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PENAL CODE

Acts No.
42 of 1930

An Act to establish a Code of Criminal Law.

[1st November, 1931]

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26 of 1933
10 of 1935
3 of 1936
28 of 1937
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21 of 1958
39 of 1958
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PART I-GENERAL PROVISIONS

CHAPTER I

PRELIMINARY

1. This Act may be cited as the Penal Code Act.

Short title
Cap. 87

2. Except as hereinafter expressly provided, nothing in this Code shall affect-

Saving of certain
laws

(a) the liability, trial or punishment of a person for an offence against the common law or against any other law in force in Zambia other than this Code; or

(b) the liability of a person to be tried or punished for an offence under the provisions of any law in force in Zambia relating to the jurisdiction of the local courts in respect of acts done beyond the ordinary jurisdiction of such courts; or

(c) the power of any court to punish a person for contempt of such court; or

(d) the liability or trial of a person, or the punishment of a person under any sentence passed or to be passed, in respect of any act done or commenced before the commencement of this Code; or

(e) any power of the President to grant any pardon or to remit or commute in whole or in part or to respite the execution of any sentence passed or to be passed; or

(f) any written law for the time being in force for the government of the Defence Force or the Zambia Police Force:

Provided that if a person does an act which is punishable under this Code and is also punishable under another Act or Statute of any of the kinds mentioned in this section, he shall not be punished for that act both under that Act or Statute and also under this Code.

(As amended by No. 10 of 1935 and S.I. No. 63 of 1964 and No 12 of 2000)

CHAPTER II

INTERPRETATION

3. This Code shall be interpreted in accordance with the principles of legal interpretation obtaining in England.

General rule of
interpretation

(No. 5 of 1972)

4. Unless the context otherwise requires-

"community service" means form of punishment as a condition of suspension of a sentence of imprisonment requiring an offender to perform unpaid work within the community where the offender resides for the period specified in the order for community service"

"dwelling-house" includes any building or structure or part of a building or structure or any tent, or caravan or vessel which is for the time being kept by the owner or occupier for the residence therein of himself, his family or servants or any of them, and it is immaterial that it is from time to time uninhabited; a building or structure adjacent to or occupied with a dwelling-house is deemed to be part of the dwelling-house if there is a communication between such building or structure and the dwelling-house, either immediate or by means of a covered and enclosed passage leading from the one to the other, but not otherwise;

"explosive" or "explosive substance" means-

(a) nitro-glycerine, dynamite, gun-cotton, blasting powders, gunpowder, fulminate of mercury or other metals, and every other substance or mixture, whether similar to those enumerated herein or not, used with a view to producing a practical effect by explosion; and

(b) any detonating, igniter or safety fuse, or article of like nature, any detonator, and every adaptation or preparation of an explosive as herein defined;

"felony" means an offence which is declared by law to be a felony or, if not declared to be a misdemeanour, is punishable, without proof of previous conviction, with death, or with imprisonment with hard labour for three years or more;

"grievous harm" means any harm which endangers life or which amounts to a maim or which seriously or permanently injures health or which is likely so to injure health, or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, member or sense;

"harm" means any bodily hurt, disease or disorder whether permanent or temporary;

"judicial proceeding" includes any proceeding had or taken in or before any court, tribunal, commission of inquiry, or person in which evidence may be taken on oath,

"knowingly", used in connection with any term denoting uttering or using, implies knowledge of the character of the thing uttered or used;

"local authority" means a city council, municipal council, town council, district council;

"maim" means the destruction or permanent disabling of any external or internal organ, member or sense;

"misdemeanour" means any offence which is not a felony;

"money" includes bank notes, currency notes, bank drafts, cheques and other similar orders, warrants or requests for the payment of money;

"night" or "night-time" means the interval between seven o'clock in the evening and six o'clock in the morning;

"offensive weapon" means any article made or adapted for use for causing or threatening injury to the person, or intended by the person in question for such use, and includes any knife, spear, arrow, stone, axe, axe handle, stick or similar article;

"owner" and other like terms, when used with reference to property, include corporations of all kinds and any other association of persons capable of owning property, and also when so used include the President;

"person employed in the public service" means any person holding any of the following offices or performing the duty thereof, whether as a deputy or otherwise, namely:

- (a) any public office; or
- (b) any office to which a person is appointed or nominated by Act or Statute; or
- (c) any civil office, the power of appointing to which or removing from which is vested in any person or persons holding an office of any kind included in either of the two last preceding paragraphs of this definition; or
- (d) any office of arbitrator or umpire in any proceeding or matter submitted to arbitration by order or with the sanction of any court, or in pursuance of any Act;

and the said term further includes-

- (i) a member of a commission of inquiry appointed under or in pursuance of any Act;
- (ii) any person employed to execute any process of a court;
- (iii) all persons belonging to the Defence Force;
- (iv) all persons in the employment of any department of the Government, or a person in the employ of any corporation, body or board, including an institution of higher learning, in which the Government has a majority or controlling interest or any director of any such corporation, body or board;
- (v) a person acting as a minister of religion of whatsoever denomination in so far as he performs functions in respect of the notification of intending marriage or in respect of the solemnisation of marriage, or in respect of the making or keeping of any register or certificate of marriage, birth, baptism, death or burial, but not in any other respect;
- (vi) a councillor of, or a person in the employ of a local authority;
- (vii) a person in the employ of a local authority;

"petroleum" has the meaning assigned to it by section *two* of the Petroleum Act;

Cap. 435

"possession", "be in possession of" or "have in possession"-

- (a) includes not only having in one's own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to, or occupied by oneself or not) for the use or benefit of oneself or of any other person;
- (b) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;

"property" includes any description of real and personal property, money, debts, and legacies, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods, and also includes 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 acquired by such conversion or exchange, whether immediately or otherwise;

"public" refers not only to all persons within Zambia, but also to such indeterminate persons as may happen to be affected by the conduct in respect to which such expression is used;

"public place" or "public premises" includes any public way and any building, place or conveyance to which for the time being the public are entitled or permitted to have access, either without any condition or upon condition of making any payment, and any building or place which is for the time being used for any public or religious meetings, or assembly or as an open court;

"public way" includes any highway, market place, square, street, bridge or other way which is lawfully used by the public;

"publicly" when applied to acts done means either-

- (a) that they are so done in any public place as to be seen by any person whether such person be or be not in a public place; or
- (b) that they are so done in any place, not being a public place, as to be likely to be seen by any person in a public place;

"the State" means the Sovereign Republic of Zambia;

"Statute" means any British Act and includes any orders, rules, regulations, by-laws, or other subsidiary legislation made or passed under the authority of any Statute;

"utter" includes using or dealing with and attempting to use or deal with and attempting to induce any person to use, deal with or act upon the thing in question;

"valuable security" includes any document which is the property of any person, and which is evidence of the ownership of any property or of the right to recover or receive any property;

"vessel" includes a ship, a boat and every other kind of vessel used in navigation either on the sea or in inland waters, and includes aircraft;

"wound" means any incision or puncture which divides or pierces any exterior membrane of the body, and any membrane is exterior for the purpose of this definition which can be touched without dividing or

piercing any other membrane.

(As amended by No. 26 of 1940, No. 29 of 1948, No. 53 of 1957, Nos. 7 and 34 of 1960, G.N. No. 268 of 1964, S.I. No. 63 of 1964, Nos. 69 and 76 of 1965, 35 of 1973 No. 20 of 1966, Nos. 25 and 36 of 1969, No. 5 of 1972, No. 29 of 1974, and No. 3 of 1990)

CHAPTER III

APPLICATION OF THIS CODE

5. The jurisdiction of the courts of Zambia for the purposes of this Code extends to every place within Zambia.

Extent of jurisdiction of local courts

6. (1) Subject to subsection (3), a citizen of Zambia who does any act outside Zambia which, if wholly done within Zambia, would be an offence against this Code, may be tried and punished under this Code in the same manner as if such act had been wholly done within Zambia.

Liability for offences committed outside the jurisdiction, or partly within and partly beyond the jurisdiction

(2) When an act which, if wholly done within Zambia, would be an offence against this Code, is done partly within and partly outside Zambia, any person who within Zambia does any part of such act may be tried and punished under this Code as if such act had been wholly done within Zambia.

(3) Nothing in subsection (1) shall render any person liable to be tried and punished under this Code in respect of any act done outside Zambia which, if wholly done within Zambia, would be an offence against this Code if such person has been convicted and punished outside Zambia in respect of the same act, but, save as aforesaid, any such conviction shall, for the purposes of any law including this Code, be deemed to be a conviction for the said offence against this Code.

(No. 39 of 1970)

CHAPTER IV

GENERAL RULES AS TO CRIMINAL RESPONSIBILITY

- | | |
|--|---------------------------------|
| <p>7. Ignorance of the law does not afford any excuse for any act or omission which would otherwise constitute an offence unless know-ledge of the law by the offender is expressly declared to be an element of the offence.</p> | <p>Ignorance of law</p> |
| <p>8. A person is not criminally responsible in respect of an offence relating to property, if the act done or omitted to be done by him with respect to the property was done in the exercise of an honest claim of right and without intention to defraud.</p> | <p>Bona fide claim of right</p> |
| <p>9. (1) Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident.</p> | <p>Intention and motive</p> |
| <p>(2) Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial.</p> | |
| <p>(3) Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regards criminal responsibility.</p> | |
| <p>10. A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist. The operation of this rule may be excluded by the express or implied provisions of the law relating to the subject.</p> | <p>Mistake of fact</p> |
| <p>11. Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved.</p> | <p>Presumption of sanity</p> |
| <p>12. A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is, through any disease affecting his mind, incapable of understanding what he is doing, or of knowing that he ought not to do the act or make the omission. But a person may be criminally responsible for an act or omission, although his mind is affected by disease, if such disease does not in fact produce</p> | <p>Insanity</p> |

upon his mind one or other of the effects above mentioned in reference to that act or omission.

12A. (1) Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or is induced by disease or injury) which has substantially impaired his mental responsibility for his acts or omissions in doing or being party to the killing.

Defence of
diminished
responsibility

(2) The provisions of subsection (2) of section *thirteen* shall apply with necessary modifications to the defence of diminished responsibility under this section:

Provided that the transient effect of intoxication as described in that subsection shall be deemed not to amount to disease or injury for purposes of this section.

(3) On a charge of murder, it shall be for the defence to prove the defence of diminished responsibility and the burden of proof shall be on a balance of probabilities.

(4) Where the defence of diminished responsibility is proved in accordance with this section, a person charged with murder shall be liable to be convicted of manslaughter or any other offence which is less than murder.

(As amended by Act No. 3 of 1990)

13. (1) Save as provided in this section, intoxication shall not constitute a defence to any criminal charge.

Intoxication

(2) Intoxication shall be a defence to any criminal charge if, by reason thereof, the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and-

(a) the state of intoxication was caused without his consent by the malicious or negligent act of another person; or

(b) the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission.

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(3) Where the defence under subsection (2) is established, then in a case falling under paragraph (a) thereof the accused person shall be discharged, and in a case falling under paragraph (b) the provisions of section *one hundred and sixty-seven* of the Criminal Procedure Code relating to insanity shall apply.

(4) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence.

(5) For the purposes of this section, "intoxication" shall be deemed to include a state produced by narcotics or drugs.

(No. 10 of 1935 as amended by No. 3 of 1936)

14. (1) A person under the age of eight years is not criminally responsible for any act or omission.

Immature age

(2) A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.

(3) A male person under the age of twelve years is presumed to be incapable of having carnal knowledge.

(As amended by No. 20 of 1953)

15. Except as expressly provided by this Code, a judicial officer is not criminally responsible for anything done or omitted to be done by him in the exercise of his judicial functions, although the act done is in excess of his judicial authority or although he is bound to do the act omitted to be done.

Judicial officers

16. (1) Except as provided in this section, a person shall not be guilty of an offence if he does or omits to do any act under duress or coercion.

Defence of duress or coercion

(2) For the purpose of this section a person shall be regarded as having

done or omitted to do any act under duress if he was induced to do or omit to do the act by any threat of death or grievous harm to himself or another and if at the time when he did or omitted to do the act he believed (whether or not on reasonable grounds)-

- (a) that the harm threatened was death or grievous injury;
- (b) that the threat would be carried out-
 - (i) immediately; or
 - (ii) before he could have any real opportunity to seek official protection,

if he did not do or omit to do the act in question; and

- (c) that there was no way of avoiding or preventing the harm threatened.

(3) In this section "official protection" means the protection of the police or any authority managing any prison or other custodial institution, or any other authority concerned with the maintenance of law and order.

(As amended by Act No. 13 of 1990)

17. Subject to any other provisions of this Code or any other law for the time being in force, a person shall not be criminally responsible for the use of force in repelling an unlawful attack upon his person or property, or the person or property of any other person, if the means he uses and the degree of force he employs in doing so are no more than is necessary in the circumstances to repel the unlawful attack.

Defence of person or property

(As amended by Act 3 of 1990)

18. Where any person is charged with a criminal offence arising out of the arrest, or attempted arrest, by him of a person who forcibly resists such arrest or attempts to evade being arrested, the court shall, in considering whether the means used were necessary or the degree of force used was reasonable for the apprehension of such person, have regard to the gravity of the offence which had been, or was being, committed by such person and the circumstances in which such offence had been, or was being, committed by such person.

Use of force in effecting arrest

19. Repealed by Act No. 3 of 1990.

20. A person cannot be punished twice either under the provisions of this Code or under the provisions of any other law for the same act or omission, except in the case where the act or omission is such that by means thereof he causes the death of another person, in which case he may be convicted of the offence of which he is guilty by reason of causing such death, notwithstanding that he has already been convicted of some other offence constituted by the act or omission.

Person not to be punished twice for same offence

CHAPTER V

PARTIES TO OFFENCES

21. (1) When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say:

Principal offenders

(a) every person who actually does the act or makes the omission which constitutes the offence;

(b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;

(c) every person who aids or abets another person in committing the offence;

(d) any person who counsels or procures any other person to commit the offence.

(2) In the case of paragraph (d) of subsection (1), such person may be charged either with committing the offence or with counselling or procuring its commission. A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence. Any person who procures another to do or omit to do any act of such a nature that, if he had himself done the act or made the omission, the act or omission would have constituted an offence on his part, is guilty of an offence of the same kind and is liable to the same punishment, as if he had himself done the

act or made the omission; and he may be charged with doing the act or making the omission.

22. When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.

Offences committed by joint offenders in prosecution of common purpose

23. When a person counsels another to commit an offence, and an offence is actually committed after such counsel by the person to whom it is given, it is immaterial whether the offence actually committed is the same as that counselled or a different one, or whether the offence is committed in the way counselled or in a different way, provided in either case that the facts constituting the offence actually committed are a probable consequence of carrying out the counsel. In either case the person who gave the counsel is deemed to have counselled the other person to commit the offence actually committed by him.

Counselling another to commit an offence

CHAPTER VI

PUNISHMENTS

24. The following punishments may be inflicted by a court:

Different kinds of punishment

- (a) death;
 - (b) imprisonment or an order for community service;
 - (c) Repealed by Act No. 10 of 2003
 - (d) fine;
 - (e) forfeiture;
 - (f) payment of compensation;
 - (g) finding security to keep the peace and be of good behaviour, or to come up for judgment;
 - (h) deportation;
 - (i) any other punishment provided by this Code or by any other law.
- (As amended by No. 26 of 1933 and No.26 of 1940 and No 12 of 2000)*

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

Sentence of death

(2) Sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the court that, at the time when the offence was committed, he was under the age of eighteen years; but in lieu thereof the court shall sentence him to be detained during the President's pleasure; and when so sentenced he shall be liable to be detained in such place and under such conditions as the President may direct.

