REPUBLIC OF ZAMBIA

THE CRIMINAL PROCEDURE CODE ACT

CHAPTER 88 OF THE LAWS OF ZAMBIA

CHAPTER 88 THE CRIMINAL PROCEDURE CODE ACTCHAPTER 88

THE CRIMINAL PROCEDURE CODE ACT

ARRANGEMENT OF SECTIONS

CHAPTER 88
CRIMINAL PROCEDURE CODE
An Act to make provision for the procedure to be followed in criminal cases
[st April, 1934]23 of 1933
1 of 1936
23 of 1937
14 of 1938

52 of 1938

23 of 1939

28 of 1940

17 of 1942

4 of 1944

4 of 1945

17 of 1945

29 of 1945

11 of 1946

24 of 1950

30 of 1952

20 of 1953

47 of 1955

26 of 1956

50 of 1957

16 of 1959

2 of 1960

23 of 1960

5 of 1962

11 of 1963

18 of 1963

27 of 1964

57 of 1964

6 of 1965

28 of 1965

76 of 1965

18 of 1966

1 of 1960

46 of 1967

9 of 1968

54 of 1968

20 of 1969

36 of 1969

38 of 1969

24 of 1970

59 of 1970

23 of 1971

6 of 1972

33 of 1972

Government Notices

303 of 1964

493 of 1964

497 of 1964

Statutory Instruments

63 of 1964

152 of 1965

Act No.

9 of 1968

23 of 1971

33 of 1972

6 of 1972

12 of 1973

34 of 1973

32 of 1974

30 of 1976

28 of 1979

35 of 1993

13 of 1994

5 of 1997

PART I PRELIMINARY PART I

PRELIMINARY

1. This Act may be cited as the Criminal Procedure Code and hereinafter is referred to as "this Code".Short title

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

"Christian marriage" means a marriage which is recognised, by the law of the place where it is contracted, as the voluntary union for life of one man and one woman to the exclusion of all others;

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

"complaint" means an allegation that some person known or unknown has committed or is guilty of an offence;

"Court" means the High Court or any subordinate court as defined in this Code;

"district" means the district assigned to a subordinate court as the district within which it is to exercise jurisdiction;

"husband" and "wife" mean a husband and wife of a Christian marriage;

"non-cognizable offence" means an offence for which a police officer may not arrest without warrant;

"officer in charge of a police station" includes, when the officer in charge of the police station is absent from the station-house or unable, from illness or other cause, to perform his duties, the police officer present at the station-house who is next in rank to such officer, or any other police officer so present;

"police station" means a post or place appointed by the Inspector-General of Police to be a police station and includes any local area policed from such station;

"preliminary inquiry" means an inquiry into a criminal charge held by a subordinate court with a view to the committal of the accused person for trial before the High Court;

"public prosecutor" means any person appointed under the provisions of section eighty-six and includes the Attorney-General, the Solicitor-General, the Director of Public Prosecutions, a State Advocate and any practitioner as defined in the Legal Practitioners Act appearing on behalf of the People in any criminal proceedings;Cap. 30

"Registrar" means the Registrar of the High Court and includes a Deputy Registrar and an Assistant Registrar;

"Session" has the meaning assigned to it by section two of the High Court Act;Cap. 27

"subordinate court" means a subordinate court as constituted under the Subordinate Courts Act;Cap. 28

"summary trial" means a trial held by a subordinate court under Part VI.

(As amended by No. 28 of 1940, No. 23 of 1960, No. 5 of 1962, No. 27 of 1964 and S.I. No. 63 of 1964)

3. (1) All offences under the Penal Code shall be inquired into, tried and otherwise dealt with accordance to the provisions hereinafter contained.Trial of offences under Penal Code

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

PART II POWERS OF COURTS PART II

POWERS OF COURTS

4. Subject to the other provisions of this Code, any offence under the Penal

Code may be tried by the High Court.Offences under Penal Code

5. (1) Any offence under any written law, other than the Penal Code, may, when any court is mentioned in that behalf in such law, be tried by such court or by the High Court.Offences under other written laws

(2) When no court is so mentioned, such offence may, subject to the other provisions of this Code, be tried by the High Court or by any subordinate court.

6. The High Court may pass any sentence or make any order authorised by law.Sentences which High Court may pass

7. Subject to the other provisions of this Code, a subordinate court of the first, second or third class may try any offence under the Penal Code or any other written law, and may pass any sentence or make any other order authorised by the Penal Code or any other written law:Powers of subordinate courts

Provided that-

(i) a subordinate court presided over by a senior resident magistrate shall not impose any sentence of imprisonment exceeding a term of nine years;

(ii) a subordinate court presided over by a resident magistrate shall not impose any sentence of imprisonment exceeding a term of seven years;

(iii) a subordinate court presided over by a magistrate of the first class shall not impose any sentence of imprisonment exceeding a term of five years;

(iv) a subordinate court other than a court presided over by a senior resident magistrate, a resident magistrate or a magistrate of the first class, shall not impose any sentence of imprisonment exceeding a term of three years.

(As amended by No. 23 of 1939, No. 26 of 1956, No. 28 of 1965 and No. 6 of 1972)

8. In criminal cases, a subordinate court may promote reconciliation, and encourage and facilitate the settlement in an amicable way, of proceedings for assault, or for any other offence of a personal or private nature, not amounting to felony and not aggravated in degree, in terms of payment of compensation or other terms approved by such court and may, thereupon, order the proceedings to be stayed.

(No. 5 of 1962)Reconciliation

9. (1) No sentence imposed by a subordinate court presided over by a magistrate of the first class (other than a Senior Resident Magistrate or a Resident Magistrate) exceeding two years□ imprisonment with or without hard labour shall be carried into effect in respect of the excess, until the record of the case or a certified copy thereof has been transmitted to and the sentence has been confirmed by the High Court.Sentences requiring confirmation

(2) Whenever a subordinate court of the first class (other than a court presided over by a Senior Resident Magistrate or a Resident Magistrate) imposes

a fine exceeding three thousand penalty units, or imprisonment in default thereof, it shall be lawful for such court to levy the whole amount of such fine or to commit the convicted person to prison, in default of payment or distress, for the whole term of such imprisonment, without confirmation by the High Court; but such court shall immediately transmit the record of the case or a certified copy thereof to the High Court, which may, thereupon, exercise all the powers conferred upon it by subsection (3) of section thirteen:

Provided always that such court may, in its discretion, in lieu of levying such fine in excess of three thousand penalty units or of committing the convicted person to prison, take security by deposit or by bond with two sureties, to be approved by the court, in such sum as it may think fit, pending any order of the High Court, for the performance of such order.

(3) No sentence imposed by a subordinate court of the second class, exceeding one year□s imprisonment with or without hard labour, shall be carried into effect in respect of the excess, until the record of the case or a certified copy thereof has been transmitted to and the sentence has been confirmed by the High Court.

(4) Whenever a subordinate court of the second class imposes a fine exceeding one thousand and five hundred penalty units, or imprisonment in default thereof, it shall be lawful for such court to levy the whole amount of such fine or to commit the convicted person to prison, in default of payment or distress, for the whole term of such imprisonment, without confirmation by the High Court; but such court shall immediately transmit the record of the case or a certified copy thereof to the High Court, which may, thereupon, exercise all the powers conferred upon it by subsection (3) of section thirteen:

Provided always that such court may, in its discretion, in lieu of levying such fine in excess of one thousand and five hundred penalty units or of committing the convicted person to prison, take security by deposit or by bond with two sureties, to be approved by the court, in such sum as it may think fit, pending any order of the High Court, for the performance of such order.

(5) No sentence imposed by a subordinate court of the third class, exceeding six months□ imprisonment with or without hard labour, shall be carried into effect in respect of the excess, and no fine exceeding seven hundred and fifty penalty units shall be levied in respect of the excess, until the record of the case or a certified copy thereof has been transmitted to and the sentence confirmed by the High Court. And no caning in excess of twelve strokes shall be administered until the record of the case or a certified copy thereof has been transmitted to and the order has been confirmed by the High Court.

(6) Whenever a subordinate court passes sentence of death, such court shall immediately transmit the record of the case or a certified copy thereof to the High Court, which may, thereupon, exercise all the powers conferred upon it by subsection (3) of section thirteen.

(7) Any sentence passed by a subordinate court which requires confirmation by the High Court shall be deemed to have been so confirmed if on a first appeal to the Supreme Court or the High Court, as the case may be, the sentence is maintained by the appellate court.

(As amended by No. 23 of 1939, No. 30 of 1952, No. 26 of 1956, G.N. No. 493 of 1964, No. 28 of 1965, No. 23 of 1971,
No. 6 of 1972 and Act No. 13 of 1994)

10. The High Court may, by special order, direct that in the case of any particular charge brought against any person in a subordinate court, such court shall not try such charge but shall hold a preliminary inquiry under the provisions of Part VII.

(No. 26 of 1956)Power of High Court to order preliminary inquiry

11. (1) The Chief Justice may, by statutory notice, order that any class of offence specified in such notice shall be tried by the High Court or be tried or committed to the High Court for trial by a subordinate court presided over by a senior resident magistrate onlyCases to be tried only by High Court

(2) No case of treason or murder or of any offence of a class specified in a notice issued under the provisions of subsection (1) shall be tried by a subordinate court unless special authority has been given by the High Court for such trial.

(No. 26 of 1956 as amended by No. 16 of 1959 and No. 28 of 1965)

12. Any court may pass any lawful sentence or make any lawful order combining any of the sentences or orders which it is authorised by law to pass or make.Combination of sentences or orders

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

(2) If the person sentenced is so released on bail as aforesaid, the term of imprisonment shall run from the date upon which such person begins to serve his sentence after confirmation or other order of the confirming court:

Provided, however, that the person sentenced may, pending confirmation or other order, elect to serve his sentence from the date upon which he is sentenced by the subordinate court, in which case the term of imprisonment shall run from

such date.

(3) The confirming court may exercise the same powers in confirmation as are conferred upon it in revision by Part XI.

14. A person sentenced to undergo corporal punishment may be detained in a prison or some other convenient place, for such time as may be necessary for carrying the sentence into effect, or for ascertaining whether the same shall be carried into effect.Corporal punishment -detention pending punishment

15. (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 therefor 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.Sentences in case of conviction for several offences at one trial

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

16. (1) Whenever a person is convicted before any court for any offence other than an offence specified in the Fifth Schedule, the court may, in its discretion, pass sentence but order the operation of the whole or any part of the sentence to be suspended for a period not exceeding three years on such conditions, relating to compensation to be made by the offender for damage or pecuniary loss, or to good conduct, or to any other matter whatsoever, as the court may specify in the order.Power of courts to suspend sentence

(2) Where the operation of a sentence has been suspended under subsection (1) and the offender has, during the period of the suspension, observed all the conditions specified in the order, the sentence shall not be enforced.

(3) If the conditions of any order made under subsection (1) are not fulfilled, the offender may, upon the order of a magistrate or Judge, be arrested without warrant and brought before the court which suspended the operation of his sentence, and the court may direct that the sentence, or part thereof, shall be executed forthwith or, in the case of a sentence of imprisonment, after the expiration of any other sentence of imprisonment which such offender is liable to serve:

Provided that the court that suspended the operation of the sentence may, in its discretion, if it be proved to its satisfaction by the offender that he has been unable through circumstances beyond his control to perform any condition of such suspension, grant an order further suspending the operation of the sentence

subject to such conditions as might have been imposed at the time of the passing of the sentence.

(4) In the alternative, where a court is satisfied that any person convicted before it of an offence has, by reason of such conviction, failed to fulfil the conditions of an order made under subsection (1), the court may direct that the sentence suspended by reason of the said order be either executed forthwith or, in the case of a sentence of imprisonment, after the expiration of any other sentence of imprisonment which such person is liable to serve.

(5) For the purposes of any appeal therefrom, a direction by a court made under subsection (3) or (4) shall be deemed to be a conviction.

(No. 16 of 1959 as amended by No. 27 of 1964,
No. 76 of 1965 and No. 46 of 1967)

17. (1) A court may, at any stage in a trial or inquiry, order that an accused person be medically examined for the purpose of ascertaining any matter which is or may be, in the opinion of the court, material to the proceedings before the court.Medical examination of accused persons

(2) Where an accused person is examined on the order of a court made under subsection (1), a document purporting to be the certificate of the medical officer who carried out the examination shall be receivable in evidence to prove the matters stated therein:

Provided that the court may summon such medical officer to give evidence orally.

(No. 11 of 1963)

PART III GENERAL PROVISIONS PART III

GENERAL PROVISIONS

Arrest, Escape and Retaking Arrest Generally

18. (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.Arrest, how made

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

(As amended by No. 28 of 1940)

19. (1) If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered 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.Search of place entered by person sought to be

arrested

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

20. Any 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 any house for purposes of liberation

21. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.No unnecessary restraint

22. 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 and the person arrested cannot furnish bail; or

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

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

23. Any police officer may stop, search and detain any vessel, aircraft or vehicle in or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found and also any person who may be reasonably suspected of having in his possession or conveying in any manner anything stolen or unlawfully obtained, and may seize any such thing.

(No. 28 of 1940)Power of police officer to detain and search vehicles and persons in certain circumstances

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

25. The police officer or other person making any arrest may take from the

person arrested any offensive weapons which he has about his person 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 WarrantPower to seize offensive weapons

26. Any police officer may, without an order from a magistrate and without a warrant, arrest-

(a) any person whom he suspects, upon reasonable grounds, of having committed a cognizable offence;

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

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

(d) any person in whose possession anything is found which may reasonably be suspected to be stolen property, or who may reasonably be suspected of having committed an offence with reference to such thing;

(e) any person whom he suspects, upon reasonable grounds, of being a deserter from the Defence Force;

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

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

(h) any person having in his possession, without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of housebreaking;

(i) any released convict committing a breach of any provision prescribed by section three hundred and eighteen or of any rule made thereunder;

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

(As amended by No. 23 of 1937 and S.I. No. 63 of 1964)Arrest by police officer without warrant

Cap. 94

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

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

(b) any person, within the limits of such station, who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself;Arrest of vagabonds, habitual robbers, etc.

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

28. When any officer in charge of a police station requires any officer subordinate to him to arrest without a warrant (otherwise than in such officer□s presence) any person who may lawfully be arrested without a warrant, 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.Procedure when police officer deputes subordinate to arrest without warrant

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

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

Provided that, if such person is not resident in Zambia, the bond shall be secured by a surety or sureties resident in Zambia.

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

(4) Any police officer may arrest without a warrant any person who in his presence has committed a non-cognizable offence, if reasonable grounds exist for believing that, except by the arrest of the person offending, he could not be found or made answerable to justice.

(As amended by No. 4 of 1945)

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

arrested by police officer

31. (1) Any private person may arrest any person who, in his presence, commits a cognizable offence, or whom he reasonably suspects of having committed a felony.Arrest by private persons

(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.

32. (1) Any 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.Disposal of persons arrested by private person

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

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

33. (1) When any person has been taken into custody without a warrant for an offence other than an offence punishable with death, the officer in charge of the police station to which such person shall be brought may, in any case, and shall, if it does not appear practicable to bring such person before an appropriate competent court within twenty-four hours after he was so taken into custody, inquire into the case, and, unless the offence appears to the officer to be of a serious nature, release the person, on his executing a bond, with or without sureties, for a reasonable amount, to appear before a competent court at a time and place to be named in the bond: but, where any person is retained in custody, he shall be brought before a competent court as soon as practicable. Notwithstanding anything contained in this section, an officer in charge of a police station may release a person arrested on suspicion on a charge of committing any offence, when, after due police inquiry, insufficient evidence is, in his opinion, disclosed on which to proceed with the charge.Detention of persons arrested without warrant

(2) In this section, "competent court" means any court having jurisdiction to try or hold a preliminary inquiry into the offence for which the person has been taken into custody.

(As amended by No. 28 of 1940 and No. 2 of 1960)

34. Officers in charge of police stations 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.Police to report apprehensions

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

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

Escape and RetakingArrest by magistrate

37. 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 Zambia.Recapture of person escaping

38. The provisions of sections nineteen and twenty shall apply to arrests under the last preceding section, although the person making any such arrest is not acting under a warrant, and is not a police officer having authority to arrest.Provisions of sections 19 and 20 to apply to arrests under section 37

39. Every 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, canal, telegraph or public property.

Prevention of Offences

Security for Keeping the Peace and for Good BehaviourDuty to assist magistrate, etc.

40. (1) Whenever a magistrate empowered to hold a subordinate court of the first or second class is informed on oath that any person is likely to commit a breach of the peace or disturb the public tranquility, or to do any wrongful act that may probably occassion a breach of the peace or disturb the public tranquillity, the magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding one year,

as the magistrate thinks fit.Power of magistrate of subordinate court of the first or second class

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

41. Whenever a magistrate empowered to hold a subordinate court of the first class is informed on oath that a person is within the limits of his jurisdiction and that such person, within or without such limits, either orally or in writing, or in any other manner, is disseminating, or attempting to disseminate, or in any wise abetting the dissemination of-

(a) any seditious matter, that is to say, any matter the publication of which is punishable under section fifty-seven of the Penal Code; or

(b) any matter concerning a Judge which amounts to libel under the Penal Code:

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

(No. 28 of 1940)Security for good behaviour from persons disseminating seditious matters

Cap. 87

42. (1) When any magistrate not empowered to proceed under section forty has reason to believe that any 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 may send him before a magistrate empowered to deal with the case, with a copy of his reasons.Powers of other magistrates

(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.

43. Whenever a magistrate empowered to hold a subordinate court of the first or second class is informed on oath that any person is taking precautions to conceal his presence within the local limits of such magistrate□s jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, such magistrate may, in manner

hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding one year, as the magistrate thinks fit.Security for good behaviour from suspected persons

44. Whenever a magistrate empowered to hold a subordinate court of the first or second class is informed on oath that any person within the local limits of his jurisdiction-

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

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

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

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

(e) habitually commits or attempts to commit, or aids or abets in the commission of, offences involving a breach of the peace; or

(f) is so desperate and dangerous as to render his being at large without security hazardous to the community;

such 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.Security for good behaviour from habitual offenders

Cap. 87

45. When a magistrate acting under section forty, forty-three or forty-four deems it necessary to require any person to show cause under any such section, he shall make an order in writing setting forth-

(a) the substance of the information received;

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

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

(d) the number, character and class of sureties, if any, required.Order to be made

46. If the person in respect of whom an order under the last preceding section 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 present in court

47. If the person referred to in the last preceding section 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.Summons or warrant in case of person not so present

Provided that, whenever it appears to such magistrate, upon the report of a police officer or upon other information (the substance of which report or information shall be recorded by the magistrate), 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.

48. Every summons or warrant issued under the last preceding section shall be accompanied by a copy of the order made under section forty-five, 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.Copy of order under section 45 to accompany summons or warrant

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

50. (1) When an order under section forty-five has been read or explained under section forty-six 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 forty-seven, the magistrate shall proceed to inquire into the truth of the information upon which the action has been taken, and to take such further evidence as may appear necessary.Inquiry as to truth of information

(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 forty-four 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.

51. (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:Order to give security

Provided that-
(i) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section forty-five;
(ii) the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;
(iii) when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.
(2) Any person ordered to give security for good behaviour under this section may appeal to the High Court, and the provisions of Part XI (relating to appeals) shall apply to every such appeal.
52. If, on an inquiry under section fifty, 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.
Proceedings in all Cases Subsequent to Order to Furnish SecurityDischarge of person informed against
53. (1) If any person in respect of whom an order requiring security is made under section forty-five or fifty-one 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.Commencement of period for which security is required
(2) In other cases, such period shall commence on the date of such order, unless the magistrate, for sufficient reason, fixes a later date.
54. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and, in the latter case, the commission or attempt to commit, or the aiding, abetting, counselling or procuring the commission of any offence punishable with imprisonment, wherever it may be committed, shall be a breach of the bond.Contents of bond
55. 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.Power to reject sureties
56. (1) If any person ordered to give security as aforesaid does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case mentioned in subsection (2), 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 which or who made the order requiring it.Procedure on failure of person to give security

(2) When such person has been ordered by a magistrate to give security for a period exceeding one year, such magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the 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 necessary, may make such order in the case as it thinks fit.

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

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

(6) Imprisonment for failure to give security for keeping the peace shall be without hard labour.

(7) Imprisonment for failure to give security for good behaviour may be with or without hard labour, as the court or magistrate, in each case, directs.

