of this Act.

(2) The provisions of the law on the probation of the offenders relating to failure to observe conditions of release shall apply *mutatis mutandis* in the case of person failing to observe any of the conditions of a recognisance entered into by him under section 325 or 326 of this Act.

### **Discharge of Offender without Conviction or on Probation**

Discharge of offender without conviction or on probation.

**330.**-(1) Where, in any trial the court thinks that the charge against the accused person is proved but is of opinion that, having regard to the character, antecedents, age, health or mental condition of the accused, or to the trivial nature of the offence, or to the extenuating circumstances in which the offence was committed, it is inexpedient to inflict any punishment, the court may, without proceeding to conviction, make an order dismissing the charge.

(2) Where an order is made by a court under this section, the order shall, for the purpose of revesting or restoring stolen property, and of enabling the court to make any order under the provisions of section 337 of the Act, have the like effect as a conviction.

(3) Where any charge is dismissed under this section, the court may order the accused person to pay the whole or any part of the costs of, and incidental to, the prosecution.

(4) Nothing in this section shall be deemed to affect the power of any court of releasing an offender after his conviction on probation under the provisions of the law on the probation of the offenders.

### **Supervision**

Power to subject to supervision.

**331.**-(1) When a person:

- (a) is convicted of an offence punishable with imprisonment for a term of two years or more; and



- (b) has been convicted on at least three previous occasions of offences punishable with such a sentence and was, on at least two of those occasions, sentenced to imprisonment,

the court may, if it thinks fit, at the time of passing sentence of imprisonment on such person, order that he shall be subject to supervision as hereinafter provided for a period not exceeding five years from the date of the expiration of such sentence.

(2) An order made under subsection (1) of this section shall, if the conviction is set aside on appeal or otherwise, become void.

Requirements which may be imposed on persons subject to supervision.

**332.**-(1) The court may, in making an order under section 331 of this Act, direct that the person shall, while subject to supervision and at large in Zanzibar, comply with all or any of the following requirements:

- (a) to reside within a specified Shehia;
- (b) not to transfer his residence to any place outside the Shehia so specified without the written consent of the District Commissioner of the district in which such Shehia is situate;
- (c) at all times to keep the Sheha of the Shehia in which he resides notified of the house or place in which he resides; or
- (d) to present himself, whenever called upon so to do by the Sheha of the Shehia in which he resides or by police officer in charge of the district in which he resides, at any place within such Shehia or at any place in such district respectively,

and the court may at any time vary any such directions.

(2)The Chief Justice of Zanzibar may make Rules for the carrying out of the provisions of subsection (1) of this section and, without prejudice to the generality of the foregoing, prescribing the manner in which persons may be brought before a court for the purposes of the said subsection.

Offence of failing to comply with requirements imposed on persons subject to supervision.

**333.**-(1) If a person subject to supervision by virtue of an order made under section 331 of this Act who is at large in Zanzibar, refuses or neglects to comply with any requirement imposed upon him under section 332 of this Act or with the provisions of any Rules made under section 332 of this Act, he shall, unless he proves to the satisfaction of the court that he has complied or attempted to comply with all such requirements and provisions, be guilty of an offence and is liable to imprisonment for a term not exceeding six months.



(2) A police officer or Sheha may arrest without warrant a person whom he suspects upon reasonable grounds of having committed an offence under this section.

### **Warrants and Orders**

Who may issue warrant.

**334.** 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.

Amendments of errors and omissions.

**335.** 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 the time and place, and no defect in form in any order or warrant given under this Act, shall be held to render void or unlawful any act done or intended to be done by virtue of such order or warrant, provided that it is therein mentioned, or may be inferred therefrom, that it is founded on a conviction or judgment, and there is a valid conviction or judgment to sustain the same.

## **PART THIRTEEN RESTITUTION OF PROPERTY**

### **Property Found on Accused Person**

Property found on accused person.

**336.** 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 a part thereof be restored to the person who appears to the court to be entitled thereto, and, if he be the person charged, that it be restored either to him or to such other person as he may direct; or
- (b) that the property or a part thereof be applied to the payment of any fine or any costs or compensation directed to be paid by the person charged.

### **Restitution of Stolen Property**

Property stolen.

**337.**-(1) If a person guilty of an offence mentioned in the Penal Act relating to stealing, taking, obtaining, extorting, converting, or disposing of, or of 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 in this section referred to, the court before whom such offender is convicted shall have power to award from time to time orders of restitution for the said property or to order the restitution thereof in a summary manner.



(3) Where goods have been obtained by fraud or other wrongful means not amounting to stealing, the property in such goods shall not revert in the person who was the owner of the goods, or his personal representative, by reason only of the conviction of the offender.

(4) Nothing in this section shall apply to the case of any valuable security which has been in good faith paid or discharged by some person liable to the payment thereof, or, being a negotiable instrument, has been in good faith taken or received by transfer or delivery by some person for a just and valuable consideration without any notice or without reasonable cause to suspect that the same has been stolen.

(5) For the purposes of subsection (3) of this section, “goods” includes all chattels personal other than things in action and money, and also includes implements, industrial growing crops, and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale.

(6) 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 a person, that such person has had no knowledge that the same was stolen, and that any moneys have been taken from the offender on his apprehension, the court may, on the application of such purchaser, order that out of such moneys a sum not exceeding the amount of the proceeds of such sale be delivered to the said purchaser.

(7) The operation of any order under this section shall, unless the court before which the conviction takes place direct to the contrary in any case in which the title to the property is not in dispute, be suspended:

- (a) in any case until the time for appeal has elapsed; and
- (b) in case where an appeal is lodged, until the determination of the appeal,

the order shall not take effect as to the property in question if the conviction is quashed on appeal.

(8) The Chief Justice of Zanzibar may make provisions by Rules for securing the safe custody of any property, pending the suspension of the operation of any such order.

(9) A person aggrieved by an order made under this section may appeal to the higher court, and upon the hearing of such appeal the court may by order annul or vary any order made on a trial for the restitution of any property to any person, although



the conviction is not quashed; and the order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

(10) Notwithstanding anything to the contrary contained in this section, if the property in respect of which an order can be made is subject to speedy and natural decay or if the court before whom the offender is convicted is of the opinion that its immediate sale would be for the benefit of the owner, the court may, at any time, direct it to be sold and direct that the proceeds of such sale be paid to the owner of the property sold.

(11) The provisions of subsection (7) of this section shall, as nearly as may be practicable, apply to the net proceeds of such sale.

#### **PART FOURTEEN APPEALS GENERALLY**

Interpretation.

**338.** 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.

**339.** A person aggrieved by any decision of any court shall have the right to appeal subject to the provisions of this Act.

Appeals to High Court.

**340.**-(1) Save as hereinafter provided, a 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.

Appeals to Regional Magistrate.

**341.**-(1) A 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.

**342.**-(1) Save as hereinafter provided, a person aggrieved by a decision of a Primary Court 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.

Appeals by the Director of Public Prosecutions.

**343.**-(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.

**344.** 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.

Notice of intention to appeal.

**345.** 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 and where such notice is tendered the court shall record the same.

Limitation.

**346.**-(1) Appeal from any finding, sentence or order shall not be entertained unless the appellant:

- (a) shall have given a notice of appeal to the Registrar within fifteen days from the date of the finding, sentence or order; and
- (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.

Petition of appeal.

**347.**-(1) An appeal shall be made in the form of a petition in writing presented by the appellant or his advocate, and every such petition shall, unless the High Court otherwise directs, be accompanied by a copy of the judgment or order appealed against.



(2) Where the appellant is represented by an advocate 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.

Appellant in prison.

**348.**-(1) If the appellant is in prison, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the prison, who shall thereupon forward such petition and copies to the Registrar of the High Court.

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

- (a) the Chief Justice for allocation in case of High Court appeals; and
- (b) an appropriate Magistrate for appeals other than High Court appeals.

Summary rejection of appeal.

**349.**-(1) On receiving the petition and copy under section 347 of this Act the appellate court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily.

(2) Appeal shall not be dismissed summarily except in the case mentioned in subsection (3) of this section, unless the appellant or his advocate has had an opportunity of being heard in support of the same.

(3) Where an appeal is brought on the ground that the conviction is against the weight of the evidence, or that the sentence is excessive, and it appears to the court that the evidence is sufficient to support the conviction and that there is no material in the circumstances of the case which could raise a reasonable doubt whether the conviction was right or lead it to consider that the sentence ought to be reduced, the appeal may, without being set down for hearing, be summarily dismissed by an order of court certifying that it has perused the record and is satisfied that the appeal has been lodged without any sufficient ground of complaint.

(4) Whenever an appeal is summarily dismissed notice of the same shall forthwith be given to the Director of Public Prosecutions.

Notice of time, place and hearing.

**350.**-(1) 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;

(2) Notice under subsection (1) of this section, 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.



Powers of  
the Appellate  
Court.

**351.-**(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 or the extent, or alter 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 or the extent, or alter 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.





Order of Appellate Court to be certified to lower court.

**352.**-(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.

Admission of appellant to bail and his custody pending appeal.

**353.**-(1) A convicted appellant who is not admitted to bail shall, pending the determination of his appeal, be treated as an unconvicted prisoner.

(2) The High Court or the subordinate court which convicted an appellant may, if it deems fit, admit an appellant to bail pending the determination of his appeal.