(3) When a person has been sentenced to be detained during the President's pleasure under subsection (2), the presiding Judge shall forward to the President a copy of the notes of evidence taken at the trial, with a report in writing signed by him containing such recommendation or observations on the case as he may think fit to make.

(4) Where a woman convicted of an offence punishable with death is found in accordance with the provisions of section *three hundred and six* of the Criminal Procedure Code to be pregnant, the sentence to be passed on her shall be a sentence of imprisonment for life instead of a sentence of death.

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(As amended by No. 26 of 1940 and No. 28 of 1952)

26. (1) All imprisonment shall be with or without hard labour in the discretion of the court, unless the imposition of imprisonment only without hard labour is expressly prescribed by law.

Imprisonment

(2) A person liable to imprisonment for life or any other period may be sentenced for any shorter term.

(3) A person convicted of a felony, other than manslaughter, may be sentenced to pay a fine in addition to imprisonment:

Provided that, where such person is a corporation, the corporation may be sentenced to a fine instead of imprisonment.

(4) A person convicted of manslaughter or a misdemeanour may be sentenced to pay a fine in addition to or instead of imprisonment.

26A. Where an offender has been sentenced to community service, the offender shall perform community work for the period specified in the order for community service shall be performed in an area where the offender resides.

Insertion of new
section 26A
Sentence of
community service

(As amended by No. 26 of 1933 and No. 76 of 1965 and No 12 of 2000)

27. *(No. 23 of 1952 as amended by No. 21 of 1958, No. 18 of 1963 and G.N. No. 303 of 1964 and Repealed by Act No. 10 of 2003)*

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

(a) Where no sum is expressed to which the fine may extend, the amount of the fine which may be imposed is unlimited, but shall not be excessive.

(b) In the case of an offence punishable with a fine or a term of imprisonment, the imposition of a fine or a term of imprisonment shall be a matter for the discretion of the court.

(c) In the case of an offence punishable with imprisonment as well as a fine in which the offender is sentenced to a fine with or without imprisonment and in every case of an offence punishable with fine only in which the offender is sentenced to a fine, the court passing sentence may, in its discretion-

(i) direct by its sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in addition to any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of sentence; and also

(ii)

is
sue a warrant for the levy of the amount on the immovable and movable property of the offender by distress and sale under warrant:

Provided that if the sentence directs that, in default of payment of the fine, the offender shall be imprisoned, and if such offender has

undergone the whole of such imprisonment in default, no court shall issue a distress warrant unless for special reasons to be recorded in writing it considers it necessary to do so.

(d) The term of imprisonment ordered by a court in respect of the non-payment of any sum of money adjudged to be paid by a conviction or in respect of the default of a sufficient distress to satisfy any such sum shall be such term as, in the opinion of the court, will satisfy the justice of the case, but shall not exceed in any case the maximum fixed by the following scale:

<i>Amount</i>	<i>Maximum period</i>
Not exceeding 15 penalty unit	14 days
Exceeding 15 penalty units but not exceeding 30 penalty units	1 month
Exceeding 30 penalty units but not exceeding 150 penalty units	3 months
Exceeding 150 penalty units but not exceeding 600 penalty units	4 months
Exceeding 600 penalty units but not exceeding 1500 penalty units	6 months
Exceeding 1500 penalty units	9 months

(e) The imprisonment which is imposed in default of payment of a fine shall terminate whenever the fine is either paid or levied by process of law.

(As amended by No. 26 of 1933 and Act No. 13 of 1994)

29. When any person is convicted of an offence under any of the following sections, namely, sections *ninety four, ninety-five, ninety-six, one hundred and thirty, one hundred and fourteen, three hundred and eighty-five and three hundred and eighty-six*, the court shall, in addition to or in lieu of any penalty which may be imposed, order the forfeiture of any property which has passed in connection with the commission of the offence, or, if such property cannot be forfeited or cannot be found, of such sum as the court shall assess as the value of the property. Payment of any sum so ordered to be forfeited may be enforced in the same manner and subject to the same provisions as in the case of the payment of a fine. Forfeiture

(As amended by No. 26 of 1933 and S.I. No. 63 of 1964 and Act No. 29 of 1974)

30. In accordance with the provisions of section *one hundred and seventy-five* of the Criminal Procedure Code, any person who is convicted of an offence may be adjudged to make compensation to any person injured by his offence. Any such compensation may be either in addition to or in substitution for any other punishment; Compensation. Cap. 88

Provided that where a person is convicted of an offence under section

two hundred and eighty-one A the court which convicts the person may, in addition to any other penalty imposed under that section, order the person convicted to make compensation to any person who has suffered loss or damage from the convicted person's offence and the order of compensation may include the actual loss suffered and any loss arising from the commission of the offence.

(As amended by No. 26 of 1933, No. 26 of 1940 and No. 20 of 2000)

31. A person convicted of an offence not punishable with death may, instead of or in addition to any punishment to which he is liable, be ordered to enter into his own recognizance, with or without sureties, in such amount as the court thinks fit, conditioned that he shall keep the peace and be of good behaviour for a time to be fixed by the court, and may be ordered to be imprisoned until such recognizance, with sureties, if so directed, is entered into; but so that the imprisonment for not entering into the recognizance shall not extend for a term longer than one year, and shall not, together with the fixed term of imprisonment, if any, extend for a term longer than the longest term for which he might be sentenced to be imprisoned without fine.

Security for
keeping the peace

(No. 26 of 1933 as amended by No. 18 of 1962)

32. A court may order any person convicted of an offence to pay the costs of and incidental to the prosecution or any part thereof.

Costs

33. Whenever a court shall sentence to a term of imprisonment any person-

(a) who is not a citizen of Zambia; and

(b) who has been convicted of an offence under this Code, or under any written law other than an offence relating to the driving of a motor vehicle set out in the Roads and Road Traffic Act or in any regulations for the time being in force made thereunder;

Court to send
particulars of
conviction of
non-citizens to
Minister
responsible for
home affairs
Cap. 464

the public prosecutor shall forth with, forward to the Minister responsible for home affairs the particulars of the conviction and sentence and all other particulars specified in the Second Schedule.

(Act No. 32 of 1972 and No. 8 of 1974)

34. (1) Where a person is convicted before the High Court of felony, the High Court may, in addition to or in lieu of any other punishment to which he is liable, recommend to the President that he be deported to such part of Zambia as the President may direct.

Deportation within
Zambia- in cases of
felony

(2) Where upon any sworn information it appears to the High Court that there is reason to believe that any person is about to commit a breach of the peace or that his conduct is likely to produce or excite to a breach of the peace, the High Court may order him to give security in one or more sureties for peace and good behaviour and in default may order him to be imprisoned until he gives the security ordered, or recommend to the President that he be deported as aforesaid.

In default of security for peace

(3) Where it is shown on oath to the satisfaction of the High Court that any person is conducting himself so as to be dangerous to peace and good order in any part of Zambia, or is endeavouring to excite enmity between any section of the people of Zambia and the President or the Government, or between any section of the people of Zambia and any other section of the same, or is intriguing against constituted power and authority in Zambia, or has been convicted in any court of competent jurisdiction within or without Zambia of any offence which would be likely to excite enmity between any section of the people of Zambia and any other section of the same or by any section of the people against such person, the High Court may recommend to the President that an order be made for his deportation to such part of Zambia as may be specified in such order.

In cases of dangerous conduct

(4) The powers conferred by this section on the High Court shall also be exercisable by subordinate courts:

Powers of subordinate courts

Provided however that any exercise of such powers by subordinate courts shall be liable to revision by and must be reported at once to the High Court.

(5) Where a court recommends under this section that a person be deported, the President may make an order in accordance with such recommendation:

Approval of High Court

Provided however that if such recommendation is made by a subordinate court, the President shall not make an order for deportation without the approval of the High Court.

(6) Any person for whose deportation a recommendation or an order has

Detention pending deportation

been made may be detained in the nearest convenient prison pending confirmation or otherwise of the recommendation or the carrying out of the order, as the case may be.

(As amended by No. 26 of 1933, No. 34 of 1954, G.N. No. 303 of 1964 and S.I. No. 63 of 1964)

35. (1) If a person ordered to be deported to any part of Zambia under the preceding section is sentenced to any term of imprisonment, such sentence of imprisonment shall be served before the order of deportation is carried into effect.

Provisions as to sentences of deportation

(2) An order for deportation may be expressed to be in force for a time to be limited therein or for an unlimited time and may require the deported person to report himself personally at such place, to such person and at such intervals of time, not being less than thirty days, as may be specified in such order.

(3) If a person leaves or attempts to leave the district or place in Zambia to which he has been deported while the order of deportation is still in force without the written consent of the President, which consent may be given subject to any terms as to security for good behaviour or otherwise as to the President may seem good, or wilfully neglects or refuses to report himself as ordered, such person is liable to imprisonment for six months and to be again deported on a fresh warrant under the original order or under a new order.

(4) For the purposes of this section, a person shall be deemed to have served a sentence of imprisonment immediately upon his release after earning remission for good behaviour or on licence issued under any written law relating to prisons.

(As amended by No. 1 of 1952, No. 34 of 1954, No. 21 of 1959, No. 18 of 1962 and G.N. No. 303 of 1964)

36. With respect to cases where one act constitutes several crimes or where several acts are done in execution of one criminal purpose, the following provisions shall have effect, that is to say:

One act constituting several crimes, etc.

(a) Where a person does several acts against or in respect of one person or thing, each of which acts is a crime but the whole of which

Against one person or thing

acts are done in the execution of the same design and in the opinion of the court before which the person is tried form one continuous transaction, the person shall be punished for each act so charged as a separate crime and the court shall upon conviction award a separate punishment for each act. If the court orders imprisonment the order may be for concurrent or consecutive terms of imprisonment:

Provided always that-

(i) if the terms of imprisonment ordered are consecutive, the total of the terms so ordered shall not exceed the maximum term of imprisonment allowed by law in respect of that conviction for which the law allows the longest term; and, if the court orders the payment of fines, the fines may or may not be cumulative;

(ii) where the court orders cumulative fines, the total of the fines so ordered shall not exceed the maximum fines allowed by law in respect of that conviction for which the law allows the largest fine.

(b) If a person by one act assaults, harms or kills several persons or in any manner causes injury to several persons or things, he shall on conviction be punished in respect of each person so assaulted, harmed or killed or each person or thing injured; in such case the court shall order a separate punishment in respect of each person assaulted, harmed or killed or in respect of each person or thing injured. If the court orders imprisonment, the order may be for concurrent or consecutive terms of imprisonment:

Against several persons or things

Provided always that-

(i) if the terms of imprisonment ordered are consecutive, the total of the terms of imprisonment so ordered shall not exceed the maximum term allowed by law in respect of that conviction for which the law allows the longest term; and, if the court orders the payment of fines, the fines may or may not be cumulative;

(ii) where the court orders cumulative fines, the total of such fines shall not exceed the maximum allowed by law in respect of that conviction for which the law allows the largest fine.

(As amended by No. 23 of 1952 and No. 10 of 2003)

37. Except as otherwise in this Code or in any other written law provided, a sentence of imprisonment takes effect from and includes the whole of the day on which it was pronounced unless the court shall, at the time of passing sentence, expressly order that it shall take effect from some day prior to that on which it was pronounced;

Date from which sentence takes effect

Provided that such prior day shall not be earlier than the day on which the arrested person was taken into custody for the offence for which sentence is pronounced.

(As amended by Act No. 3 of 1990)

38. When in this Code no punishment is specially provided for any misdemeanour, it shall be punishable with imprisonment for a term not exceeding two years or with a fine or with both.

General punishment for misdemeanours

39. (1) Where any person is convicted of an offence by a court and at the date of such conviction he has not been sentenced under a prior conviction or his sentence under a prior conviction has not expired, then any sentence imposed by the said court, other than a sentence of death, shall be executed after the expiration of the sentence imposed under the prior conviction, unless the said court otherwise directs.

Sentences cumulative unless otherwise directed

(2) A court may direct that a sentence imposed by it on any person shall be executed concurrently with a sentence or with any part of a sentence imposed on such person under a prior conviction:

Provided that it shall not be lawful for a court to direct that a sentence of imprisonment in default of payment of a fine shall be executed concurrently with a sentence imposed in respect of a prior conviction under sub-paragraph (i) of paragraph (c) of section *twenty-eight* or with any part of such sentence.

(No. 18 of 1962 as amended by G.N. No. 268 of 1964 and Act No. 10 of 2003)

40. (1) When sentence is passed under this Code on an escaped convict, such sentence, if of death or fine, shall, subject to the provisions of this code, take effect immediately, and if of imprisonment, shall take effect according to the following rules, that is to say:

Escaped convicts to serve unexpired sentences when recaptured

(a) if the new sentence is severer than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately and he shall serve any period of imprisonment in respect of his former sentence which remained unexpired at the time of his escape after he has completed serving his new sentence;

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

(2) For the purposes of this section, a sentence of imprisonment for whatever period with hard labour shall be deemed severer than a sentence of imprisonment for whatever period without hard labour and, where the conditions as to labour are the same, a longer sentence shall be deemed severer than a shorter sentence.

(Amended by Act No. 26 of 1940 and Act No. 10 of 2003)

41. (1) Where a court by or before which a person is convicted of an offence, not being an offence the sentence for which is fixed by law, is of opinion, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order under the Probation of Offenders Act is not appropriate, the court may make an order discharging him absolutely or subject to the condition that he commits no offence during such period, not exceeding twelve months from the date of the order, as may be specified therein.

Absolute and
conditional
discharge
Cap. 93

(2) An order discharging a person subject to such a condition as aforesaid is in this section and in section *forty-two* referred to as "an order for conditional discharge", and the period specified in any such order as "the period of conditional discharge".

(3) Before making an order for conditional discharge, the court shall explain to the offender in ordinary language that if he commits another offence during the period of conditional discharge he will be liable to be sentenced for the original offence.

(4) A court may, on making an order for conditional discharge, if it

Cap. 88

thinks it expedient for the purpose of the reformation of the offender, allow any person who consents to do so to execute a bond for the good behaviour of the offender; and the provisions of section *sixty* of the Criminal Procedure Code shall apply in relation to the forfeiture of any such bond.

(5) Subject as hereinafter provided, a conviction for an offence for which an order is made under this section discharging the offender absolutely or conditionally shall not be deemed to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any further proceedings which may be taken against the offender under section *forty-two*.

(6) The foregoing provisions of this section shall not affect-

(a) any right of any such offender as aforesaid to appeal against his conviction, or to rely thereon in bar of any subsequent proceedings for the same offence;

(b) the revesting or restoration of any property in consequence of the conviction of any such offender.

(7) Where, under the provisions of section *forty-two*, a person conditionally discharged under this section is sentenced for the offence in respect of which the order for conditional discharge was made, that order shall cease to have effect.

(No. 18 of 1962)

42. (1) If it appears to any Judge or magistrate that an offender against whom an order for conditional discharge has been made has been convicted of an offence during the period of conditional discharge, he may issue a summons requiring the offender to appear at the place and time specified therein or may issue a warrant for his arrest:

Commission of further offences by offender against whom an order for conditional discharge has been made

Provided that a magistrate shall not issue such a summons or warrant except on information on oath.

(2) A summons or warrant issued under subsection (1) shall direct the

offender to appear or to be brought before the court by which the order for conditional discharge was made.