57. Whenever a magistrate empowered to hold a subordinate court of the first or second class 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 such Court may, if it thinks fit, order such person to be discharged.Power to release persons imprisoned for failure to give security

58. 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 or magistrate.Power of High Court to cancel bond

59. (1) Any 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 of the first or second class to cancel any bond executed under any of the preceding sections within the local limits of his jurisdiction.Discharge of sureties

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

(3) When such person appears or is brought before the magistrate, such magistrate shall cancel the bond and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections fifty-four, fifty-five, fifty-six and fifty-seven, be deemed to be an order made under section fifty-one.

60. (1) If the conditions of any bond be not complied with, the court may endorse such bond and declare the same to be forfeited.Forfeiture

(2) On any forfeiture, the court may issue its warrant of distress for the amount mentioned in such bond, or for the imprisonment of the principal and his surety or sureties for a term not exceeding six months, unless the amount be sooner paid or levied.

(3) A warrant of distress under this section may be executed within the local limits of the jurisdiction of the court which issued it, and it shall authorise the distress and sale of any property belonging to such person and his surety or sureties without such limits, when endorsed by a magistrate holding a subordinate court of the first or second class within the local limits of whose jurisdiction such property is found.

Preventive Action of the Police

61. Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent the commission of any cognizable offence.Police to prevent cognizable offences

62. Every police officer receiving information of a design to commit any cognizable offence shall communicate such information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.Information of design to commit such offences

63. A police officer knowing of a design to commit any cognizable 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.Arrest to prevent such offences

64. A police officer may, of his own authority, interpose to prevent any injury attempted to be committed, in his presence, 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.Prevention of injury to public property

PART IV PROVISIONS RELATING TO ALL CRIMINAL INVESTIGATIONS PART IV PROVISIONS RELATING TO ALL CRIMINAL INVESTIGATIONS

Place of Inquiry or Trial

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

66. Where a person accused of having committed an offence within Zambia has escaped or removed 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.Accused person to be sent ot district where offence committed

67. Where any person is to be sent in custody in pursuance of the last preceding section, 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 tried.Removal of accused person under warrant

68. (1) The High Court may inquire of and try any offence subject to its jurisdiction, at any place where it has power to hold sittings.Mode of trial before High Court

(2) Criminal cases in the High Court shall, subject to the provisions of subsection (3), be tried upon information signed in accordance with the provisions of this Code.

(3) The Chief Justice may, by statutory order, direct that any offences or class of offences, other than offences against sections one hundred and ninety-nine, two hundred, two hundred and fifteen, two hundred and sixteen and two hundred and nineteen of the Penal Code, may be tried by the High Court without a preliminary inquiry as if it were a court of summary jurisdiction.Cap. 87

(4) When an order has been made under subsection (3), the trial shall be conducted in accordance with the provisions of Part VI and the provisions of Part IX shall not apply to any such trial.

(No. 11 of 1946)

69. Subject to the provisions of section sixty-eight and to the powers of transfer conferred by sections seventy-eight and eighty, every offence shall be inquired into or tried, as the case may be, by a court within the local limits

of whose jurisdiction it was committed or within the local limits of whose jurisdiction the accused was apprehended, or is in custody on a charge for the offence, or has appeared in answer to a summons lawfully issued charging him with the offence.

(No. 28 of 1940)Ordinary place of inquiry and trial

70. When a person is accused of the commission of any offence, by reason of anything which has been done, or omitted to be 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 omitted to be done, or any such consequence has ensued.Trial at place where act done or where consequence of offence ensues

71. When an act or ommission is an offence by reason of its relation to any other act or omission 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 offence is connected with another offence

72. When-

(a) it is uncertain in which of several districts an offence was comitted; or

(b) an offence is committed partly in one district and partly in another; or

(c) an offence is a continuing one, and continues to be committed in more districts than one; or

(d) an offence consists of several acts or omissions done in different districts;

such offence may be inquired into or tried by a court having jurisdiction in any of such districts.Trial where place of offence is uncertain

73. (1) When an offence is committed on or near the boundary or boundaries of two or more districts, or within a distance of ten miles from any such boundary or boundaries, it may be inquired into or tried by a court having jurisdiction in any of the said districts, in the same manner as if it had been wholly committed therein.Offence near boundary of district

(2) When an offence is committed on any person or in respect of any property on any railroad, or within a distance of ten miles from any line of railway on either side thereof, such offence may be inquired into or tried by a court having jurisdiction in any district in or through any part whereof, or within such distance from the boundaries whereof, such line of railway passes, in the same manner as if such offence had been wholly committed within such district.Offence on or near railway

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

75. Whenever any doubt arises as to the court by which any offence should be inquired into or tried, the High Court may decide by which court the offence shall be inquired into or tried.High Court to decide in cases of doubt

76. The place in which any court is held, for the purpose of inquiring into or trying any offence shall, unless the contrary is expressly provided by any Act for the time being in force, be deemed an open court to which the public generally may have access, so far as the same can conveniently contain them:Court to be open

Provided that the presiding Judge or magistrate may, if he considers it necessary or expedient-

(a) in interlocutory proceedings; or

(b) in circumstances where publicity would be prejudicial to the interest of-

(i) justice, defence, public safety, public order or public morality; or

(ii) the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings;

order, at any stage of the inquiry into or trial of any particular case, that persons generally or any particular person other than the parties thereto or their legal representatives shall not have access to or be or remain in the room or building used by the court.

(As amended by No. 20 of 1953 and No. 54 of 1968)

Transfer of Cases

77. (1) If, upon the hearing of any complaint, it appears that the cause of complaint arose out of the limits of the jurisdiction of the court before which such complaint has been brought, the court may, 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.Transfer of case where offence committed outside jurisdiction

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

taken by the court directing such transfer, to be delivered to the court before whom the accused person is to be taken; and such complaint and recognizances, if any, shall be treated, for all purposes as if they had been taken by such last-mentioned court.

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

78. Any magistrate holding a subordinate court of the first class-

(a) may transfer any case of which he has taken cognizance for inquiry or trial to any subordinate court empowered to inquire into or try such case within the local limits of such first class subordinate court□s jurisdiction; and

(b) may direct or empower any subordinate court of the second or third class within the local limits of his jurisdiction which has taken cognizance of any case, 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.

(As amended by No. 16 of 1959)Transfer of cases between magistrates

79. (1) 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 holding a subordinate court of the first class and empowered to direct the transfer of the case under the last preceding section.Procedure when, after commencement of inquiry or trial, magistrate finds case should be transferred to another magistrate

(2) The provisions of this section and of section seventy-eight shall be without prejudice to the powers conferred upon a Judge of the High Court under section twenty-three of the High Court Act.

(As amended by No. 16 of 1959)Cap. 27

80. (1) Whenever it is made to appear to the High Court-Power of High Court to change venue

(a) that a fair and impartial inquiry or trial cannot be had in any court subordinate thereto; or

(b) that some question of law of unusual difficulty is likely to arise; or

(c) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same; or

(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 Code;

it may order-

(i) that any offence be inquired into or tried by any court not empowered under the preceding sections of this Part but, in other respects, competent to inquire into or try such offence;

(ii) that any particular criminal case or class of cases be transferred from a court subordinate to its authority to any other such court of equal or superior jurisdiction;

(iii) that an accused person be committed for trial before itself.

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

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

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

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

(As amended by S.I. No. 152 of 1965)

Criminal Proceedings

81. (1) In any criminal case and at any stage thereof before verdict or judgment, as the case may be, the Director of Public Prosecutions may enter a nolle prosequi, either by stating in court, or by informing the court in writing, that the People intend that the proceedings shall not continue, and, thereupon, the accused shall stand 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 he is on bail, his recognizances shall be treated as being discharged; but such discharge of an accused person shall not operate as a bar to any subsequent proceedings against him on account of the same facts.Power of Director of Public Prosecutions to enter nolle prosequi

(2) If the accused shall not be before the court when such nolle prosequi is

entered, the Registrar or clerk of such court shall forthwith cause notice in writing of the entry of such nolle prosequi to be given to the keeper of the prison in which such accused may be detained, and also, if the accused person has been committed for trial, to the subordinate court by which he was so committed, and such subordinate court shall forthwith cause a similar notice in writing to be given to any witnesses bound over to prosecute and give evidence and to their sureties (if any), and also to the accused and his sureties, in case he shall have been admitted to bail.

(As amended by No. 28 of 1940, No. 5 of 1962, S.I. No. 63 of 1964 and S.I. No. 152 of 1965)

82. The Director of Public Prosecutions may order in writing that all or any of the powers vested in him by the last preceding section, by section eighty-eight and by Parts VII and VIII, may be exercised also by the Solicitor-General, the Parliamentary Draftsmen and State Advocates and the exercise of these powers by the Solicitor-General, the Parliamentary Draftsmen and State Advocates shall then operate as if they had been exercised by the Director of Public Prosecutions:Delegation of powers by Director of Public Prosecutions

Provided that the Director of Public Prosecutions may in writing revoke any order made by him under this section.

(No. 47 of 1955 as amended by No. 50 of 1957, No. 23 of 1960, No. 27 of 1964 and S.I. No. 63 of 1964)

83. (1) Notwithstanding anything in this Code contained, the Director of Public Prosecutions may exhibit on behalf of the People in the High Court against persons subject to the jurisdiction of the High Court, informations for all purposes for which Her Britannic Majesty□s Attorney-General for England may exhibit informations on behalf of the Crown in the High Court of Justice in England.Criminal informations by Director of Public Prosecutions

(2) Such proceedings may be taken upon every such information as may lawfully be taken in the case of similar informations filed by Her Britannic Majesty□s Attorney-General for England, so far as the circumstances of the case and the practice and procedure of the High Court will admit.

(3) The Chief Justice may, by statutory instrument, make rules for carrying into effect the provisions of this section.

(As amended by No. 2 of 1960 and S.I. No. 63 of 1964)

84. Where, by any written law, the sanction, fiat or written consent of the Director of Public Prosecutions is necessary for the commencement or continuance of the prosecution of any offence, a document purporting to give such sanction,

fiat or consent placed before the court by the prosecutor and purporting to be signed by the person for the time being exercising the powers and performing the duties of the Director of Public Prosecutions shall be prima facie evidence that such sanction, fiat or consent has been given.

(No. 50 of 1957 as amended by S.I. No. 63 of 1964)Signature of Director of Public Prosecutions to be evidence

85. (1) Where any written law provides that no prosecution shall be instituted against any person for an offence without the sanction, fiat or written consent of the Director of Public Prosecutions, such person may be arrested or a warrant for such arrest may be issued and executed and such person may be remanded in custody or on bail, notwithstanding that such sanction, fiat or written consent has not been first obtained, but no further proceedings shall be taken until such sanction, fiat or written consent has been obtained and produced to the court.Arrest of persons for offences requiring the consent of the Director of Public Prosecutions for commencement of prosecution

(2) The provisions of subsection (1) shall be subject to the other provisions of this Code relating to arrest, remand and the granting of bail.

(No. 5 of 1962 as amended by S.I. No. 152 of 1965)

Appointment of Public Prosecutors and Conduct of Prosecutions

86. (1) The Director of Public Prosecutions may appoint generally, or in any case, or for any specified class of cases, in any district, one or more officers to be called public prosecutors.Power to appoint public prosecutors

(2) The Director of Public Prosecutions may appoint any person employed in the public service to be a public prosecutor for the purposes of any proceedings instituted on behalf of the People.

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

(As amended by No. 28 of 1940, No. 16 of 1959, No. 23 of 1960, S.I. No. 63 of 1964 and S.I. No. 152 of 1965)

87. 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.Powers of public prosecutors

88. In any trial before a subordinate court, any public prosecutor may, with the consent of the court or on the instructions of the Director of Public Prosecutions, at any time before judgment is pronounced, withdraw from the

prosecution of any person; 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.

(As amended by S.I. No. 63 of 1964)Withdrawal from prosecution in trials before subordinate courts

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

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

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

(As amended by G.N. No. 303 of 1964 and S.I. No. 63 of 1964)

Institution of Proceedings Making of Complaint

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

(2) Any person who believes from a reasonable and probable cause that an offence has been committed by any person may make a complaint 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 and in either case shall be signed by the complainant.

(4) The magistrate, upon receiving any such complaint, shall-

(a) himself draw up and sign; or

(b) direct that a public prosecutor or legal practitioner representing the complainant shall draw up and sign; or

(c) permit the complainant to draw up and sign;

a formal charge containing a statement of the offence with which the accused is charged, and until such charge has been drawn up and signed no summons or warrant shall issue and no further step shall be taken in the proceedings.

(5) When an accused person who has been arrested without a warrant is brought

before a magistrate, a formal charge containing a statement of the offence with which the accused is charged shall be signed and presented to the magistrate by the police officer preferring the charge.

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

(7) Any person aggrieved by an order made by a magistrate under subsection (6) may appeal to the High Court within fourteen days of the date of such order and the High Court may, if satisfied that the formal charge or complaint, in respect of which the order was made, disclose an offence, direct the magistrate to admit the formal charge or complaint, or may dismiss the appeal.

(No. 28 of 1940 as amended by No. 5 of 1962)

91. (1) Where a charge has been drawn up and signed in accordance with subsection (4) of the last preceding section, the magistrate may, in his discretion, issue either a summons or a warrant to compel the attendance of the accused person before a court having jurisdiction to inquire into or try the offence alleged to have been committed:Issue of summons or warrant

Provided that a warrant shall not be issued in the first instance unless the complaint has been made upon oath before the magistrate, either by the complainant or by a witness or witnesses.

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

(No. 28 of 1940 as amended No. 5 of 1962)

Processes to Compel the Appearance of Accused Persons Summons

92. (1) Every summons issued by a court under this Code shall be in writing, in duplicate, and signed by the presiding officer of such court or by such other officer as the Chief Justice may, from time to time, by rule, direct.Form and contents of summons

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

(As amended by No. 2 of 1960)

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

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

94. 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 male member of his family, or with his servant residing with him; 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.Service when person summoned cannot be found

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

96. 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 Zambia. In the latter case, service shall be deemed to have been effected when the letter would arrive in ordinary course of post.Service on company

97. 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.Service outside local limits of jurisdiction

98. (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 endorsed, 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.Proof of service when serving officer not present

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

99. (1) Whenever a summons is issued in respect of any offence other than a

felony, a magistrate may, if he sees reason to do so, and shall, when the offence with which the accused is charged is punishable only by fine or only by fine and/or imprisonment not exceeding three months, dispense with the personal attendance of the accused, if he pleads guilty in writing or appears by an advocate.Power to dispense with personal attendance of accused

(2) The magistrate inquiring into or trying any case may, in his discretion, at any subsequent stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinafter provided.

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

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

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

Warrant of Arrest

100. Nothwithstanding 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. But no such warrant shall be issued unless a complaint or charge has been made upon oath.Warrant after issue of summons

101. If the accused does not appear at the time and place appointed in and by the summons, and his personal attendance has not been dispensed with under section ninety-nine, the court may issue a warrant to apprehend him and cause him to be brought before such court. But no such warrant shall be issued unless a complaint or charge has been made upon oath.Summons disobeyed

102. (1) Every warrant of arrest shall be under the hand of the Judge or magistrate issuing the same.Form, contents and duration of warrant of arrest

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

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

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

(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.

104. (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.Warrants to whom directed

(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.

105. (1) A magistrate empowered to hold a subordinate court of the first or second class may order any land-holder, farmer or manager of land, within the local limits of his jurisdiction, to assist in the arrest of any escaped convict, or person who has been accused of a cognizable offence and has eluded pursuit.Order for assistance directed to land-holder

(2) Such land-holder, farmer or manager shall, thereupon, comply with such order, 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 such person is arrested, he shall be made over with the order to the nearest police officer, who shall cause him to be taken before a magistrate having jurisdiction, unless security is taken under section one hundred and three.

(4) No land-holder, farmer or manager of land to whom such order is directed shall be liable at the suit of the person so arrested for anything done by him under the provisions of this section.

(5) If any land-holder, farmer or manager of land to whom such order is directed fails to comply therewith, he shall be liable, on conviction, to a fine not exceeding seven hundred and fifty penalty units or, in default of payment, to imprisonment with or without hard labour for a period not exceeding six months.

(As amended by Act No. 13 of 1994)

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

107. 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.Notification of substance of warrant

108. The police officer or other person executing a warrant of arrest shall (subject to the provisions of section one hundred and three as to security), without unnecessary delay, bring the person arrested before the court before which he is required by law to produce such person.Person arrested to be brought before court without delay

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

110. (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.Forwarding of warrants for execution outside jurisdiction

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

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

of whose jurisdiction it is to be executed.Procedure in case of warrant directed to police officer for execution outside jurisdiction

(2) Such magistrate shall endorse his name 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 officer 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.

112. (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 one hundred and three, be taken before the magistrate within the local limits of whose jurisdiction the arrest was made.Procedure on arrest of person outside jurisdiction

(2) Such 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:

Provided that, if such person has been arrested for an offence other than murder or treason, and he is ready and willing to give bail to the satisfaction of such magistrate, or if a direction has been endorsed under section one hundred and three on the warrant, and such person is ready and willing to give the security required by such direction, the magistrate may take such bail or shall take such security, as the case may be, and shall forward the bond to the court which issued the warrant.

(3) Nothing in this section shall be deemed to prevent a police officer from taking security under section one hundred and three.

113. Any 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 trial, shall not affect the validity of any proceedings at or subsequent to the hearing of the case, but, if any such variance appears to the court to be such that the accused has been thereby deceived or misled, such court may, at the request of the accused, adjourn the hearing of the case to some future date,

and, in the meantime, remand the accused or admit him to bail.

Miscellaneous Provisions Regarding ProcessesIrregularities in warrant

114. Where any 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.Power to take bond for appearance

115. When any person who is bound by any bond taken under this Code 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.Arrest for breach of bond for appearance

116. (1) Where any person for whose appearance or arrest a court is empowered to issue a summons or warrant is confined in any prison within Zambia, 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.Power of court to order prisoner to be brought before it

(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.

(3) Notwithstanding anything to the contrary contained in this Code or in any written law, it is declared for the avoidance of doubt that upon a person being convicted or sentenced by a subordinate court and before the entering of an appeal by such person against the conviction or sentence or both, the subordinate court which convicted or sentenced such person or the High Court has and shall have no power to release that person on bail with or without securities.

(As amended by Act No. 6 of 1972)

117. 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 Code.

Search WarrantsProvisions of this Part generally applicable to summonses and warrants

118. Where it is proved on oath to a magistrate 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 to the conduct of an investigation into any offence is in any building, vessel, carriage, box, receptacle or place, the magistrate may, by warrant (called a search warrant), authorise a police officer or other person therein named to search the building, vessel, carriage,

box, receptable 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 of the magistrate issuing the warrant or some other court, to be dealt with according to law.

(

As amended by No. 28 of 1940)Power to issue search warrant

119. Every search warrant may be issued and executed on a Sunday, and shall be executed between the hours of sunrise and sunset, but a magistrate may, by the warrant, in his discretion, authorise the police officer or other person to whom it is addressed to execute it at any hour.Execution of search warrant

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

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

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

121. (1) When any article 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.Detention of property seized

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

(3) If no appeal is made, or if no person is committed for trail, 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.

122. The provisions of section one hundred and two (1) and (3), one hundred and four, one hundred and six, one hundred and nine, one hundred and ten and one hundred and eleven shall, so far as may be, apply to all search warrants issued under section one hundred and eighteen.

Provisions as to BailProvisions applicable to search warrants

123. (1) When any person is arrested or detained, or appears before or is brought before a subordinate court, the High Court or Supreme Court he may, at any time while he is in custody, or at any stage of the proceedings before such court, be admitted to bail upon providing a surety or sureties sufficient, in the opinion of the police officer concerned or court, to secure his appearance, or be released upon his own recognizance if such officer or court thinks fit:Bail

Provided that any person charged with-

(i) murder, treason or any other offence carrying a possible or mandatory capital penalty;

(ii) misprision of treason or treason-felony; or

(iii) aggravated robbery;

shall not be granted bail by either a subordinate court, the High Court or Supreme Court or be released by any Police Officer.

(As amended by Act No. 35 of 1993)

(2) Subject to the provisions of section one hundred and twenty-six, before any person is admitted to bail or released on his own recognizance, a bond (hereinafter referred to as a bail bond), for such sum as the court or officer, as the case may be, thinks sufficient, shall be executed by such person and by the surety or sureties, or by such person alone, as the case may be, conditioned that such person shall attend at the time and place mentioned in such bond and at every time and place to which during the course of the proceedings the hearing may from time to time be adjourned.

(3) The High Court may, at any time, on the application of an accused person, order him, whether or not he has been committed for trial, to be admitted to bail or released on his own recognizance, and the bail bond in any such case may, if the order so directs, be executed before any magistrate.