(3) When a subordinate court refuses to release such person on bail, such person may apply for bail to the High Court.

(4) The time during which an appellant, pending the determination of his appeal, is admitted to bail, and subject to any directions which the High Court may give to the contrary on the appeal, the time during which the appellant, if in custody, is treated as an unconvicted prisoner under this section, shall not count as part of any term of imprisonment under his sentence.

(5) The sentence of the appellant whether it is the sentence passed by the subordinate court or the sentence passed by the High Court on appeal, shall, subject to any directives which may be given by the court as aforesaid, be deemed to be resumed or to begin to run, as the case requires if:

- (a) the appellant is in custody, as from the day on which the appeal is determined; or
- (b) the appellant is not in custody, as from the day on which he is received into prison under the sentence.

(6) Notwithstanding the provisions under subsection 5 (a) of this section, when an appellant has been in custody pending the determination of his appeal for a period longer than six weeks then unless the High Court otherwise orders his sentence shall begin to run so soon as he has been in custody for a total period of six weeks.

(7) Where an appellant has on conviction been adjudged to pay a sum of money as fine, penalty, compensation, costs, expenses or otherwise, the High Court or the subordinate court, which convicted the appellant, may suspend the execution of the order for such payment upon taking security by recognizance, with or without sureties,



or by deposit of money or any other property, or otherwise, for the due payment of such sum by the appellant when so ordered by the High Court for such execution to be suspended.

Power to take additional evidence.

**354.**-(1) In dealing with appeals, the appellate 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 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 of 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.

(4) Evidence taken in pursuance of this section, shall be taken as if it were evidence taken at trial before a subordinate court.

Number of Judges on appeal.

**355.**-(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.

Abatement of appeals.

**356.**-(1) An 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.



Appeals to  
Court of  
Appeal.

**357.** Either party to an appeal from a subordinate court may appeal against a decision of the High Court in its appellate jurisdiction to the Court of Appeal according to the Rules of Court of Appeal.

Admission to  
bail pending  
appeal to  
Court of  
Appeal.

**358.**-(1) A Judge of the High Court may, in his discretion, in any case in which an appeal from a decision of the High Court in its appellate jurisdiction to the Court of Appeal is filed, grant bail pending the hearing of such appeal.

(2) The provisions of subsections (1), (2) and (3) of section 353 of this Act, shall apply to convicted appellants appealing under the provisions of section 357 as if for the words "High Court" were substituted the words "Court of Appeal" and for the words "subordinate court" were substituted the words "High Court".

### Revision

Power of  
High Court  
to call for  
records.

**359.** The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

Power of  
Magistrates to  
call for records  
of inferior  
courts.

**360.**-(1) A magistrate may call for and examine the record of any criminal proceedings before a subordinate court of a class inferior to the court which he is empowered to hold, and situate within the local limits of his jurisdiction, for the purpose of satisfying himself 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 such inferior subordinate court.

(2) If a magistrate acting under subsection (1) of this section considers that any finding, sentence or order of such inferior subordinate court is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the High Court, and pending the decision of the High Court thereon, such magistrate may for reasons to be recorded by him in writing order that the execution of the sentence or order of such inferior subordinate court be suspended and also, if the convicted person is in confinement that he be released on bail or on his own bond.

(3) In any case where the sentence or order dealt with under this section is confirmed by the High Court, the time during which the convicted person is so released shall be excluded in computing the term for which he is sentenced.

Powers of  
High Court  
on revision.

**361.**-(1) In the case of any proceeding in a subordinate court, the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge or upon application, the High Court may:



- (a) in the case of a conviction, exercise any of the powers conferred on it as an appellate court by sections 351, 353 and 354 of this Act and may enhance the sentence; and
- (b) in the case of any order other than an order of acquittal, alter or reverse such order.

(2) An order under this section shall not be made to the prejudice of an accused person or to the prejudice of the Director of Public Prosecutions unless the accused person or the Director of Public Prosecutions as the case may be has had an opportunity of being heard either personally or by an advocate.

(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 interest of justice.

(5) No proceeding by way of revision shall be entertained if an appeal has already been lodged.

(6) 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.

Discretion of Court as to hearing parties.

**362.**-(1) A party has not any right to be heard either personally or by advocate before the High Court when exercising its powers of revision.

(2) 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 361 of this Act.

Number of Judges on revision.

**363.**-(1) Proceedings before 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.



(2) 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.

Order on revision to be certified to lower court.

**364.** When 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 so certified, and, if necessary, the record shall be amended in accordance therewith.

### Reference

Reference to High Court.

**365.**-(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) of this section 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.

Disposal of case according to decision of High Court.

**366.**-(1) When a question has been so referred in terms of section 365, 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 of the case conformably to the said order.

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

Power to remit case to subordinate court.

**367.** The High Court shall have power, if it thinks fit:

- (a) to cause the case to be sent back for amendment or restatement, and thereupon the same shall be amended or restated accordingly, and judgment shall be delivered after it has been so amended or restated; or
- (b) to remit the case to the subordinate court for rehearing and determination with such directions as it may deem necessary.

Number of Judges on case referenced.

**368.**-(1) A case referenced for the opinion of the High Court may be heard at the discretion of the Chief Justice by one or two Judges of the High Court.



(2) Where the hearing of a case stated has been commenced before one Judge, the Chief Justice may direct that it be heard by two Judges, if available, such direction may be given at any time before judgment is delivered.

(3) If on the hearing the court is equally divided in opinion, the decision of the subordinate court shall be affirmed.

### **Appeals from High Court**

Appeal to the Court of Appeal on conviction by High Court.

**369.**-(1) A person convicted on a trial held by the High Court may appeal to the Court of Appeal against his conviction or sentence or both his conviction and sentence except the conviction or acquittal on the offence of treason.

(2) There shall be no right of appeal against sentence where such sentence is fixed by law.

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

(4) The appeal against the decision of the High Court on the offence of treason shall be heard on by the panel of three Judges of the High Court.

## **PART FIFTEEN INVESTIGATIONS INTO SUDDEN DEATHS AND INQUESTS**

### **Duty to Report Crime or Accident or Death in Certain Circumstances.**

Duty to report a crime.

**370.** Every person who is or becomes aware of the commission of or the intention of any other person to commit any offence punishable by law 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.

Duty to report finding of dead body.

**371.** When the body of a dead person is found or a person has committed suicide or has been killed by another or by an accident or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, it shall be the duty of any person finding the body or becoming aware of the death immediately to give information thereof to the nearest District Commissioner, Sheha or police officer.

### **Investigations as to Sudden Deaths.**

Investigation and report by Police.

**372.**-(1) The officer in charge of a police station, or any other officer specially empowered by the President in that behalf, on receiving information that a person:



- (a) has committed suicide;
- (b) has been killed by another or by an accident; or
- (c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give information thereof to the nearest magistrate empowered to hold inquests, and, unless otherwise directed by any Rules prescribed by the Chief Justice of Zanzibar, shall proceed to the place where the body of such deceased person is, and shall there make an investigation and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner or by what weapon or instrument, if any, such marks appear to have been inflicted.

(2) The report shall be forwarded forthwith to the nearest magistrate empowered to hold inquests.

(3) When there is any doubt regarding the cause of death, or when for any other reason the police officer considers it expedient to do so, he shall, subject to any Rules prescribed by the Chief Justice of Zanzibar, forward the body, with a view to its being examined, to the nearest medical officer or other person appointed by the Chief Justice of Zanzibar in this behalf, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

### **Inquests**

Duty to notify  
the Chief  
Justice.

**373.**-(1) The Chief Justice shall appoint any Regional or District Magistrate to hold an inquest either generally or for specific inquest.

(2) When a 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 empowered to hold inquest is already appointed and known, it shall be the duty of the officer in charge of a Police Station or any other officer specially empowered by the President, immediately to inform such Magistrate of the death and the Magistrate shall proceed under section 374 of this Act.

Inquest by  
Magistrate.

**374.**-(1) When a person dies in circumstances mentioned in section 371, 372 or 373 (2) of this Act a Magistrate 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 other officer, 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.

(2) Whenever such magistrate considers it expedient to make an examination of the dead body of a person who has been already interred, in order to discover the cause of his death, the Magistrate or public officer may cause the body to be disinterred and examined.

(3) If before or at the termination of the inquiry, the Magistrate is of opinion that the commission by some known person or persons of an offence has been disclosed, he shall issue a summons or warrant for his or their arrest, as the case may be, or take such other steps as may be necessary to secure his or their attendance to answer the charge.

(4) On the attendance of the said person or persons the Magistrate shall commence the inquiry *de novo* and shall proceed as if he had taken cognisance of an offence.

(5) If at the termination of the inquiry the Magistrate is of opinion that an offence has been committed by some person or persons unknown, he shall record his opinion and shall forthwith send a copy thereof to the Director of Public Prosecutions.

(6) If at the termination of the inquiry the Magistrate is of opinion that no offence has been committed, he shall record his opinion accordingly.

## PART SIXTEEN HABEAS CORPUS AND OTHER PREROGATIVE WRITS

### Directions in the Nature of Habeas Corpus

Power to issue directions in the nature of *habeas corpus*.