(3) Where an offender is convicted by a magistrate of an offence committed during the period of conditional discharge, the magistrate may commit the offender to custody or release him on bail, with or without sureties, until he can be brought or appear before the court by which the order of conditional discharge was made.

(4) Where a magistrate commits an offender to custody, or releases him on bail, under the provisions of subsection (3), he shall transmit to the court by which the order for conditional discharge was made-

(a) such particulars of the matter as he thinks fit; and

(b) a signed certificate of the conviction for the offence committed during the period of conditional discharge;

and for the purposes of the proceedings in the court to which it is transmitted, such certificate, if purporting to be so signed, shall be admitted as evidence of the conviction.

(5) Where it is proved to the satisfaction of the court by which an order for conditional discharge was made that the offender has been convicted of an offence committed during the period of conditional discharge, such court may deal with him in respect of the original offence in any manner in which it could deal with him if he had just then been convicted before the court of such original offence.

(6) Where an offender is convicted before the High Court of an offence committed during the period of conditional discharge, the High Court may deal with him in respect of the original offence in any manner in which the court which made the order for conditional discharge could deal with him if he had just then been convicted before that court of such original offence.

(No. 18 of 1962)

PART II-CRIMES

DIVISION I

OFFENCES AGAINST PUBLIC ORDER

CHAPTER VII

TREASON AND OTHER OFFENCES

43. (1) A person is guilty of treason and shall be liable to suffer death Treason
who-

(a) prepares or endeavours to overthrow by unlawful means the Government as by law established; or

(b) prepares or endeavours to procure by force any alteration of the law or the policies of the Government; or

(c) prepares or endeavours to procure by force the setting up of an independent state in any part of Zambia or the secession of any part of Zambia from the Republic; or

(d) prepares or endeavours to carry out by force any enterprise which usurps the executive power of the State in any matter of both a public and a general nature; or

(e) incites or assists any person to invade Zambia with armed force or unlawfully to submit any part of Zambia to attack by land, water or air, to assist in the preparation of any such invasion or attack; or

(f) in time of war and with intent to give assistance to the enemy, does any act which is likely to give such assistance.

(2) In paragraphs (b), (c) and (d) of subsection (1), "by force" means either-

(a) by force used in such a manner as, whether by reason of the number of persons involved or the means used or both, to imperil or be likely to imperil the safety of the State or to cause or be likely to cause death or grievous harm or serious damage to property; or

(b) by a show of force calculated to arouse reasonable apprehension that force will be used in such a manner as is described in paragraph (a).

(3) A person who is not a citizen of Zambia shall not be punishable under this section for anything done outside Zambia, but a citizen of Zambia may be tried and punished for an offence under this section as if it had been committed within the jurisdiction of the court.

(No. 6 of 1965)

44. Any person who-

Concealment of
treason

(a) becomes an accessory after the fact to treason; or

(b) knowing that any person intends to commit treason, does not give information thereof with all reasonable despatch to the President, the Vice-President, a Minister, a Deputy Minister, an Administrative Officer or a police officer, or use other reasonable endeavours to prevent the commission of the offence;

is guilty of the felony termed misprision of treason and is liable to imprisonment for life.

(As amended by No. 6 of 1965)

45. A person is guilty of treason-felony and shall be liable to imprisonment for twenty years who-

Treason-felony

(a) prepares or endeavours to procure by unlawful means any alterations of the law or the policies of the Government; or

(b) prepares or endeavours to carry out by unlawful means any enterprise which usurps the executive power of the State in any matter of both a public and a general nature.

(No. 6 of 1965)

46. Any person who, without lawful authority, carries on, or makes preparation for carrying on, or aids in or advises the carrying on of, or preparation for, any war or warlike undertaking with, for, by, or against any chief, or with, for, by, or against any tribal group, is guilty of a felony, and is liable to imprisonment for life.

Promoting tribal
war

47. Repealed by Act No. 35 of 1973.

48. Any person who advisedly attempts to effect any of the following purposes, that is to say: Inciting to mutiny

(a) to seduce any person serving in the Defence Force or any member of the Zambia Police Force from his duty and allegiance to the President; or

(b) to incite any such persons to commit an act of mutiny or any traitorous or mutinous act; or

(c) to incite any such persons to make or endeavour to make a mutinous assembly;

is guilty of a felony, and is liable to imprisonment for life.

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

49. Any person who-

(a) aids, abets, or is accessory to, any act of mutiny by; or

(b) incites to sedition or to disobedience to any lawful order given by a superior officer;

any non-commissioned officer or private of the Defence Force or any member of the Zambia Police Force, is guilty of a misdemeanour.

Aiding soldiers or police in acts of mutiny

50. Any person who, by any means whatever, directly or indirectly-

(a) procures or persuades or attempts to procure or persuade to desert; or

(b) aids, abets, or is accessory to the desertion of; or

(c) having reason to believe he is a deserter, harbours or aids in concealing;

any non-commissioned officer or private of the Defence Force or any member of the Zambia Police Force, is guilty of a misdemeanour and is liable to imprisonment for six months.

Inducing soldiers or police to desert

51. Any person who-

(a) knowingly and advisedly aids an alien enemy of the Republic, being a prisoner of war in Zambia, whether such prisoner is confined in a prison or elsewhere, or is suffered to be at large on his parole, to escape from his prison or place of confinement, or if he is at large on his parole,

Aiding prisoners of war to escape

to escape from Zambia, is guilty of a felony and is liable to imprisonment for life;

(b) negligently and unlawfully permits the escape of any such person as is mentioned in paragraph (a), is guilty of a misdemeanour.

52. In the case of any of the offences defined in this Chapter, when the manifestation by an overt act of an intention to effect any purpose is an element of the offence, every act of conspiring with any person to effect that purpose, and every act done in furtherance of the purpose by any of the persons conspiring, is deemed to be an overt act manifesting the intention.

Definition of overt act

53. (1) If the President is of the opinion that there is in any publication or series of publications published within or without Zambia by any person or association of persons matter which is contrary to the public interest, he may, in his absolute discretion, by order published in the *Gazette* and in such local newspapers as he may consider necessary, declare that that particular publication or series of publications, or all publications or any class of publication specified in the order published by that person or association of persons, shall be a prohibited publication or prohibited publications, as the case may be.

Prohibited publications

(2) If an order made under the provisions of subsection (1) specifies by name a publication which is a periodical publication, such order shall, unless a contrary intention be expressed therein, have effect-

(a) with respect to all subsequent issues of such publication; and

(b) not only with respect to any publication under that name, but also with respect to any publication published under any other name if the publishing thereof is in any respect a continuation of, or in substitution for, the publishing of the publication named in the order.

(3) If an order made under the provisions of subsection (1) declares that all publications published by a specified person or association of persons shall be prohibited publications, such order shall, unless a contrary intention be expressed therein, have effect not only with respect to all publications published by that person or association of persons before the date of the order but also with respect to all publications so published on or after such date.

(4) An order made under the provisions of subsection (1) shall, unless a contrary intention is expressed therein, apply to any translation into any language whatsoever of the publication specified in the order.

(5) Where an order has been made under subsection (1) declaring any series of publications or all or any class of publications published by any person or association of persons to be prohibited publications or specifying by name a publication which is a periodical publication, any person who wishes to import into Zambia any particular publication affected by such order may apply to the competent authority for a permit in that behalf and, unless the competent authority is satisfied that the publication contains matter which is contrary to the public interest, he shall grant such a permit and the order shall thereupon cease to have effect with respect to that publication.

(6) Any person whose application to the competent authority under subsection (5) has been refused may appeal in writing against such refusal to the President whose decision thereon shall be final.

(7) For the purpose of this section and of any prosecution in respect of a prohibited publication, any publication which purports to be printed or published outside Zambia by any person or association of persons shall, unless and until the contrary is proved, be deemed to be published outside Zambia by such person or persons.

(No. 9 of 1954 as amended by Nos. 34 and 36 of 1960, No. 18 of 1962 and G.N. No. 303 of 1964)

54. (1) Any person who imports, publishes, sells, offers for sale, distributes, or reproduces any prohibited publication or any extract therefrom, is guilty of an offence and is liable for a first offence to imprisonment for two years or to a fine not exceeding three thousand penalty units or to both, and for a subsequent offence to imprisonment for three years; and such publication or extract therefrom shall be forfeited to the President on behalf of the Government.

Offences in respect
of prohibited
publications

(2) Any person who, without lawful excuse, has in his possession any prohibited publication or any extract therefrom, is guilty of an offence and is liable for a first offence to imprisonment for one year or to a fine not exceeding one thousand and five hundred penalty units or to both, and for subsequent offence to imprisonment for two years; and such

publication or extract therefrom shall be forfeited to the President on behalf of the Government.

(No. 48 of 1938 as amended by No. 9 of 1954, S.I. No. 63 of 1964 and Act No. 13 of 1994)

55. (1) Any person to whom any prohibited publication or any extract therefrom is sent without his knowledge or privity or in response to a request made before the publication was declared to be a prohibited publication, or who has in his possession any prohibited publication or extract therefrom at the date when the publication is declared to be a prohibited publication, shall forthwith if or as soon as the nature of the contents thereof have become known to him, or in the case of a publication or extract therefrom which is in the possession of such person before an order declaring it to be a prohibited publication has been made, forthwith upon the making of such an order, deliver such publication or extract therefrom at the nearest police station of which an officer of or above the rank of Sub Inspector is in charge or to the nearest Administrative Officer, and in default thereof he is guilty of an offence and is liable on conviction to a fine not exceeding one thousand and five hundred penalty units or to imprisonment for a period not exceeding one year, or to both, and such publication or extract therefrom shall be forfeited.

Delivery of prohibited publication to police station

(2) This section shall not apply to a public officer who receives or is in possession of a prohibited publication or extract therefrom in the course of his duties as such officer.

(3) A person who complies with the provisions of subsection (1) or is convicted of an offence under that subsection shall not be liable to prosecution for an offence under section *fifty-four*.

(No. 9 of 1954 as amended by S.I. No. 63 of 1964, No. 24 of 1977 and Act No. 13 of 1994)

56. (1) Any of the following officers, that is to say:

Power to examine packages

(a) any officer of the General Post Office not below the rank of postmaster;

(b) any officer of the Department of Customs and Excise not below the rank of collector;

(c) any police officer not below the rank of Sub Inspector;

(d) any other officer authorised in that behalf by the President;

may detain, open and examine any package or article which he suspects to contain any prohibited publication or extract therefrom, and during such examination may detain any person importing, distributing, or posting such package or article or in whose possession such package or article is found.

(2) If any such publication or extract therefrom is found in such package or article, the whole package or article may be impounded and retained by the officer, and the person importing, distributing, or posting it, or in whose possession it is found, may forthwith be arrested and proceeded against for the commission of an offence under section *fifty-four* or *fifty-five*, as the case may be.

(No. 48 of 1938 as amended by No. 9 of 1954, G.N. No. 303 of 1964 and Act No. 24 of 1977)

57. (1) Any person who-

Offences in respect
of seditious
practices

(a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention;

(b) utters any seditious words;

(c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication;

(d) imports any seditious publication, unless he has no reason to believe that it is seditious;

is guilty of an offence and is liable for a first offence to imprisonment for seven years or to a fine not exceeding six thousand penalty units or to both; and any seditious publication shall be forfeited.

(2) Any person who, without lawful excuse, has in his possession any seditious publication is guilty of an offence and is liable for a first offence to imprisonment for two years or to a fine not exceeding three thousand penalty units or to both, and for a subsequent offence to imprisonment for five years; and such publication shall be forfeited.

(No. 48 of 1938 as amended by No. 29 of 1959, No.6 of 1965 and Act No. 13 of 1994)

58. A person shall not be prosecuted for an offence under section *fifty-seven* without the written consent of the Director of Public Prosecutions. Legal proceedings

(No. 48 of 1938 as amended by No. 6 of 1965)

59. No person shall be convicted of an offence under section *fifty-seven* on the uncorroborated testimony of one witness. Evidence

(No. 48 of 1938)

60. (1) A seditious intention is an intention- Seditious intention

(a) to advocate the desirability of overthrowing by unlawful means the Government as by law established; or

(b) to bring into hatred or contempt or to excite disaffection against the Government as by law established; or

(c) to excite the people of Zambia to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Zambia as by law established; or

(d) to bring into hatred or contempt or to excite disaffection against the administration of justice in Zambia; or

(e) to raise discontent or disaffection among the people of Zambia; or

(f) to promote feelings of ill will or hostility between different communities or different parts of a community; or

(g) to promote feelings of ill will or hostility between different classes of the population of Zambia; or

(h) to advocate the desirability of any part of Zambia becoming an independent state or otherwise seceding from the Republic; or

(i) to incite violence or any offence prejudicial to public order or in

disturbance of the public peace; or

(j) to incite resistance, either active or passive, or disobedience to any law or the administration thereof:

Provided that an intention, not being an intention manifested in such a manner as to effect or be likely to effect any of the purposes mentioned in the foregoing provisions of this subsection, shall not be taken to be seditious if it is an intention-

(i) to show that the Government have been misled or mistaken in any of their measures; or

(ii) to point out errors or defects in the Government or Constitution as by law established or in legislation or in the administration of justice, with a view to the reformation of such errors or defects; or

(iii) to persuade the people of Zambia to attempt to procure by lawful means the alteration of any matter in Zambia as by law established; or

(iv) to point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill will or hostility between different classes of the population of Zambia.

(2) In determining whether the intention with which any act was done, any words were spoken, or any document was published, was or was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself.

(3) For the purposes of paragraph (f) of subsection (1), "community" includes any body or group of persons having a common tribal or racial origin.

(No. 48 of 1938 as amended by No. 2 of 1955, No. 53 of 1957, No. 34 of 1960, No. 20 of 1964, No. 6 of 1965 and No. 36 of 1969)

61. (1) In any prosecution for publishing a seditious publication where it is proved that the publication has been published, the following persons shall be deemed to have published such publication:

Persons deemed to have published a seditious publication

(a) in the case of a publication of a society, the office-bearers of the society;

(b) any person referred to in the publication as being the editor,

assistant editor or author of such publication;

(c) any person who is proved to be the editor of such publication;

(d) any person who is proved to have published such publication.

(2) Notwithstanding the provisions of subsection (1), where any person mentioned in paragraph (a), (b) or (c) of the said subsection is prosecuted for publishing a seditious publication, it shall be a sufficient defence if he proves to the satisfaction of the court that the seditious publication was published without his consent and that the publication of the seditious publication did not arise from want of due care or caution on his part.

(3) A publication shall be treated as being the publication of a society if-

(a) it professes by name or otherwise to be a publication of or under the sponsorship of the society;

(b) it is published or disseminated by or under the direction or guidance of the society or by any person as an office-bearer of the society.

(4) In any prosecution for publishing a seditious publication, publication by or under the sponsorship of any branch, party or organ of a society shall be deemed to be a publication by the main society and by any headquarters branch of such society.