(4) Notwithstanding anything in this section contained, no person charged with an offence under the State Security Act shall be admitted to bail, either pending trial or pending appeal, if the Director of Public Prosecutions certifies that it is likely that the safety or interests of the Republic would thereby be prejudiced.Cap. 111

(5) Notwithstanding anything to the contrary contained in this Code or in any written law, it is declared for the avoidance of doubt that upon a person being convicted or sentenced by a subordinate court and before the entering of an appeal by such person against the conviction or sentence or both, the subordinate court which convicted or sentenced such person or the High Court has and shall have no power to release that person on bail with or without

securities.
(No. 50 of 1957 as amended by No. 36 of 1969,
No. 59 of 1970, No. 6 of 1972 and Act No. 35 of 1993)
124. In addition to the condition mentioned in subsection (2) of section one hundred and twenty-three, the court or officer before whom a bail bond is executed may impose such further conditions upon such bond as may seem reasonable and necessary in any particular case.
(No. 50 of 1957)Additional conditions of bail bond
125. (1) As soon as a bail 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.Release from custody
(2) Nothing in this section or in section one hundred and twenty-three shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which a bail bond was executed.
(As amended by No. 50 of 1957)
126. (1) The amount of bail shall, in every case, be fixed with due regard to the circumstances of the case, but shall not be excessive.Amount of bail, and deposits
(2) The court or police officer admitting a person to bail or releasing him on his own recognizance may, in lieu of a bail bond, accept a deposit of money, or a deposit of property, from any person who would otherwise have had to execute a bail bond under the provisions of section one hundred and twenty-three, and may attach to such deposit such conditions as might have been attached to a bail bond, and on any breach of any such condition such deposit shall be forfeited.
(3) The High Court may, in any case, direct that the bail or deposit required by a subordinate court or by a police officer be reduced, or may vary or add to any conditions imposed under the provisions of section one hundred and twenty-four.
(No. 50 of 1957 as amended by No. 27 of 1964)
127. 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 order sufficient bail when that first taken is insufficient
128. (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 bail bond either wholly or so far as it relates to the applicant or applicants.Discharge of sureties

(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 bail 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.

(As amended by No. 50 of 1957)

129. Where a surety to a bail 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.

(As amended by No. 50 of 1957)Death of surety

130. If it is made to appear to any court, by information on oath, that any person bound by recognizance is about to leave Zambia, the court may cause him to be arrested, and may commit him to prison until the trial, unless the court shall see fit to admit him to bail upon further recognizance.Persons bound by recognizance absconding may be committed

131. (1) Whenever any person shall not appear at the time and place mentioned in any recognizance entered into by him, the court may, by order, endorse such recognizance and declare the same to be forfeited.Forfeiture of recognizance

(2) On the forfeiture of any recognizance, the court may issue its warrant of distress for the amount mentioned in such recognizance, or for the imprisonment of such person and his surety or sureties, for any term not exceeding six months, unless the amount mentioned in such recognizance be sooner paid or levied.

(3) A warrant of distress under this section may be executed within the local limits of the jurisdiction of the court which issued it, and it shall authorise the distress and sale of any property belonging to such person and his surety or sureties, without such limits, when endorsed by a magistrate holding a subordinate court of the first or second class within the local limits of whose jurisdiction such property is found.

132. All orders passed under the last preceding section by any magistrate shall be appealable to and may be revised by the High Court.Appeal from and revision of orders

133. The High Court may direct any magistrate to levy the amount due on a

recognizance to appear and attend at the High Court.

Charges and InformationsPower to direct levy of amount due on recognizance

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

(No. 28 of 1940)Offence to be specified in charge or information with necessary particulars

135. (1) Any offences, whether felonies or misdemeanours, may be charged together in the same cahrge of or information if the offences charged are founded on the same facts or form, or are a part of, a series of offences of the same or a similar character.Joinder of counts in a charge or information

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

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

(No. 28 of 1940)

136. The following persons may be joined in one charge or information and may be tried together, namely:

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

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

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

(d) persons accused of any offence under Chapters XXVI to XXX of the Penal Code and persons accused of receiving or retaining property, possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit either of such last-named offences;

(e) persons accused of any offence relating to counterfeit coin under Chapter XXXVII of the Penal Code, and persons accused of any other offence under the

said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence.

(No. 28 of 1940)Joinder of two or more accused in one charge or information

Cap. 87

Cap. 87

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

(a) (i) A count of a charge or an information shall commence with a statement of the offence charged, called the statement of offence;Mode in which offences are to be charged

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

(iii) after the statment 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:

Provided that, where any rule of law or any Act limits the particulars of an

offence which are required to be given in a charge or an information, nothing in this paragraph shall require any more particulars to be given than those so required;

(iv) the forms set out in the Second Schedule 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;

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

(b) (i) Where an enactment constituting an offence states the offence to be the doing or 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 cournt charging the offence;

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

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

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

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

(iv) coin and bank notes may be described as money; and any allegation as to money, so far as regards the description of the property, shall be sustained by proof of any amount of coin or 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.

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

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

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

(f) 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.

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

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

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

(No. 28 of 1940 as amended by No. 11 of 1963 and S.I. No. 63 of 1964)

Previous Conviction or Acquittal

138. 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 remains in force, not be liable to be tried again on the same facts for the same offence.Persons convicted or acquitted not to be tried again for same offence

139. 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 one hundred and thirty-five.

(No. 28 of 1940)Person may be tried again for separate offence

140. 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 different 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.Consequences supervening or not known at time of former trial

141. A person convicted or acquitted of any 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.Where original court was not competent to try subsequent charge

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

(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 suffered, 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 given under the hand of an officer authorised by the *President in that behalf, who shall have compared the fingerprints of an accused person with the fingerprints of a person previously convicted, shall be sufficient evidence of all facts therein set forth provided it is produced by the person who took the fingerprints of the accused.

*Officer in Charge, Fingerprint Department, authorised by Gazette Notice No. 5 of 1964.

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

(4) Where a person is convicted by a subordinate court, other than a juvenile court, and it is proved to the satisfaction of the court on oath or in the manner prescribed that, not less than seven days previously, a notice was served on the accused in the prescribed form and manner specifying any alleged previous

conviction of the accused of an offence proposed to be brought to the notice of the court in the event of his conviction of the offence charged, and the accused is not present in person before the court, the court may take account of any such previous conviction so specified as if the accused had appeared and admitted it.

(5) In this section, "prescribed" means prescribed by rules made by the Chief Justice.

(As amended by No. 4 of 1944, No. 2 of 1960,
No. 5 of 1962 and G.N. No.303 of 1964)

Compelling Attendance of Witnesses

143. If it is made to appear that material evidence can be given by, or is in the possession of, any person, it shall be lawful for a court having cognizance 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 writings in his possession or power, which may be specified or otherwise sufficiently described in the summons.

(As amended by No. 28 of 1940)Summons for witness

144. If, 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 who disobeys summons

145. If the court is satisfied that any person will not attend as a witness unless compelled to do so, it may at once issue a warrant for the arrest and production of such person before the court at a time and place to be therein specified.Warrant for witness in first instance

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

147. (1) Any court, desirous of examining as a witness, in any case pending before it, any person confined in any prison within Zambia, 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.Power of court to order prisoner to be brought up for examination

(2) The officer so in charge, on receipt of such order, shall act in accordance

therewith, and shall provide for the safe custody of the prisoner during his absence from the prison for the purpose aforesaid.

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

(2) Such 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 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.

(As amended by Act No. 13 of 1994)

Examination of Witnesses

149. Where the person charged is called by the defence as a witness to the facts of the case or to make a statement without being sworn he shall be heard immediately after the close of the evidence for the prosecution.

(As amended by Act No. 6 of 1972)Procedure where person charged is called for defence

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

(a) refuses to be sworn; or

(b) having been sworn, refuses to answer any question put to him; or

(c) refuses or neglects to produce any document or thing which he is required to produce; or

(d) refuses to sign his deposition;

without, in any such case, offering any sufficient excuse for such refusal or 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 such person, upon being brought before the court at or before such adjourned hearing, again refuses to do what is required of him, the court may, if it sees fit, again adjourn the case and commit him for the like period, and

so again, from time to time, until such person consents to do what is so required of him.

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

151. (1) 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-Cases where wife or husband may be called without consent of accused

(a) in any case where the wife or husband of a person charged may, under any law in force for the time being, be called as a witness without the consent of such person;

(b) in any case where such person is charged with an offence under Chapter XV of the Penal Code or with bigamy;Cap. 87

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

(2) For the purposes of this section-

(a) "wife" and "husband" include the parties to a customary marriage:

(b) "customary marriage" includes a union which is regarded as marriage by the community in which the parties live.

(As amended by No. 20 of 1969)

Commissions for the Examination of Witnesses

152. (1) Whenever, in the course of any inquiry, trial or other proceeding under this Code, the High 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, in the circumstances of the case, would be unreasonable, the court may issue a commission to any magistrate, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.Issue of commission for examination of 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, execise the same powers as in the case of a trial.

153. (1) The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the

court 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.Parties may examine witness

(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.

154. Whenever, in the course of any inquiry, trial or other proceeding under this Code 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, in 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.Power of magistrate to apply for issue of commission

155. After any commission issued under section one hundred and fifty-two or one hundred and fifty-four has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the court in which the case is depending, and the commission, the return thereto, and the deposition shall be open, at all reasonable times, to inspection by the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.Return of commission

156. In every case in which a commission is issued under section one hundred and fifty-two or one hundred and fifty-four, the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

Evidence for DefenceAdjournment of inquiry or trial

157. Every 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:Competency of accused and husband or wife as witnesses

Provided that-

(i) a person so charged shall not be called as a witness in pursuance of this section, except upon his own application;Own application

(ii) the failure of any 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;No comment if not

called as witness

(iii) 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;Spouses

(iv) 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;Communications during marriage

(v) 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 criminate him as to the offence charged;Cross-examination

(vi) 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-No question to show commission of offence not charged

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

(b) 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

(c) he has given evidence against any other person charged with the same offence;Exceptions

(vii) every 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;Evidence from box

(viii)nothing in this section shall affect the provisions of section two hundred and twenty-eight or any right of the person charged to make a statement without being sworn.Statement by person charged

158. Where the person charged is called by the defence as a witness to the facts of the case or to make a statement without being sworn, he shall be heard immediately after the close of the evidence for the prosecution.

(No. 6 of 1972)Procedure where person charged is called for defence

158A. (1) Where the presiding Judge or Magistrate is, on account of illness,

death, relinquishment or cesser of jurisdiction or any other similar cause, unable to deliver a judgment already prepared by him, then the Chief Justice may direct-Completion of proceedings

(a) that another Judge of the High Court shall deliver in open court the judgment prepared by the presiding Judge; and

(b) that another Magistrate of co-ordinate jurisdiction shall deliver in open court the judgment prepared by the presiding Magistrate, in the manner prescribed in subsection (1) of section one hundred and fifty-seven of this Code:

Provided that in either case the judgment shall be dated and signed by the Judge or Magistrate at the time of delivering it.

(2) After delivering the judgment under subsection (1), the Judge or the Magistrate, as the case may be, shall complete the proceedings of the case as if he had himself heard and determined the case.

(3) In any case where a Judge has been appointed whether before or after the commencement of the Criminal Procedure Code (Amendment) Act, 1972, to be or to act as a Justice of Appeal or where a Magistrate has been appointed to be a Magistrate of a higher class or to be or to act as a Judge, he shall complete any proceedings already commenced before him, and for this purpose he shall be deemed to retain the position and powers which he held immediately before his being so appointed.

(4) Where a Magistrate is transferred to another District he shall complete any proceedings already commenced before him.

(As amended by No. 6 of 1972)

159. 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:Right of reply

Provided that the Director of Public Prosecutions or Solicitor-General, when appearing personally as advocate for the prosecution, shall, in all cases, have the right of reply.

(As amended by S.I. No. 63 of 1964)

Procedure in Case of the Insanity or Other Incapacity of an Accused Person

160. Where on the trial of a person charged with an offence punishable by death or imprisonment the question arises, at the instance of the defence or otherwise, whether the accused is, by reason of unsoundness of mind or of any other disability, incapable of making a proper defence, the court shall inquire into and determine such question as soon as it arises.

(No. 76 of 1965 as amended by No. 18 of 1966)Question whether accused capable of making his defence

161. Where a court, in accordance with the provisions of section one hundred and sixty, finds an accused incapable of making a proper defence, it shall enter a plea of "not guilty" if it has not already done so and, to the extent that it has not already done so, shall hear the evidence for the prosecution and (if any) for the defence.Procedure where accused unfit to make his defence

(2) At the close of such evidence as is mentioned in subsection (1), the court, if it finds that the evidence as it stands-

(a) would not justify a conviction or a special finding under section one hundred and sixty-seven, shall acquit and discharge the accused; or

(b) would, in the absence of further evidence to the contrary, justify a conviction, or a special finding under section one hundred and sixty-seven, shall order the accused to be detained during the President□s pleasure.

(3) An acquittal and discharge under subsection (2) shall be without prejudice to any implementation of the provisions of the Mental Disorders Act, and the High Court may, if it considers in any case that an inquiry under the provisions of section nine of that Act is desirable, direct that the person acquitted and discharged be detained and taken before a magistrate for the purpose of such inquiry.

(No. 76 of 1965)Cap. 305

162. (1) Where an order for the detention of an accused during the President□s pleasure is made by a subordinate court-Procedure following order of detention during President□s pleasure

(a) the court shall transmit the record or a certified copy thereof to the High Court for confirmation of such order;

(b) the High Court may, and at the request of the prosecution or defence made within fourteen days of the order of the subordinate court shall, admit additional evidence or hear the prosecution and defence in relation to the disability of the accused; and

(c) the High Court in dealing with the confirmation of such an order may exercise all or any of the powers which are conferred upon it under Part XI for the purposes of revision.

(2) Where an order for the detention of an accused during the President□s pleasure is made or confirmed by the High Court, the Judge concerned shall submit a written report to the President containing any recommendations or observations on the case which he may think fit to make, together with a certified copy of the record.

(No. 76 of 1965)

163. (1) Where under this Code any person is ordered to be detained during the President□s pleasure, the order shall be sufficient authority for his detention, until otherwise dealt with under this Code, in any mental institution, prison or other place where facilities exist for the detention of persons, and for his conveyance to that place.Detention during President□s pleasure

(2) A person ordered under this Code to be detained during the President□s pleasure shall be liable to be detained in such place and under such conditions as the President may by order direct, and while so detained shall be in lawful custody.

(3) The officer in charge of the place in which any person is detained during the President□s pleasure under this Code shall, at intervals not exceeding six months, submit a report to the President containing the prescribed information in relation to every person so detained in his custody.

(No. 76 of 1965)

164. (1) The President may at any time by order discharge from detention any person detained during the President□s pleasure and such discharge may be absolute or subject to conditions, and if absolute the order under which he has been detained shall cease to be of effect accordingly.Discharge of persons detained during President□s pleasure

(2) The President may at any time by order revoke an order of conditional discharge made under subsection (1) and thereupon the person concerned shall be detained during the President□s pleasure as though he had never been discharged from detention.

(No. 76 of 1965)

165. (1) If on the advice of a medical officer the President, having regard to the requirements of the Constitution, considers that the question of the capacity to make a proper defence of any person detained following an order under section one hundred and sixty-one should be re-examined, he shall by order direct that such person be taken before a court and the court shall inquire into and determine that question.Resumption of trial

Cap 1

(2) Where a court, after inquiry under subsection (1), finds the accused capable of making a proper defence, any order under which the accused has been detained during the President□s pleasure shall thereupon cease to have effect and the accused shall be called upon to plead to the charge or information and the trial shall commence de novo.

(3) Where a court, after inquiry under subsection (1), finds the accused to be

still incapable of making a proper defence, the order under which the accused has been detained during the President□s pleasure shall continue to be of force and effect.

(4) For the purposes of an inquiry under subsection (1), a report concerning the capacity of the accused to conduct his defence by the medical officer in charge of the asylum or other place in which the accused has been detained may be read as evidence but without prejudice to the right of the court to summon and examine such medical officer.

(No. 76 of 1965)

166. The question whether-

(a) while before the subordinate court an accused person is by reason of unsoundness of mind or of any other disability incapable of making a proper defence; or

(b) at the time of the act or omission in respect of which an accused person is charged, such person was by reason of unsoundness of mind incapable of understanding what he was doing, or of knowing that he ought not to do the act or make the omission;

shall not be determined in any preliminary inquiry held under Part VII and, for the purposes of any decision whether an accused should be committed for trial, the accused shall be deemed to have been at all material times free from any such disability.

(No. 76 of 1965)Preliminary inquiries

167. (1) Where an 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 not guilty by reason of insanity.Defence of insanity at the time of the offence

(2) For the purposes of appeal, whether to the High Court or to the Court of Appeal, a special finding made under subsection (1) shall be deemed to be a conviction.

(3) Where a special finding is made under subsection (1), the court so finding shall order the person to whom such finding relates to be detained during the President□s pleasure.

(No. 76 of 1965)

167A. The provisions of sections one hundred and sixty-three, one hundred and

sixty-four, one hundred and sixty-five, one hundred and sixty-six and one hundred and sixty-seven shall apply mutatis mutandis to any person detained during the President□s pleasure in terms of an order made under section one hundred and fifty-one of Chapter 7 of the 1965 Edition of the Laws before the *7th January, 1966.*commencement of Act No. 76 of 1965.

* *7th January, 1966.Application to persons detained in terms of orders made under former provisions

(No. 24 of 1970)

Judgment

168. (1) The judgment in every trial in a subordinate court shall be pronounced, or the substance of such judgment shall be explained, in open court, either immediately after the termination of the trial or, without undue delay, at some subsequent time, of which notice shall be given to the parties and their advocates, if any:Mode of delivering judgment

Provided that the whole judgment shall be read out by the presiding magistrate, if he is requested so to do, either by the prosecution or the defence.

(

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

(3) No judgment delivered by any court shall be deemed to be invalid by reason only of the absence of any party or his advocate on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their advocates, or any of them, the notice of such day and place.

(4) Nothing in this section shall be construed to limit, in any way, the provisions of section three hundred and fifty-three.

169. (1) The judgment in every trial in any court shall, except as otherwise expressly provided by this Code, be prepared by the presiding officer 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.Contents of judgment

(2) In the case of a conviction, the judgment shall specify the offence of which and the section of the Penal Code or other written law under which the accused person is convicted, and the punishment to which he is sentenced.

*7th January, 1966.

(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.

(No. 28 of 1940 as amended by No. 17 of 1945, No. 5 of 1962 and No. 11 of 1963)

169A. (1) Where the presiding Judge or Magistrate is, on account of illness, death, relinquishment or cesser of jurisdiction or any other similar cause, unable to deliver a judgment already prepared by him, then the Chief Justice may direct-Completion of proceedings

(a) that another Judge of the High Court shall deliver in open court the judgment prepared by the presiding Judge; and

(b) that another magistrate of co-ordinate jurisdiction shall deliver in open court the judgment prepared by the presiding magistrate, in the manner prescribed in subsection (1) of section one hundred and sixty-eight;

Provided that in either case the judgment shall be dated and signed by the Judge or magistrate at the time of delivering it.

(2) After delivering the judgment under subsection (1), the Judge or magistrate, as the case may be, shall complete the proceedings of the case as if he had himself heard and determined the case.

(3) In any case where a Judge has been appointed, whether before or after the commencement of Act No. 6 of 1972, to be or to act as a Justice of Appeal or where a magistrate has been appointed to be a magistrate of a higher class or to be or to act as a Judge, he shall complete any proceedings already commenced before him, and for this purpose he shall be deemed to retain the position and powers which he held immediately before his being so appointed.

(4) Where a magistrate is transferred to another District, he shall complete any proceedings already commenced before him.

170. On the application of the accused person, a copy of the judgment, or, when he so desires, a translation in his own language, if practicable, shall be given to him without delay. Such copy or translation shall be given free of cost.Copy of judgment, etc., to be given to accused on application

171. (1) The court before which any person employed in the public service is convicted of a prescribed offence shall enter judgment, and civil jurisdiction is hereby conferred upon it for that purpose, for the amount of the value of the property in respect of which the offence was committed-Entry of judgment where public officer convicted of offence

(a in favour of the Attorney-General where such property is the property of the or of any corporation, body or board, including any institutions of higher learning, in which the Government has a majority or controlling interest

(2) No appeal shall lie against a statutory judgment but if, on an appeal against conviction, the appeal is allowed or a conviction for an offence which is not a prescribed offence is substituted, the statutory judgment shall be deemed to have been set aside, but without prejudice to any other right of recovery by way of civil proceedings.