**375.** The High Court may whenever it thinks fit direct:

- (a) that a person within the limits of Zanzibar be brought up before the court to be dealt with according to law;
- (b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;
- (c) that a 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 a prisoner detained as aforesaid be brought before a court-martial or any commissioners acting under the authority of any commission from





the President for trial or to be examined touching any matter pending before such court-martial or commissioners respectively;

- (e) that a prisoner within such limits be removed from one custody to another for the purpose of trials; or
- (f) that the body of a defendant within such limits be brought in on a return of *cepi corpus* to a writ of attachment.

Power to issue certain writs.

**376.** The High Court may in the exercise of its criminal jurisdiction issue any writ which may be issued by the common law courts.

Power to make rules.

**377.** The Chief Justice may from time to time make Rules to regulate the procedure in cases under sections 375 and 376 of this Act.

## PART SEVENTEEN IRREGULAR PROCEEDINGS

Proceeding in wrong place.

**378.** 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 district or other local area, unless it appears that such error has in fact occasioned a failure of justice.

Improper admission or rejection of evidence.

**379.** The improper rejection or admission of evidence shall not be a ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

Omission to take oath.

**380.** No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever in, or in respect of, which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth.

Omissions and errors in proceedings.

**381.**-(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of:



- (a) any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Act; or
- (b) the omission to revise any list of assessors in accordance with section 233 of this Act, unless such error, omission, or irregularity has in fact occasioned a failure of justice.

(2) In determining whether any error, omission or irregularity has occasioned a failure of justice, the court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings.

## PART EIGHTEEN MISCELLANEOUS

Persons before whom affidavits may be sworn

**382.** Affidavits and affirmations to be used before the High Court may be sworn or affirmed before a Judge of the High Court or any magistrate or the Registrar or deputy registrar of the High Court or any commissioner for oaths.

Shorthand notes of proceedings.

**383.** Shorthand notes may be taken of the proceedings at the trial of a person before the High Court, and a transcript of such notes shall be made if the court so directs, and such transcript shall for all purposes be deemed to be the official record of the proceedings at such trial.

Electronic records.

**384.** Any court may take records of proceedings through electronic devices.

Right to copies of proceedings.

**385.** If a 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 he pays for the same, unless the court for some special reason thinks fit to furnish it free of cost.

Forms to be used.

**386.** Such Forms as the High Court may from time to time approve, with such variation as the circumstances of each case may require, may be used for the respective purposes therein mentioned, and if used shall be sufficient.

Expenses of assessors and witnesses.

**387.** Subject to any Rules of Court which may be made by the Chief Justice, any court may order payment on the part of Government of the reasonable expenses of any assessor or witness attending before such court for the purposes of any inquiry, trial or other proceeding under this Act.



General  
Rules.

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

Consequential  
amendment of  
the Magistrates'  
Courts Act.

**389.** The provisions of the Magistrates' Courts 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 Act  
No. 7 of 2004.

**390.** The Criminal Procedure Act No. 7 of 2004 is hereby repealed.

Transitional  
provisions.

**391.**-(1) Notwithstanding the repeal of the Criminal Procedure Act No. 7 of 2004, any matter pending in any court before the commencement of this Act, the disposal of which is affected by the repeal, shall be dealt with and disposed under the repealed Act.

(2) All subsidiary legislation made under the repealed Act shall remain in force as if made under this Act, unless subsequently revoked.

(3) Any criminal act done or criminal omission made, before the repeal of the Penal Act No. 6 of 2004 and has not yet been brought to any court, may be investigated, inquired into or tried under the provisions of this Act.



**FIRST SCHEDULE**  
**Offences under the Penal Act**  
 (Under Sections 4 (1) and 5 (2))

**EXPLANATORY NOTES**

1. The entries in the second and fourth columns of this Schedule, headed respectively "Offence" and "Punishment under the Penal Act" are not intended as definitions of the offences and punishments described in the several corresponding sections of the Penal Act 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.
2. Under section 307 of this Act a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment:

Provided that where a fine is specified as alternative to imprisonment such person shall not be liable to both unless so stated.

All offences are triable by the High Court and the words "High Court" only appear in the fifth column in cases solely triable by that Court.

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>
<i>Section</i>	<i>Offence</i>	<i>Whether the police may arrest without warrant or not</i>	<i>Punishment under the Penal Act</i>	<i>Court by which offence is triable</i>



**PART FOUR  
PARTIES TO OFFENCES**

24	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.
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**PART SIX**  
**TREASON AND OTHER OFFENCES AGAINST**  
**THE SOVEREIGN'S AUTHORITY**

27	Treason	May arrest without warrant	Death	High Court
28	Entering Zanzibar with intent to organize a counter- revolution	Do	Do	Do
29	Instigating invasion	Do	Do	Do
30	Misprision of treason	Do	Imprisonment for life	Do
31	Treasonable felonies	Do	Do	Do
33	Inciting to mutiny	Do	Do	Do
34	Aiding military offences or police officers in acts of mutiny	Shall not arrest without warrant	Imprisonment for five years	District Magistrate Court
35	Inducing Soldiers or Police Officers to desert	Do	Imprisonment for a term of not less than five years but not exceeding ten years	Regional Magistrate Court
36	Knowingly Aiding prisoners of war to escape	May arrest without warrant	Imprisonment for life	High Court
37	Negligently Permitting prisoners of war to escape	Shall not arrest without warrant	Imprisonment for two years	Primary Magistrate Court or District Magistrate Court
39	Unlawful oaths to commit capital offences	May arrest without warrant	Imprisonment for life	High Court



40(b)	Other unlawful oath to commit offences	Do	Imprisonment for a term not exceeding seven years.	District Magistrate Court or Regional Magistrate Court
42(1)	Unlawful drilling	Do	Do	Do
42(2)	Being unlawfully drilled	Do	Imprisonment for two years	Primary Magistrate Court or District Magistrate Court
43	Publication of false news	Do	Do	Do
44	Incitement to violence	May arrest without warrant	Do	Do

**PART SEVEN**  
**OFFENCES AFFECTING RELATIONS WITH FOREIGN STATES**  
**AND EXTERNAL TRANQUILLITY**

45	Defamation	Shall not arrest without warrant	Imprisonment for two years	Primary Magistrate Court or District Magistrate Court
46	Foreign enlistment	Do	Do	Do
47	Piracy	May arrest without warrant	Imprisonment for life	High Court



**PART EIGHT**  
**UNLAWFUL ASSEMBLIES, RIOTS AND OTHER OFFENCES**  
**AGAIST PUBLIC TRANQUILITY**

49(1)	Managing unlawful society	May arrest without warrant	Imprisonment for seven years	Regional Magistrate Court
49(2)	Being a member of unlawful society	May arrest without warrant	Fine of Three Hundred Thousand Shillings or imprisonment for three months	Regional Magistrate Court
55	Unlawful assembly	Do	Imprisonment for a term not exceeding one year	Primary Magistrate Court or District Magistrate Court
56	Riot	Do	Imprisonment for two years	Do
59	Rioting after proclamation	Do	Imprisonment for five years	District Magistrate court
60	Preventing or obstructing the making of proclamation	Do	Imprisonment for ten or five years	Regional Magistrate Court
61	Rioters demolishing buildings	Do	Imprisonment for life	High Court
62	Rioters damaging buildings	Do	Imprisonment for seven years	Regional Magistrate Court
63	Riotously interfering with vehicle or vessel	Do	Imprisonment for two years	Primary Magistrate Court or District Magistrate Court
64(1)	Going armed in public	Do	Imprisonment for two years	Do
64(2)	Unlawful possession of firearm	Do	Imprisonment for not less than five years but not exceeding fourteen years	Regional Magistrate Court





65	Forcible entry	Do	Imprisonment not exceeding for two years	Primary Magistrate Court or District Magistrate Court
66	Forcible detainer	Do	Imprisonment not exceeding for two years	Do
67	Affray	Do	Imprisonment for six months or fine of Five Hundred Thousand shillings	Primary Magistrate Court
68	Challenge to fight a duel	Shall not arrest without warrant	Imprisonment for two years	Primary Magistrate Court or District Magistrate Court
69(1)	Threatening violence	May arrest without warrant	Imprisonment for one year	Do
69(2)	If the offence committed in the night	Do	Imprisonment for two years	Do
70	Watching and besetting	Do	Imprisonment for six months or fine not exceeding Five Hundred Thousand	Primary Magistrate Court
71	Intimidation	Do	Imprisonment for one year or fine not exceeding One Million Shillings	Primary Magistrate Court or District Magistrate Court
72	Assembling for purpose of smuggling	Do	Fine not exceeding Five Hundred Thousand Shillings or imprisonment for six months	Do
73(1) (a)	Offensive weapons at public meetings and Processions	Do	Fine not exceeding Two Hundred and Fifty Thousand Shillings or imprisonment for three months	Primary Magistrate Court



73(1) (b)	Offensive conduct in public or at public meeting	Do	Do	Do
74	Possession of offensive weapons without lawful authority	Do	Imprisonment for two years	Primary Magistrate Court or District Magistrate Court

### PART NINE

#### OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE

76	False statements by interpreters	Shall not arrest without warrant	Imprisonment for a term not exceeding seven years	Regional Magistrate Court
77	Punishment of perjury and subornation of perjury	Do	Imprisonment for a term not exceeding seven years.	Do
79	Fabricating evidence	Do	Do	Do
80	False swearing	Do	Imprisonment for two years	District Magistrate Court
81	Deceiving witnesses	Do	Do	Do
82	Destroying evidence	Do	Do	Do
83	Conspiracy to defeat justice and interference with witnesses	Do	Do	Do
84	Compounding offence	Do	Do	Do
85	Compounding penal actions	Do	Do	Do
86	Advertising for stolen property	Do	Do	Do



87(1)	Contempt of court	May arrest without warrant	Imprisonment for three months	Any Court
87(2)	Contempt of Court if in view of Court	Do	Fine of One Hundred Thousand Shillings or one month imprisonment in default	Court before which offence committed.