(5) For the purposes of this section, "office-bearer" and "society" shall have the meaning assigned to them in the Societies Act. Cap. 119

(No. 18 of 1962)

62. For the purposes of sections *fifty-three* to *sixty-one* both inclusive- Interpretation

"competent authority" means the person appointed as such by the President;

"import" includes-

(a) to bring into Zambia; and

(b) to bring within the inland waters of Zambia, whether or not the publication is brought ashore, and whether or not there is an intention to bring the same ashore;

"periodical publication" includes every publication issued periodically or in parts or numbers at intervals, whether regular or irregular;

"prohibited publication" means any publication in respect of which an order has been made under the provisions of section *fifty-three*;

"public interest" means the interest of defence, public safety, public order, public morality or public health;

"publication" includes all written or printed matter and everything, whether of a nature similar to written or printed matter or not, containing any visible representation, or by its form, shape, or in any manner capable of suggesting words or ideas, or gramophone record, or other similar means of reproducing speech, and every copy and reproduction of any publication;

"seditious publication" means a publication containing any word, sign or visible presentation expressive of a seditious intention; and

"seditious words" means words having a seditious intention.

(No. 48 of 1938 as amended by No. 9 of 1954, No. 18 of 1962, G.N. No. 303 of 1964 and No. 6 of 1965)

63. Any person who-

(a) administers, or is present at and consents to the administering of, any oath, or engagement in the nature of an oath, purporting to bind the person who takes it to commit any offence punishable with death; or

(b) takes any such oath or engagement, not being compelled to do so;

is guilty of a felony and is liable to imprisonment for life.

Unlawful oaths to
commit capital
offences

64. Any person who-

(a) administers, or is present at and consents to the administering of, any oath, or engagement in the nature of an oath, purporting to bind the

Other unlawful
oaths to commit
offences

person who takes it to act in any of the ways following, that is to say:

- (i) to engage in any mutinous or seditious enterprise;
- (ii) to commit any offence not punishable with death;
- (iii) to disturb the public peace;
- (iv) to be of any association, society or confederacy, formed for the purpose of doing any such act as aforesaid;
- (v) to obey the orders or commands of any committee or body of men not lawfully constituted, or of any leader or commander or other person not having authority by law for that purpose;
- (vi) not to inform or give evidence against any associate, confederate or other person;
- (vii) not to reveal or discovery any unlawful association, society or confederacy, or any illegal act done or to be done, or any illegal oath or engagement that may have been administered or tendered to or taken by himself or any other person, or the import of any such oath or engagement; or
- (b) takes any such oath or engagement, not being compelled to do so;

is guilty of a felony and is liable to imprisonment for seven years.

65. A person who takes any such oath or engagement as is mentioned in the two last preceding sections cannot set up as a defence that he was compelled to do so, unless within fourteen days after taking it, or, if he is prevented by actual force or sickness, within fourteen days after the termination of such prevention, he declares by information on oath before a magistrate, or, if he is on actual service in the Defence Force or in the Zambia Police Force, either by such information or by information to his commanding officer, the whole of what he knows concerning the matter, including the person or persons by whom and in whose presence, and the place where, and the time when, the oath or engagement was administered or taken.

Compulsion: how far a defence

66. (1) Any person who-

Unlawful drilling

(a) without the permission of the President, trains or drills any other person to the use of arms or the practice of military exercises, movements, or evolutions; or

(b) is present at any meeting or assembly of persons, held without the permission of the President, for the purpose of training or drilling any other persons to the use of arms or the practice of military exercises, movements, or evolutions;

is guilty of a felony and is liable to imprisonment for seven years.

(2) Any person who, at any meeting or assembly held without the permission of the President, is trained or drilled to the use of arms or the practice of military exercises, movements, or evolutions, or who is present at any such meeting or assembly for the purpose of being so trained or drilled, is guilty of a misdemeanour.

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

67. (1) Any person who publishes, whether orally or in writing or otherwise, any statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace, knowing or having reason to believe that such statement, rumour or report is false, is guilty of a misdemeanour and is liable to imprisonment for three years.

Publication of false news with intent to cause fear and alarm to the public

(2) It shall be no defence to a charge under subsection (1) that he did not know or did not have reason to believe that the statement, rumour or report was false, unless he proves that, prior to publication, he took reasonable measures to verify the accuracy of such statement, rumour or report.

(No. 48 of 1938 as amended by No. 7 of 1958)

68. Any person who does any act or utters any words or publishes any writing, with intent to insult or bring into contempt or ridicule the official national anthem of Zambia, is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding two years.

Insulting the national anthem

(No. 6 of 1965)

69. Any person who, with intent to bring the President into hatred, ridicule or contempt, publishes any defamatory or insulting matter, whether by writing, print, word of mouth or in any other manner, is

Defamation of President

guilty of an offence and is liable on conviction to imprisonment for a period not exceeding three years.

(No. 6 of 1965)

70. (1) Any person who utters any words or publishes any writing expressing or showing hatred, ridicule or contempt for any person or group of persons wholly or mainly because of his or their race, tribe, place of origin or colour is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding two years.

Expressing or showing hatred, ridicule or contempt for persons because of race, tribe, place of origin or colour

(2) A person shall not be prosecuted for an offence under this section without the written consent of the Director of Public Prosecutions.

(No. 6 of 1965)

CHAPTER VIII

OFFENCES AFFECTING RELATIONS WITH FOREIGN STATES AND EXTERNAL TRANQUILITY

71. Any person who, without such justification or excuse as would be sufficient in the case of the defamation of a private person, publishes anything intended to be read, or any sign or visible representation, tending to degrade, revile or expose to hatred or contempt any foreign prince, potentate, ambassador or other foreign dignitary with intent to disturb peace and friendship between Zambia and the country to which such prince, potentate, ambassador or dignitary belongs, is guilty of a misdemeanour.

Defamation of foreign princes

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

72. Any person commits a misdemeanour who does any of the following acts without the authority of the President, that is to say:

Foreign enlistment

(a) who prepares or fits out any naval or military expedition to proceed against the dominions of any friendly state, or is engaged in such preparation or fitting-out, or assists therein, or is employed in any capacity in such expedition; or

(b) who, being a Zambian subject, accepts or agrees to accept any commission or engagement in the military or naval service of any foreign state at war with any friendly state, or, whether a Zambian subject or not, induces any other person to accept or agree to accept any commission or engagement in the military or naval service of any

foreign state as aforesaid; or

(c) who, being a Zambian subject, quits or goes on board any vessel with a view of quitting Zambia, with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state, or, whether a Zambian subject or not, induces any other person to quit or to go on board any vessel with a view of quitting Zambia with the like intent; or

(d) who, being the master or owner of any vessel, knowingly either takes on board, or engages to take on board, or has on board such vessel any illegally enlisted person; or

(e) who, with intent or knowledge, or having reasonable cause to believe that the same will be employed in the military or naval service of any foreign state at war with any friendly state builds, agrees to build, causes to be built, equips, despatches, or causes or allows to be despatched, any vessel, or issues or delivers any commission for any vessel:

Provided that a person building, causing to be built or equipping a vessel in any of the cases aforesaid, in pursuance of a contract made before the commencement of such war as aforesaid, is not liable to any of the penalties specified in this section in respect of such building or equipping if-

(i) upon a proclamation of neutrality being issued by the President, he forthwith gives notice to the President or the Minister responsible for foreign affairs that he is so building, causing to be built, or equipping such vessel, and furnishes such particulars of the contract and of any matters relating to, or done, or to be done under the contract as may be required by the President or the Minister responsible for foreign affairs; and

(ii) he gives such security, and takes and permits to be taken such other measures, if any, as the President or the Minister responsible for foreign affairs may prescribe for ensuring that such vessel shall not be despatched, delivered, or removed without the licence of the President until the termination of such war as aforesaid.

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

73. Any person who is guilty of piracy or any crime connected with or relating or akin to piracy is liable to be tried and punished according to the law of England for the time being in force. Piracy

CHAPTER IX

UNLAWFUL ASSEMBLIES, RIOTS AND OTHER OFFENCES AGAINST PUBLIC TRANQUILITY

74. (1) When three or more persons assemble with intent to commit an offence, or being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause persons in the neighbourhood reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace, they are an unlawful assembly. It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in such a manner as aforesaid.

Definition of unlawful assembly

(2) When an unlawful assembly has begun to execute a common purpose by a breach of the peace and to the terror of the public, the assembly is called a riot, and the persons assembled are said to be riotously assembled.

Definition of riot

(As amended by No. 20 of 1964)

75. Any person who takes part in an unlawful assembly is guilty of a misdemeanour and is liable to imprisonment for five years.

Punishment of unlawful assembly

(As amended by No. 26 of 1961)

76. Any person who takes part in a riot is guilty of a misdemeanour and is liable to imprisonment for seven years.

Punishment of riot

(As amended by No. 26 of 1961)

77. Any magistrate, or any police officer of or above the rank of Inspector, or any commissioned officer in the Defence Force, in whose view twelve or more persons are riotously assembled, or who apprehends that a riot is about to be committed by twelve or more persons assembled within his view, may make or cause to be made a proclamation in the President's name, in such form as he thinks fit, commanding the rioters or persons so assembled to disperse peaceably.

Making proclamation for rioters to disperse

(As amended by No. 1 of 1956 and S.I. No. 63 of 1964)

78. If upon the expiration of a reasonable time after such proclamation

Dispersion of rioters after

is made, or after the making of such proclamation has been prevented by force, twelve or more persons continue riotously assembled together, any person authorised to make proclamation, or any police officer, or any other person acting in aid of such person or police officer, may do all things necessary for dispersing the persons so continuing assembled, or for apprehending them or any of them, and, if any person makes resistance, may use all such force as is reasonably necessary for overcoming such resistance, and shall not be liable in any criminal or civil proceeding for having, by the use of such force, caused harm or death to any person.

proclamation made

79. If proclamation is made, commanding the persons engaged in a riot, or assembled with the purpose of committing a riot, to disperse, every person who, at or after the expiration of a reasonable time from the making of such proclamation, takes or continues to take part in the riot or assembly, is guilty of a felony and is liable to imprisonment for ten years.

Rioting after proclamation

(As amended by No. 26 of 1961)

80. Any person who forcibly prevents or obstructs the making of such proclamation as is in section *seventy-seven* mentioned, is guilty of a felony and is liable to imprisonment for ten years; and if the making of the proclamation is so prevented, every person who, knowing that it has been so prevented, takes or continues to take part in the riot or assembly, is liable to imprisonment for ten years.

Preventing or obstructing the making of proclamation

(As amended by No. 26 of 1961)

81. Any persons who, being riotously assembled together, unlawfully pull down or destroy, or begin to pull down or destroy any building, railway, machinery or structures are guilty of a felony and each of them is liable to imprisonment for life.

Rioters demolishing buildings, etc.

82. Any persons who, being riotously assembled together, unlawfully damage any of the things in the last preceding section mentioned, are guilty of a felony and each of them is liable to imprisonment for seven years.

Rioters injuring buildings, etc.

83. All persons are guilty of a misdemeanour who, being riotously assembled, unlawfully and with force prevent, hinder or obstruct the loading or unloading of any railway, motor or other vehicle or vessel, or

Riotously interfering with railway, vehicle, etc.

the starting or transit of any railway, motor or other vehicle, or the sailing or navigating of any vessel, or unlawfully and with force board any railway, motor or other vehicle or any vessel with intent so to do.

84. Any person who goes armed in public, without lawful occasion, in such a manner as to cause terror to any person is guilty of a misdemeanour and his arms may be forfeited. Going armed in public

85. (1) Any person who, without lawful authority or excuse, the proof whereof shall lie upon him, has in his possession or in or upon any premises occupied by him any offensive weapon or any offensive material is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding seven years. Possession of offensive weapons or materials

(2) A police officer may arrest without warrant any person whom he has reasonable cause to believe to be committing an offence under this section.

(3) A person shall not be prosecuted for an offence under this section without the written consent of the Director of Public Prosecutions.

(4) In this section-

"offensive material" means any substance, material or article made or adapted for use for causing or threatening injury to the person or property, or intended by the person in question for such use, and includes-

(a) any explosive as defined in the Explosives Act; Cap. 115

(b) any ammunition as defined in the Firearms Act; Cap. 110

(c) any inflammable liquid or substance, and any acid or gas.

(No. 36 of 1969)

86. (1) Any person who, in order to take possession thereof, enters on any land or tenements in a violent manner, whether such violence consists in actual force applied to any other person or in threats or in breaking open any house or in collecting an unusual number of people, Forcible entry

is guilty of the misdemeanour termed "forcible entry".

(2) It is immaterial whether he is entitled to enter on the land or not, provided that a person who enters upon lands or tenements of his own, but which are in the custody of his servant or bailiff, does not commit the offence of forcible entry.

87. Any person who, being in actual possession of land without colour of right, holds possession of it, in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, against a person entitled by law to the possession of the land, is guilty of the misdemeanour termed "forcible detainer".

Forcible detainer

88. Any person who takes part in a fight in a public place is guilty of a misdemeanour and is liable to imprisonment for six months or to a fine not exceeding seven hundred and fifty penalty units.

Affray

(As amended by Act No. 13 of 1994)

89. Any person who challenges another to fight a duel, or attempts to provoke another to fight a duel, or attempts to provoke any person to challenge another to fight a duel, is guilty of a misdemeanour.

Challenge to fight a duel

90. Any person who-

Threatening violence

(a) threatens another with any injury to his person or property with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as a means of avoiding the execution of such threat; or

(b) discharges loaded firearms or commits any breach of the peace with intent to alarm any person;

is guilty of a misdemeanour and is liable to imprisonment for five years.

(No. 28 of 1937 as amended by No. 26 of 1961)

***91.** (1) Any person who, without lawful excuse, to any assembly makes any statement indicating or implying that it would be incumbent or desirable-

Proposing violence or breaches of the law to assemblies

*On the expiry of Act No. 70 of 1953, the text of this section set out in

Act No. 22 of 1953 will be substituted.

(a) to do any acts calculated to bring death or physical injury to any person or to any class or community of persons; or

(b) to do any acts calculated to lead to destruction or damage to any property; or

(c) to commit an offence against any law in force in Zambia or in any part thereof;

is guilty of an offence and is liable to imprisonment for seven years:

Provided that a statement which expresses mere disapproval of a law shall, to that extent only, be held not to be a statement which indicates or implies that it would be incumbent or desirable to commit an offence against such law.

(2) A person shall not be prosecuted for an offence under paragraph (c) of subsection (1) without the written consent of the Director of Public Prosecutions.

*On the expiry of Act No. 70 of 1953, the text of this section set out in Act No. 22 of 1953 will be substituted.

(3) For the purposes of this section, an assembly means a gathering of three or more persons.

(No. 70 of 1953 as amended by No. 26 of 1961 and S.I. No. 63 of 1964)

92. (1) Whenever the President is satisfied that any boycott is being conducted or is threatened or likely to be conducted in Zambia with the intention or effect of-

Wrongfully
inducing a boycott

(a) bringing into hatred or contempt, exciting disaffection against or undermining the lawful authority of the Government, or a local authority, or of persuading any such body to alter any law or rule, to appoint or dissolve any commission or committee or to take any action which it is not by law required to take;

(b) endangering law and order in the Republic;

(c) bringing the economic life of the Republic into jeopardy; or

(d) raising discontent or disaffection among the inhabitants of Zambia or engendering feelings of ill will or hostility between different classes or different races of the population of Zambia;

he may, by statutory notice, designate such boycott for the purposes of this section and may, by the same or in a subsequent such notice, specify in relation to a designated boycott any action which he is satisfied is likely to further that boycott, including (but without prejudice to the generality of the foregoing power) any action falling within any of the following classes of action, that is to say:

(i) abstaining from buying goods from or selling goods to any person or class of persons; or

(ii) abstaining from buying or selling any goods or class of goods; or

(iii) abstaining from entering or approaching or dealing at any premises at which any person or class of person carries on trade or business; or

(iv) abstaining from dealing with any person or class of person in the course of his trade or business or abstaining from using or providing any service or class of service; or

(v) abstaining from working for or employing any person or class of person; or

(vi) abstaining from letting, hiring or allowing the use of any land or building to any person or class of person; or

(vii) abstaining from doing any other act which may lawfully be done.