(3) The entering of an appeal against conviction shall not operate as a stay of execution under a statutory judgment, unless the court otherwise orders.

(4) Execution may be levied under a statutory judgment against all or any persons employed in the Public Service jointly charged with and convicted of a prescribed offence, but the total amount levied shall not exceed the amount for which the statutory judgment was entered.

(5) Where a person employed in the public service is convicted of an offence and such person asks the court to take another offence, which is a prescribed offence, into account for the purposes of sentence and the court does so, such person shall, for the purposes of this section, be deemed to have been convicted of such prescribed offence and the court shall enter judgment accordingly as provided in subsection (1).;

(6) In this section, unless the context otherwise requires-

"prescribed offence" means an offence under Chapter XXVI, XXVII, XXX, XXXI or XXXIII of the Penal Code where the property in respect of which the offence is committed is the property of the Government or any corporation, body or board including an institution of learning, in which the Government has a majority or controlling interest or a local authority or is property which comes into the possession of the person employed in the public service by virtue of his employment;

"person employed in the public service" means a person who, at the time of commission of the prescribed offence, was a person employed in the public service as defined in section four of the Penal Code;

"statutory judgment" means a judgment entered in pursuance of the provisions of subsection (1).

(As amended by Act N.o. 54 of 1968, 12 of 1973,
34 of 1973 and 32 of 1974)Cap. 87

Costs, Compensation and Damages

172. (1) It shall be lawful for a Judge or a magistrate to order any person convicted before him of an offence to pay such reasonable costs, as to such Judge or magistrate may seem fit, in addition to any other penalty imposed and such costs shall be paid, where the prosecution was in the charge of a public

prosecutor, into the general revenues of the Republic, and in any other case to the person by or on behalf of whom the prosecution was instituted.Costs against accused or prosecution

(2) It shall be lawful for a Judge or a magistrate who acquits or discharges a person accused of an offence to order that such reasonable costs, as to such Judge or magistrate may seem fit, be paid to such person and such costs shall be paid, where the prosectuion was in the charge of a public prosecutor, from the general revenues of the Republic, and in any other case by the person by or on behalf of whom the prosecution was instituted:

Provided that no such order shall be made if the Judge or magistrate shall consider that there were reasonable grounds for making the complaint.

(3) The costs awarded under this section may be awarded in addition to any compensation awarded under section one hundred and seventy-four.

(As amended by No. 5 of 1962 and S.I. No. 63 of 1964)

1

73. An appeal shall lie from any order of a subordinate court awarding costs, under the last preceding section, to the High Court. The appellate court shall have power to give such costs of the appeal as it shall deem reasonable.Order to pay costs appealable

174. If, on the dismissal of any case, any court shall be of opinion that the charge was frivolous or vexatious, such court may order the complainant to pay to the accused person a reasonable sum, as compensation for the trouble and expense to which such person may have been put by reason of such charge, in addition to his costs.Compensation in case of frivolous or vexatious charge

175. (1) When an accused person is convicted by any court of any offence not punishable with death and it appears from the evidence that some other person, whether or not he is the prosecutor or a witness in the case, has suffered material loss or personal injury in consequence of the offence committed and that substantial compensation is, in the opinion of the court, recoverable by that person by civil suit, such court may, in its discretion and in addition to any other lawful punishment, order the convicted person to pay to that other person such compensation, in kind or in money, as the court deems fair and reasonable:Power of court to order accused to pay compensation

Provided that in no case shall the amount or value of the compensation awarded exceed fifty kwacha.

(2) When any person is convicted of any offence under Chapters XXVI to XXXI, both inclusive, of the Penal Code, the power conferred by subsection (1) shall be deemed to include a power to award compensation to any bona fide purchaser of

any property in relation to which the offence was committed for the loss of such property if the same is restored to the possession of the person entitled thereto.

(3) Any order for compensation under this section shall be subject to appeal and no payment of compensation shall be made before the period allowed for presenting the appeal has elapsed or, if an appeal be presented, before the decision of the appeal.

(No. 28 of 1940)

176. The sums allowed for costs or compensation shall, in all cases, be specified in the conviction or order, and the same shall be recoverable in like manner as any penalty may be recovered under this Code; and, in default of payment of such costs or compensation or of distress as hereinafter provided, the person in default shall be liable to imprisonment with or without hard labour for a term not exceeding three months, unless such costs or compensation shall be sooner paid.Costs and compensation to be specified in order; how recoverable

177. (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-Power of court to award expenses or compensation out of fine

(a) in defraying expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when substantial compensation is, in the opinion of the court, recoverable by civil suit.

(2) At the time of awarding any compensation in any subsequent civil suit relating to the same matter, the court hearing the civil suit shall take into account any compensation paid or recovered under section one hundred and seventy-five or this section.

(As amended by No. 28 of 1940)Compensation recovered to be taken into account in subsequent civil suit

178. Where, in a charge of stealing, dishonest receiving or fraudulent conversion, the court shall be of opinion that the evidence is insufficient to support the charge, but that it establishes wrongful conversion or detention of property, such court may order that such property be restored, and may also award damages. Any damages awarded shall be recoverable as a penalty.

Restitution of PropertyWrongful conversion and detention of property

179. 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-Property found on accused person

(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.

180. (1) If any person guilty of any offence as is mentioned in Chapters XXVI to XXXI, both inclusive, of the Penal Code, in stealing, taking, extorting, obtaining, converting or disposing of, or in knowingly receiving, any property, is prosecuted to conviction by or on behalf of the owner of such property, the property shall be restored to the owner or his representative.Stolen property. Cap. 146

(2) In every case in this section referred to, the court before whom such offender is convicted shall have the power to award, from time to time, writs of restitution for the said property or to order the restitution thereof in a summary manner:

Provided that nothing in this section shall apply to-

(i) any valuable security which has been bona fide paid or discharged by any person liable to pay or discharge the same; or

(ii) any negotiable instrument which shall have been bona fide received by transfer or delivery by any person for a just and valuable consideration without notice, or without reasonable cause to suspect that it has been stolen or dishonestly obtained.

(3) On the restitution of any stolen property, if it appears to the court by the evidence that the offender has sold the stolen property to any person, 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.

(4) The operation of any order under this section shall (unless the court before which the conviction takes place directs to the contrary in any case in which the title to the property is not in dispute) be suspended-

(a) in any case until the time for appeal has elapsed; and

(b) in any case where an appeal is lodged, until the final determination of such appeal;

and in cases where the operation of any such order is suspended until the determination of the appeal, the order shall not take effect as to the property

in question if the conviction is quashed on appeal.

(5) In this section, unless the context otherwise requires, "property" means not only such property as has been originally in the possession or under the control of any person but also any property into or for which the same has been converted or exchanged, and anything which has been acquired by such conversion or exchange, whether immediately or otherwise.

(No. 50 of 1957)

Miscellaneous Provisions

181. (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.When offence proved is included in offence charged

(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.

(No. 28 of 1940)

182. 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.

(No. 28 of 1940)Person charged with any offence may be convicted of attempt

183. (1) Where a person is charged with treason and the facts proved in evidence authorise a conviction for treason-felony and not for treason, he may be convicted of treason-felony although he was not charged with that offence.Person charged with treason may be convicted of treason-felony and person charged with treason or treason-felony may be convicted of sedition

(2) Where a person is charged with treason or treason-felony and the facts proved in evidence authorise a conviction for sedition and not for treason or treason-felony, as the case may be, he may be convicted of sedition although he was not charged with that offence.

(No. 6 of 1965)

184. (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 she, by any wilful act or omission, caused its death but at the time of the act or omission she had not fully recovered from the effect of giving birth to such child and that by reason thereof or by reason of the effect of lactation consequent upon the birth of the child the balance of her mind was then disturbed, she may, notwithstanding that the circumstances were such that but for the provisions of section two hundred and three of the Penal Code she might be convicted of

murder, be convicted of the offence of infanticide although she was not charged with it.Alternative verdicts in various offences involving the homicide of children

Cap. 87

(2) When a person is charged with the murder or manslaughter of any child or with infanticide, or with an offence under section one hundred and fifty-one or one hundred and fifty-two of the Penal Code (relating to the procuring of abortion), and the court is of opinion that he is not guilty of murder, manslaughter or infanticide or of an offence under section one hundred and fifty-one or one hundred and fifty-two of the Penal Code but that he is guilty of the offence of child destruction, he may be convicted of that offence although he was not charged with it.Cap. 87

Cap. 87

(3) When a person is charged with the offence of child destruction and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under either section one hundred and fifty-one or one hundred and fifty-two of the Penal Code, he may be convicted of that offence although he was not charged with it.Cap. 87

(4) When a person is charged with the murder or infanticide of any child or with child destruction and the court is of opinion that he is not guilty of any of the said offences but that he is guilty of the offence of concealment of birth, he may be convicted of the offence of concealment of birth although he was not charged with it.

(No. 28 of 1940)

185. When a person is charged with manslaughter in connection with the driving of a motor vehicle by him and the court is of the opinion that he is not guilty of that offence, but that he is guilty of an offence under subsection (1) of section one hundred and ninety-six of the Roads and Road Traffic Act (relating to reckless or dangerous driving), or under any written law in substitution therefor, he may be convicted of that offence although he was not charged with it.

(No. 28 of 1940)Person charged with manslaughter in connection with the driving of a motor vehicle may be convicted of reckless or dangerous driving.

Cap. 464

186. (1) 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 one of sections one hundred and thirty-seven, one hundred and thirty-eight, one hundred and forty-one and one hundred and fifty-nine of the Penal Code, he may

be convicted of that offence although he was not charged with it.Alternative verdicts in charges of rape and kindred offences.

Cap. 146

(2) When a person is charged with an offence under section one hundred and fifty-nine of the Penal Code and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under one of the sections one hundred and thirty-eight and one hundred and thirty-nine of the Penal Code, he may be convicted of that offence although he was not charged with it.Cap. 87

Cap. 87

(3) When a person is charged with the defilement of a girl under the age of sixteen years and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under subsection (1) or (3) of section one hundred and thirty-seven of the Penal Code, he may be convicted of that offence although he was not charged with it.

(No. 28 of 1940)Cap. 87

187. When a person is charged with an offence under one of sections three hundred and one to three hundred and five of the Penal Code and the court is of opinion that he is not guilty of that offence but that he is guilty of any other offence under another of the said sections, he may be convicted of that other offence although he was not charged with it:Person charged with burglary, etc., may be convicted of kindred offence.

Cap. 146

Provided that, in such case, the punishment imposed shall not exceed the maximum punishment which may be imposed for the offence with which the accused was charged.

(No. 28 of 1940)

188. (1) When a person is charged with stealing anything and-Alternative verdicts in charges of stealing and kindred offences.

(a) the facts proved amount to an offence under subsection (1) of section three hundred and eighteen of the Penal Code, he may be convicted of the offence under that section although he was not charged with it;Cap. 87

(b) it is proved that he obtained the thing in any such manner as would amount, under the provisions of the Penal Code, to obtaining it by false pretences with intent to defraud, he may be convicted of the offence of obtaining it by false pretences although he was not charged with it;

(c) the facts proved amount to an offence under section three hundred and nineteen of the Penal Code, he may be convicted of the offence under that section although he was not charged with it.Cap. 87

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

(No. 28 of 1940 as amended by No. 47 of 1955)

189. The provisions of sections one hundred and eighty-one to one hundred and eighty-eight shall be construed as in addition to, and not in derogation of, the provisions of any other Act and the other provisions of this Code, and the provisions of sections one hundred and eighty-two to one hundred and eighty-eight shall be construed as being without prejudice to the generality of the provisions of section one hundred and eighty-one.

(No. 28 of 1940)Construction of sections 181 to 188

190. If, on any trial for misdemeanour, the facts proved in evidence amount to a felony, the accused shall not be therefore entitled to be acquitted of such misdemeanour; and no person tried for such misdemeanour shall be liable afterwards to be prosecuted for felony on the same facts, unless the court before which such trial may be had shall think fit, in its discretion, to discharge such person in respect of the misdemeanour and to direct such person to be prosecuted for felony, whereupon such person may be dealt with as if not previously put on trial for misdemeanour.Person charged with misdemeanour not to be acquitted if felony proved

PART V MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALSPART V MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS

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

(No. 33 of 1972)Evidence to be taken in presence of accused

191A. (1) The contents of any document purporting to be a report under the hand of a medical officer employed in the public service upon any matter relevant to the issue in any criminal proceedings shall be admitted in evidence in such proceedings to prove the matters stated therein:Reports by medical officers in public service

Provided that-

(i) the court in which any such report is adduced in evidence may, in its discretion, cause the medical officer to be summoned to give oral evidence in such proceedings or may cause written interrogatories approved by the court to be submitted to him for reply, and such interrogatories and any reply thereto

purporting to be a reply from such person shall likewise be admissible in evidence in such proceedings;

(ii) at the request of the accused, made not less than seven days before the trial, such witness shall be summoned to give oral evidence.

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

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

(4) For the purposes of this section, the expression "medical officer" shall mean a medical practitioner registered as such under the Medical and Allied Professions Act.

(No. 33 of 1972)Cap. 297

192. (1) Whenever any fact ascertained by any examination or process requiring chemical or bacteriological skill is or may become relevant to the issue in any criminal proceedings, a document purporting to be an affidavit relating to any such examination or process shall, if purporting to have been made by any person qualified to carry out such examination or process, who has ascertained any such fact by means of any such examination or process, be admissible in evidence in such proceedings to prove the matters stated therein:Evidence of analyst

Provided that-

(i) the court in which any such document is adduced in evidence may, in its discretion, cause such person to be summoned to give oral evidence in such proceedings or may cause written interrogatories to be submitted to him for reply, and such interrogatories and any reply thereto purporting to be a reply from such person shall likewise be admissible in evidence in such proceedings;

(ii) at the request of the accused, made not less than seven days before the trial, such witness shall be summoned to give oral evidence.

(2) Nothing in this section contained shall be deemed to affect any provision of any written law under which any certificate or other document is made admissible in evidence, and the provisions of this section shall be deemed to be additional to, and not in substitution of, any such provision.

(No. 1 of 1936 as amended by No. 11 of 1963)

193. Where any photograph is or may become relevant to the issue in any criminal proceedings, a document purporting to be an affidavit made by the person who processed such photograph shall be admissible in evidence in any such

proceedings as proof of such processing:Evidence of photographic process

Provided that the court in which any such document is produced may, if it thinks fit, summon such person to give evidence orally.

(No. 50 of 1957)

194. (1) In any criminal proceedings, a certificate purporting to be signed by a police officer or any other person authorised under rules made in that behalf by the Chief Justice, by statutory instrument, and certifying that a plan or drawing exhibited thereto is a plan or drawing made by him of the place or object specified in the certificate and that the plan or drawing is correctly drawn to a scale so specified and clearly indicates, where applicable, the direction of North in relation to the places or objects depicted thereon, shall be evidence of the relative positions of the things shown on the plan or drawing.Evidence of plans, theft of postal matters and goods in transit on railways

(2) In any proceedings for an offence consisting of the stealing of goods in the possession of the Zambia Railways, or receiving or retaining goods so stolen knowing them to have been stolen, or for the theft of postal matter under the Penal Code, or for an offence under the Postal Services Act, a statutory declaration made by any person-Cap. 470

(a) that he despatched or received or failed to receive any goods or postal packet or that any goods or postal packet when despatched or received by him were in a particular state or condition; or

(b) that a vessel, vehicle or aircraft was at any time employed by or under the Postmaster-General for the transmission of postal packets under contract; shall be admissible as evidence of the facts stated in the declaration.

(3) Nothing in this section shall be deemed to make a certificate or statutory declaration admissible as evidence in proceedings for an offence except in a case where and to the extent to which oral evidence to the like effect would have been admissible in those proceedings.

(4) Nothing in this section shall be deemed to make a certificate or any plan or drawings exhibited thereto or a statutory declaration admissible as evidence in proceedings for any offence-

(a) unless a copy thereof has, not less than seven days before the hearing or trial, been served on the person charged with the offence; or

(b) if that person, not later than three days before the hearing or trial or within such further time as the court may in special circumstances allow, serves notice in writing on the prosecutor requiring the attendance at the trial of the person who signed the certificate or the person by whom the declaration was

made, as the case may be; or
(c) if the court before whom the said proceedings are brought requires the attendance at the trial of the person who signed the certificate or the person by whom the declaration was made, as the case may be.
(No. 16 of 1959)
195. (1) Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open court in a language understood by him.Interpretation of evidence to accused or his advocate
(2) If he appears by advocate, and the evidence is given in a language other than the English language, and not understood by the advocate, it shall be interpreted to such advocate in the English language.
(3) When documents are put in for the purpose of formal proof, it shall be in the discretion of the court to cause to be interpreted as much thereof as appears necessary.
196. A magistrate shall record the sex and approximate age of each witness, and may also record such remarks (if any) as he thinks material respecting the demeanour of any witness whilst under examination.Remarks respecting demeanour of witness
PART VI PROCEDURE IN TRIALS BEFORE SUBORDINATE COURTS PART VI PROCEDURE IN TRIALS BEFORE SUBORDINATE COURTS
Provisions Relating to the Hearing and Determination of Cases
197. (1) All trials in subordinate courts shall be held before a magistrate sitting alone, or before a magistrate sitting with the aid of assessors (if the presiding magistrate so decides), the number of whom shall be two or more, as the court thinks fit:Trials in subordinate courts
Provided always that every trial on a charge of treason or murder in a subordinate court shall be held with the aid of assessors, if assessors are procurable therefor.
(2) Where an accused person has been committed for trial before the High Court, and the case has been transferred by the High Court for trial before a subordinate court, such of the provisions of Parts VII and IX as are applicable shall, with all necessary modifications and alterations, apply to such trial before such subordinate court:
Provided that-
(i) no provisions relating to the inclusion of a count charging a previous conviction in an information shall be deemed applicable to such trial before such subordinate court;

(ii) the recognizances of witnesses bound to appear and give evidence at such trial before the High Court shall be deemed, for all purposes, to have been executed as if the obligations to attend the High Court had included attendance at any court to which the case might be transferred.

198. If a trial is held in a subordinate court with the aid of assessors, all the provisions in this Code contained as to a trial with assessors in the High Court shall apply, so far as the same are applicable, to a trial held with assessors in a subordinate court.Trials with assessors

199. 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 sumons for the hearing of the case or is brought before court under arrest, then, if the complainant, having had notice of the time and place appointed for the hearing of the charge, does not appear, the court shall dismiss the charge, unless, for some reason, it shall think it proper to adjourn the hearing of the case until some other date, upon such terms as it shall think fit, in which event it may, pending such adjourned hearing, either admit the accused to bail or remand him to prison, or take such security for his appearance as the court shall think fit.

(As amended by No. 28 of 1940)Non-appearance of complainant at hearing

200. 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, or if the complainant appears and the personal attendance of the accused person has been dispensed with under section ninety-nine, the court shall proceed to hear the case.Appearance of both parties

201. If a complainant, at any time before a final order is passed in any case under this Part, satisfies the court that there are sufficient grounds for permitting him to withdraw his complaint, the court may permit him to withdraw the same, and shall, thereupon, acquit the accused.Withdrawal of complaint

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

Provided that no such adjournment shall be for more than thirty clear days, or, if the accused person has been committed to prison, for more than fifteen clear

days, the day following that on which the adjournment is made being counted as the first day.

(As amended by No. 5 of 1962)

203. (1) If, at the time or 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, unless the accused person is charged with felony, to proceed with the hearing or further hearing, as if the accused were present, and, if the complainant shall not appear, the court may dismiss the charge, with or without costs, as the court shall think fit.Non-appearance of parties after adjournment

(2) If the court convicts the accused person in his absence, it may set aside such conviction, upon being satisfied that the cause of his absence was reasonable, and that he had a reasonable defence on the merits.

(3) Any sentence passed under subsection (1) shall be deemed to commence from the date of apprehension subsequent to judgment, and the person effecting such apprehension shall endorse the date thereof on the back of the warrant of commitment.

(4) If the accused person who has not appeared as aforesaid is charged with felony, or if the court, in its discretion, refrains from convicting the accused in his absence, the court shall issue a warrant for the apprehension of the accused person and cause him to be brought before the court.

204. (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:Accused to be called upon to plead

Provided that where the charge or complaint contains a count charging the accused person with having been previously convicted of any offence, the procedure prescribed by section two hundred and seventy-five shall, mutatis mutandis, be applied.

(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 order a plea of "not guilty" to be entered for him.

(As amended by No. 50 of 1957)

205. (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.Procedure on plea of "not guilty"

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

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

206. 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 case, and shall forthwith acquit him.