**PART TEN**  
**RESCUES, ESCAPES, AND OBSTRUCTING OFFICERS OF COURTS OF LAW**

88(a)	Rescue	May arrest without warrant	Imprisonment for life	High Court
88(b)	Rescue	Do	Imprisonment for seven years	Regional Magistrate Court
88(c)	Rescue	Do	Imprisonment for two years	District Magistrate Court
89(1)	Escape after conviction from lawful custody	Do	Imprisonment for a term equivalent to twice the length of period which the person was serving while in lawful custody	Any Court
89(3)	Escape before conviction from lawful custody	Do	Imprisonment for two years	District Magistrate Court
90	Aiding prisoners to escape	Do	Imprisonment for seven years	Regional Magistrate Court
91	Escaping from confinement or custody	Do	Imprisonment not exceeding two years or fine not exceeding Two Million Shillings or both	District Magistrate Court



92	Removal of property under lawful seizure	Do	Imprisonment for three years	District Magistrate Court
93	Obstructing court officers	Do	Imprisonment for one year	Do

**PART ELEVEN**  
**MISCELLANEOUS OFFENCES AGAINST PUBLIC AUTHORITY**

94	Frauds and breaches of trust by persons employed in the public service	Shall not arrest without warrant	Imprisonment for two years	District Magistrate Court
95	Neglect of official duty	Do	Do	Do
96	Causing loss to Government or public institutions	May arrest without warrant	Imprisonment for a term exceeding three years but not exceeding ten years or fine exceeding Three Million Shillings but not exceeding Ten Million Shillings or both	District Magistrate Court or Regional Magistrate Court
97	False information to public servant	Do	Imprisonment for six months or fine of Five Hundred Thousand Shillings or both	Primary Magistrate Court or District Magistrate Court
98	Disobedience of statutory duty	Shall not arrest without warrant	Imprisonment for one year or fine of One Million Shillings	District Magistrate Court
99	Disobedience of lawful orders	Do	Imprisonment for two years or fine of Two Million Shillings or both	Do



**PART TWELVE**  
**OFFENCES RELATING TO RELIGION**

100	Insult to religion of any class	May arrest without warrant	Imprisonment for two years	District Magistrate Court
101	Disturbing religious assemblies	Do	Do	Do
102	Trespassing on burial places	Do	Do	Do
103	Hindering burial of dead body	Do	Do	District Magistrate Court
104	Writing or uttering words with intent to wound religious feelings	Shall not arrest without warrant	Imprisonment for two years	Do
105	Abuse of religion	May arrest without warrant	Imprisonment for seven years	Regional Magistrate Court
106(1)	Promote enmity between different groups	Do	Imprisonment for three years	District Magistrate Court
106(2)	Promote enmity between different groups at place of worship	Do	Imprisonment for five years	Do



**PART THIRTEEN**  
**OFFENCES AGAINST MORALITY**

109(1)	Punishment of rape	May arrest without warrant	Imprisonment for life, or thirty years with fine and compensation	Regional Magistrate Court
109(2)(a)	Do	Do	One year in juvenile home, approved school or working in the community	Do
109(2)(b)	Do	Do	Imprisonment for a term of twelve months	Do
109(2)(c)	Do	Do	Imprisonment for life, or thirty years with fine and compensation	Do
110	Punishment gang rape	May arrest without warrant	Imprisonment for life	Do
111(1)	Attempted rape	Do	Imprisonment for twenty years	Do
111(3)	Attempted rape	Do	Six months in juvenile home, approved school or working in the community	Do
112	Abduction of a woman	Do	Imprisonment for seven years	Do
113	Abduction of girls and boys	Do	Imprisonment for ten years	Do
114(1)	Indecent assault	Do	Imprisonment for fourteen years and compensation	Do
114(3)	Indecent assault	Do	Imprisonment for a term not less than three years and compensation	Do
115(1)	Defilement of boys	Do	Imprisonment for life	Regional Magistrate Court
115(2)	Attempted defilement of boy	Do	Imprisonment for a term of not less than thirty years	Do



116(1)	Defilement of a person with mental disability	Do	Life imprisonment	Do
116(2)	Attempt to defile a person with mental disability	Do	Imprisonment for a term of not less than thirty years	Do
117	Procuration for prostitution	Do	Imprisonment for a term of not less than five years and not exceeding ten years or to a fine not less than Five Hundred Thousand Shillings and not exceeding Ten Million Shillings or both	Do
118	Procuring illicit sexual intercourse	Do	Fine not less One Million Shillings and not exceeding Ten Million or imprisonment for a term not less than one year or not exceeding ten years or both	Do
119	Householder permitting defilement of boy	Do	Imprisonment for ten years	District Magistrate Court
120	Householder permitting canal knowledge of a girl	Do	Imprisonment for ten years	Do
121	Detention of woman, girl or boy in brothel or elsewhere	Do	Imprisonment for seven years	Regional Magistrate Court
123	Offence of prostitution	Do	Imprisonment for a term of three years	District Magistrate Court



124	Male person living on earnings of prostitution	Do	Imprisonment for two years	Do
125	Woman living on earnings of prostitution or abetting prostitution	Do	Do	Do
127	Brothel	Do	Do	Do
128	Conspiracy to rape	Do	Imprisonment for three years	Do
129	Attempt to procure abortion	Do	Imprisonment for fourteen years	Regional Magistrate Court
130	Abortion by woman or girl	Do	Imprisonment for seven years	Do
131	Supplying drugs or instruments to procure abortion	Do	Imprisonment for three years	District Magistrate Court
133	Unnatural offences	Do	Imprisonment for thirty years	Regional Magistrate Court
134	Attempt to commit unnatural offence	Do	Imprisonment for ten years	Do
135	Indecent assault on boy	Do	Imprisonment for a term of not less than twenty five years	Do
136	Acts of lesbianism	Do	Imprisonment for ten years	Do
137(1)	Acts of gross indecency between persons	Do	Imprisonment for a term not less than three years but not exceeding five years or fine not less than Three Million and not exceeding Five Million Shillings	Regional Magistrate Court





137(2)	Where offence committed by person 18 years old and above	Do	Imprisonment for a term of not less than five years but not exceeding ten years and compensation to be determined by the Court	Regional Magistrate Court
138	Sexual exploitation of children	Do	Imprisonment for a term of not less than five years and not exceeding twenty years	Do
139(2)(a)	Grave sexual abuse	Do	Imprisonment for a term of not less than fifteen years but not exceeding thirty years and compensation	Do
139(2)(b)	Grave sexual abuse	Do	Imprisonment for a term of not less than twenty five years but not exceeding thirty years and compensation	Do
140	Union of persons of the same sex	Do	Imprisonment for seven years	Do
141(1)	Sexual harassment	Do	Imprisonment for five years or fine not exceeding five Million Shillings or both	District Magistrate Court
142	Adultery	Shall not arrest without warrant.	Imprisonment for two years	Do
143(2)	Incest	May arrest without warrant	Imprisonment for a term of not less than twenty five years	Regional Magistrate Court
143(3)	Incest	Do	Imprisonment for a term not exceeding five years	Do
143(4)	Incest	Do	Imprisonment for life	Do



143(5)	Incest	Do	Imprisonment for a term of not less than twenty years	Do
143(6)	Incest	Do	Imprisonment for a term of not less than ten years	Do
143(7)	Incest	Do	Imprisonment for a term not less than three years	Do
145	Disclosure of identity of the victim	Do	Imprisonment for two years and compensation	District Magistrate Court

**PART FOURTEEN**  
**OFFENCES RELATING TO MARRIAGE AND DOMESTIC OBLIGATIONS**

146	Fraudulent presence of marriage	May arrest without warrant	Imprisonment for ten years	Regional Magistrate Court
147	Unlawfully marrying	Do	Imprisonment for five years	District Magistrate Court
148	Marriage ceremony fraudulently gone through without lawful marriage	Do	Do	Do
149	Cruelty to children	Do	Imprisonment for a term of not less than five years and not exceeding fifteen years or to a fine not exceeding Fifteen Million Shillings or both and compensation	Regional Magistrate Court
150	Desertion of a child or person with disability	Shall not arrest without warrant	Imprisonment for two years	District Magistrate Court



151	Neglecting to provide food for child or a person with disability	Do	Do	Do
152	Employer not providing for employees or apprentices	Do	Do	Do
153	Trafficking of person	May arrest without warrant	Imprisonment for a term of not less than five years but not exceeding twenty years or a fine of not more than Five Million Shillings but not exceeding Twenty Million or both	High Court
154	Child stealing	Do	Imprisonment for not less than five years but not exceeding ten	District Magistrate Court