(2) Any person who, with intent to further any designated boycott-

(a) by word of mouth; or

(b) by making a publication as defined in subsection (6);

advises, induces or persuades or attempts to advise, induce or persuade any person or class of person to take any action which has been specified in relation to such boycott under the provisions of subsection (1), is guilty of an offence and is liable to imprisonment for a period not exceeding six months.

(3) For the purposes of this section, in determining whether any words

were spoken or any publication was made with intent to further a designated boycott, every person shall, unless the contrary be proved, be deemed to intend the consequences which would naturally follow from his conduct at the time and the circumstances in which he so conducts himself.

(4) Nothing in this section shall be construed so as to make unlawful any action lawfully taken by a party to a trade dispute as defined in the Industrial and Labour Relations Act, in contemplation or in furtherance of such dispute.

Cap. 269

(5) Where any person is charged before any court with an offence under this section, no further proceedings in respect thereof shall be taken against him without the consent of the Director of Public Prosecutions, except such as the court may think necessary by remanding (whether in custody or on bail) or otherwise to secure the due appearance of the person charged, so however, that if such person is remanded in custody, he shall, after the expiration of a period of fourteen days from the date on which he was so remanded, be entitled to be discharged from custody on entering a recognizance without sureties, unless within such period the Director of Public Prosecutions has consented to such further proceedings as aforesaid.

(6) For the purposes of this section, "publication" has the meaning given to it by section *sixty-two*, and a person is said to make a publication if he prints, publishes, sells, distributes or reproduces such publication.

(7) For the purposes of this section, "boycott" means the withholding by a combination of persons of all relations or any particular relations from any person or class of persons.

(No. 29 of 1959 as amended by G.N. No. 268 of 1964, S.I. No. 63 of 1964 and No. 69 of 1965)

93. Any persons who assemble together, to the number of two or more, for the purpose of unshipping, carrying, or concealing any goods subject to customs duty and liable to forfeiture under any written law relating to customs, are guilty of a misdemeanour and each of them is liable to imprisonment for six months or to a fine not exceeding three thousand penalty units.

Assembling for the purpose of smuggling

(As amended by Act No. 13 of 1994)

DIVISION II

OFFENCES AGAINST THE ADMINISTRATION OF LAWFUL AUTHORITY

CHAPTER X

OFFENCES AGAINST THE ADMINISTRATION OF LAWFUL AUTHORITY

94. Repealed by Act 14 of 1980

95. Repealed by Act 14 of 1980

96. Repealed by Act 14 of 1980

97. Any person who, being employed in the public service, and being charged by virtue of his employment with any judicial or administrative duties respecting property of a special character, or respecting the carrying on of any manufacture, trade or business of a special character, and having acquired or holding, directly or indirectly, a private interest in any such property, manufacture, trade or business, discharges any such duties with respect to the property, manufacture, trade or business in which he has such interest or with respect to the conduct of any person in relation thereto, is guilty of a misdemeanour and is liable to imprisonment for one year.

Officers charged
with administration
of property of a
special character of
with special duties

98. Any person who, being employed in the public service in such a capacity as to require him or to enable him to furnish returns or statements touching any sum payable or claimed to be payable to himself or to any other person, or touching any other matter required to be certified for the purpose of any payment of money or delivery of goods to be made to any person, makes a return or statement touching any such matter which is, to his knowledge, false in any material particular, is guilty of a misdemeanour.

False claims by
officials

99. (1) Any person who, being employed in the public service, does or

Abuse of

directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights or interests of the Government or any other person, is guilty of a misdemeanour. If the act is done or directed to be done for purposes of gain, he is guilty of a felony and is liable to imprisonment for three years.

authority of
office

(2) A prosecution for any offence under this or either of the two last preceding sections shall not be instituted except by or with the sanction of the Director of Public Prosecutions.

(As amended by S.I. No. 63 of 1964 and Act No 29 of 1976)

100. Any person who, being authorised or required by law to give any certificate touching any matter by virtue whereof the rights of any person may be prejudicially affected, gives a certificate which is, to his knowledge, false in any material particular, is guilty of a misdemeanour.

False certificates
by public officers

101. Any person who-

False assumption
of authority

(a) not being a judicial officer, assumes to act as a judicial officer; or

(b) without authority, assumes to act as a person having authority by law to administer an oath or take a solemn declaration or affirmation or affidavit or to do any other act of a public nature which can only be done by persons authorised by law to do so; or

(c) represents himself to be a person authorised by law to sign a document testifying to the contents of any register or record kept by lawful authority, or testifying to any fact or event, and signs such document as being so authorised, when he is not, and knows that he is not, in fact, so authorised;

is guilty of a misdemeanour.

102. Any person who-

Personating public
officers

(a) personates any person employed in the public service on an occasion when the latter is required to do any act or attend in any place by virtue of his employment; or

(b) falsely represents himself to be a person employed in the public service, and assumes to do any act or to attend in any place for the purpose of doing any act by virtue of such employment;

is guilty of a misdemeanour and is liable to imprisonment for three years.

103. Whoever holds out any threat of injury to any person employed in the public service, or to any person in whom he believes that person to be interested, for the purpose of inducing that person to do any act, or to forbear or delay to do any act connected with the exercise of the public functions of such person, is guilty of a misdemeanour.

Threat of injury to persons employed in public service

(No. 26 of 1940)

103A. In this chapter, "public service" means service of the Government or a local authority, or of a statutory board or body including an institution of higher learning, corporation or company in which the Government has majority interest or control.

Definition

(As amended by Act No. 29 of 1976).

CHAPTER XI

OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE

104. (1) Any person who, in any judicial proceeding, or for the purpose of instituting any judicial proceeding, knowingly gives false testimony touching any matter which is material to any question then pending in that proceeding or intended to be raised in that proceeding, is guilty of the misdemeanour termed "perjury".

Perjury

(2) It is immaterial whether the testimony is given on oath or under any other sanction authorised by law.

(3) The forms and ceremonies used in administering the oath or in otherwise binding the person giving the testimony to speak the truth are immaterial, if he assent to the forms and ceremonies actually used.

(4) It is immaterial whether the false testimony is given orally or in writing.

(5) It is immaterial whether the court or tribunal is properly constituted, or is held in the proper place, or not, if it actually acts as a court or tribunal in the proceeding in which the testimony is given.

(6) It is immaterial whether the person who gives the testimony is a competent witness or not, or whether the testimony is admissible in the proceeding or not.

(7) Any person who aids, abets, counsels, procures, or suborns another person to commit perjury is guilty of the misdemeanour termed "subornation of perjury".

Subornation of perjury

104A. (1) Where a witness in any judicial proceeding, other than a person accused of an offence in a criminal proceeding, makes a statement on oath or affirmation on some fact relevant in the proceeding contradicting a material detail in a previous statement made on oath or affirmation by the same witness before any court or tribunal and, the court or tribunal is satisfied that either of the statements whether false or not was made with intent to deceive, shall be guilty of an offence and liable to imprisonment for two years.

Conflicting statements on oath

(2) At the trial of any person for an offence under this section, the record of a court or tribunal containing any statement made on oath or affirmation by the person charged shall be *prima facie* evidence of such statement.

(3) A person shall be liable to be convicted of an offence under this section notwithstanding that any statement made by him before a court or tribunal was made in reply to a question which he was bound by law to answer, any such statement shall be admissible in any proceeding under this section.

(As amended by Act 3 of 1990)

105. Any person who, having been lawfully sworn as an interpreter in a judicial proceeding, wilfully makes a statement material in that proceeding which he knows to be false, or does not believe to be true, is guilty of the misdemeanour termed "perjury".

False statements by interpreters

(No. 26 of 1940)

106. Any person who commits perjury or suborns perjury is liable to imprisonment for seven years.

Punishment of perjury and subordination of perjury

107. A person cannot be convicted of committing perjury or of subordination of perjury solely upon the evidence of one witness as to the falsity of any statement alleged to be false. Evidence on charge of perjury

108. Any person who, with intent to mislead any tribunal in any judicial proceeding- Fabricating evidence

(a) fabricates evidence by any means other than perjury or subordination of perjury; or

(b) knowingly makes use of such fabricated evidence;

is guilty of a misdemeanour and is liable to imprisonment for seven years.

109. Any person who swears falsely or makes a false affirmation or declaration before any person authorised to administer an oath or take a declaration upon a matter of public concern under such circumstances that the false swearing or declaration if committed in a judicial proceeding would have amounted to perjury, is guilty of a misdemeanour. False swearing

110. Any person who practises any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token, or writing, to any person called or to be called as a witness in any judicial proceeding, with intent to affect the testimony of such person as a witness, is guilty of a misdemeanour. Deceiving witnesses

111. Any person who, knowing that any book, document, or thing of any kind whatsoever, is or may be required in evidence in a judicial proceeding, wilfully removes or destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, is guilty of a misdemeanour. Destroying evidence

(As amended by No. 26 of 1940)

112. (1) Any person commits a felony who- Conspiracy to defeat justice and interference with witnesses

(a) conspires with any other person to accuse any person falsely of any crime or to do anything to obstruct, prevent, pervert, or defeat the course of justice; or

(b) in order to obstruct the due course of justice, dissuades, hinders or prevents any person lawfully bound to appear and give evidence as a witness from so appearing and giving evidence, or endeavours to do so; or

(c) obstructs or in any way interferes with or knowingly prevents the execution of any legal process, civil or criminal.

(2) Any person guilty of a felony under sub-section (1) is liable to imprisonment for seven years.

(As amended by Act No. 29 of 1976)

113. Any person who asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person upon any agreement or understanding that he will compound or conceal a felony, or will abstain from, discontinue, or delay a prosecution for a felony, or will withhold any evidence thereof, is guilty of a misdemeanour.

Compounding
felonies

114. Any person who, having brought, or under pretence of bringing, an action against another person upon a Penal Act or Statute in order to obtain from him a penalty for any offence committed or alleged to have been committed by him, compounds the action without the order or consent of the court in which the action is brought or is to be brought, is guilty of a mis-demeanour.

Compounding
penal actions

115. Any person who-

Advertisements for
stolen property

(a) publicly offers a reward for the return of any property which has been stolen or lost, and in the offer makes use of any words purporting that no questions will be asked, or that the person producing such property will not be seized or molested; or

(b) publicly offers to return to any person who may have bought or advanced money by way of loan upon any stolen or lost property the money so paid or advanced or any other sum of money or reward for the return of such property; or

(c) prints or publishes any such offer;

is guilty of a misdemeanour.

116. (1) Any person who-

Contempt of court

(a) within the premises in which any judicial proceeding is being had or taken, or within the precincts of the same, shows disrespect, in speech or manner, to or with reference to such proceeding, or any person before whom such proceeding is being had or taken; or

(b) having been called upon to give evidence in a judicial proceeding, fails to attend or, having attended, refuses to be sworn or to make an affirmation, or having been sworn or affirmed, refuses without lawful excuse to answer a question or to produce a document, or remains in the room in which such proceeding is being had or taken, after the witnesses have been ordered to leave such room; or

(c) causes an obstruction or disturbance in the course of a judicial proceeding; or

(d) while a judicial proceeding is pending, makes use of any speech or writing, misrepresenting such proceeding, or capable of prejudicing any person in favour of or against any parties to such proceeding, or calculated to lower the authority of any person before whom such proceeding is being had or taken; or

(e) publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private; or

(f) attempts wrongfully to interfere with or influence a witness in a judicial proceeding either before or after he has given evidence, in connection with such evidence; or

(g) dismisses a servant because he has given evidence on behalf of a certain party to a judicial proceeding; or

(h) retakes possession of land from any person who has recently obtained possession by a writ of court; or

(i) commits any other act of intentional disrespect to any judicial proceeding, or to any person before whom such proceeding is being had or taken;

is guilty of a misdemeanour and is liable to imprisonment for six months or to a fine not exceeding seven hundred and fifty penalty units.

(2) When any offence against paragraph (a), (b), (c), (d) or (i) of subsection (1) is committed in view of the court, the court may cause the offender to be detained in custody, and at any time before the rising of the court on the same day may take cognizance of the offence and sentence the offender to a fine not exceeding six hundred penalty units or, in default of payment, to imprisonment without hard labour for one month.

(3) The provisions of this section shall be deemed to be in addition to and not in derogation from the power of a court to punish for contempt of court.

(As amended by No. 26 of 1940 and Act No. 13 of 1994)

117. (1) No person shall-

Prohibition on
taking
photographs, etc.,
in court

(a) take or attempt to take in any court any photograph, or, with a view to publication, make or attempt to make in any court any portrait or sketch, of any person, being a Judge of the court or a juror or a witness in or a party to any proceedings before the court, whether civil or criminal; or

(b) publish any photograph, portrait or sketch taken or made in contravention of the provisions of this subsection or any reproduction thereof;

and if any person acts in contravention of this subsection, he shall be liable to a fine not exceeding one thousand five hundred penalty units in respect of each offence;

Provided that this section shall not apply to photographs being taken on any occasion with the consent of the Chief Justice, or where the occasion is the opening of any session of the High Court, with the consent of the Judge holding that session.

(2) For the purposes of this section-

(a) "court" means the High Court, any subordinate court, juvenile court, court of a coroner or a local court as defined in the Local Courts

Cap. 29

Act;

(b) "Judge" includes registrar, magistrate, coroner and officer of such local court;

(c) a photograph, portrait or sketch shall be deemed to be a photograph, portrait or sketch taken or made in court if it is taken or made in the court-room or in the building or in the precincts of the building in which the court is held, or if it is a photograph, portrait or sketch taken or made of the person while he is entering or leaving the court-room or any such building or precincts as aforesaid.

(As amended by No. 53 of 1957, Act No. 3 of 1990 and No. 13 of 1994)

CHAPTER XII

RESCUES, ESCAPES AND OBSTRUCTING OFFICERS OF COURT OF LAW

118. (1) Any person who by force rescues or attempts to rescue from lawful custody any other person- Rescue

(a) is, if such last-named person is under sentence of death or imprisonment for life or charged with an offence punishable with death or imprisonment for life, guilty of a felony and is liable to imprisonment for life;
and

(b) is, if such other person is imprisoned on a charge or under sentence for any offence other than those specified above, guilty of a felony and is liable to imprisonment for seven years; and

(c) is, in any other case, guilty of a misdemeanour.

(2) If the person rescued is in the custody of a private person, the offender must have notice of the fact that the person rescued is in custody.

119. Any person who, being in lawful custody, escapes from such custody, is guilty of a misdemeanour.

Escape from lawful custody

120. Any person who-

(a) aids a prisoner in escaping or attempting to escape from lawful custody; or

(b) conveys anything or causes anything to be conveyed into a prison with intent to facilitate the escape of a prisoner;

is guilty of a felony and is liable to imprisonment for seven years.

Aiding prisoners to escape

121. Any person who, when any property has been attached or taken under the process of authority of any court, knowingly, and with intent to hinder or defeat the attachment or process, receives, removes, retains, conceals, or disposes of such property, is guilty of a felony and is liable to imprisonment for three years.

Removal etc., of property under lawful seizure

122. Any person who wilfully obstructs or resists any person lawfully charged with the execution of an order or warrant of any court, is guilty of a misdemeanour and is liable to imprisonment for one year.