(As amended by No. 2 of 1960)Acquittal

207. (1) At the close of the evidence in support of the charge, if it appears to the court that a case is made out against the accused person sufficiently to require him to make a defence, the court shall again explain the substance of the charge to the accused and shall inform him that he has the right to give evidence on his own behalf and that, if he does so, he will be liable to cross-examination, or to make a statement not on oath from the dock, and shall ask him whether he has any witnesses to examine or other evidence to adduce in his defence, and the court shall then hear the accused and his witnesses and other evidence, if any.The defence

(2) If the accused person states that he has witnesses to call, but that they are not present in court, and the court is satisfied that the absence of such witnesses is not due to any fault or neglect of the accused person, and that there is 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.

(As amended by No. 28 of 1940 and No. 5 of 1962)

208. Unless the only witness to the facts of the case called by the defence is the accused, 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. If an accused person wishes to give evidence or to make an unsworn statement on his own behalf, he shall do so first, and thereafter he or his advocate may examine his witnesses, and, after their cross-examination and re-examination, if any, may sum up his case.

(No. 16 of 1959 as amended by No. 6 of 1972)Defence

209. (1) If the only witness to the facts of the case called by the defence is the accused, or if the accused elects to make an unsworn statement without calling any witnesses, the accused shall forthwith give his evidence or make his unsworn statement, as the case may be.Procedure where defence calls no witnesses other than accused

(2) At the conclusion of such evidence or unsworn statement, the prosecutor shall then have the right to sum up the case against the accused.

(3) The court shall then call on the accused person personally or by his advocate to address the court on his behalf.

(No. 16 of 1959)

210. If the accused person adduces evidence in his defence introducing new matter which the advocate for the prosecution could not by the exercise of reasonable diligence have foreseen, the court may allow the advocate for the prosecution to adduce evidence in reply to contradict the said matter.

(No. 16 of 1959)Evidence reply

211. If the accused person, or any one of several accused persons, adduces any evidence through any witness other than himself, the prosecutor shall be entitled to reply.

(No. 16 of 1959)Prosecutor□s reply

212. If the accused person says that he does not mean to give or adduce evidence or make an unsworn statement, and the court considers that there is evidence that he committed the offence, the advocate for the prosecution may then sum up the case against the accused person, and the court shall then call upon the accused person personally or by his advocate to addres the court on his own behalf.

(No. 16 of 1959)Where the accused person does not give evidence or make unsworn statement

213. (1) Where, at any stage of a trial before the accused is required to make his defence, it appears to the court that the charge is defective either in substance or in form, the court may, save as in section two hundred and six otherwise provided, 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:Variance between charge and evidence and amendment of charge

Provided that, where a charge is altered under this subsection-

(i) the court shall thereupon call upon the accused person to plead to the altered charge;

(ii) 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.

(2) 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.

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

(No. 28 of 1940 as amended by No. 76 of 1965)

214. 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 shall acquit him.

(As amended by No. 28 of 1940)The decision

215. 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 clerk or other officer of the court.Drawing up of conviction or order

216. The production of a copy of an order of acquittal, certified by the clerk or other officer of the court, shall, unless the acquittal has been set aside by a competent court, without other proof, be a bar to any subsequent information or complaint for the same matter against the same accused person.

(As amended by No. 2 of 1960)Order of acquittal bar to further proceedings

217. (1) Where, on the trial by a subordinate court of an offence, a person who is of not less than the apparent age of seventeen years is convicted of the offence, and the court is of opinion that his character and antecedents are such that greater punishment should be inflicted for the offence than that court has power to inflict, or if it appears to the court that the offence is one in respect whereof a mandatory minimum punishment is provided by law which is greater than that court has power to inflict, it may, after recording its reasons in writing on the record of the case, commit such person to the High Court for sentence, instead of dealing with him in any other manner in which it has power to deal with him.Committal to High Court for sentence

(2) For the purposes of this section, the aggregate of consecutive sentences which might be imposed by the subordinate court upon any person in respect of

convictions for other offences joined in the charge of the offence referred to in subsection (1) shall be deemed to be the sentence which could be imposed for such last-mentioned offence.

(No. 26 of 1956 as amended by No. 2 of 1960, 12 of 1973 and 28 of 1979)

218. (1) In any case where a subordinate court commits a person for sentence under the provisions of section two hundred and seventeen, the subordinate court shall forthwith send a copy of the record of the case to the High Court.Procedure on committal for sentence

(2) Any person committed to the High Court for sentence shall be brought before the High Court at the first convenient opportunity.

(3) When any person is brought before the High Court in accordance with the provisions of subsection (2), the High Court shall proceed as if he had been convicted on trial by the High Court.

(As amended by no 26 of 1956, 16 of 1959, 2 of 1960, 5 of 1962 and Act 12 of 1973)

Limitations and Exceptions Relating to Trials before Subordinate Courts

219. Except where a longer time is specially allowed by law, no offence, the maximum punishment for which does not exceed imprisonment for six months and/or a fine of one thousand and five hundred penalty units, 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.

(As amended by Act No. 13 of 1994)Limitation of time for summary trials in certain cases

220. (1) If, before or during the course of a trial before a subordinate court, it appears to the magistrate that the case is one which ought to be tried by the High Court or if, before the commencement of the trial, an application in that behalf is made by a public prosecutor acting on the instructions of the Director of Public Prosecutions that it shall be so tried, the magistrate shall not proceed with the trial but in lieu thereof he shall hold a preliminary inquiry in accordance with the provisions hereinafter contained, and in such case the provisions of section two hundred and thirty-two shall not apply.Procedure in case of offence unsuitable for summary trial

(2) Where, in the course of a trial, the magistrate has stopped the proceedings under the provisions of subsection (1), it shall, in the case of any witness whose statement has already been taken, be sufficient compliance with the provisions of section two hundred and twenty-four if the statement is read over

to the witness and is signed by him and by the magistrate:
Provided that the accused person shall, if he so wishes, be entitled to a further opportunity for cross-examining such witness.
(No. 2 of 1960 as amended by S.I. No. 63 of 1964)
221. (1) When any person is summoned to appear before a subordinate court or is arrested or informed by a police officer that proceedings will be instituted against him, then-Payment by accused persons of fines which may be imposed for minor offences without appearing in court
(a) if the offence in respect of which the summons is issued, the arrest made or the proceedings are to be instituted is punishable by-
(i) a fine not exceeding one thousand and five hundred penalty units or imprisonment in default of payment of such fine; or
(ii) a fine not exceeding one thousand and five hundred penalty units or imprisonment not exceeding six months; or
(iii) a fine not exceeding one thousand and five hundred penalty units or imprisonment not exceeding six months, or both;
or is an offence specified by the Chief Justice, by statutory notice, as been an offence to which the provisions of this section shall apply; and
(b) if such person has been served with a concise statement, in such form as may be prescribed by the Chief Justice, of the facts constituting and relating to the offence in respect of which the summons is issued, the arrest made or the proceedings are to be instituted;
such person may, before appearing in court to answer the charge against him, sign and deliver to the prescribed officer a document, in such form as may be prescribed by the Chief Justice (in this section called an "Admission of Guilt Form") admitting that he is guilty of the offence charged; and
(c) if such person forthwith-
(i) deposits with the prescribed officer the maximum amount of the fine which may be imposed by the court or such lesser sum as may be fixed by such officer; or
(ii) furnishes to the prescribed officer such security, by way of deposit of property, as may be approved by such officer for the payment within one month of any fine which may be imposed by the court;
such person shall not be required to appear in court to answer the charge made against him unless the court, for reasons to be recorded in writing, shall otherwise order. The appearance in court of such person may be enforced by summons, or if necessary, by warrant.
(2) A copy of the aforesaid concise statement of facts and the Admission of

Guilt Form signed and delivered as aforesaid shall forthwith be transmitted by the prescribed officer to the court before which such person would otherwise have been required to appear and may be entered by the court in the court records.

(3) A person who has signed and delivered an Admission of Guilt Form may, at any time before the fixed day, transmit to the clerk of the court-

(a) an intimation in writing purporting to be given by him or on his behalf that he wishes to withdraw the Admission of Guilt Form aforesaid; or

(b) in writing, any submission which he wishes to be brought to the attention of the court with a view to mitigation of sentence.

(4) On receipt of an intimation of withdrawal transmitted under the provisions of subsection (3), the clerk of the court shall forthwith inform the prosecutor thereof.

(5) On the fixed day the court may adjourn the hearing in accordance with the provisions of this Code or may proceed to hear and dispose of the case in open court in accordance with such one of the following procedures as is appropriate:

(a) If the accused person has not withdrawn the Admission of Guilt Form aforesaid, the court shall cause the charge as stated therein and the statement of facts aforesaid and any written submission in mitigation received in accordance with the provisions of subsection (3) to be read out in court and shall then proceed to judgment in accordance with law as if such person had appeared and pleaded guilty:

Provided that the accused person, or his advocate, if no submission in mitigation as aforesaid has been received by the clerk of court, shall be entitled to address the court in mitigation before sentence is passed on him.

(b) If the accused person has withdrawn the admission of guilt and appears in court, the court shall immediately, or after any such adjournment as the court may think fit, try the offence alleged to have been committed, in accordance with the provisions of this Code as if this section had not been passed.

(c) If the accused person has withdrawn his admission of guilt and does not appear in court, the court shall thereupon issue a summons commanding the attendance of the accused person before the court, which shall, on the date stated on the summons, inquire into and try the offence alleged to have been committed, in accordance with the provisions of this Code as if this section had not been passed.

(6) On the trial of an accused person who has withdrawn his admission of guilt, the court shall not permit any evidence to be led or any cross-examination of such accused person in any way relating to his Admission of Guilt Form.

(7) (a) If payment of the fine imposed has not been made in accordance with the terms of the security given under paragraph (c) (ii) of subsection (1), the property so deposited may be sold and the fine paid out of the proceeds of such sale.

(b) If the sum of money deposited under paragraph (c) (i) of subsection (1) or the proceeds of a sale of property effected under paragraph (a) of this subsection be not sufficient to pay the fine imposed the balance of the fine remaining due shall be recovered from the convicted person in the manner provided by section three hundred and eight.

(c) Any balance remaining of the sum of money deposited under paragraph (c) (i) of subsection (1) or of the proceeds of a sale of property effected under paragraph (a) of this subsection after the deduction of the amount of any fine imposed shall be paid over to the accused person, and, in any case where no fine is imposed, the whole of such sum shall be paid over or the property deposited shall be returned to the accused person.

(d) Where an accused person in respect of whom a summons has been issued in accordance with paragraph (c) of subsection (5) is not found and is not served with the summons as aforesaid within twenty-eight days from the date of issue of the summons, the court shall, upon the application of the person having custody of the money or security deposited, order the sum of money deposited under paragraph (c) (i) of subsection (1) or the property deposited by way of security under paragraph (c) (ii) of subsection (1) to be forfeited and, in the case of property deposited as aforesaid, to be sold.

(8) For the purposes of this section, the "prescribed officer" shall be any police officer of or above the rank of Sub-Inspector and "fixed day" means the day stated in the Admission of Guilt Form for the appearance of the accused before the court.

(9) (a) Subject to the provisions of paragraph (b), no punishment other than a fine shall be imposed on any person convicted under this section.

(b) Where an accused person is, under the provisions of this section, convicted of an offence under the Roads and Road Traffic Act, the court may, in addition to any fine imposed, exercise the powers of suspension, cancellation, disqualifying and endorsement conferred upon courts by the said Act.Cap. 464

(c) Any fee paid into court, under paragraph (b), as a fine, in respect of a road traffic offence under the Roads and Road Traffic Act, shall be paid into the general revenues of the Republic.Cap. 464

(10) The provisions of this section shall not apply-

(a) where the accused person is a juvenile within the meaning of the

Juveniles Act; orCap. 53

(b) in respect of such offences or classes of offence as the Chief Justice may specify by statutory notice.

(No. 16 of 1959 as amended by No. 2 of 1960, No. 27 of 1964, No. 6 of 1972, Act No. 13 of 1994 and Act No. 5 of 1997)

PART VII PROVISIONS RELATING TO THE COMMITTAL OF ACCUSED PERSONS FOR TRIAL BEFORE THE HIGH COURT PART VII

PROVISIONS RELATING TO THE COMMITTAL OF ACCUSED PERSONS FOR TRIAL BEFORE THE HIGH COURT

Preliminary Inquiry by Subordinate Courts

222. Any magistrate empowered to hold a subordinate court of the first, second or third class may commit any person for trial to the High Court.Power to commit for trial

223. (1) Whenever any charge has been brought against any person of an offence not triable by a subordinate court, or as to which the High Court has given an order or direction under section ten or eleven, or as to which the subordinate court is of opinion that it is not suitable to be disposed of upon summary trial, a preliminary inquiry shall be held, according to the provisions hereinafter contained, by a subordinate court, locally and otherwise competent.Court to hold preliminary inquiry

(2) Notwithstanding anything to the contrary contained in this Code or any other written law, any person who could have been joined in one charge under section one hundred and twenty-seven B with a person who has been committed to the High Court for trial, but was not so joined, may be joined in an information by the Director of Public Prosecutions-

(a) if such person could not be found before the completion of the preliminary inquiry held under this Part; or

(b) it is discovered after the completion of the preliminary inquiry that such person could have been joined in the charge brought against the person so committed.

(3) A copy of the information referred to in subsection (3) signed by the Director of Public Prosecutions shall be sufficient authority for any subordinate court before which such other person or persons appear or have appeared to discontinue any proceedings in respect of such person and to either admit them to bail or send them to prison for safe-keeping until the trial before the High Court.

(4) Where any person has been joined in an information under subsection (3) the prosecution shall, not less than twenty-one clear days before the date fixed for

trial of the case, furnish to him or to his legal practitioner-

(a) if his co-accused was committed under section two hundred and nine, a copy of the depositions taken in respect of his co-accused together with a copy of the statements of any additional evidence which it is intended to adduce at the trial whether from witnesses who appeared at the preliminary inquiry or from further witnesses;

(b) if his co-accused was committed under section two hundred and thirty-one C, a list of the persons whom it is intended to call as witnesses for the prosecution at the trial and a statement of the evidence of each witness which it is intended to adduce at the trial;

(c) in either of the cases mentioned in paragraph (a) or (b), and if so requested, a translation of the depositions or statements in a language which such person appears to understand:

Provided that the Court may, upon such conditions as it may determine, permit the prosecution to call a witness, whose name does not appear as a deponent or witness, to give evidence.

(As amended by Act No. 6 of 1972)

224. (1) When the accused person charged with an offence referred to in the last preceding section comes before a subordinate court, on summons or warrant or otherwise, the court shall cause the charge to be read over to the accused person, and shall, in his presence, take down in writing, or cause to be so taken down, the statements on oath of those who know the facts and circumstances of the case. Statements of witnesses so taken down in writing are termed depositions.Depositions

(2) The accused person may put questions to each witness produced against him, and the answer of the witness thereto shall form part of such witness□s depositions.

(3) If the accused person does not employ an advocate, the court shall, at the close of the examination of each witness for the prosecution, as the accused person whether he wishes to put any questions to that witness.

(4) The deposition of each witness shall be read over to such witness, and shall be signed by him and by the magistrate holding the inquiry.

225. At any preliminary inquiry under this Part, any document, purporting to be a report under the hand of a medical officer or a Government analyst upon any examination or analysis carried out by him, shall, if it bears his signature, be admitted in evidence, unless the court shall have reason to doubt the genuineness of such signature.How certain documents proved

226. No objection to a charge, summons or warrant for defect in substance or

in form, or for variance between it and the evidence of the prosecution, shall be allowed; but, if any variance appears to the court to be such that the accused person has been thereby deceived or misled, the court may, on the application of the accused person, adjourn the inquiry, and allow any witness to be recalled, and such questions to be put to him as, by reason of the terms of the charge, may have been omitted.Variance between evidence and charge

227. (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 adjourn the inquiry, the court may, from time to time, by warrant, remand the accused for a reasonable time, not exceeding fifteen days at any one time, to some prison or other place of security. Or, if the remand is for not more than three days, the court may, by word of mouth, order the officer or person in whose custody the accused person is, or any other fit officer or person, to continue to keep the accused in his custody, and to bring him up at the time appointed for the commencement or continuance of the inquiry.Remand

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

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

228. (1) If, after examination of the witnesses called on behalf of the prosecution, the court considers that, on the evidence as it stands, there are sufficient grounds for committing the accused for trial, the magistrate shall frame a charge under his hand declaring with what offence or offences the accused is charged and shall read the charge to the accused person and explain the nature thereof to him in simple language and address to him the following words or words to the like effect:

"This is not your trial. You will be tried later on in another court and before another Judge, where all the witnesses you have heard here will be produced and you will be allowed to question them. You will then be able to make any statement you may wish or to give evidence on oath and to call any witnesses on your own behalf. Unless you wish to reserve your defence, which you are at liberty to do, you may now either make a statement not on oath or give evidence on oath, and may call witnesses on your behalf. If you give evidence on oath you will be liable to cross-examination. Anything you may say whether on oath or not will be taken down and may be used in evidence at your trial."Provisions as to taking statement or evidence of accused person

(2) Before the accused person makes any statement in answer to the charge, or gives evidence, as the case may be, the magistrate shall state to him and give him clearly to understand that he has nothing to hope from any promise of favour

and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt, but that whatsoever he then says may be given in evidence on his trial notwithstanding the promise or threat.

(

3) Everything which the accused person says, either by way of statement or evidence, shall be recorded in full and shall be shown or read over to him, and he shall be at liberty to explain or add to anything contained in the record thereof.

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

(No. 28 of 1940)

229. (1) Immediately after complying with the requirements of the preceding section relating to the statement or evidence of the accused person, and whether the accused person has or has not made a statement or given evidence, the court shall ask him whether he desires to call witnesses on his own behalf.Evidence and address in defence

(2) The court shall take the evidence of any witnesses called by the accused person in like manner as in the case of the witnesses for the prosecution, and every such witness, not being merely a witness to the character of the accused person, shall, if the court be of opinion that his evidence is in any way material to the case, be bound by recognizance to appear and give evidence at the trial of such accused person.

(3) If the accused person states that he has witnesses to call, but that they are not present in court, and the court is satisfied that the absence of such witnesses is not due to any fault or neglect of the accused person, and that there is a likelihood that they could, if present, give material evidence on behalf of the accused person, the court may adjourn the inquiry and issue process, or take other steps, to compel the attendance of such witnesses and, on their attendance, shall take their depositions and bind them by recognizance in the same manner as witnesses under subsection (2).

(4) (a) In any preliminary inquiry under this Part the accused person or his advocate shall be at liberty to address the court-

(i) after the examination of the witnesses called on behalf of the prosecution;

(ii) if no witnesses for the defence are to be called, immediately after the statement or evidence of the accused person;

(iii) if the accused person elects-

A. to give evidence or to make a statement and witnesses for the defence are to be called; or

B. not to give evidence or to make a statement, but to call witnesses;

immediately after the evidence of such witnesses.

(b) If the accused person or his advocate addresses the court in accordance with the provisions of sub-paragraph (i) or (iii) of paragraph (a), the prosecution shall have the right of reply.

(5) Where the accused person reserves his defence, or at the conclusion of any statement in answer to the charge, or evidence in defence, as the case may be, the court shall ask him whether he intends to call witnesses at the trial, other than those, if any, whose evidence has been taken under the provisions of this section, and, if so, whether he desires to give their names and addresses so that they may be summoned. The court shall thereupon record the names and addresses of any such witnesses whom he may mention.

(No. 28 of 1940)

230. If, at the close of the case for the prosecution or after hearing any evidence in defence, the court considers that the evidence against the accused person is not sufficient to put him on his trial, the court shall forthwith order him to be discharged as to the particular charge under inquiry; but such discharge shall not be a bar to any subsequent charge in respect of the same facts:Discharge of accused person

Provided always that nothing contained in this section shall prevent the court from either forthwith, or after such adjournment of the inquiry as may seem expedient in the interests of justice, proceeding to investigate any other charge upon which the accused person may have been summoned or otherwise brought before it, or which, in the course of the charge so dismissed as aforesaid, it may appear that the accused person has committed.

(No. 28 of 1940)

231. (1) If the court considers the evidence sufficient to put the accused person on his trial, the court shall commit him for trial to the High Court and, except in the case of a corporation, shall, until the trial, either admit him to bail or send him to prison for safe-keeping. The warrant of such first-named court shall be sufficient authority to the officer in charge of any prison

appointed for the custody of prisoners committed for trial, although out of the jurisdiction of such court.Committal for trial

(2) The order of committal shall state that such person is committed for trial to a Sessions of the High Court to be held in the Province in which such subordinate court is situate.