**PART FIFTEEN**  
**NUISANCES AND OFFENCES AGAINST HEALTH AND CONVENIENCE**

155	Public nuisance	Shall not arrest without warrant	Imprisonment for one year	Primary Magistrate Court or District Magistrate Court
156(3)	Keeping common gaming house	Do	Imprisonment for not less than three years	District Magistrate Court
156(4)	Being found in common gaming house	Do	Fine of not less than Two Million Shillings for first offence and for each subsequent offence a fine of not less than Three Million Shillings or imprisonment for not less than two years or both.	Do
157	Gaming machines	Shall not arrest without warrant	Fine not less than Four Million Shillings or imprisonment for not less than four years or both	District Magistrate Court
158	Betting houses	Do	Imprisonment for a term not exceeding four years or fine not exceeding Four Million Shillings or both	Do
159(1)	Carrying on a lottery	Shall not arrest without warrant	Imprisonment for two years	District Magistrate Court
159(2)	Printing or publishing advertisement relating to a lottery	Do	Fine not exceeding Five Hundred Thousand Shillings	Do



161	Trafficking in obscene publications	May arrest without warrant	Imprisonment for a term not less than three years but not exceeding six years or fine not less than Three Million Shillings but not exceeding Six Million Shillings	District Magistrate Court or Regional Magistrate Court
162	Obscene acts	Do	Imprisonment for three months or fine not exceeding Two Hundred and Fifty Thousand Shillings or both	Primary Magistrate Court
163	Idle or disorderly person	May arrest without warrant	Imprisonment for not less than one year and not exceeding two years or fine not less than One Million Shillings and not exceeding Two Million Shillings	District Magistrate Court
164	Rogue and vagabond	Do	Imprisonment for a term of not less than three months but not exceeding two years or fine not exceeding Two Million Shillings	Primary Magistrate Court
165(1)	Offences against military uniforms	Do	Imprisonment for one month or a fine not exceeding One Hundred Thousand Shillings	Do
165(3)	Bringing contempt on uniform	Do	Imprisonment for three months or fine not exceeding Two Hundred and Fifty Thousand Shillings	Do



165(4)	Importing or selling uniform without authority	Do	Imprisonment for six months or fine not exceeding Five Hundred Thousand Shillings	Do
166	Negligent act likely to spread infection	Do	Imprisonment for two years	District Magistrate's Court
167	Fouling water	Do	Do	Do
168	Fouling air	Shall not arrest without warrant	Do	Do
169	Offensive trade	Do	Imprisonment for one year	Do
170	Disobedience to quarantine rule	May arrest without warrant	Imprisonment for six months or fine of Five Hundred Thousand Shillings or both	Do
171	Punishment for public nuisance	Do	Imprisonment for a term not exceeding one year.	Do
172	Continuation of nuisance	Do	Imprisonment not exceeding two years or fine not exceeding Two Million Shillings or both	Do
173	Adulteration of food	Do	Imprisonment for two years	Do
174	Sale of noxious food	Do	Do	Do
175	Adulteration of drugs	Do	Do	Do
176	Sale of adulterated drugs	Do	Do	Do



**PART SIXTEEN**  
**MURDER, MANSLAUGHTER AND INFANTICIDE**

178	Punishment of manslaughter	May arrest without warrant	Imprisonment for life	High Court
180	Punishment of murder	Do	Death	Do
182	Killing on provocation	Do	Imprisonment for life	Do
187	Infanticide	Do	Imprisonment not exceeding seven years	Do

**PART SEVENTEEN**  
**DUTIES RELATING TO THE PREVENTION OF LIFE AND HEALTH**

192	Punishment for failure to perform duties	Shall not arrest without warrant	Imprisonment not exceeding one year or fine not exceeding One Million Shillings or both	District Magistrate Court
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**PART EIGHTEEN**  
**OFFENCES CONNECTED WITH MURDER AND SUICIDE**

193	Attempting unlawfully to cause death	May arrest without warrant	Imprisonment for life	High Court
194	Accessory after the fact to murder	Do	Imprisonment for seven years	Do
195	Written threats to murder	Do	Do	Do
196	Conspiracy to murder	Do	Imprisonment for fourteen years	Do
197	Aiding suicide	Do	Imprisonment for life	Do
198	Attempting suicide	Do	Imprisonment for two years	District Magistrate Court
199	Concealing the birth of a child	Do	Do	Do
200	Child destruction	Do	Imprisonment for life	High Court
201(1)	Concealing design to commit an offence	Do	Imprisonment for seven years or three years	Regional Magistrate Court
201(2)	Concealing design to commit an offence	Do	Imprisonment for one year or six months	Do





**PART NINETEEN**  
**OFFENCES ENDANGERING LIFE OR HEALTH**

202	Disabling in order to commit offences	May arrest without warrant	Imprisonment for life	Regional Magistrate Court
203	Stupefying in order to commit an offence	Do	Do	Do
204	Acts intended to cause grievous harm or prevent arrest	Do	Do	Do
205	Preventing escape from wreck	Do	Do	Do
206	Intentionally endangering safety of persons travelling by railway	Do	Do	Do
207	Endangering safety of vessels	Do	Do	Do
208	Grievous harm	Do	Imprisonment for seven years	Do
209	Attempting to injure by explosive substances	Do	Imprisonment for fourteen years	High Court
210	Maliciously administering poison with intent to harm	Do	Do	Do
211	Wounding and similar acts	Do	Imprisonment for three years	District Magistrate Court
212	Failure to supply provide necessaries	Do	Do	Do



**PART TWENTY**  
**OFFENCES RELATING TO CRIMINAL GANG ACTIVITIES**

216 & 217 216(1)	Participating or being a member of a criminal gang	May arrest without warrant	Fine not exceeding Six Million Shillings or imprisonment for six years	Regional Magistrate Court
216(2)(a)	Promoting or contributing toward a pattern of criminal gang activities	Do	Do	Do
216(2)(b)	Inciting, instigating in a criminal gang	Do	Fine not exceeding Three Million Shillings or imprisonment for three years	Do
216(2)(c)	Causing, encouraging, recruiting	Do	Do	Do

**PART TWENTY ONE**  
**CRIMINAL RECKLESSNESS AND NEGLIGENCE**

219	Rash or negligent act causing death	May arrest without warrant	Imprisonment for ten years or fine not exceeding Ten Million Shillings or both.	High Court
220	Rash and negligent acts	Do	Imprisonment for two years	District Magistrate Court
221(1)	Removal of tonsils	Do	Imprisonment for five years.	Do
221(2)	Do	Do	Life imprisonment	High Court



222(1)	Removal of human organs.	Do	Imprisonment for twenty years	Do
222(2)	Do	Do	Death	Do
223	Other negligent acts causing harm	Do	Imprisonment for six months or fine not exceeding Five Hundred Thousand Shillings	District Magistrate Court
224	Dealing in poisonous substances in negligent manner	Shall not arrest without warrant	Imprisonment for six months or fine of Five Hundred Thousand Shillings	Do
225	Endangering safety of persons travelling by railway	May arrest without warrant	Imprisonment for two years	Do
226	Exhibiting false light, marks or buoy	Do	Imprisonment for seven years	Regional Magistrate Court
227	Conveying person by water for hire in unsafe or overloaded vessel	Do	Imprisonment for two years	District Magistrate Court
228	Danger or obstruction in public way or line of navigation	Shall not arrest without warrant	Imprisonment for a term not exceeding one year or fine not exceeding One Million Shillings or both	Do



**PART TWENTY TWO  
ASSAULTS**

229	Common assault	Shall not arrest without warrant	Imprisonment for one year	Any Magistrate
230	Assault occasioning actual bodily harm	May arrest without warrant	Imprisonment for five years	District Magistrate Court
231	Assaulting person protecting wrecks	Do	Imprisonment for seven years	Regional Magistrate Court
232	Assaults punishable with five years imprisonment	Do	Imprisonment for five years	District Magistrate Court

**PART TWENTY THREE  
OFFENCES AGAINST LIBERTY**

233, 234 & 235	Kidnapping	May arrest without warrant	Imprisonment not exceeding ten years	High Court.
237	Kidnapping or abducting in order to murder	Do	Life imprisonment	Do
238	Kidnapping or abducting with intent to confine a person	Do	Imprisonment not exceeding fourteen years	Do
239	Kidnapping or abducting in order to subject person to grievous harm, slavery	Do	Imprisonment for ten years	Do
240	Wrongfully concealing or keeping in confinement a kidnapped or abducted person	Do	Do	Do



241	Kidnapping or abducting child with intent to steal from its person	Do	Imprisonment for seven years	Regional Magistrate Court
242	Kidnapping or abducting child with intent to demand money	Do	Imprisonment not exceeding fifteen years	High Court
243 & 245	Punishment for wrongful restraint	May arrest without warrant	Imprisonment for one month or fine of One Hundred Thousand Shilling	Primary Magistrate Court
244 & 246	Punishment for wrongful confinement	Do	Imprisonment for one year or a fine of One Million Shillings	District Magistrate Court
247	Buying or disposing of any person as a slave	Do	Imprisonment for seven years	Regional Magistrate Court
248	Habitually dealing in slaves	Do	Imprisonment for ten years	High Court
249	Forced labor	Do	Imprisonment not less than three years but not exceeding five years	District Magistrate Court