Obstructing court officers

CHAPTER XIII

MISCELLANEOUS OFFENCES AGAINST PUBLIC AUTHORITY

123. Any person employed in the public service who, in the discharge of the duties of his office, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person, is guilty of a misdemeanour.

Frauds and breaches of trust by public officers

124. Repealed by Act No. 7 of 1990

125. Whoever gives to any person employed in the public service any information which he knows or believes to be false, intending thereby to cause or knowing it to be likely that he will thereby cause such person-

False information to public officer

(a) to do or omit anything which such person ought not to do or omit if the true state of facts respecting which such information is given were known to him; or

(b) to use the lawful power of such person to the injury or annoyance of any person;

is guilty of a misdemeanour and is liable to imprisonment for six months or to a fine of one thousand and five hundred penalty units or to both.

(As amended by No. 26 of 1933 and Act No. 13 of 1994)

126. Everyone who wilfully disobeys any Statute or Act by doing any act which it forbids, or by omitting to do any act which it requires to be done, and which concerns the public or any part of the public, is guilty of a misdemeanour and is liable, unless it appears from the Statute or Act that it was the intention of Parliament to provide some other penalty for such disobedience, to imprisonment for two years.

Disobedience of
statutory duty

127. Everyone who disobeys any order, warrant or command duly made, issued or given by any court, officer or person acting in any public capacity and duly authorised in that behalf, is guilty of a misdemeanour and is liable, unless any other penalty or mode of proceeding is expressly prescribed in respect of such disobedience, to imprisonment for two years.

Disobedience of
lawful orders

DIVISION III

OFFENCES INJURIOUS TO THE PUBLIC IN GENERAL

CHAPTER XIV

OFFENCES RELATING TO RELIGION

128. Any person who destroys, damages or defiles any place of worship or any object which is held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, is guilty of a misdemeanour.

Insult to religion of
any class

129. Any person who voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremony, is guilty of a misdemeanour.

Disturbing
religious
assemblies

130. Every person who, with the intention of wounding the feelings of any person or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or in any place of sepulture or in any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the purpose of funeral ceremonies, is guilty of a misdemeanour.

Trespassing on burial places

131. Any person who, with the deliberate intention of wounding the religious feelings of any person, utters any word, or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, is guilty of a misdemeanour and is liable to imprisonment for one year.

Uttering words with the intent to wound religious feelings

131A. In this Part "child" means a person below the age of sixteen years. (As amended by Act No. 15 of 2005)

Definition of child

CHAPTER XV

OFFENCES AGAINST MORALITY

132. Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of the felony termed "rape".

Definition of rape

133. Any person who commits the offence of rape is liable to imprisonment for life.

Punishment of rape

(As amended by No. 26 of 1933 and No. 20 of 1964)

134. Any person who attempts to commit rape is guilty of a felony and is liable to imprisonment for life.

Attempted rape

(As amended by No. 26 of 1933)

135. Any person who with intent to marry or carnally know a woman of any age, or to cause her to be married or carnally known by any other

Abduction

person, takes her away, or detains her, against her will, is guilty of a felony and is liable to imprisonment for seven years.

136. Any person who unlawfully takes an unmarried girl under the age of sixteen years out of the custody or protection of her father or mother or other person having the lawful care or charge of her, and against the will of such father or mother or other person, is guilty of a misdemeanour.

Abduction of children

137. (1) Any person who unlawfully and indecently assaults any woman or girl is guilty of a felony and is liable to imprisonment for fourteen years.

Indecent assault

(2) It shall be no defence to a charge for an indecent assault on a girl under the age of twelve years to prove that she consented to the act of indecency:

Provided that it shall be a sufficient defence to any charge under this subsection if it shall be made to appear to the court before whom the charge shall be brought that the person so charged had reasonable cause to believe, and did in fact believe, that the girl was of or above the age of twelve years.

(3) Any person who is found in any building or dwelling-house or in any verandah or passage attached thereto or in any yard, garden or other land adjacent to or within the curtilage of such building or dwelling-house not being a public place-

Indecently insulting or annoying females

(a) for the purpose of and from motives of indecent curiosity gazing at or observing any woman or girl who may be therein while in a state of undress or semi-undress; or

(b) with intent to annoy or indecently to insult any woman or girl who may be therein;

is guilty of a misdemeanour and is liable to imprisonment for one year.

(As amended by No. 26 of 1933)

138. (1) Any person who unlawfully and carnally knows any child commits a felony and is liable, upon conviction, to a term of imprisonment of not less than fifteen years and may be liable to

Defilement of Child

imprisonment for life.

(2) Any person who attempts to have unlawful carnal knowledge of any child commits a felony and is liable, upon conviction, to imprisonment for a term of not less than fourteen years and not exceeding twenty years.

(3) Any person who prescribes the defilement of a child as cure for an ailment commits a felony and is liable, upon conviction, to imprisonment for a term of not less than fifteen years and may be liable to imprisonment for life.

(4) A child above the age of twelve years who commits an offence under subsection (1) or (2) is liable, to such community service or counseling as the court may determine, in the best interests of both children.

(As amended by Act No. 15 of 2005)

139. Any person who, knowing a child or other person to be an imbecile or person with mental illness, has or attempts to have unlawful carnal knowledge of that child or other person in circumstances not amounting to rape, but which prove that the offender knew at the time of the commission of the offence that the child or other person was an idiot or imbecile commits a felony and is liable, upon conviction, to imprisonment for a term of not less than fourteen years and may be liable to imprisonment for life.

Defilement of imbeciles or person with mental illness

(As amended by No. 26 of 1933, repealed and replaced by Act No. 15 of 2005)

140. Any person who-

Procuring child or other person for prostitution, etc.

(a) procures or attempts to procure any child or other person to have unlawful carnal knowledge either in Zambia or elsewhere, with an person or other persons for pornography, bestiality or any other purpose;

(b) procures or attempts to procure any child or other person to become, either in Zambia or elsewhere, a common prostitute;

(c) procures or attempts to procure any child or person to leave Zambia, with the intent that the child or person may become an inmate of or frequent a brothel elsewhere; or

(d) procures or attempts to procure any child or person to leave that child's or other person's usual place of abode in Zambia with intent that the child or other person may, for the purposes of prostitution, become an inmate of or frequent a brothel either in Zambia or elsewhere;

commits a felony and is liable, upon conviction, to imprisonment for a term of not less than twenty years and may be liable to imprisonment for life:

Provided that no person shall be convicted of an offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.

(As amended by No. 26 of 1933, No. 9 of 1954 and repealed and replaced by Act No. 15 of 2005)

141. Any person who-

(a) by threat or intimidation procures or attempts to procure any child or other person to have any unlawful carnal knowledge, either in Zambia or elsewhere;

(b) by false pretence or false representation procures any child or other person to have any unlawful carnal knowledge, either in Zambia or elsewhere; or

(c) applies, administers to, or causes to be taken by any child or other person any drug, matter or thing, with intent to stupefy or overpower so as thereby to enable any third person to have unlawful carnal knowledge with such child or other person;

commits a felony and is liable, upon conviction, to imprisonment for a term of not less than twenty years and may be liable to imprisonment for life:

Provided that no person shall be convicted of an offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.

(As amended by No. 9 of 1954, repealed and replaced by Act No. 15 of 2005)

142. Any person who, being the owner or occupier of premises or having or acting or assisting in the management of control thereof, induces or knowingly permits any child to resort to or be upon such premises for the purpose of being unlawfully and carnally known by any other person, whether such carnal knowledge is intended to be with any particular person or generally, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than twenty years and may be liable to imprisonment for life.

(As repealed and replaced by Act No. 15 of 2005)

Procuring
defilement by
threat or fraud
administering
drugs

Householder, etc.,
permitting
defilement of child
on premises

143. Any person who sells or traffics in a child or other person for any purpose or in any form commits an offence is liable, upon conviction, to imprisonment for a term of not less than twenty years:

Selling or trafficking in children, etc.

Provided that where it is proved during the trial of the accused person that the sale or trafficking in a child or other person was for the purpose of causing that child or person to be unlawfully and carnally known by any other person, whether such carnal knowledge was intended to be with any particular person or generally, the person is liable, upon conviction, to imprisonment for life.

(As repealed and replaced by Act No. 15 of 2005)

144. (1) Any person who detains any child or other person against that child or other person's will-

Detention with intent in premises or brothel

(a) in or upon any premises with intent that the child or other person may be unlawfully and carnally known by any third person, whether particularly or generally or for rituals or any other purpose; or

(b) in any brothel;

commits a felony and is liable, upon conviction, to imprisonment for a term of not less than twenty years and may be liable to imprisonment for life.

(2) When a child or person is in or upon any premises for the purposes of having any lawful carnal knowledge or in any brothel, another person shall be deemed to detain such a child or person in or upon such premises or in such brothel, if, with intent to compel or induce the child or person to remain in or upon such premises or in such brothel, such other person withholds from the child or person any wearing apparel or other property belonging to the child or person, or where wearing apparel has been lent or otherwise supplied to such child or person or by directions of such person, such other person threatens such person with legal proceedings for taking away the wearing apparel so lent or supplied.

(3) No legal proceedings, whether civil or criminal, shall be taken against any child or person for taking away or being found in possession of any such wearing apparel as was necessary to enable the child or person to leave such premises or brothel.

(As repealed and replaced by Act No. 15 of 2005)

145. (1) If it appears to any magistrate, on information made before the magistrate, on oath, by any parent, relative or guardian of any child or other person who, in the opinion of the magistrate, is acting *bona fide* in the interests of any child or person, that there is reasonable cause to suspect that such child or other person is

Power of search

unlawfully detained for immoral purposes by any person in any place within the jurisdiction of such magistrate, such magistrate may issue a warrant authorizing the person named therein to search for, and when found to take to and detain in a place of safety such child or person until the child or person can be brought before a magistrate.

(2) The magistrate before whom the child or person is brought in accordance with subsection (1) may cause the child or person to be delivered up to the child's parents or guardians, or be otherwise dealt with as circumstances may permit and require.

(3) A magistrate issuing a warrant under this section may, by the same or any other warrant, cause any person accused of so unlawfully detaining such child or person to be apprehended and brought before a magistrate and proceedings to be taken for punishing such person according to law.

(4) A child or person shall be deemed to be unlawfully detained for the purpose of being unlawfully and carnally known by any other person, whether any particular third person or generally; and

(a) in the case of the child whether the child consented to the detention or not; or

(b) if the person is of, or above the age of, sixteen years and is so detained against the person's will or against the will of the person's father or mother or of any person having the lawful care or charge of that person.

(5) Any person authorised by warrant under this section to search for any child so detained as aforesaid may enter if need be by force, any house, building or other place mentioned in the warrant, and may remove such child or person from there.

(As amended by S.I. No. 63 of 1964, repealed and replaced by Act No. 15 of 2005)

146. (1) A person who-

(a) knowingly lives wholly or in part on the earnings of prostitution; or

(b) in any public place, persistently solicits or importunes for immoral purposes;

commits a felony and is liable, upon conviction, to imprisonment for a term not exceeding fifteen years;

Provided that a child who commits an offence under subsection is

Person living on earnings of prostitution or persistently soliciting

liable to such community service or counseling as the court may determine in the best interests of the child.

(2) Where a person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such manner as to show that the person is aiding, abetting or compelling the prostitution with any other person, or generally, that person shall, unless the person shall satisfy the court to the contrary, be deemed to be knowingly living on the earnings of prostitution.

(As repealed and replaced by Act No. 15 of 2005)

147. (1) Every person who knowingly lives wholly or in part on the earnings of the prostitution of another or who is proved to have, for the purpose of gain, exercised control, direction or influence over the movements of a prostitute in such manner as to show that such person is aiding, abetting or compelling that person's prostitution with any other person, or generally, commits a felony and is liable, upon conviction, to imprisonment for a term not exceeding fifteen years.

Person living on aiding, etc., prostitution of another for gain

(2) Where a person compels a child to become a prostitute that person commits an offence and is liable, upon conviction, to imprisonment for life.

(As repealed and replaced by Act No. 15 of 2005)

148. If it is made to appear to a magistrate, by information on oath, that there is reason to suspect that any house or any part of a house is used by a woman or girl for purposes of prostitution, and that any person residing in or frequenting the house is knowingly living wholly or in part on the earnings of the prostitute, or is exercising control, direction or influence over the movements of the prostitute, the magistrate may issue a warrant authorising any police officer to enter and search the house and to arrest such person.

Power of search

149. Any person who keeps a house, room, set of rooms, or place of any kind whatsoever for purposes of prostitution commits a felony and is liable, upon conviction, to imprisonment for a term of not less than fifteen years and not exceeding twenty five years.

Brothels

(As repealed and replaced by Act No. 15 of 2005)

150. Any person who conspires with another person to induce any person or child, by means of any false pretence or other fraudulent means, to permit any other person to have unlawful carnal knowledge of such person or child, commits a felony and is liable,

Conspiracy to defile

upon conviction, to imprisonment for a term of not less than fifteen years and may be liable to imprisonment for life.

(As amended by No. 26 of 1933 and repealed and replaced by Act No. 15 of 2005)

151. Any person who, with intent to procure the miscarriage of a woman or female child, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatsoever, commits a felony and is liable, upon conviction, to imprisonment for a term not exceeding seven years.

Attempts to procure abortion

(As repealed and replaced by Act No. 15 of 2005)

152. (1) Every woman being pregnant who, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or uses force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used, commits a felony and is liable, upon conviction, to imprisonment for a term of fourteen years.

Abortion by pregnant woman or female child

(2) Any female child being pregnant who, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing or uses any force of any kind commits an offence and is liable to such community service or counseling as the court may determine, in the best interests of the child:

Provided that where a female child is raped or defiled and becomes pregnant, the pregnancy may be terminated in accordance with the Termination of Pregnancy Act.

(As repealed and replaced by Act No. 15 of 2005)

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153. Any person who unlawfully supplies to or procures for any person any thing whatsoever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman or female child, whether she is or is not with child, commits a felony and is liable, upon conviction, to imprisonment for a term not exceeding fourteen years.

Supplying drugs or instruments to procure abortion

(As repealed and replaced by Act No. 15 of 2005)

154. Except as otherwise expressly stated, it is immaterial in the case of any of the offences committed with respect to a woman or girl under a specified age, that the accused person did not know that the woman or

Knowledge of age of female immaterial

girl was under that age, or believed that she was not under that age.

155. Any person who-

Unnatural offences

(a) has carnal knowledge of any person against the order of nature;
or

(b) has carnal knowledge of an animal; or

(c) permits a male person to have carnal knowledge of him or her against the order of nature;
commits a felony and liable, upon conviction, to imprisonment for a term not less than fifteen years and may be liable to imprisonment for life:

Provided that where a person-

(i) has carnal knowledge of a child against the order of nature;

(ii) causes a child to have carnal knowledge of an animal; or

(iii) permits a male person to have carnal knowledge of a male or female child against the order of nature;

that person commits an offence and is liable, upon conviction, to imprisonment for not less than twenty-five years and may be liable to imprisonment for life.

(As amended by No. 26 of 1933 and repealed and replaced by Act No. 15 of 2005)

156. Any person who attempts to commit any of the offences specified in section *one hundred and fifty-five* commits a felony and is liable, upon conviction of not less than seven years but not exceeding fourteen years.