(As amended by No. 76 of 1965 and No. 38 of 1969)

232. If, at the close of or during the inquiry, it shall appear to the subordinate court that the offence is of such a nature that it may suitably be dealt with under the powers possessed by the court, the court may, subject to the provisions of Part VI, hear and finally determine the matter, and either convict the accused person or dismiss the charge:Summary adjudication

Provided that, in every such case, the accused shall be entitled to have recalled for cross-examination all witnesses for the prosecution whom he has not already cross-examined.

233. (1) A subordinate court conducting a preliminary inquiry shall bind by recognizance, with or without surety or sureties, as it may deem requisite, the complainant and every witness, to appear in the event of the accused person being committed for trial before the High Court, at such trial to give evidence, and also to appear, if required, at any further examination concerning the charge which may be held by direction of the Director of Public Prosecutions.Complainant and witnesses to be bound over

(2) A recognizance under this section shall not be estreated unless the High Court is satisfied that the person bound has been informed of the date of the Sessions in which the accused person comes before the High Court for trial.

(No. 5 of 1962 as amended by S.I. No. 63 of 1964
and No. 38 of 1969)

234. If a person refuses to enter into the recognizance referred to in the last preceding section, the court may commit him to prison or into the custody of any officer of the court there to remain until after the trial, unless, in the meantime, he enters into a recognizance. But, if afterwards, from want of sufficient evidence or other cause, the accused is discharged, the court shall order that the person imprisoned for so refusing be also discharged.Refusal to be bound over

235. A person who has been committed for trial before the High Court shall be entitled, at any time before the trial, to have a copy of the depositions, on payment of a reasonable sum, not exceeding five ngwee for every hundred words, or, if the court thinks fit, without payment. The court shall, at the time of committing him for trial, inform the accused person of the effect of this

provision.Accused person entitled to copy of depositions

236. (1) Where any person, charged before a subordinate court with an offence triable upon information before the High Court, is committed for trial, and it appears to such subordinate court, after taking into account anything which may be said with reference thereto by the accused or the prosecutor, that the attendance at the trial of any witness who has been examined before it is unnecessary, by reason of anything contained in any statement by the accused person, or of the evidence of the witness being merely of a formal nature, the subordinate court shall, if the witness has not already been bound over, bind him over to attend the trial conditionally upon notice given to him and not otherwise, or shall, if the witness has already been bound over, direct that he shall be treated as having been bound over to attend only conditionally as aforesaid, and shall transmit to the High Court a statement in writing of the names, addresses and occupations of the witnesses who are, or who are to be treated as having been, bound over to attend the trial conditionally.Binding over of witnesses conditionally

(2) Where a witness has been, or is to be treated as having been, bound over conditionally to attend the trial, the Director of Public Prosecutions or the person committed for trial may give notice, at any time before the opening of the Sessions of the High Court, to the committing subordinate court, and, at any time thereafter, to the Registrar, that he desires the witness to attend at the trial, and any such court or Registrar to whom any such notice is given shall forthwith notify the witness that he is required so to attend in pursuance of his recognizance. The subordinate court shall, on committing the accused person for trial, inform him of his right to require the attendance at the trial of any such witness as aforesaid, and of the steps which he must take for the purpose of enforcing such attendance.

(3) Any documents or articles produced in evidence before the subordinate court by any witness whose attendance at the trial is stated to be unnecessary, in accordance with the provisions of this section, and marked as exhibits shall, unless, in any particular case, the subordinate court otherwise orders, be retained by the subordinate court and forwarded with the depositions to the Registrar.

(As amended by No. 28 of 1940 and S.I. No. 63 of 1964)

Preservation of Testimony in Certain Cases

237. Whenever it appears to any magistrate that any person dangerously ill or hurt and not likely to recover is able and willing to give material evidence relating to any offence triable by the High Court, and it shall not be

practicable to take the deposition, in accordance with the provisions of this Code, of the person so ill or hurt, such magistrate may take in and shall subscribe the same, and certify that it contains accurately the whole of the statement made by such person, and shall add a statement of his reason for taking the same, and of the date and place when and where the same was taken, and shall preserve such statement and file it for record.Taking the depositions of persons dangerously ill

238. If the statement relates or is expected to relate to an offence for which any person is under a charge or committal for trial, reasonable notice of the intention to take the same shall be given to the prosecutor and the accused person, and, if the accused person is in custody, he may, and shall, if he so requests, be brought by the person in whose charge he is, under an order in writing of the magistrate, to the place where the statement is to be taken.

(As amended by No. 24 of 1950)Notice to be given

239. If the statement relates to an offence for which any person is then or subsequently committed for trial, it shall be transmitted to the Registrar, and a copy thereof shall be transmitted to the Director of Public Prosecutions

(As amended by S.I. No. 63 of 1964)Transmission of statement

240. Such statement, so taken, may afterwards be used in evidence on the trial of any person accused of an offence to which the same relates, if the person who made the statement be dead, or if the court is satisfied that, for any sufficient cause, his attendance cannot be procured, and if reasonable notice of the intention to take such statement was given to the person (whether prosecutor or accused person) against whom it is proposed to be read in evidence, and he had or might have had, if he had chosen to be present, full opportunity of cross-examining the person making the same.

(As amended by No.24 of 1950)Use of statement in evidence

Proceedings after Committal for Trial

241. In the event of a committal for trial, the written charge, the depositions, the statement of the accused person, the recognizances of the complainant and of the witnesses, the recognizances of bail (if any) and all documents or things which have been tendered or put in evidence shall be transmitted without delay by the committing court to the Registrar, and an authenticated copy of the depositions and statement aforesaid shall be also transmitted to the Director of Public Prosecutions.

(As amended by S.I. No. 63 of 1964)Transmission of records to High Court and Director of Public Prosecutions

242. If, after receipt of the authenticated copy of the depostions and

statement provided for by the last preceding section, and before the trial before the High Court, the Director of Public Prosecutions shall be of opinion that further investigation is required before such trial, it shall be lawful for the Director of Public Prosecutions to direct that the original depositions be remitted to the court which committed the accused person for trial, and such court may, thereupon, reopen the case and deal with it, in all respects, as if such person had not been committed for trial as aforesaid; and, if the case be one which may suitably be dealt with under the powers possessed by such court, it may, if thought expedient by the court, or if the Director of Public Prosecutions so directs, be so tried and determined accordingly.

(As amended by S.I. No. 63 of 1964)Power of Director of Public Prosecutions to direct further investigation

243. If, after receipt of the authenticated copy of the depositions and statement as aforesaid and before the trial before the High Court, the Director of Public Prosecutions shall be of opinion that there is, in any case committed for trial, any material or necessary witness for the prosecution or the defence who has not been bound over to give evidence on the trial of the case, the Director of Public Prosecutions may require the subordinate court which committed the accused person for trial to take the depositions of such witness and compel his attendance either by summons or by warrant as herein before provided.

(No. 28 of 1940 as amended by S.I. No. 63 of 1964.)Powers of Director of Public Prosecutions as to additional witnesses

244. (1) If, before the trial before the High Court, the Director of Public Prosecutions is of opinion, upon the record of the committal proceedings received by him, that the case is one which may suitably be tried by a subordinate court, he may cause the depositions to be returned to the court which committed the accused, and thereupon the case shall be tried and determined in the same manner as if such person had not been committed for trial.Return of depositions with a view to summary trial

(2) Where depositions are returned under the provisions of subsection (1), the Director of Public Prosecutions may direct that the person concerned shall be tried on the charge in respect of which he was committed, if such charge is within the competence of the subordinate court concerned, or upon such other charge within such competence as the Director of Public Prosecutions may specify.

(No. 28 of 1940 as amended by No. 23 of 1960
and S.I. No. 63 of 1964)

245. (1) If, after the receipt of the authenticated copy of the depositions as aforesaid, the Director of Public Prosecutions shall be of the opinion that the case is one which should be tried upon information before the High Court, an information shall be drawn up in accordance with the provisions of this Code, and, when signed by the Director of Public Prosecutions, shall be filed in the registry of the High Court.Filing of information

(2) In such information the Director of Public Prosecutions may charge the accused person with any offences which, in his opinion, are disclosed by the depositions either in addition to, or in substitution for, the offences upon which the accused person has been committed for trial.

(3) Notwithstanding anything to the contrary contained in this Code or any other written law, any person who could have been joined in one charge under section one hundred and thirty-six with a person who has been committed to the High Court for trial, but was not so joined, may be joined in an information by the Director of Public Prosecutions-

(a) if such person could not be found before the completion of the preliminary inquiry held under this Part; or

(b) if it is discovered after the completion of the preliminary inquiry that such person could have been joined in the charge brought against the person so committed.

(4) A copy of the information referred to in subsection (3) signed by the Director of Public Prosecutions shall be sufficient authority for any subordinate court before which such other person or persons appear or have appeared to discontinue any proceedings in respect of such persons and either to admit them to bail or send them to prison for safe-keeping until the trial before the High Court.

(

5) Where any person has been joined in an information under subsection (3) the prosecution shall, not less than twenty-one clear days before the date fixed for trial of the case, furnish to him or to his legal practitioner-

(a) if his co-accused was committed under section two hundred and thirty-one, a copy of the depositions taken in respect of his co-accused together with a copy of the statements of any additional evidence which it is intended to adduce at the trial, whether from witnesses who appeared at the preliminary inquiry or from further witnesses;

(b) if his co-accused was committed under section two hundred and fifty-five, a list of the persons whom it is intended to call as witnesses for the prosecution at the trial and a statement of the evidence of each witness which

it is intended to adduce at the trial;
(c) in either of the cases mentioned in paragraph (a) or (b), and if so requested, a translation of the depositions or statements in a language which such person appears to understand:
Provided that the High Court may, upon such conditions as it may determine, permit the prosecution to call a witness, whose name does not appear as a deponent or witness, to give evidence.
(As amended by No. 28 of 1940,
S.I. No. 63 of 1964 and No. 6 of 1972)
246. (1) The period within which the Director of Public Prosecutions may file an information under the provisions of this Code shall be one month from the date of receipt by him of the authenticated copy of the depositions and other documents referred to in section two hundred and forty-one.Time in which information to be filed
(2) The Director of Public Prosecutions shall inform the High Court and the person committed of the date of receipt aforesaid.
(3) If the Director of Public Prosecutions has not within the period of one month aforesaid exercised his powers under section two hundred and forty-two or two hundred and forty-four or filed an information, the High Court may of its own motion, and shall upon the application of the person committed, discharge such person unless the High Court sees fit to extend the time for filing an information.
(4) Where the High Court has extended the period for filing an information and the Director of Public Prosecutions does not file an information within the period so extended, the High Court may of its own motion, and shall upon the application of the person committed, discharge such person.
(No. 38 of 1969)
247. The Registrar or the Clerk of Sessions appointed under subsection (3) of section nineteen of the High Court Act shall endorse on or annex to every information filed as aforesaid, and to every copy thereof delivered to the officer of the court or police officer for service thereof, a notice of trial, which notice shall specify the particular Sessions of the High Court at which the accused person is to be tried on the said information, and shall be in the following form, or as near thereto as may be:Notice of trial.
Cap. 27
"A.B.
Take notice that you will be tried on the information whereof this is a true copy at the Sessions of the High Court to be held at ..... on the

..... day of ..... 19 ....."

(As amended by No. 5 of 1962)

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

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

(As amended by S.I. No. 63 of 1964)

249. The officer serving the copy or copies of the information and notice or notices of trial shall forthwith make to the Registrar a return of the mode of service thereof.Return of service

250. (1) It shall be lawful for the High Court, upon the application of the prosecutor or the accused person if it considers that there is sufficient cause for the delay, to postpone the trial of any accused person to the next Sessions of the court held in the district, or at some other convenient place, or to a subsequent Sessions, and to respite the recognizances of the complainant and witnesses, in which case the respited recognizances shall have the same force and effect as fresh recognizances to prosecute and give evidence at such subsequent Sessions would have had.Postponement of trial

(2) The High Court may give such directions for the amendment of the information and the service of any notices which the court may deem necessary in

consequence of any order made under subsection (1).

(As amended by No. 28 of 1940)

Rules as to Informations by the Director of Public Prosecutions

251. All informations drawn up in pursuance of section two hundred and forty-five shall be in the name of and (subject to the provisions of section eighty-two) signed by the Director of Public Prosecutions.

(As amended by S.I. No. 63 of 1964)Informations by Director of Public Prosecutions

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

In the High Court for Zambia

The day of 19

At the Sessions holden at on the day of , 19

, the Court is informed by the Director of Public Prosecutions on behalf of the People that A.B. is charged with the following offence (or offences).

(As amended by S.I. No. 63 of 1964)

PART VIII SUMMARY COMMITTAL PROCEDURE FOR TRIAL OF ACCUSED PERSON BEFORE THE HIGH COURT PART VIII

(No. 27 of 1964)

SUMMARY COMMITTAL PROCEDURE FOR TRIAL OF ACCUSED PERSON BEFORE THE HIGH COURT

253. In this Part, unless the context otherwise requires-Interpretation

"summary procedure case" means any case certified under the provisions of this Part as a proper case for trial before the High Court after summary committal procedure.

254. Notwithstanding anything contained in Part VII, in any case where a person is charged with an offence not triable by a subordinate court, the Director of Public Prosecutions may issue a certificate in writing that the case is a proper one for trial by the High Court as a summary procedure case and such case shall, upon production to a subordinate court of such certificate, be dealt with by the subordinate court in accordance with the provisions of this Part.

(As amended by S.I. No. 63 of 1964)Certifying of case as a summary procedure case

255. No such preliminary inquiry as is referred to in Part VII shall be held in respect of any case in which the Director of Public Prosecutions has issued and the prosecutor has produced to a subordinate court a certificate issued under the provisions of section two hundred and fifty-four, but the subordinate

court before whom the accused person is brought shall, upon production of such certificate, and whether or not a preliminary inquiry has already been commenced, forthwith commit the accused person for trial before the High Court upon such charge or charges as may be designated in the certificate.

(As amended by S.I. No. 63 of 1964)No preliminary inquiry in summary procedure case

256. Upon the committal of the accused person for trial in a summary procedure case, the record of the proceedings, including, in any case where a preliminary inquiry has been commenced, any depositions taken and any exhibits produced, shall be transmitted without delay by the committing court to the Registrar, and an authenticated copy of the record shall also be transmitted to the Director of Public Prosecutions.

(As amended by S.I. No. 63 of 1964)Record to be forwarded

257. (1) The Director of Public Prosecutions may, after receipt of the authenticated copy of the record in a summary procedure case as aforesaid, draw up and sign an information in accordance with the provisions of this Code, which shall be filed in the Registry of the High Court.Filing of an information

(2) In such information the Director of Public Prosecutions may alter or redraft the charge or charges against the accused person or frame an additional charge or charges against him.

(3) The provisions of sections two hundred and forty-seven to two hundred and fifty-two inclusive, shall apply mutatis mutandis to an information filed under the provisions of this section as they do to an information filed under the provisions of section two hundred and forty-five.

(As amended by S.I. No. 63 of 1964)

258. In every summary procedure case in which an information has been filed under the provisions of section two hundred and fifty-seven, the prosecution shall, not less than fourteen clear days before the date fixed for the trial of the case, furnish to the accused person or his legal practitioner, if any, and to the Registrar a list of the persons whom it is intended to call as witnesses for the prosecution at the trial and a statement of the evidence of each witness which it is intended to adduce at the trial:Statements, etc., to be supplied to the accused

Provided that the Court may, upon such conditions as it may determine, permit the prosecution to call a witness whose name does not appear on the said list, to give evidence.

(As amended by Act 30 of 1976)

259. (1) The affidavit of a medical officer or other medical witness, attested

before a magistrate, may be read as evidence although the deponent is not called as a witness.Affidavit of medical witness may be read as evidence

(2) The Court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his affidavit.

PART IX PROCEDURE IN TRIALS BEFORE THE HIGH COURT PART IX PROCEDURE IN TRIALS BEFORE THE HIGH COURT

Practice and Mode of Trial

260. The practice of the High Court, in its criminal jurisdiction, shall be assimilated, as nearly as circumstances will admit, to the practice of Her Britannic Majesty□s High Court of Justice in its criminal jurisdiction and of Courts of Oyer and Terminer and General Gaol Delivery in England.

(As amended by S.I. No. 63 of 1964)Practice of High Court in its criminal jurisdiction

261. All trials before the High Court shall be held before a Judge sitting alone, or before a Judge with the aid of assessors (if the presiding Judge so decides), the number of whom shall be two or more as the court thinks fit.

List of AssessorsTrials before High Court

262. Magistrates shall, before the 1st March in each year, and subject to such rules as the Chief Justice may, from time to time, prescribe, prepare lists of suitable persons in their districts liable to serve as assessors.

(As amended by No. 2 of 1960 and S.I. No. 63 of 1964)Preparation of list of assessors

263. Subject to the exemptions in the next succeeding section contained, all male persons between the ages of twenty-one and sixty shall be liable to serve as assessors:Liability to serve

Provided that the Chief Justice may, from time to time, make rules regulating the area within which a person may be summoned to serve.

(As amended by No. 2 of 1960)

264. The following persons are exempt from liability to serve as assessors, save with their own consent, namely:

(a) all Government officers;

(b) Members of the National Assembly;

(c) persons actively discharging the duties of priests or ministers of their respective religions:

(d) physicians, surgeons, dentists and apothecaries in actual practice;

(e) legal practitioners in actual practice;

(f) officers and others in the Defence Force on full pay;

(g) persons disabled by mental or bodily infirmity;

(h) persons exempted by the High Court.

(As amended by G.N. No. 303 of 1964
and S.I. No. 63 of 1964)Exemptions

265. (1) When the lists aforesaid have been prepared, extracts therefrom containing the names of the persons liable to serve as assessors, residing in each district, shall be posted for public inspection at the Court House of such district.Publication of list

(2) To every such extract shall be subjoined a notice stating that objections to the list will be heard and determined by a magistrate of the district, at a time and place to be mentioned in such notice.

266. (1) Every magistrate shall, at the time and place mentioned in the notice relating to his district, 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 his judgment, to serve as an assessor, or who may establish his right to any exemption from service given by section two hundred and sixty-four, and insert the name of any person omitted from the list whom he deems qualified for such service.Revision of list

(2) A copy of the revised list shall be signed by the magistrate and sent to the Registrar.

(3) Any order of the magistrate as aforesaid, in preparing and revising the list, shall be final.

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

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

(6) If any person suitable to serve as an assessor shall be found in any district after the list has been settled, his name may be added to the list by a magistrate of that district, and he shall be liable to serve.

Attendance of Assessors

267. (1) The Registrar shall ordinarily, seven days at least before the day which from time to time may be fixed for holding a Sessions of the High Court, send a letter to a magistrate of the district in which such Sessions are to be held, requesting him to summon as many persons as seem to the Judge who is to preside at the Sessions to be needed at the said Sessions.Summoning assessors

(2) The magistrate shall, thereupon, summon such number of assessors, excluding those who have served within six months, unless the number cannot be made up without them.

268. Every summons to an assessor shall be in writing, and shall require his

attendance at a time and place to be therein specified.Form of summons

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

270. (1) At each Sessions, the Registrar shall cause to be made a list of the names of those who have attended as assessors at such Sessions, and such list shall be kept with the list of the assessors as revised under section two hundred and sixty-six.List of assessors attending

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

(As amended by No. 5 of 1962)

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

(2) Such punishment may be inflicted summarily, on an order to that effect, by the High Court, and any fine imposed shall be recoverable by distress and sale of the real and personal property of the person fined, by warrant of distress to be signed by the Registrar; and such warrant shall be issued by the Registrar, without further order of the High Court, if the fine is not paid within six days of its having come to the knowledge of the person fined, by notice or otherwise, that the fine has been imposed:

Provided that it shall be lawful for the High Court, if it shall see fit, to remit any fine, or any portion of such fine, so imposed.

(3) The Registrar shall send notice of the imposition of such fine to any person so fined in his absence, requiring him to pay the fine or to show cause before the High Court, within four days, for not paying the same.

(4) In default of recovery of the fine by distress and sale, the person fined may, by order of the High Court, be imprisoned for a term of twenty-one days, if the fine be not sooner paid.

Arraignment

272. 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.Pleading to information

273. (1) Every objection to any 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.Orders for amendment of information, separate trial, and postponement of trial

(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. All such amendments shall be made upon such terms as to the court shall seem just.

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

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

(5) 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 Code, the court shall make such order as to the postponement of the trial as appears necessary.