**PART TWENTY FOUR**  
**THEFT**

258	General punishment for theft	May arrest without warrant	Imprisonment for three years	Any Magistrate
259	Stealing Wills, postal matter or animal	Do	Imprisonment for ten years	Regional Magistrate Court
260	Stealing from the person or stealing goods in transit	Do	Imprisonment for seven years	Do
261(1)	Stealing from the government	Do	Not less than one year but not exceeding four years	District Magistrate Court
261(2)	Do	Do	Not less than five years and compensation	Do
262	Stealing by clerks or servants	Do	Imprisonment for a term not exceeding seven years	Regional Magistrate Court
263	Stealing by directors or officers of companies	Do	Do	Do
264	Stealing by agents	Do	Do	Do
265	Stealing by tenants or lodgers	Do	Do	Do
266	Stealing after previous conviction	Do	Do	Do
267	Stealing of cloves	Do	Imprisonment for a term not less than ten years, grow and nurse one hundred clove trees	High Court
268	Stealing agricultural produce	Do	Imprisonment for five years and penalty of twice the market value of the produce stolen	District Magistrate Court



**PART TWENTY FIVE**  
**OFFENCES ALLIED TO STEALING**

270	Concealing registers	May arrest without warrant	Imprisonment for not less than one year but not exceeding ten years	High Court
271	Concealing wills	Do	Imprisonment for a term not exceeding ten years	Do
272	Concealing deeds	Do	Imprisonment for three years	District Magistrate Court
273	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.
274	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.
275	Fraudulent disposition of mortgaged goods	Do	Imprisonment for two years	District Magistrate Court
276	Fraudulently dealing with ore or minerals in mines	Do	Imprisonment for five years	Do
277	Fraudulent appropriation of mechanical or electrical power	Do	Do	Do
278	Conversion not amounting to theft.	Do	Imprisonment for six months or fine of Five Hundred Thousand Shillings or both	Do



**PART TWENTY SIX**  
**ROBBERY AND EXTORTION**

279	Definition and punishment of robbery	May arrest without warrant	Imprisonment for twenty five years	Regional Magistrate Court
280	Armed robbery	Do	Imprisonment for life	Do
281(1)	Punishment of attempted robbery and attempted armed robbery	Do	Imprisonment for ten years	Do
281(2)	Attempted armed robbery	Do	Imprisonment for life	Do
282	Assault with intent to steal	Do	Imprisonment for seven years	Do
283	Demanding property by written threats	Do	Imprisonment for fourteen years	Do
284(1)	Attempt at extortion by threats.	Do	Imprisonment for five years	Regional Magistrate Court
284(2)	Do	Do	Imprisonment not exceeding fourteen years	Regional Magistrate Court
284(3)	Do	Do	Imprisonment for three years	Regional Magistrate Court
285	Procuring execution of deeds by threats	Do	Imprisonment for fourteen years	Regional Magistrate Court
286	Demanding property with menaces with intent to steal	Do	Imprisonment for five years	District Magistrate Court
287	Dishonest misappropriation of property	Do	Imprisonment for two years or fine not exceeding Two Million Shillings or both	Do





288	Dishonest misappropriation of property possessed by deceased person	Do	Imprisonment for three years or fine not exceeding Three Million Shillings or imprisonment for seven years	Do
289	Criminal breach of trust	Do	Imprisonment for three years or fine not exceeding Three Million Shillings or both	Do



**PART TWENTY SEVEN**  
**BURGLARY, HOUSEBREAKING AND SIMILAR OFFENCES**

291(1)	Housebreaking	May arrest without warrant	Imprisonment for Ten years	Regional Magistrate Court
291(2)	Burglary	Do	Imprisonment for fifteen years	Do
292(1)	Entering dwelling house with intent to commit an offence	Do	Imprisonment for ten years	Do
292(2)	If offence is committed in the night	Do	Imprisonment for twelve years	Do
293	Breaking into building and committing an offence	Do	Do	Do
294	Breaking into building with intent to commit an offence	Do	Imprisonment for ten years	Do
295(1)	Being found armed with intent to commit an offence	Do	Imprisonment for seven years	Do
295(2)	If offender has been previously convicted of an offence relating to property	Do	Imprisonment for ten years	Do
296(1)	Criminal trespass	Do	Imprisonment for three months or fine of Two Hundred and Fifty Thousand Shillings or both	Primary Magistrate Court



296(2)	If the property upon offence which committed is building used as a human dwelling or as a place of worship or as a place for custody of property	Do	Imprisonment for one year	Any Magistrate.
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**PART TWENTY EIGHT**  
**FALSE PRETENCES**

299	Obtaining by false pretence	May arrest without warrant	Imprisonment for a term not less than three years but not exceeding five years	District Magistrate Court
300	Obtaining execution of a security by false pretence	Do	Do	Do
301	Cheating	Do	Do	Do
302	Obtaining credit by false pretence	Do	Imprisonment for a term not exceeding three years	Do
303	Conspiracy to defraud	Do	Imprisonment for a term of three years	Do
304	Frauds on sale or mortgage of property	Do	Imprisonment for term not less than two years	Do
305	Pretending to tell fortunes	Do	Imprisonment for two years	Do
306	Obtaining registration by false pretence	Do	Imprisonment for one year	Do
307	False declaration for passport	Do	Imprisonment for two years	Do
308	Personating public officer	Do	Do	Do



**PART TWENTY NINE**  
**RECEIVING PROPERTY STOLEN AND LIKE OFFENCES**

309(1)	Receiving property stolen or unlawfully obtained	May arrest without warrant	Imprisonment for a term not exceeding ten years	District Magistrate Court
309(2)	Do	Do	Imprisonment for a term not exceeding three years	Do
310	Person suspected of having or conveying stolen property	Do	Imprisonment for two years	Do
311	Being in possession of stolen property	Do	Imprisonment for a term not less than three years but not exceeding ten years or fine of not less than Three Million Shillings but not exceeding Ten Million Shillings or both	Do
312	Hoarding	Do	Imprisonment for a term of not less than seven years or fine of not less than Seven Million Shillings or both	Do
313	Being in possession of property stolen outside Zanzibar	Do	Imprisonment for seven years.	Regional Magistrate Court



**PART THIRTY**  
**FRAUDS BY TRUSTEES AND PERSONS IN A POSITION OF TRUST,**  
**AND FALSE ACCOUNTING**

314	Trustees fraudulently disposing of trust property	May arrest without warrant	Imprisonment for seven years	Regional Magistrate Court
315	Misappropriation and fraud by Directors and officers of corporations	Do	Imprisonment for fourteen years	Do
316	False statements by officials of companies	Do	Imprisonment for seven years	Do
317	Fraudulent false accounting	Do	Do	Do
318	False accounting by public officer	Do	Imprisonment for seven years	Do

**PART THIRTY ONE**  
**OFFENCES CAUSING INJURY TO PROPERTY**

319	Arson	May arrest without warrant	Imprisonment for life	Regional Magistrate Court
320	Attempt to commit arson	Do	Imprisonment for a term not exceeding fourteen years	Regional Magistrate Court
321	Setting fire to crops or growing plants	Do	Do	Do
322	Attempting to set fire to crops	Do	Imprisonment for seven years	Do
323	Casting away a vessel	Do	Imprisonment for fourteen years	High Court



324	Attempt to cast away a vessel	Do	Imprisonment for seven years	High Court
325	Injuring animals	Do	Imprisonment for two years	District Magistrate Court
326(1)	Destroying or damaging property in general	Do	Imprisonment for a term not exceeding five years	Do
326(2)	Destroying or damaging an inhabited house or a vessel with explosives	Do	Imprisonment for life	High Court
326 (3)	Destroying or damaging river bank or wall, or navigation works or bridges	Do	Do	Do
326 (4)	Destroying or damaging wills or registers.	Do	Imprisonment for a term not exceeding fourteen years	Do
326 (5)	Destroying vessel in distress or wrecked, or stranded.	Do	Imprisonment for a term not exceeding seven years	Regional Magistrate Court
326 (6)	Destroying or damaging railways or roads	Do	Imprisonment for a term not exceeding fourteen years	Do
326(7)	Destroying or damaging property of special value	Do	Imprisonment for a term not exceeding seven years	Do
326(8)	Destroying or damaging deeds or records	Do	Do	Do



326(9)(a)	Destroying property used or intended to be used for the purpose of providing necessary service	Do	Imprisonment for a term of twenty years	High Court
326(9)(b)	Destroying property used or intended to be used for the purpose of providing necessary service	Do	Imprisonment for a term of fifteen years	High Court
327	Attempts to destroy or property by explosives	Do	Imprisonment for fourteen years	Regional Magistrate Court
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	District Magistrate Court
330	Willful damaging to survey or boundary marks	Do	Imprisonment for three months or a fine of Two Hundred and Fifty Thousand Shillings	Any magistrate
331	Penalties for damage to railway works or road	Do	Do	Do
332	Threats to burn or destroy	Do	Imprisonment for a term not exceeding seven years	Regional Magistrate Court