Attempt to commit
unnatural offences

(As amended by No. 26 of 1933 and repealed and replaced by Act No. 15 of 2005)

157. (1) Any person who conducts or causes to be conducted a harmful cultural practice on a child commits a felony and is liable, upon conviction, to imprisonment for a term not less than fifteen years and may be liable to imprisonment for life.

Harmful cultural
practice

(2) In this section "harmful cultural practice" includes sexual cleansing, female genital mutilation or in initiation ceremony that results in injury, the transmission of an infectious or life threatening disease or loss of life to a child but does not include circumcision on a male child.

(As amended by No. 26 of 1933 and repealed and replaced by Act No. 15 of 2005)

158. (1) Any male who, whether in public or private, commits any act of gross indecency with a male child or person, or procures a male child or person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male child or person, whether in public or private, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than seven years and not exceeding fourteen years.

Indecent practices
between persons of
the same sex

(2) Any female who, whether in public or private, commits any act of gross indecency with a female child or person, or procures a female child or person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with himself or with another female child or person, whether in public or private, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than seven years and not exceeding fourteen years.

(3) A child who, whether in public or private, commits any act of gross indecency with another child of the same sex or attempts to procure the commission of any such act by any person with the child's self or with another child or person of the same sex, whether in public or private, commits an offence and is liable, to such community service or counseling as the court may determine in the best interests of the child.

(As amended by No. 26 of 1933 and repealed and replaced by Act No. 15 of 2005)

159. (1) Any male person who has carnal knowledge of a female person who is to that person's knowledge his grandmother, mother, sister, daughter, grand-daughter, aunt or niece commits a felony and is liable, upon conviction, for a term of not less than twenty years and may be liable to imprisonment for life.

(2) Any female person who has carnal knowledge of a male person who is to that person's knowledge her grand-father, father, brother, son, grand-son, uncle or nephew commits a felony and is liable, upon conviction, for a term of not less than twenty years and may be liable to imprisonment for life.

(3) For the purposes of this section, it is immaterial that carnal knowledge was had with consent of the other person.

(4) Any person who attempts to commit incest commits a felony and is liable to imprisonment for a term of not less than ten years and not exceeding twenty-five years.

Incest

(As amended by No. 26 of 1933 and repealed and replaced by Act No. 15 of 2005)

160. On the conviction before any court of any person of an offence under section *one hundred and fifty-nine*, or of an attempt to commit the same, against any child it shall be in the power of the court to divest the offender of all authority over such child, and, if the offender is the guardian of such child, to remove the offender from such guardianship, and in any case to appoint any person or persons to be the guardian or guardians of such child during the child's minority or any less period:

Provided that the High Court may at any time vary or rescind the order by the appointment of any other person as such guardian or in any other respect.

(As amended by No. 26 of 1933 and repealed and replaced by Act No. 15 of 2005)

161. (1) Any female person of or above the age of sixteen years who with consent permits her grandfather, father, brother, uncle, nephew, son or grandson to have carnal knowledge of her knowing him to be her grandfather, father, brother, uncle, nephew, son or grandson, as the case may be, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than twenty years and may be liable to imprisonment for life:

Provided that a female child commits an offence under this subsection is liable to such community service or counseling as the court may determine in the best interests of the child.

Order for
guardianship

(2) Any male person of or above the age of sixteen years who with consent permits his grandmother, mother, sister, auntie, niece, daughter or grand-daughter to have carnal knowledge of him knowing her to be her grandmother, mother, sister, aunt, niece, daughter or grand-daughter, as the case may be, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than twenty years and may be liable to imprisonment for life:

Provided that a male child commits an offence under this subsection is liable to such community service or counseling as the court may determine in the best interests of the child.

(As amended by No. 26 of 1933 and repealed and replaced by Act No. 15 of 2005)

Consent to incest

162. In sections *one hundred and fifty-nine* and *one hundred and sixty-one*, "brother" and "sister", respectively, include half-brother and half-sister, and the provisions of the said sections shall apply whether the relationship between the person charged with an offence and the person with whom the offence is alleged to have been committed is or is not traced through lawful wedlock.

Test of relationship

163. (1) If, on the trial of any information for or charge of rape, the court is satisfied that the defendant is guilty of an offence under section *one hundred and fifty-nine*, but is not satisfied that the defendant is guilty of rape, the court may acquit the defendant of rape and find him guilty of an offence under section *one hundred and fifty-nine*, and he shall be liable to be punished accordingly.

Conviction of incest lawful on charge of rape

(2) If, on the trial of any information for or charge of an offence under section *one hundred and fifty-nine*, the court is satisfied that the defendant is guilty of an offence under section *one hundred and thirty-eight* or *one hundred and thirty-nine*, but is not satisfied that the defendant is guilty of an offence under section *one hundred and fifty-nine*, the court may acquit the defendant of an offence under section *one hundred and fifty-nine* and find him guilty of an offence under section *one hundred and thirty-eight* or *one hundred and thirty-nine*, and he shall be liable to be punished accordingly.

Conviction of unlawful carnal knowledge on charge of incest

164. (1) A person shall not without the consent, in writing, given by or on behalf of a child or person publish or disclose to any person otherwise than in the course of duty, the contents of any documents, communication or information which relates to and which has come to that person's knowledge in the course of duty performed in relation to offences under this Part, including the handling, medical treatment or counseling of victims.

Prohibition of disclosure of information

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine of not less than fifty thousand penalty units or to imprisonment for six months, or to both.

(As repealed and replaced by Act No. 15 of 2005)

CHAPTER XVI

OFFENCES RELATING TO MARRIAGE AND DOMESTIC OBLIGATIONS

165. Any person who wilfully and by fraud causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, is guilty of a felony and is liable to imprisonment for ten years.

Fraudulent
pretence of
marriage

166. Any person who, having a husband or wife living, goes through a ceremony of marriage which is void by reason of its taking place during the life of such husband or wife, is guilty of a felony and is liable to imprisonment for five years:

Bigamy

Provided that this section shall not extend to any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time.

167. Any person who dishonestly or with a fraudulent intention goes through the ceremony of marriage, knowing that he is not thereby lawfully married, is guilty of a felony and is liable to imprisonment for five years.

Marriage
ceremony
fraudulently gone
through without
lawful marriage

168. Any person who being the parent, guardian or other person having the lawful care or charge of a child being able to maintain such child, willfully and without lawful or reasonable cause deserts the child and leaves it without means of support commits an offence and is liable, upon conviction, for a first offence to imprisonment for a term not exceeding three years, or for a subsequent offence to imprisonment for a term not exceeding seven years.

Desertion of
children

(As repealed and replaced by Act No. 15 of 2005)

169. Any person who being the-

(a) parent;

Neglecting to
provide food, etc.,
for children

(b) guardian; or

(c) person in charge;

of a child that is unable to provide for itself, refuses or willfully neglects to provide, being able to do so, sufficient food, clothes, bedding or other necessities for such child, and thereby injures the health of such child, commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding three years or to both.

(As repealed and replaced by Act No. 15 of 2005)

170. Any person who, being legally liable either as master or mistress, to provide for any apprentice or servant necessary food, clothing, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, or unlawfully and maliciously does or causes to be done any bodily harm to such apprentice or servant so that the life of such apprentice or servant is endangered or that his health has been or is likely to be permanently injured, is guilty of a misdemeanour.

Master not providing for servants or apprentices

171. (1) Any person who, with intent to deprive any parent, guardian or other person who has the lawful care or charge of a child under the age of sixteen years, of the possession of such child-

Child stealing

(a) forcibly or fraudulently takes or entices away, or detains the child; or

(b) receives or harbours the child, knowing it to have been so taken or enticed away or detained;

is guilty of a felony and is liable to imprisonment for fourteen years.

(2) It is a defence to a charge of any of the offences defined in this section to prove that the accused person claimed in good faith a right to the possession of the child, or, in the case of an illegitimate child, is its mother or claimed to be its father.

(As amended by No. 20 of 1953 and Act No. 14 of 1981)

CHAPTER XVII

NUISANCES AND OFFENCES AGAINST HEALTH AND CONVENIENCE

172. (1) Any person who does an act not authorised by law or omits to discharge a legal duty and thereby causes any common injury, or danger or annoyance, or obstructs or causes inconvenience to the public in the exercise of common rights, commits the misdemeanour termed a "common nuisance" and is liable to imprisonment for one year.

Common nuisance

(2) It is immaterial that the act or omission complained of is convenient to a larger number of the public than it inconveniences, but the fact that it facilitates the lawful exercise of their rights by a part of the public may show that it is not a nuisance to any of the public.

173. (1) Every person who, with a view to compelling any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority-

Watching and besetting

(a) uses violence to or intimidates such other person or members of his household, or injures his property; or

(b) persistently follows such other person about from place to place; or

(c) hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or

(d) follows such other person in a disorderly manner; is guilty of an offence.

(2) Every person who, wrongfully and without legal authority, watches or besets-

(a) any premises or the approaches to such premises with a view to preventing any other person from doing any act which such other person has a legal right to do thereat; or

(b) the house or other place where any other person resides or works or carries on business, or happens to be, or the approaches to such house or place with a view to preventing such other person from doing or compelling him to do any act which such other person has a legal right to do or abstain from doing;

is guilty of an offence.

(3) Every person who is guilty of an offence under the provisions of this section is liable to a fine not exceeding three thousand penalty units or to imprisonment for a period not exceeding six months, or to both.

(No. 60 of 1957 and Act No. 13 of 1994)

174. (1) Any person being the owner or occupier, or having the use of, any house, room or place, who shall open, keep or use the same for the purpose of unlawful gaming being carried on therein, and any person who, being the owner or occupier of any house, room or place, shall knowingly and wilfully permit the same to be opened, kept or used by any other person for the purpose aforesaid, and any person having the care or management of or in any manner assisting in conducting the business of any house, room or place opened, kept or used for the purpose aforesaid, is said to keep a common gaming house. Gaming houses

(2) In this section, "unlawful gaming" means any game the chances of which are not alike favourable to all the players, including the banker or other person or persons by whom the game is managed or against whom the other players stake, play or bet.

(3) Any person who keeps a common gaming house is guilty of a misdemeanour.

(4) Any person, other than the persons mentioned in subsection (1), who is found in a common gaming house shall be deemed, unless the contrary is proved, to be there for the purpose of unlawful gaming, and is guilty of a misdemeanour and is liable to a fine of one hundred and fifty penalty units for the first offence, and for each subsequent offence to a fine of six hundred penalty units or imprisonment for three months, or to both.

(As amended by Act No. 13 of 1994)

175. (1) Any house, room or place which is used for any of the purposes following, that is to say: Betting houses

(a) for the purpose of bets being made therein between persons resorting to the place and-

- (i) the owner, occupier, or keeper of the place, or any person using the place; or
- (ii) any person procured or employed by or acting for or on behalf of any such owner, occupier or keeper, or person using the place; or
- (iii) any person having the care or management, or in any manner conducting the business, of the place; or

(b) for the purpose of any money or other property being paid or received therein by or on behalf of any such owner, occupier, or keeper, or person using the place, as, or for the consideration-

- (i) for an assurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or other property on any event or contingency of or relating to any horse race, or other race, fight, game, sport, or exercise; or
- (ii) for securing the paying or giving by some other person of any money or other property on any such event or contingency;

is called a common betting house.

(2) Any person who, being the owner or occupier of any house, room or place, knowingly and wilfully permits it to be opened, kept, or used as a common betting house by another person, or who has the use or management, or assists in conducting the business, of a common betting house, is guilty of a misdemeanour and is liable to imprisonment for one year:

Provided that-

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- (i) nothing herein contained shall make illegal the use of a totalisator by a race club, gymkhana club or sports club recognised by the Government, with the approval in each case of the Commissioner of Police. In this proviso, "totalisator" means and includes the instrument, machine or contrivance, commonly known as the totalisator and any other instrument, machine or contrivance of a like nature, or any scheme for enabling any number of persons to make bets with one another on the like principles;
- (ii) nothing in this section shall be deemed to prohibit any lottery lawfully promoted and conducted under the provisions of the Lotteries Act.

(As amended by No. 15 of 1946 and Nos. 8 and 27 of 1957)

176. Any person who appears, acts, or behaves as master or mistress, or as the person having the care or management of any such house, room, set of rooms, or place as is mentioned in sections *one hundred and seventy-four* and *one hundred and seventy-five* is to be taken to be the keeper thereof, whether he is or is not the real keeper.

Keeper of premises defined

177. (1) Any person who-

Obscene matters or things

(a) makes, produces or has in his possession any one or more obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films or any other object tending to corrupt morals; or

(b) imports, conveys or exports, or causes to be imported conveyed or exported, any such matters or things, or in any manner whatsoever puts any of them in circulation; or

(c) carries on or takes part in any business, whether public or private, concerned with any such matters or things, or deals in any such matters or things in any manner whatsoever, or distributes any of them, or exhibits any of them publicly, or makes a business of lending any of them; or

(d) advertises or makes known by any means whatsoever with a view to assisting the circulation of, or traffic in, any such matters or things, that a person is engaged in any of the acts referred to in this section, or advertises or makes known how, or from whom, any such matters or things can be procured either directly or indirectly; or

(e) publicly exhibits any indecent show or performance or any show or performance tending to corrupt morals;

is guilty of a misdemeanour and is liable to imprisonment for five years or to a fine of not less than fifteen thousand penalty units nor more than seventy-five thousand penalty units.

(2) If, in respect of any of the offences specified in paragraph (a), (b), (c) or (d) of subsection (1), any constituent element thereof is committed in Zambia, such commission shall be sufficient to render the person accused of such offence triable therefor in Zambia.

(3) A court, on convicting any person of an offence against this section, may order to be confiscated or destroyed any matter or thing made, possessed or used for the purpose of such offence.

(4) Any court may, on the application of a public prosecutor, order the destruction of any obscene matter or thing to which this section relates, whether any person may or may not have been convicted under the provisions of this section in respect of such obscene matter or thing.

(5) No prosecution for an offence under this section shall be instituted without the written consent of the Director of Public Prosecutions.

(No. 61 of 1970 and Act No. 13 of 1994)

177A. (1) Any person who engages a child or other person-

Child
pornography

(a) in a pornographic performance;

(b) in the production of a pornographic film or other material; or

(c) in a pornographic activity of any nature;

commits an offence and is liable, upon conviction, to a term of imprisonment of not less than fifteen years and may be liable to imprisonment for life.

(2) Any person who-

(a) sells to a child pornographic material;

(b) compels a child to watch a pornographic film or view pornography on the internet or elsewhere or in any form intended to corrupt a child's morals;

commits an offence and is liable, upon conviction, to a term of imprisonment of not less than fifteen years.

(3) A child who commits an offence under subsection (2) is liable, to such community service or counseling as the court may determine in the best interests of the child.

(As amended by Act No. 15 of 2005)

178. The following persons:

Idle and disorderly
persons

(a) every common prostitute behaving in a disorderly or indecent manner in any public place;

(b) every person wandering or placing himself in any public place to beg or gather alms, or causing or procuring or encouraging any child or children so to do;

(c) every person playing at any game of chance, not being an authorised lottery, for money or money's worth in any public place;

(d) every person wandering abroad and endeavouring by the exposure of wounds or deformity to obtain or gather alms;

(e) every person who, without lawful excuse, publicly does any indecent act;

(f) every person who publicly conducts himself in a manner likely to cause a breach of the peace; and

(g) every person who in any public place solicits for immoral purposes;

are deemed idle and disorderly persons, and are liable to imprisonment for one month or to a fine not exceeding sixty penalty units or to both.