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

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

(b) the procedure on the separate trial of a count shall be the same, in all respects, as if the count had been found in a separate information, and the

procedure on the postponed trial shall be the same, in all respects (if the assessors, if any, have been discharged), as if the trial had not commerced; and
(c) the court may make such order as to admitting the accused to bail, and as to the enlargement of recognizances and otherwise, as the court thinks fit
(7) Any power of the court under this section shall be in addition to, and not in derogation of, any other power of the court for the same or similar purposes.
274. If an information does not state, and cannot, by any amendment authorised by the last preceding section, be made to state, any offence of which the accused has had notice, it shall be quashed, either on a motion made before the accused pleads, or on a motion made in arrest of judgment. A written statement of every such motion shall be delivered to the Registrar or other officer of the court by or on behalf of the accused, and shall be entered upon the record.Quashing of information
275. 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 Judge may proceed to pass sentence on him accordingly; but, if he denies that he has been so previously convicted, or refuses to or does not answer such question, the court shall then hear evidence concerning such previous conviction:Procedure in case of previous convictions
Provided, however, that if, upon the trial of any person for any such subsequent offence, such person shall give evidence of his own good character, it shall be lawful for the advocate for the prosecution, in answer thereto, to give evidence of the conviction of such person for the previous offence or offences before he is convicted of such subsequent offence, and the court shall inquire concerning such previous conviction or convictions at the same time that it inquires concerning such subsequent offence.
276. Every accused person, upon being arraigned upon any information, by pleading generally thereto the plea of "not guilty", shall, without further form, be deemed to have put himself upon his trial.Plea of "not guilty"

277. (1) Any accused person against whom an information is filed may
plead-Plea of autrefois acquit and autrefois convict
(a) that he has been previously convicted or acquitted, as the case may be,
of the same offence; or
(b) that he has been granted a pardon for his offence.
(2) If either of such pleas are pleaded in any case and denied to be true in
fact, the court shall try whether such plea is true in fact or not.
(3) If the court holds that the facts alleged by the accused do not prove the
plea, or if it finds that it is false in fact, the accused shall be required to
plead to the information.
(As amended by G.N. No. 303 of 1964)
278. If an accused person, being arraigned upon any information, stands mute
of malice, the court, if it thinks fit, shall order the Registrar or other
officer of the court to enter a plea of "not guilty" on behalf of such accused
person, and the plea so entered shall have the same force and effect as if such
accused person had actually pleaded the same.
(No. 11 of 1963)Refusal to plead
279. If the accused pleads "guilty", the plea shall be recorded and he may be
convicted thereon.Plea of "guilty"
280. If the accused pleads "not guilty", or if a plea of "not guilty" is
entered in accordance with the provisions of section two hundred and
seventy-eight, the court shall proceed to choose assessors, as hereinafter
directed (if the trial is to be held with assessors), and to try the
case:Proceedings after plea of "not guilty"
Provided that the same assessors may aid in the trial of as many accused persons
successively, as the court thinks fit.
281. (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.Power to postpone or adjourn proceedings
(2) During a remand the court may, at any time, order the accused to be brought
before it.
(3) The court may, on a remand, admit the accused to bail.
Selection of Assessors
282. When a trial is to be held with the aid of assessors, the court shall
select two or more from the list of those summoned to serve as assessors at the

Sessions, as it deems fit.Selection of assessors

283. (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 assessor or assessors.Absence of an assessor

(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.

284. 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.

Case for the ProsecutionAssessors to attend at adjourned sittings

285. When the assessors have been chosen (if the trial is before a Judge with the aid of assessors), the advocate for the prosecution shall open the case against the accused person, and shall call witnesses and adduce evidence in support of the charge.Opening of case for prosecution

286. No witness who has not given evidence at the preliminary inquiry shall be called by the prosecution at any trial, unless the accused person has received reasonable notice in writing of the intention to call such witness. The notice must state the witness□s name and address and the substance of the evidence which he intends to give. The court shall determine what notice is reasonable, regard being had to the time when and the circumstances under which the prosecution became acquainted with the nature of the witness□s evidence and determined to call him as a witness. No such notice need be given if the prosecution first became aware of the evidence which the witness could give on the day on which he is called.Additional witnesses for prosecution

287. 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.Cross-examination of witnesses for prosecution

288. (1) Where any person has been committed for trial for any offence, the deposition of any person taken before the commiting subordinate court may, if the conditions set out in subsection (2) are satisfied, without further proof, be read as evidence on the trial of that person, whether for that offence or for any other offence arising out of the same transaction or set of circumstances as that offence.Depositions may be read as evidence in certain cases

(2) The conditions referred to in subsection (1) are the following:

(a) (i) The deposition must be the deposition either on a witness whose attendance at the trial is stated to be unnecessary in accordance with the provisions of section two hundred and thirty-six, of of a witness who is proved at the trial by oath of a credible witness to be absent from Zambia, or dead or insane, or so ill as not to be able to travel, or to be kept out of the way by means of the procurement of the accused or on his behalf; or

(ii) the deposition must be the deposition of a witness who cannot be found or is incapable of giving evidence, or of a witness whose presence cannot be obtained without an amount of delay or expense which, in the circumstances of the case, the court considers unreasonable:

Provided that, before any such deposition as is referred to in this sub-paragraph is read, the court shall satisfy itself that the reading of such deposition will not unduly prejudice the accused.

(b) It must be proved at the trial, either by a certificate purporting to be signed by the magistrate of the subordinate court before whom the deposition purports to have been taken, or by the clerk to such court, or by the oath of a credible witness, that the deposition was taken in the presence of the accused, and that the accused or his advocate had full opportunity of cross-examining the witness.

(c) The deposition must purport to be signed by the magistrate of the subordinate court before whom it purports to have been taken:

Provided that the provisions of this subsection shall not have effect in any case in which it is proved-

(i) that the deposition, or, where the proof required by paragraph (b) is given by means of a certificate, that the certificate was not in fact signed by the magistrate by whom it purports to have been signed; or

(ii) where the deposition is that of a witness whose attendance at the trial is stated to be unnecessary as aforesaid, that the witness has been duly notified that he is required to attend the trial.

(As amended by No. 28 of 1940)

289. (1) The deposition of a medical officer or other medical witness, taken and attested by a magistrate in the presence of the accused person, may be read as evidence, although the deponent is not called as a witness.Deposition of medical witness may be read as evidence

(2) The court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.

(No. 28 of 1940)

290. Any statement or evidence of the accused person duly certified by the

committing magistrate in the manner provided by subsection (4) of section two hundred and twenty-eight may, whether signed by the accused person or not, be given in evidence without further proof thereof, unless it is proved that the magistrate purporting to certify the same did not in fact certify it.

(No. 28 of 1940)Statement or evidence of accused

291. (1) When the evidence of the witnesses for the prosecution has been concluded, and the statement or evidence (if any) of the accused person before the committing court has been given in evidence, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence shall, after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit, record a finding.Close of case for prosecution

(2) When the evidence of the witnesses for the prosecution has been concluded, and the statement or evidence (if any) of the accused person before the committing court has been given in evidence, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person, who is not represented by an advocate, of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself. Upon being informed thereof, the court shall record the same. If such accused person says that he does not mean to give evidence or make an unsworn statement, or to adduce evidence, then the advocate for the prosecution may sum up the case against such accused person. If such accused person says that he means to give evidence or make an unsworn statement, or to adduce evidence, the court shall call upon such accused person to enter upon his defence.

(No. 28 of 1940 as amended by No. 50 of 1957)

Case for the Defence

292. Unless the only witness to the facts of the case called by the defence is the accused, 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. The accused person may then give evidence on his own behalf, and he or his advocate may examine his witnesses, and, after their cross-examination and re-examination (if any), may sum up his case.The defence

293. The accused person shall be allowed to examine any witness not

previously bound over to give evidence at the trial, if such witness is in attendance, but he shall not be entitled, as of right, to have any witness summoned, other than the witnesses whom he named to the subordinate court committing him for trial, as witnesses whom he desired to be summoned.Additional witnesses for defence

294. If the accused person adduces evidence in his defence introducing new matter which the advocate for the prosecution could not by the exercise of reasonable diligence have foreseen, the court may allow the advocate for the prosecution to adduce evidence in reply to contradict the said matter.

(No. 28 of 1940)Evidence in reply

295. If the accused person, or any one of several accused persons, adduces any evidence through any witness other than himself, the prosecutor shall be entitled to reply.

(As amended by No. 16 of 1959)Prosecutor□s reply

296. 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 may 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.

(As amended by No. 50 of 1957)Where accused person does not give evidence

Close of Hearing

297. (1) When the case on both sides is closed, the Judge may sum up the evidence for the prosecution and the defence, and shall (if the trial is being held with the aid of assessors) then require each of the assessors to state orally his opinion whether the accused is guilty or not, and shall record such opinion.Delivery of opinions by assessors

(2) The Judge shall then give judgment, but, in so doing, 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.

(As amended by No. 28 of 1940)

Passing Sentence

298. (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 is willing and has power to make, state any offence which the court has power to try.Motion in arrest of judgment

(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.

299. 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 Sessions.Sentence

300. 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.Power to reserve decision on question raised at trial

301. No judgment shall 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, nor for any informality in swearing the witnesses or any of them.Objections cured by judgment

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

PART X SENTENCES AND THEIR EXECUTION PART X

SENTENCES AND THEIR EXECUTION

Sentence of Death

303. When any person is sentenced to death, the sentence shall direct that he shall be hanged by the neck till he is dead.Sentence of death

304. A certificate, under the hand of the Registrar or the clerk of the court, as the case may be, that sentence of death has been passed, and naming the person condemned, shall be sufficient authority for the detention of such person.Authority for detention

305. (1) As soon as conveniently may be after sentence of death has been pronounced by the High Court, if no appeal from the sentence is preferred, or if such appeal is preferred and dismissed, then as soon as conveniently may be thereafter, 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 he may think fit to

make.Record and report to be sent to President

(2) In any case where a sentence of death passed by a subordinate court shall be confirmed by the High Court, such subordinate court shall, on receipt of the confirmation of such sentence, inform the convicted person that he may appeal to the Court of Appeal as if he had been convicted on a trial before the High Court, and, if he wishes to appeal, inform him that his appeal must be preferred within fourteen days from the date on which he is given such information; and where no appeal from such confirmation is preferred or, if preferred, is dismissed by the Court of Appeal, then as soon as conveniently may be after the expiration of the period of fourteen days as aforesaid or after the receipt of the order of the Court of Appeal dismissing the appeal, as the case may be, the Judge confirming the sentence shall transmit the record of the case or a certified copy thereof to the President with a report in writing signed by him containing any recommendation or observations on the case he may think fit to make.

(3) After receiving the advice of the Advisory Committee on the Prerogative of Mercy on the case, in accordance with the provisions of the Constitution, the President shall communicate to the said Judge, or his successor in office, the terms of any decision to which he may come thereon, and such Judge shall cause the tenor and substance thereof to be entered in the records of the court.Cap. 1

(4) The President shall issue a death warrant, or an order for the sentence of death to be commuted, or a pardon, under his hand and the seal of the Republic, to give effect to the said decision. If the sentence of death is to be carried out, the warrant shall state the place where and the time when execution is to be had, and shall give directions as to the place of burial of the body of the person executed. If the sentence is commuted for any other punishment, the order shall specify that punishment. If the person sentenced is pardoned, the pardon shall state whether it is free, or to what conditions (if any) it is subject:

Provided that the warrant may direct that the execution shall take place at such time and at such place, and that the body of the person executed shall be buried or cremated at such place, as shall be appointed by some officer specified in the warrant.

(5) The warrant or order or pardon of the President shall be sufficient authority in law to all persons to whom the same is directed to execute the sentence of death or other punishment awarded, and to carry out the directions therein given in accordance with the terms thereof.

(As amended by No. 14 of 1938, G.N. No. 303 of 1964 and S.I. No. 63 of 1964)

306. (1) Where a woman convicted of an offence punishable with death alleges that she is pregnant, or where the court before which 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.Procedure where woman convicted of capital offence alleges she is pregnant

(2) The question whether such 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 prosecution, and the court shall find that the woman is not pregnant unless it is proved affirmatively to its satisfaction that she is pregnant.

(3) Where, on proceedings under this section, a subordinate court finds that the woman in question is not pregnant, the woman may appeal to the High Court, and the High Court, if satisfied that for any reason the finding should be set aside, shall quash the sentence passed on her and, in lieu thereof, pass on her a sentence of imprisonment for life.

(As amended by No. 28 of 1940)

Other Sentences

307. A warrant under the hand of the Judge or magistrate by whom any person shall be sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within Zambia, shall be issued by the sentencing Judge or magistrate, and shall be full authority to the officer in charge of such prison and to all other persons for carrying into effect the sentence described in such warrant, not being a sentence of death.

(As amended by No. 28 of 1940 and No. 16 of 1959)Warrant in case of sentence of imprisonment

308. (1) When a court orders money to be paid by an accused person or by a prosecutor or complainant for fine, penalty, compensation, costs, expenses, or otherwise, the money may be levied on the movable and immovable property of the person ordered to pay the same, by distress and sale under warrant. If he shows sufficient movable property to satisfy the order, his immovable property shall not be sold.Warrant for levy of fine, etc.

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

(3) A warrant under this section may be executed within the local limits of 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

endorsed by a magistrate holding a subordinate court of the first or second class within the local limits of whose jurisdiction such property was found.

309. (1) Any person claiming to be entitled to have a legal or equitable interest in the whole or part of any property attached in execution of a warrant issued under section three hundred and eight may, at any time prior to the receipt by the court of the proceeds of sale of such property, give notice in writing to the court of his objection to the attachment of such property. Such notice shall set out shortly the nature of the claim which such person (hereinafter in this section called "the objector") makes to the whole or part of the property attached, and shall certify the value of the property claimed by him. Such value shall be deposed to on affidavit which shall be filed with the notice.Objections to attachment

(2) Upon receipt of a valid notice given under subsection (1), the court shall, by an order in writing addressed to the officer having the execution of the warrant, direct a stay of the execution proceedings.

(3) Upon the issue of an order under subsection (2), the court shall, by notice in writing, direct the objector to appear before such court and establish his claim upon a date to be specified in the notice.

(4) A notice shall be served upon the person whose property was, by the warrant issued under section three hundred and eight, directed to be attached and, unless the property is to be applied to the payment of a fine, upon the person entitled to the proceeds of the sale of such property. Such notice shall specify the time and place fixed for the appearance of the objector and shall direct the person upon whom the notice is served to appear before the court at the same time and place if he wishes to be heard upon the hearing of the objection.

(5) Upon the date fixed for the hearing of the objection, the court shall investigate the claim and, for such purpose, may hear any evidence which the objector may give or adduce and any evidence given or adduced by any person served with a notice in accordance with subsection (4).

(6) If, upon investigation of the claim, the court is satisfied that the property attached was not, when attached, in the possession of the person ordered to pay the money or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the person ordered to pay the money at such time, it was so in his possession not on his own account or as his own property but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.

(7) If, upon the date fixed for his appearance, the objector fails to appear, or if, upon investigation of the claim in accordance with subsection (5), the court is of opinion that the objector has failed to establish his claim, the court shall order the attachment and execution to proceed and shall make such order as to costs as it deems proper.

(8) Nothing in this section shall be deemed to deprive a person who has failed to comply with the requirements of subsection (1) of the right to take any other proceedings which, apart from the provisions of this section, may lawfully be taken by a person claiming an interest in property attached under a warrant.

(No. 28 of 1940)

310. (1) When a convicted person has been sentenced to a fine only and to imprisonment in default of payment of that fine, and whether or not a warrant of distress has been issued under section three hundred and eight, the court may, if it is satisfied that such fine cannot be immediately paid, allow the convicted person time to pay such fine.Suspension of execution of sentence of imprisonment in default of fine

(2) When a court allows a convicted person time to pay a fine under this section, it shall make a note to that effect on the record of the case.

(3) Where a convicted person is allowed time to pay a fine under this section, no warrant of commitment to prison in respect of the non-payment of such fine shall be issued until after the expiration of the time allowed for such payment.

(No. 5 of 1962)

311. 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 for want of distress

312. When it appears to the court that distress and sale of property would be ruinous to the person ordered to pay the money or to 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.Commitment in lieu of distress

313. Any person committed for non-payment may pay the sum mentioned in the

warrant, with the amount of expenses therein authorised (if any), to the person in whose custody he is, and that person shall, thereupon, discharge him, if he is in custody for no other matter.Payment in full after commitment

314. (1) If any 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.Part payment after commitment

(2) If any person committed to prison for default of sufficient distress shall pay any sum in part satisfaction thereof, or if any part of the fine is levied by process of law, whether before or subsequent to his commitment to prison, the term of his imprisonment shall be reduced as in subsection (1) provided.

(3) The officer in charge of a prison in which a person is confined who is desirous of taking advantage of the provisions of the preceding subsections 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.

315. 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.Who may issue warrant

316. No commitment for non-payment shall be for a longer period than nine months, unless the written law under which the conviction has taken place enjoins or allows a longer period.

Previously Convicted OffendersLimitation of imprisonment

317. (1) When any person, having been convicted of any offence punishable with imprisonment for a term of three years or more, is again convicted of any offence punishable with imprisonment for a term of three years or more, the court may, if it thinks fit, at the time of passing sentence of imprisonment on such person, also order that he shall be subject to police supervision, as hereinafter provided, for a term not exceeding five years from the date of his release from prison.Person twice convicted may be subjected to police supervision

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) An order under this section may be made by the High Court when exercising its powers of revision.

(4) Every such order shall be stated in the warrant of commitment.

(As amended by No. 5 of 1962)

318. (1) Every person subject to police supervision shall, on discharge from prison, be furnished by the prescribed officer with an identity book in the prescribed form, and, while at large in Zambia, shall-Requirements from persons subject to police supervision

(a) report himself personally at such intervals of time, at such place and to such person, as shall be endorsed on his book; and

(b) notify his residential address, any intention to change his residential address and any change thereof, in such manner and to such person as may be prescribed by rules under this section.

(2) The President may, by statutory instrument, make rules for carrying out the provisions of this section.

(As amended by No. 5 of 1962 and G.N. No. 303 of 1964)

319. If any person subject to police supervision who is at large in Zambia refuses or neglects to comply with any requirement prescribed by the last preceding section or by any rule made thereunder, such person shall, unless he proves to the satisfaction of the court before which he is tried that he did his best to act in conformity with the law, be guilty of an offence and liable to imprisonment for a term not exceeding six months.

Defects in Order or WarrantFailure to comply with requirements under section 318

320. The court may, at any time, amend any defect in substance or in form in any order or warrant, and no omission or error as to time or place, and no defect in form in any order or warrant given under this Code, shall be held to render void or unlawful any act done or intended to be done by virtue of such order or warrant, provided that it is therein mentioned, or may be inferred therefrom, that it is founded on a conviction or judgment, and there is a valid conviction or judgment to sustain the same.Errors and omissions in orders and warrants

PART XI APPEALS PART XI

APPEALS

321. (1) Any person convicted by a subordinate court may appeal to the High Court-Appeals.

Cap. 27

(a) against his conviction on any ground of appeal which involves a question of law alone; or

(b) against his conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact; or

(c) against the sentence passed on his conviction, unless the sentence is one fixed by law;

and shall be so informed by the magistrate at the time when sentence is passed.

(2) For the purposes of this Part "sentence" includes any order made on conviction not being-

(a) a probation order or an order for conditional discharge;

(b) an order under any enactment which enables the court to order the destruction of an animal; or

(c) an order made in pursuance of any enactment under which the court has no discretion as to the making of the order or its terms.

321A. (1) If the Director of Public Prosecutions is dissatisfied with a judgment of a subordinate court as being erroneous in point of law, or as being in excess of jurisdiction, he may appeal against any such judgment to the High Court within fourteen days of the decision of the subordinate court.Appeals by Director of Public Prosecutions

(2) On an appeal under this section the High Court may-

(a) reverse, affirm or amend any such judgment;

(b) find the person in relation to whom such judgment was given guilty of the offence of which he was charged in the subordinate court or of any other offence of which he could have been convicted by the subordinate court and may convict and sentence him for such or such other offence;

(G.N. No. 493 of 1964 as amended by No. 23 of 1971 and 30 of 1976)

322. No appeal shall be heard unless entered-

(a) in the case of an appeal against sentence, within fourteen days of the date of such sentence;

(b) in the case of an appeal against conviction, within fourteen days of the date of sentence imposed in respect of such conviction:

(c) remit the matter to the subordinate court for rehearing and determination, with such directions as it may deem necessary; or

(d) make such other order including an order as to costs, as it may deem fit.Limitation

(3) The provisions of sections three hundred and twenty-three, three hundred and twenty-four, three hundred and twenty-five, three hundred and twenty-eight, three hundred and twenty-nine, three hundred and thirty-three and three hundred and thirty-four shall apply mutatis mutandis to appeals under this section as they apply to appeals under the provisions of section three hundred and twenty-one.