**PART THIRTY TWO**  
**FORGERY, COINING, COUNTERFEITING AND SIMILAR OFFENCES**

337	General punishment for forgery.	May arrest without warrant	Imprisonment for seven years	District Magistrate Court
338	Forgeries punishable by imprisonment	Do	Imprisonment for life and document forfeited to the Government	High Court
339	Forgery of judicial or official document	Do	Imprisonment for seven years	Regional Magistrate Court
340	Forgery and other offences in relation of stamps	Do	Imprisonment for a term not exceeding seven years	Do
341	Making or having in possession paper or implements for forgery	Do	Do	Do
342	Uttering false document	Do	Same punishment as for forgery of document	Any court by which forgery of document would be tribal
343	Uttering cancelled or exhausted documents	Do	Do	Do
344	Procuring execution of document by false pretences	Do	Do	Do
345	Obliterating crossing on cheque	Do	Imprisonment for seven years	Regional Magistrate Court
346	Making documents 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 forged notes	Do	Imprisonment for seven years	Regional Magistrate Court
349	Falsifying warrant for money payable under public authority	Do	Do	Do
350	Falsification of register	Do	Do	Do
351	Sending false certificate of marriage to registrar	Do	Do	Do
352	False statement for register of births, deaths or marriages	Do	Imprisonment for three years	District Magistrate Court

**PART THIRTY THREE**  
**OFFENCES RELATING TO COIN AND NOTES**

355	Counterfeiting coin	May arrest without warrant	Imprisonment for life	High Court
356	Preparations for coining	Do	Do	Do
357	Clipping	Do	Imprisonment for seven years	Regional Magistrate Court
358	Possession of clippings	Do	Do	Do
359	Uttering counterfeit coin	Do	Imprisonment for three years	District Magistrate Court
360	Repeated uttering	Do	Imprisonment for five years	Do
361	Uttering metal as coin not current as coin	Do	Imprisonment for a term not exceeding one year	Do



362	Importing or exporting counterfeit coin	Do	Imprisonment for two years	Do
364	Defacing bank notes and melting down of coin	Do	Imprisonment for two years or fine of not exceeding Two Million Shillings for each note or coin	Do
365	Wrongful issue of notes	Do	Imprisonment for a term not exceeding five years	Do

**PART THIRTY FOUR  
COUNTERFEIT STAMPS**

366	Possession of die used for purpose of making stamps	May arrest without warrant	Imprisonment for seven years	District Magistrate Court
367	Paper and dies used for postage stamps	Do	Imprisonment for three years or fine of Three Million Shillings	Do

**PART THIRTY FIVE  
OFFENCES CONNECTED WITH COMPUTERS**

369(4)(a)	Offences against intellectual property	May arrest without warrant	Imprisonment for five years	Regional Magistrate Court
369(4)(b)	Do	Do	Imprisonment for ten years	Do
370(1)	Offence against computer equipment or supplies	Do	Imprisonment for a term not exceeding five years	Do
370(2)	Offence against computer equipment or supplies	Do	Imprisonment for a term not exceeding ten years	Do



371(1)	Destruction of computer equipment	Do	Imprisonment for a term not less than three years but not exceeding ten years	Do
371(2)	Destruction of computer equipment	Do	Imprisonment for a term not exceeding five years but not exceeding fifteen years	Do
372	Interfering with data	Do	Imprisonment for five years or fine not exceeding Five Million Shillings or both	District Magistrate Court
373	Interfering with computer system	Do	Imprisonment for a term of not less than one year but not exceeding five years or fine of not less than One Million Shillings but not exceeding Five Million Shillings or both	Do
374	Illegal interception of data	Do	Imprisonment for a period not exceeding five years or fine not exceeding Five Million Shillings or both	Do
375	Illegal devices	Do	Imprisonment for a term not exceeding five years or fine not exceeding Five Million Shillings or both	Do
376(1)	Offences against computer use	Do	Imprisonment for a term not exceeding five years or fine not exceeding Five Million Shillings	Do



376(2)	Offences against computer use	Do	Imprisonment not exceeding ten years or fine not exceeding Ten Million Shillings	Do
377	Fraud and relating activity on government computers	Do	Imprisonment for fifteen years or fine of Fifteen Million Shillings	Regional Magistrate Court

**PART THIRTY SIX**  
**COUNTERFEITING TRADE MARKS**

380	Counterfeiting trade mark	Shall not arrest without warrant	Imprisonment for two years	District Magistrate Court
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**PART THIRTY SEVEN**  
**PERSONATION**

381(1)	Personation in general	May arrest without warrant	Imprisonment for two years	District Magistrate Court
381(2)	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	Do
382	Falsely acknowledging liability	Do	Imprisonment for two years	Do
383	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.
384	Lending certificate for purposes of personation	Do	Imprisonment for two years	District Magistrate Court
385	Personation of person named in a testimonial of character	Do	Imprisonment for one year	Do
386	Lending testimonial of character for purposes of personation	May arrest without warrant	Imprisonment for two years	Do



**PART THIRTY EIGHT**  
**ATTEMPTS**

388	Attempts 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
389	Punishment for attempts to commit certain offences	May arrest without warrant	Imprisonment for seven years	Any court by which the offence attempted would be triable
390	Soliciting or inciting others to commit offence in Zanzibar or elsewhere	May arrest without warrant if arrest for offence solicited or incited may be made without warrant, but not otherwise	Same punishment as if he had attempted offence solicited or incited	Any court by which offence solicited or incited would be triable.
391	Neglecting to prevent commission or completion of an offence	Shall not arrest without warrant	Imprisonment for two years	Any subordinate Court



**PART THIRTY NINE  
CONSPIRACIES**

392(2)	Conspiracy to commit an offence	May arrest without warrant	Imprisonment for two years	Any court by which the offence would be triable.
392(3)	Do	Do	Imprisonment for seven years	Do
393	Other conspiracies	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.

**PART FOURTY  
ACCESSORIES AFTER THE FACT**

395	Punishment for accessory after the fact to an offence	May arrest without warrant	Imprisonment for three years	Any subordinate Court
396	Punishment of soliciting or inciting another to commit an offence	May arrest without warrant	Imprisonment for two years	Do



**OFFENCES UNDER OTHER LAWS**

If punishable with death or imprisonment for fifteen years or upwards	May arrest without warrant	-	High Court
If punishable with imprisonment for seven years or upwards, but less than fifteen years	Do	-	Regional Magistrate court
If punishable with imprisonment for two years or upwards, but less than seven years	Do	-	District Magistrate court
If punishable with imprisonment for less than one year or with fine only	Do	-	Any magistrate.





## SECOND SCHEDULE

### Forms of Stating Offences in Informations

(Under section 167(2)(e))

#### 1. MURDER

Murder, contrary to section 179 of the Penal Act.

#### PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., in the district of ..... murdered J.S.

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#### 2. ACCESSORY AFTER THE FACT TO MURDER

Accessory after the fact to murder, contrary to section 194 of the Penal Act.

#### PARTICULARS OF OFFENCE

A.B., well knowing that one, H.C., did on the ..... day of ....., in the district of ....., murder C.C., did on the ..... Of ....., in the district of ..... and on other days thereafter receive, comfort, harbour, assist and maintain the said H.C.

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#### 3. MANSLAUGHTER

Manslaughter, contrary to section 177 of the Penal Act.

#### PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., in the district of ....., unlawfully killed J.S.



#### 4. RAPE

Rape, contrary to section 108 of the Penal Act.

##### **PARTICULARS OF OFFENCE**

A.B., on the ..... day of ....., ....., in the district of ....., had carnal knowledge of E.F. without her consent.

-----

#### 5. WOUNDING

##### **First Count**

Wounding with intent, contrary to section 204 of the Penal Act.

##### **PARTICULARS OF OFFENCE**

A.B., on the ..... day of ..... in the district 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 211 of the Penal Act.

##### **PARTICULARS OF OFFENCE**

A.B., on the ..... day of ....., ....., in the district of ..... Unlawfully wounded C.D.

-----



## 6. THEFT

### First Count

Stealing, contrary to section 258 of the Penal Act

#### PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., ....., in the district of ..... stole a bag, the property of C.D.

### Second Count

Receiving stolen goods, contrary to section 309 of the Penal Act.

#### PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., ....., in the district of ..... did receive a bag, the property of C.D., knowing the same to have been stolen.

-----

## 7. STEALING BY CLERK

Stealing, by clerk or servant, contrary to section 262 of the Penal Act.

#### PARTICULARS OF OFFENCE

A.B., on the .... Day of ....., ....., in the district of ..... being clerk or servant to M.N., stole from the said M.N., 10 yards of cloth.

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## 8. ROBBERY

Robbery with violence, contrary to section 279 of the Penal Act.

### PARTICULARS OF OFFENCE

A.B., on the ..... Day ....., ....., in the district of ....., robbed C.D. of a watch, and at, or immediately before or immediately after, the time of such robbery did use personal violence to the said C.D.

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## 9. BURGLARY

Burglary, contrary to section 291, and stealing in a dwelling-house, contrary to section 258, of the Penal Act.

### PARTICULARS OF OFFENCE

A.B., in the night of the ..... day of ....., in the district 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 one hundred and fifty shillings.

-----

## 10. THREATS

Demanding property by written threats, contrary to section 283 of the Penal Act.

### PARTICULARS OF OFFENCE

A.B., on the ..... Day of ....., ....., in the district 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.

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## 11. ATTEMPTS TO EXTORT

Attempts to extort by threats, contrary to section 284 of the Penal Act.

### PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., ....., in the district of ....., with intent to extort money from C.D., accused or threatened to accuse the said C.D., of an unnatural offence.

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## 12. FALSE PRETENCES

Obtaining goods by false pretences, contrary to section 299 of the Penal Act.