(4) The provisions of section three hundred and forty-eight shall apply mutatis mutandis in relation to the decision of the High Court in any appeal under this section, as they apply in relation to a decision given on a case stated under section three hundred and forty-one.

(5) In this section, "judgment" includes conviction, acquittal, sentence, order and decision.

Provided that the appellate court may at its discretion hear an appeal in respect of which an application has been made in accordance with the provisions of section three hundred and twenty-four.

(No. 5 of 1962 as amended by No. 76 of 1965 and Act 12 of 1973)

323. (1) An appeal shall be entered-Procedure preliminary to appeal

(a) by filing with the court below a notice of appeal in the form prescribed; or

(b) if the appellant is in prison, by handing such notice to the officer in charge of the prison in which he is lodged.

(2) The officer in charge of any prison shall, on receipt of a notice of appeal, endorse upon such notice the date it was handed to him and shall transmit the notice to the court below.

(3) The court below shall transmit to the appellate court a notice of appeal filed with or transmitted to it under this section together with the record of the case and the judgment or order therein.

(No. 76 of 1965)

324. (1) Where the period has expired within which, under section three hundred and twenty-two, an appeal shall be entered, an appellant may nevertheless make application in the prescribed form for his appeal to be heard and shall in support of any such application enter an appeal, and the form of application shall be attached to the notice of appeal when that notice is filed with or transmitted to the court below and the appellate court.Procedure for application to appeal out of time

(2) In any case where an appellate court refuses an application made under subsection (1), the appeal entered in support of the application shall be deemed never to have been entered.

(No. 76 of 1965)

325. Every appellant shall be entitled, if he so desires, to be present at the hearing of his appeal, and to be heard, either personally or by his advocate. If he does not desire to be present or to be heard, either personally or by his advocate, then the appellate court shall decide the appeal summarily,

without hearing argument, unless it sees fit to direct otherwise, on the documents forwarded to it as in section three hundred and twenty-three provided.Procedure on appeal

326. If the appellate court does not determine the appeal summarily, it shall cause notice to be given to the appellant or his advocate, and to the public or private prosecutor at the place where the appeal is to be heard, of the time and place at which such appeal will be heard, and shall furnish such prosecutor with a copy of the documents prescribed by section three hundred and twenty-three.Notice of time and place of hearing

327. (1) The appellate court, after persuing the documents forwarded to it, if the appeal is being heard summarily, or after hearing the appellant or his advocate, if he appears, and the prosecutor, if he appears, may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may-Powers of appellate court

(a) on an appeal from a conviction-

(i) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a subordinate court of competent jurisdiction or by the High Court; or

(ii) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce or increase the sentence; or

(iii) with or without such reduction or increase, and with or without altering the finding, alter the nature of the sentence;

(b) on an appeal against sentence, quash the sentence passed at the trial, and pass such other sentence warranted in law (whether more or less severe) in substitution therefor as it thinks ought to have been passed, and, in any other case, dismiss the appeal;

(c) on an appeal from any other order, alter or reverse such order;

and, in any case, may make any amendment or any consequential or incidental order that may appear just and proper.

(2) Where the High Court has directed that an appellant shall be retried by the High Court under the provisions of paragraph (a) of subsection (1), the trial shall be conducted without a preliminary inquiry in accordance with the provisions of subsection (4) of section sixty-eight.

(As amended by No. 2 of 1960 and G.N. No. 493 of 1964)

328. (1) The High Court sitting as an appellate court may, at the close of an appeal, pronounce its decision on the appeal and give its reasons for the decision.Pronouncement of decision of the High Court sitting as an appellate court

(2) Where the High Court pronounces its decision at the close of an appeal under subsection (1), the judgment of the court shall be pronounced in such manner as the court may direct:

Provided that, where an appeal is heard by more than one Judge, any such Judge may give directions as to the manner in which the judgment shall be pronounced, and the judgment may be so pronounced whether or not the other Judge or Judges who heard the appeal are present.

(No. 11 of 1963 as amended by No. 23 of 1971)

329. The appellate court shall certify its judgment or order to the court below, which shall, thereupon, make such orders as are conformable to the judgment or order of the appellate court, and, if necessary, the records shall be amended in accordance therewith.Order of appellate court to be certified

330. In the case of a conviction involving sentence of corporal punishment-

(a) the sentence shall not, in any case, be executed until after the expiration of the time within which an appeal may be entered;

(b) if an appeal is entered, the sentence shall not be executed until after the determination of the appeal:Postponement of corporal punishment

Provided that, where an order is made that a convicted person shall be caned and that person appears to the court to be a person under nineteen years of age, that circumstance shall be recorded by the court, and the sentence of caning may be carried into effect before the expiration of the time within which an appeal may be entered unless notice of appeal shall have previously been given, and in any case shall be carried into effect in the presence of the parent or guardian of the person to be caned, if he can be found and resides within a reasonable distance and desires to be present.

(As amended by No. 14 of 1938 and No. 11 of 1963)

331. The operation of any order for the restitution of any property to any person made on a conviction, and the operation, in the case of any conviction, of any rule of law as to the revesting of the property in stolen goods on conviction, as also the operation of any order of compensation to an injured party, shall be suspended-

(a) in any case, until the expiration of fourteen days after the date of the conviction; and

(b) in cases where an appeal has been entered, until the determination of the appeal.

(As amended by No. 28 of 1940)Suspension of orders on conviction

332. (1) After the entering of an appeal by a person entitled to appeal, the appellate court, or the subordinate court which convicted or sentenced such

person, may, for reasons to be recorded by it in writing, order that he be released on bail with or without sureties, or if such person is not released on bail shall, at the request of such person, order that the execution of the sentence or order appealed against shall be suspended pending the hearing of his appeal.Admission to bail or suspension of sentence pending appeal

(2) If the appeal is ultimately dismissed and the original sentence confirmed, or some other sentence of imprisonment substituted therefor, the time during which the appellant has been released on bail, or during which the sentence has been suspended, shall, unless the court shall otherwise order, be excluded in computing the term of imprisonment to which he is finally sentenced.

(No 28 of 1940 as amended by No. 1959)

333. (1) In dealing with an appeal from a court below, 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 the court below.Further evidence

(2) When the additional evidence is taken by the court below, 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 accused or his advocate shall be present when the additional evidence is taken.

(4) Evidence taken in pursuance of this section shall be taken as if it were evidence taken at a trial before a subordinate court.

334. (1) Appeals from subordinate courts to the High Court shall be heard by one Judge except where the Chief Justice shall direct that the appeal be heard by more than one Judge.Appeals to be heard by one Judge unless the Chief Justice otherwise directs

(2) Where an appeal is heard by more than one Judge and such Judges are divided equally in opinion, the appeal shall be dismissed.

(No. 11 of 1963)

335. Every appeal from a subordinate court (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.Abatement of appeals

336. (1) The High Court may, if it deems fit, on the application of an appellant from a judgment of that Court and pending the determination of his appeal or application for leave to appeal to the Supreme Court in a criminal matte-Bail in cases of appeals to Supreme Courtl

(a) admit the appellant to bail, or if it does not so admit him, direct him to be treated as an unconvicted prisoner pending the determination of his appeal or of his application for leave to appeal, as the case may be; and

(b) postpone the payment of any fine imposed upon him.
(2) The time during which an appellant, pending the determination of his appeal, is admitted to bail, and, subject to any directions which the Supreme Court may give to the contrary in any 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.
Any imprisonment under the sentence of the appellant, whether it is the sentence passed by the court of trial or by the High Court in its appellate jurisdiction or the sentence passed by the Supreme Court, shall, subject to any directions which the Supreme Court may give to the contrary, be deemed to be resumed or to begin to run, as the case requires-
(a) if the appellant is in custody, as from the day on which the appeal is determined;
(b) if the appellant is not in custody, as from the day on which he is received into gaol under the sentence.
(No. 47 of 1955 as amended by G.N. No. 303 of 1964,
No. 23 of 1971 and 30 of 1976)
Revision
337. 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 High Court to call for records
338. (1) In the case of any proceedings in a subordinate court, the record of which has been called for, or which otherwise comes to its knowledge, the High Court may-Powers of High Court on revision
(a) in the case of a conviction-
(i) confirm, vary or reverse the decision of the subordinate court, or order that the person convicted be retried by a subordinate court of competent jurisdiction or by the High Court, or make such other order in the matter as to it may seem just, and may by such order exercise any power which the subordinate court might have exercised;
(ii) if it thinks a different sentence should have been passed, quash the sentence passed by the subordinate court and pass such other sentence warranted in law, whether more or less severe, in substitution therefor as it thinks ought to have been passed;
(iii) if it thinks additional evidence is necessary, either take such additional evidence itself or direct that it be taken by the subordinate court;

(iv) direct the subordinate court to impose such sentence or make such order as may be specified;

(b) in the case of any other order, other than an order of acquittal, alter or reverse such order.

(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of making representations in writing on his own behalf.

(3) The High Court shall not exercise any powers under this section in respect of any convicted person who has appealed, unless such appeal is withdrawn, or who has made application for a case to be stated, unless the subordinate court concerned refuses to state a case under the provisions of section three hundred and forty-three.

(4) Nothing in this section shall be to the prejudice of the exercise of any right of appeal given under this Code or under any other law.

(5) The provisions of subsections (2), (3) and (4) of section three hundred and thirty-three shall apply, mutatis mutandis, in respect of any additional evidence.

(6) When the High Court gives a direction under subparagraph (iv) of paragraph (a) of subsection (1), the record of the proceedings shall be returned to the subordinate court and that court shall comply with the said direction.

(As amended by No. 16 of 1959 and No. 11 of 1963)

339. No party has any right to be heard, either personally or by advocate, before the High Court when exercising its powers of revision:Discretion of High Court as to hearing parties

Provided that the High Court may, if it thinks fit, when exercising such powers, hear any party either personally or by advocate.

(As amended by G.N. No. 493 of 1964)

340. When a case is revised by the High Court, the Court 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.

(As amended by G.N. No. 493 of 1964)Order to be certified to lower court Case Stated

341. After the hearing and determination by any subordinate court of any summons, charge, information or complaint, either party to the proceedings before the said subordinate court may, if dissatisfied with the said

determination, as being erroneous in point of law, or as being in excess of jurisdiction, apply in writing, within fourteen days after the said determination, to the said subordinate court to state and sign a case setting forth the facts and the grounds of such determination, for the opinion thereon of the High Court, and such party (hereinafter called "the appellant") shall-

(a) within fourteen days after receiving the case transmit the same to the High Court; and

(b) within thirty days after receiving the case serve a copy of the case so stated and signed on the other party to the proceedings in which the determination was given (hereinafter called "the respondent").

(No. 28 of 1940)Case stated by subordinate court

342. The appellant, at the time of making such application, and before the case shall be stated and delivered to him by the subordinate court, shall, in every instance, enter into a recognizance before such subordinate court, with or without surety or sureties, and in such sum not exceeding one hundred kwacha as to the subordinate court shall seem meet, conditioned to prosecute without delay such appeal, and to submit to the judgment of the High Court, and to pay such costs as may be awarded by the same; and, before he shall be entitled to have the case delivered to him, he shall pay to the clerk of such subordinate court his fees for and in respect of the case and recognizance, which fees shall be in accordance with the Third Schedule. The appellant, if then in custody, shall be liberated upon the recognizance being further conditioned for his appearance before the same subordinate court, or, if that is impracticable, before some other subordinate court exercising the same jurisdiction, within fourteen days after the judgment of the High Court shall have been given, to abide such judgment, unless the determination appealed against be reversed:Recognizance to be taken and fees paid

Provided that nothing in this section shall apply to an application for a case stated by or under the direction of the Director of Public Prosecutions.

(As amended by S.I. No. 152 of 1965)

343. If the subordinate court be of opinion that the application is merely frivolous, but not otherwise, it may refuse to state a case, and shall, on the request of the appellant, and on payment of the fee set out in the Third Schedule, sign and deliver to him a certificate of such refusal:Subordinate court may refuse case when it thinks application frivolous

Provided that the subordinate court shall not refuse to state a case when the application for that purpose is made to it by or under the direction of the Director of Public Prosecutions, who may require a case to be stated with

reference to proceedings to which he was not a party.

(As amended by S.I. No. 63 of 1964)

344. Where a subordinate court refuses to state a case, the High Court may, on the application of the person who applied for the case to be stated, make an order of mandamus requiring the subordinate court to state a case.Procedure on refusal of subordinate court to state case

345. A case stated for the opinion of the High Court shall be heard by one Judge of the Court except when, in any particular case, the Chief Justice shall direct that it shall be heard by two Judges. Such direction may be given before the hearing or at any time before judgment is delivered. If, on the hearing, the Court is equally divided in opinion, the decision of the subordinate court shall be affirmed.

(No. 2 of 1960)Constitution of court hearing case stated

346. The High Court shall (subject to the provisions of the next succeeding section) hear and determine the question or questions of law arising on the case stated, and shall, thereupon, reverse, affirm or amend the determination in respect of which the case has been stated, or remit the matter to the subordinate court with the opinion of the High Court thereon, or may make such other order in relation to the matter, and may make such order as to costs, as to the Court may seem fit, and all such orders shall be final and conclusive on all parties:High Court to determine questions on case

Provided that-

(i) no magistrate who shall state and deliver a case in pursuance of this Part, or bona fide refuse to state one, shall be liable to any costs in respect or by reason of such appeal against his determination or refusal;

(ii) no costs shall be awarded against the People, except where the People are the appellant.

(As amended by S.I. No. 63 of 1964)

347. 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;

(b) to remit the case to the subordinate court for rehearing and determination, with such directions as it may deem necessary.Case may be sent back for amendment or rehearing

348. After the decision of the High Court has been given on a case stated, the subordinate court in relation to whose determination the case has been stated, or any other subordinate court exercising the same jurisdiction, shall

have the same authority to enforce any conviction or order which may have been affirmed, amended or made by the High Court as the subordinate court which originally decided the case would have had to enforce its determination, if the same had not been appealed against; and no action or proceeding whatsoever shall be commenced or had against the magistrate holding such subordinate court for enforcing such conviction or order, by reason of any defect in the same respectively.Powers of subordinate court after decision of High Court

349. No person who has appealed under section three hundred and twenty-one shall be entitled to have a case stated, and no person who has applied to have a case stated shall be entitled to appeal under section three hundred and twenty-one.Appellant may not proceed both by case stated and by appeal

350. A case stated by a subordinate court shall set out-

(a) the charge, summons, information or complaint;

(b) the facts found by the subordinate court to be proved;

(c) any submission of law made by or on behalf of the complainant during the trial or inquiry;

(d) any submission of law made by or on behalf of the accused during the trial or inquiry;

(e) the finding and, in case of conviction, the sentence of the subordinate court;

(f) any question or questions of law which the subordinate court or any of the parties may desire to be submitted for the opinion of the High Court;

(g) any question of law which the Director of Public Prosecutions may require to be submitted for the opinion of the High Court.

(As amended by S.I. No. 63 of 1964)Contents of case stated

351. The High Court may, if it deems fit, enlarge any period of time prescribed by section three hundred and forty-one or three hundred and forty-two.

(As amended by No. 5 of 1962)High Court may enlarge time

351A. In this Part, "appellate court" means the High Court.

(No. 23 of 1971)Interpretation

PART XII SUPPLEMENTARY PROVISIONS PART XII

SUPPLEMENTARY PROVISIONS

Irregular Proceedings

352. No finding, sentence or order of any 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, unless it appears that such error has in fact occasioned a substantial miscarriage of justice.

(As amended by No. 16 of 1959)Proceedings in wrong place

353. 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 any ground whatsoever unless any matter raised in such ground has, in the opinion of the appellate court, in fact occasioned a substantial miscarriage of justice:Finding or sentence when not reversible

Provided that, in determining whether any such matter has occasioned a substantial miscarriage 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 proceeding.

(No. 16 of 1959)

354. No distress made under this Code 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.

MiscellaneousDistress not illegal nor distrainer a trespasser for defect or want of form in proceedings

355. (1) Where any thing which has been tendered or put in evidence in any criminal proceedings before any court has not been claimed by any person who appears to the court to be entitled thereto within a period of twelve months after the final disposal of such proceedings or of any appeal entered in respect thereof, such thing may be sold, destroyed or otherwise disposed of in such manner as the court may by order direct, and the proceeds of any such sale shall be paid into the general revenues of the Republic.Disposal of exhibits

(2) If any thing which has been tendered or put in evidence in any criminal proceedings before any court is subject to speedy and natural decay the court may, at any stage of the proceedings or at any time after the final disposal of such proceedings, order that it be sold or otherwise disposed of but shall hold the proceeds of any such sale and, if unclaimed at the expiration of a period of twelve months after the final disposal of such proceedings or of any appeal entered in respect thereof, shall pay such proceeds into the general revenues of the Republic.

(3) Notwithstanding the provisions of subsection (1), the court may, if it is satisfied that it would be just and equitable so to do, order that any thing tendered or put in evidence in criminal proceedings before it should be returned at any stage of the proceedings or at any time after the final disposal of such proceedings to the person who appears to be entitled thereto, subject to such conditions as the court may see fit to impose.

(4) Any order of a court made under the provisions of subsection (1) or (2) shall be final and shall operate as a bar to any claim by or on behalf of any person claiming ownership of or any interest in such thing by virtue of any title arising prior to the date of such order.

(No. 11 of 1963)

356. (1) Where a corporation is charged with an offence before a court, the provisions of this section shall have effect.Corporations

(2) A representative may, on behalf of the corporation, make a statement before the court in answer to the charge.

(3) Where a representative appears, any requirement of this Code that anything shall be done in the presence of the accused, or shall be read or said to the accused, shall be construed as a requirement that that thing shall be done in the presence of the representative or read or said to the representative.

(4) Where a representative does not appear, any requirement referred to in subsection (3) shall not apply.

(5) A subordinate court may, after holding an inquiry in accordance with the provisions of Part VII, make an order certifying that it considers the evidence against an accused corporation sufficient to put that corporation on its trial and the corporation shall thereupon be deemed to have been committed for trial to the High Court.

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

(7) Subject to the provisions of subsections (2) to (6), both inclusive, the provisions of this Code relating to the inquiry into and to the trial by any court of offences shall apply to a corporation as they apply to an individual over the age of twenty-one years.

(8) In this section, "representative" means a person duly appointed in accordance with subsection (9) by the corporation to represent it for the purpose of doing any act or thing which the representative of a corporation is by this section authorised to do, but a person so appointed shall not, by virtue only of being so appointed, be qualified to act on behalf of the corporation before any court for any other purpose.

(9) A representative for the purposes of this section need not be appointed under the seal of the corporation, and a statement in writing purporting to be signed by a managing director of the corporation, or by any person (by whatever

name called) having, or being one of the persons having, the management of the affairs of the corporation, to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section, shall be admissible without further proof as prima facie evidence that that person has been so appointed.

(No. 76 of 1965)

357. In addition to or in substitution for the fees set forth in the Third Schedule, the Chief Justice may prescribe the fees to be paid for any proceedings in the High Court and in subordinate courts. Such fees shall be paid by the party prosecuting, and may be charged as part of the costs, if so ordered. The payment of fees may, on account of the poverty of any person or for other good reason, be dispensed with by the court of trial.

(As amended by No. 2 of 1960)Prescribed fees

358. (1) The Chief Justice may by rule prescribe forms for the purposes of this Code, and such forms, with such variations as the circumstances of each case may require, may be used and, if used, shall be sufficient for the respective purposes therein mentioned.Prescribed forms

(2) The forms in the Fourth Schedule shall be deemed to have been prescribed by the Chief Justice under the provisions of this section.

(No. 2 of 1960)

359. (1) The Chief Justice may, by statutory instrument, make rules for the better administration of this Code.Rules

(2) In particular and without prejudice to the generality of the foregoing, such rules may-

(a) prescribe anything which by this Code may or is to be prescribed;

(b) prescribe the allowances and expenses of witnesses and assessors;

(c) make provisions for the procedure to be followed in relation to appeals under this Code;

(d) amend the Second Schedule by varying or annulling forms contained therein or by adding new forms thereto.

(No. 11 of 1963)

Non-application of British Act

360. The Criminal Evidence Act, 1898, of the United Kingdom, shall not apply to the Republic.

Non-application