### PARTICULARS OF OFFENCE

A.B., on the ..... Day of ....., .... in the district of ....., with intent to defraud, obtain from S.P. 5 yards 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 303 of the Penal Act.

### 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 district 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 district of ..... and that they were then able to supply certain articles of jewellery to whomsoever would remit to them the sum of sixty shillings.



#### 14. ARSON

Arson, contrary to section 319 of the Penal Act.

##### PARTICULARS OF OFFENCE

A.B., on the ..... Day of ....., .., in the district of ....., willfully and unlawfully set fire to a house.

-----

#### 15. ARSON AND ACCESSORY BEFORE THE FACT

A.B., Arson, contrary to section 319 of the Penal Act. C.D., Accessory before the fact to same offence.

##### PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., .., in the district of ....., willfully and unlawfully set fire to a house.

C.D., on the same day, in the district of ....., did counsel or procure the said A.B., to commit the said offence.

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#### 16. WILFUL DAMAGE TO SURVEY AND BOUNDARY MARKS

Damaging survey and boundary marks, contrary to section 330 of the Penal Act.

##### PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., .., in the district of ....., willfully and unlawfully damaged survey and boundary marks.

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## 17. FORGERY

### First Count

Forgery, contrary to section 337 of the Penal Act.

### PARTICULARS OF OFFENCE

A.B., on the ..... Day of ....., ....., in the district of ....., 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 Act

### PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., ....., in the district of ....., knowingly and fraudulently uttered a certain forged will purporting to be the will of C.D.

-----

## 18. COUNTERFEIT COIN

Uttering a counterfeit coin, contrary to section 359 of the Penal Act.

### PARTICULARS OF OFFENCE

A.B., on the ..... Day of ....., ....., at ..... market in the district of ....., uttered a counterfeit shilling knowing the same to be counterfeit.

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## 19. PERJURY

Perjury, contrary to section 75 of the Penal Act.

### PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., ....., in the district of ....., being a witness upon the trial of an action in the ..... court of ..... at ..... 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 ....., .....

-----

## 20. FALSE ACCOUNTING

### First Count

Fraudulent false accounting, contrary to section 317 of the Penal Act

### PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., ....., in the district of ....., being 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 three 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 district of ....., being 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 five hundred shillings from H.S.

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## 21. STEALING BY AGENT

### First Count

Stealing by agents and others, contrary to section 264 of the Penal Act.

### PARTICULARS OF OFFENCE

A.B., on the ..... day of ....., ....., in the district of ....., stole three 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 264 of the Penal Act.

### PARTICULARS OF OFFENCE

A.B., on the ..... Day of ....., ....., in the district of ....., stole three thousand shillings which had been received by him for and on account of L.M.,

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## 22. PREVIOUS CONVICTION

Prior to commission of the said offence, the said A.B. had been previously convicted of ..... on the ..... day of ....., 19...or 20... .., at the ..... Held at.....



### THIRD SCHEDULE

#### Scale of Imprisonment in Default of Payment of Fine or of Sufficient Distress

(Under Section 324(1))

<i>Amount</i>		<i>Maximum Period</i>
Not exceeding Shs. 50,000		15 days
Exceeding ... Shs. 50,000	But not Exceeding... 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



## FOURTH SCHEDULE

### Persons Exempted From Liability to Serve as Assessors

(Under Section 231)

- (1) Members of the House of Representatives.
- (2) Members of the Revolutionary Council.
- (3) Judges and magistrates.
- (4) Persons actively discharging the duties of priests or ministers of their respective religions.
- (5) Physicians, surgeons, dentists and apothecaries in actual practice.
- (6) State Attorneys.
- (7) Legal practitioners in actual practice.
- (8) Officers of Tanzania People's Defence Force, National Security and officers of the Special Departments.
- (9) Members of the Police and Prisons of Services.
- (10) The Private Secretaries to the President of Zanzibar, to the First Vice President, to the Sec and Vice President and to all other ministers.
- (11) All Principal Secretaries, Commissioners, and Directors in the Government Services.
- (12) Probation officers appointed under the law on Probation of Offenders.
- (13) Persons with mental disability.
- (14) Members of Clerical Staff employed in the Attorney General's Chambers, Judiciary, Office of the Director of Public Prosecutions and the Ministry Responsible for Legal Affairs.



## FIFTH SCHEDULE

### Jurisdiction of Courts

(Under section 21 of Act Number 9 of 2009 as amended by Act Number 12 of 2011)

S/N	SECTION	OFFENCE	PUNISHMENT	COURT BY WHICH OFFENCE IS TRIABLE
1.	13	Cultivation of certain plants and substances	Imprisonment for a term of not less than 15 years or fine not less than Sh. 40, 000,000/= or both.	Regional Magistrate Court.
2.	14	Manufacturing of narcotics Drugs and psychotropic Substances.	An imprisonment for term of not less than thirty years and in addition fine of Sh. 30,000,000/=.	Regional Magistrate Court.
3.	15(1)(a)	Being in possession or purchase of coca or narcotic drugs.	15 years imprisonment or fine not less than Sh. 40,000,000/= or both.	Regional Magistrate Court.
4.	15(1)(b)(i)	Trafficking narcotic drugs or psychotropic substance	15 years imprisonment and fine of sh. 40,000,000/=.	Regional Magistrate Court.
5.	15(1)(b)(ii)	Trafficking of any other substance other than narcotic drugs or psychotropic substances which represents or holds to be narcotic drugs or psychotropic substances.	Fine not less than Shs. 2,000,000/= and in addition to imprisonment not less than 10 years.	District Magistrate Court.
6.	15(1)(c),	Smoking, inhaling, sniffing or otherwise using any narcotic drug or psychotropic substance.	Imprisonment for not less than seven years or to a fine of not less than Sh. 5,000,000/= or both.	District Magistrate Court.
	15(1)(d),	Being found in any house, room or place rented for purposes of selling, smoking or inhaling, sniffing etc any narcotic drug or psychotropic substance.	Do	Do



	15(1)(e)	Permitting premises to be used for preparation of opium for smoking, sell etc, or for manufacturing, sale or distribution of narcotic drugs or psychotropic substances.	Do	Do
	15(1)(f)	being in possession of any pipe or other utensil for use in connection with the smoking, inhaling etc.	Do	Do
7.	16(1).	Being in possession, use of small quantity of narcotic drugs and psychotropic substance		District Magistrate Court.
	(a)	If Cocaine, morphine, dialectally-morphine or other as may by notice published in the Gazette.	Imprisonment not less than seven years or fine not less than Sh. 5,000,000/=	District Magistrate Court.
	(b)	Other than those specified in paragraph (a).	Fine not less than Sh. 5,000,000/= or seven years imprisonment	District Magistrate Court.
	(c)		Six months imprisonment.	District Magistrate Court.
8.	17(c)	Found using narcotic drugs or psychotropic substances.	Fine of sh. 15,000,000/= or 15 years imprisonment or both.	District Magistrate Court.
9.	18.	Administration of narcotic drugs and psychotropic substance.	30 years imprisonment and fine of Sh. 30,000,000/=	Regional Magistrate Court
10.	19.	Breach of terms, license or permit.	Imprisonment for a term not less than 30 years and fine not less than Sh.. 30,000,000/=	Regional Magistrate Court
11.	20.	Financing illegal activities.	Penalty equal to that of principal offender.	Regional or District Magistrate Court depending on the nature of the offence.



12.	21	Aiding to commit offence.	Penalty equal to that of principal offender.	Regional or District Magistrate Court depending on the nature of the offence
13.	22.	Attempt to commit offence.		
		Commission of offence after previous conviction.	Double penalty.	Regional Magistrate Court
	(a)	For offences under section 16	35 years imprisonment or fine of Shs. 60,000,000/=	Regional Magistrate Court
14.	23. (b)	Offences under section 17, 19, 20 and 21.	Imprisonment not less than seven years and not exceeding 15 years.	District Regional Magistrate Court
15.	32(2).	Any offences for which penalty not provided. Failure to protect informer	Imprisonment for a term not less than 5 years or fine not exceeding sh. 10,000,000/= or both such fine and imprisonment.	District Magistrate Court



**SIXTH SCHEDULE**

Content and Format of Search Warrant

*(Under section 145(2))*

**SEARCH WARRANT**

(To be completed when the Magistrate or Judge requires a search to be carried out)

I require you..... Rank/title/No ..... to make search for the thing (s) specified at the place described hereunder:

.....  
.....  
.....  
.....  
.....

**Name of the Court:** .....

**Date:** .....

**Time:** .....

.....  
**Magistrate/ Judge**



**SEVENTH SCHEDULE**

**Oath to be taken by an Assessor**

*(Under Section 234(2))*

I..... hereby swear/affirm that, I will perform diligently and honestly my duties as an assessor in criminal cases, and I undertake to observe and uphold the integrity, impartiality and fairness required of an assessor in the discharge of my responsibilities.

SIGNED this ..... Day of ..... 20 .....

.....  
ASSESSOR

**In the presence of:**

NAME OF JUDGE: .....

SIGNATURE: .....

**PASSED** by the House of Representatives of Zanzibar on 13<sup>th</sup> February, 2018.

.....  
(RAYA ISSA MSELLEM)

*Clerk of the House of Representatives of Zanzibar.*