(As amended by No. 15 of 1938, No. 26 of 1940, No. 29 of 1948 and Act No. 13 of 1994)

179. Every person who uses insulting language or otherwise conducts himself in a manner likely to give such provocation to any person as to cause such person to break the public peace or to commit any offence against the person, is liable to imprisonment for three months or to a fine not exceeding four hundred and fifty penalty units or to both.

Use of insulting language

(No. 15 of 1938 and Act No. 13 of 1994)

180. (1) Every person found drunk and incapable in any highway or other public place, or on any premises licensed under the Liquor Licensing Act, may be arrested without warrant and is liable to a penalty not exceeding one hundred and fifty penalty units, and on a second conviction within a period of twelve months is liable to a penalty not exceeding three hundred penalty units, and on a third or subsequent conviction within the said period of twelve months is liable to a penalty not exceeding six hundred penalty units.

Nuisances by drunken persons, etc.
Cap. 167

(2) Every person who, in any highway or other public place or on any premises licensed under the Liquor Licensing Act, is guilty while drunk of riotous or disorderly behaviour or who is drunk while in charge on any highway or railway or other public place of any horse, cattle, steam engine, locomotive, wagon, van, carriage or any other vehicle, other

Cap. 167

than a motor vehicle, or who is drunk when in possession of any loaded firearms, may be arrested without warrant and is liable to a penalty not exceeding seven hundred and fifty penalty units, or to imprisonment with or without hard labour for a period not exceeding three months.

(No. 21 of 1958 and Act No. 13 of 1994)

181. The following persons:

Rogues and
vagabonds

(a) every person convicted of an offence under section *one hundred and seventy-eight* after having been previously convicted as an idle and disorderly person:

(b) every person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence;

(c) every suspected person or reputed thief who has no visible means of subsistence and cannot give a good account of himself; and

(d) every person found wandering in or upon or near any premises or in any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose; shall be deemed to be a rogue and vagabond, and are guilty of a misdemeanour and are liable for the first offence to imprisonment for three months, and for every subsequent offence to imprisonment for one year.

182. (1) In this section, unless the context otherwise requires-

Offences relating
to official uniform

"official uniform" means any uniform prescribed for or used by the Defence Force, the Zambia Police Force or any other force or service in Zambia, or such department of the Government as the President may, by statutory instrument, prescribe;

"uniform" includes any distinctive part of such uniform.

(2) Any person who unlawfully wears any official uniform, or any dress bearing any of the distinctive marks of any such official uniform-

Wearing of official
uniform with intent
to commit offence

(a) with intent to commit a felony is guilty of an offence and is liable upon conviction to imprisonment for a term not exceeding seven years;

or

(b) with intent to commit any offence other than a felony is guilty of an offence and is liable upon conviction to a fine not exceeding seven thousand five hundred penalty units or to imprisonment for a term not exceeding three years, or to both.

(3) Any person who, without authority, wears an official uniform, or any dress having the appearance or distinctive marks of such official uniform, is guilty of an offence and is liable upon conviction to a fine not exceeding seven hundred and fifty penalty units or to imprisonment for a term not exceeding two months, or to both.

Unauthorised wearing of official uniform

Provided that nothing in this section shall prevent any person from wearing any official uniform or dress in the course of a stage play performed in any place in which stage plays may lawfully and publicly be performed, or in the course of a music-hall or circus performance, or in the course of any *bona fide* military representation.

(4) Any person who, not being in the service of the Republic or having previously received the written permission of the President or other appropriate authority so to do, imports, manufactures or sells or has in his possession for sale any official uniform is guilty of an offence and is liable upon conviction to a fine not exceeding seven thousand five hundred penalty units or to imprisonment for a term not exceeding three years, or to both.

Unauthorised importation, manufacture or sale of official uniform, etc.

(5) Any person who wears or uses without authority any badge or insignia of office, decoration, medal or ribbon supplied to or authorised for use by any member of the Defence Force, the Zambia Police Force or any other force or service in Zambia, or of such department of the Government as is prescribed under subsection (1), is guilty of an offence and is liable upon conviction to a fine not exceeding seven hundred and fifty penalty units, or to imprisonment for a term not exceeding two months, or to both.

Unauthorised wearing of badges, etc.

(6) Any person who unlawfully wears any official uniform, or any dress having the appearance of or bearing any of the distinctive marks of any such official uniform, in such manner or in such circumstances as to be likely to bring contempt on that uniform or dress is guilty of an offence and is liable upon conviction to a fine not exceeding seven hundred and

Bringing contempt on official uniform

fifty penalty units or to imprisonment for a term not exceeding two months, or to both such fine and imprisonment.

(7) Any uniform, dress, button, badge or other thing which is the subject of an offence under this section is liable to forfeiture, unless the President otherwise directs. Forfeiture of official uniform, etc.

(As amended by Federal Act No. 23 of 1955, G.N. No. 303 of 1964, S.I. No. 63 of 1964, Act No. 2 of 1987 and No. 13 of 1994)

183. Any person who unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, is guilty of a misdemeanour. Negligent act likely to spread infection

184. Any person who adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, is guilty of a misdemeanour. Adulteration of food or drink intended for sale

185. Any person who sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, is guilty of a misdemeanour. Sale of noxious food or drink

186. Any person who adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, is guilty of a misdemeanour. Adulteration of drugs

187. Any person who, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, is guilty of a misdemeanour. Sale of adulterated drugs

188. Any person who voluntarily corrupts or fouls the water of any Fouling water

public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, is guilty of a misdemeanour.

189. Any person who voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, is guilty of a misdemeanour. Fouling air

190. Any person who, for the purposes of trade or otherwise, makes loud noises or offensive or unwholesome smells in such places and circumstances as to annoy any considerable number of persons in the exercise of their common rights, commits and is liable to be punished as for a common nuisance. Offensive trades

CHAPTER XVIII

DEFAMATION

191. Any person who, by print, writing, painting, effigy, or by any means otherwise than solely by gestures, spoken words, or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, is guilty of the misdemeanour termed "libel". Libel

192. Defamatory matter is matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation. It is immaterial whether at the time of the publication of the defamatory matter the person concerning whom such matter is published is living or dead: Definition of defamatory matter

Provided that no prosecution for the publication of defamatory matter concerning a dead person shall be instituted without the consent of the Director of Public Prosecutions.

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

193. (1) A person publishes a libel if he causes the print, writing, painting, effigy or other means by which the defamatory matter is conveyed, to be dealt with, either by exhibition, reading, recitation, description, delivery, or otherwise, so that the defamatory meaning Definition of publication

thereof becomes known or is likely to become known to either the person defamed or any other person.

(2) It is not necessary for libel that a defamatory meaning should be directly or completely expressed; and it suffices if such meaning and its application to the person alleged to be defamed can be collected either from the alleged libel itself or from any extrinsic circumstances, or partly by the one and partly by the other means.

194. Any publication of defamatory matter concerning a person is unlawful within the meaning of this Chapter, unless-

Definition of unlawful publication

(a) the matter is true and it was for the public benefit that it should be published; or

(b) it is privileged on one of the grounds hereafter mentioned in this Chapter.

195. (1) The publication of defamatory matter is absolutely privileged, and no person shall, under any circumstances, be liable to punishment under this Code in respect thereof, in any of the following cases, namely:

Cases in which publication of defamatory matter is absolutely privileged

(a) if the matter is published by the President, or by the Cabinet or the National Assembly in any official document or proceeding; or

(b) if the matter is published in the Cabinet or the National Assembly by a Minister or by any member of the National Assembly; or

(c) if the matter is published concerning a person subject to military or naval discipline for the time being, and relates to his conduct as a person subject to such discipline, and is published by some person having authority over him in respect of such conduct, and to some person having authority over him in respect of such conduct; or

(d) if the matter is published in the course of any judicial proceedings by a person taking part therein as a Judge or magistrate or commissioner or counsel or solicitor or assessor or witness or party thereto; or

(e) if the matter published is in fact a fair report of anything said, done, or published in the Cabinet or the National Assembly; or

(f) if the person publishing the matter is legally bound to publish it.

(2) Where a publication is absolutely privileged, it is immaterial for the purposes of this Chapter whether the matter be true or false, and whether it be or be not known or believed to be false, and whether it be or be not published in good faith:

Provided that nothing in this section shall exempt a person from any liability to punishment under any other Chapter of this Code or under any other Act or Statute in force within Zambia.

(As amended by No. 26 of 1940 and G.N. No. 303 of 1964)

196. A publication of defamatory matter is privileged, on condition that it was published in good faith, if the relation between the parties by and to whom the publication is made is such that the person publishing the matter is under some legal, moral or social duty to publish it to the person to whom the publication is made or has a legitimate personal interest in so publishing it, provided that the publication does not exceed either in extent or matter what is reasonably sufficient for the occasion, and in any of the following cases, namely:

Cases in which publication of defamatory matter is conditionally privileged

(a) if the matter published is in fact a fair report of anything said, done, or shown in a civil or criminal inquiry or proceedings before any court:

Provided that if the court prohibits the publication of anything said or shown before it, on the ground that it is seditious, immoral, or blasphemous, the publication thereof shall not be privileged; or

(b) if the matter published is a copy or reproduction, or in fact a fair abstract, of any matter which has been previously published, and the previous publication of which was or would have been privileged under the last preceding section; or

(c) if the matter is an expression of opinion, in good faith as to the conduct of a person in a judicial, official, or other public capacity, or as to his personal character so far as it appears in such conduct; or

(d) if the matter is an expression of opinion in good faith as to the conduct of a person in relation to any public question or matter, or as to his personal character so far as it appears in such conduct; or

(e) if the matter is an expression of opinion in good faith as to the conduct of any person as disclosed by evidence given in a public legal

proceeding, whether civil or criminal, or as to the conduct of any person as a party, witness, or otherwise in any such proceeding, or as to the character of any person so far as it appears in any such conduct as in this paragraph mentioned; or

(f) if the matter is an expression of opinion in good faith as to the merits of any book, writing, painting, speech, or other work, performance, or act published, or publicly done or made, or submitted by a person to the judgment of the public, or as to the character of the person so far as it appears therein; or

(g) if the matter is a censure passed by a person in good faith on the conduct of another person in any matter in respect of which he has authority, by contract or otherwise, over the other person, or on the character of the other person, so far as it appears in such conduct; or

(h) if the matter is a complaint or accusation made by a person in good faith against another person in respect of his conduct in any matter, or in respect of his character so far as it appears in such conduct, to any person having authority, by contract or otherwise, over that other person in respect of such conduct or matter, or having authority by law to inquire into or receive complaints respecting such conduct or matter; or

(i) if the matter is published in good faith for the protection of the rights or interests of the person who publishes it, or of the person to whom it is published, or of some person in whom the person to whom it is published is interested.

197. A publication of defamatory matter shall not be deemed to have been made in good faith by a person, within the meaning of the last preceding section, if it is made to appear either-

Explanation as to good faith

(a) that the matter was untrue, and that he did not believe it to be true; or

(b) that the matter was untrue, and that he published it without having taken reasonable care to ascertain whether it was true or false; or

(c) that, in publishing the matter, he acted with intent to injure the person defamed in a substantially greater degree or substantially otherwise than was reasonably necessary for the interest of the public or for the protection of the private right or interest in respect of which he claims to be privileged.

198. If it is proved, on behalf of the accused person, that the defamatory matter was published under such circumstances that the

Presumption as to good faith

publication would have been justified if made in good faith, the publication shall be presumed to have been made in good faith until the contrary is made to appear, either from the libel itself, or from the evidence given on behalf of the accused person, or from evidence given on the part of the prosecution.

DIVISION IV

OFFENCES AGAINST THE PERSON

CHAPTER XIX

MURDER AND MANSLAUGHTER

199. Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed "man-slaughter". An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm. Manslaughter

200. Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder. Murder

201. (1) Any person convicted of murder shall be sentenced- Punishment for murder

(a) to death; or

(b) where there are extenuating circumstances, to any sentence other than death:

Provided that paragraph (b) of this subsection shall not apply to murder committed in the course of aggravated robbery with a firearm under section *two hundred and ninety-four*.

(2) For the purpose of this section-

(a) an extenuating circumstance is any fact associated with the offence which would diminish morally the degree of the convicted person's guilt;

(b) in deciding whether or not there are extenuating circumstances, the court shall consider the standard of behaviour of an ordinary person of a class of the community to which the convicted person belongs.

(As amended by Act No. 3 of 1990).

202. Any person who commits the felony of manslaughter is liable to imprisonment for life. Punishment of manslaughter

203. Where a woman by any wilful act or omission causes the death of her child, being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, notwithstanding that the circumstances were such that but for this section the offence would have amounted to murder, she shall be guilty of felony, to wit of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child. Infanticide

(No. 26 of 1940)

204. Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances: Malice aforethought

(a) an intention to cause the death of or to do grievous harm to any person, whether such person is the person actually killed or not;

(b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;

(c) an intent to commit a felony;

(d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.

205. (1) When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, does the act which causes death in the heat of passion, caused by sudden provocation as hereinafter defined, and before there is time for his passion to cool, he is guilty of manslaughter Killing on provocation

only.

(2) The provisions of this section shall not apply unless the court is satisfied that the act which causes death bears a reasonable relationship to the provocation.

(As amended by No. 28 of 1952)

206. (1) The term "provocation" means and includes, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done or offered to an ordinary person, or in the presence of an ordinary person to another person who is under his immediate care, or to whom he stands in a conjugal, parental, filial, or fraternal relation, or in the relation of master or servant, to deprive him of the power of self-control and to induce him to assault the person by whom the act or insult is done or offered. For the purposes of this section, "an ordinary person" shall mean an ordinary person of the community to which the accused belongs.

Provocation
defined

(2) When such an act or insult is done or offered by one person to another, or in the presence of another to a person who is under the immediate care of that other, or to whom the latter stands in any such relation as aforesaid, the former is said to give the latter provocation for an assault.

(3) A lawful act is not provocation to any person for an assault.

(4) An act which a person does in consequence of incitement given by another person in order to induce him to do the act and thereby to furnish an excuse for committing an assault is not provocation to that other person for an assault.

(5) An arrest which is unlawful is not necessarily provocation for an assault, but it may be evidence of provocation to a person who knows of the illegality.

(As amended by No. 26 of 1933 and No. 26 of 1940)

207. A person is deemed to have caused the death of another person although his act is not the immediate or sole cause of death in any of the following cases:

Causing death
defined

(a) If he inflicts bodily injury on another person in consequence of which that other person undergoes surgical or medical treatment which causes death. In this case it is immaterial whether the treatment was proper or mistaken, if it was employed in good faith and with common knowledge and skill; but the person inflicting the injury is not deemed to have caused the death if the treatment which was its immediate cause was not employed in good faith or was so employed without common knowledge or skill;

(b) If he inflicts bodily injury on another which would not have caused death if the injured person had submitted to proper surgical or medical treatment or had observed proper precautions as to his mode of living;

(c) If by actual or threatened violence he causes that other person to perform an act which causes the death of that person, such act being a means of avoiding such violence which in the circumstances would appear natural to the person whose death is so caused;

(d) If by any act or omission he hastens the death of a person suffering under any disease or injury which apart from such act or omission would have caused death;

(e) If his act or omission would not have caused death unless it had been accompanied by an act or omission of the person killed or of other persons.

208. A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not.

When child deemed to be a person

209. (1) A person is not deemed to have killed another if the death of that person does not take place within a year and a day of the cause of death.

Limitation as to time of death

(2) Such period is reckoned inclusive of the day on which the last unlawful act contributing to the cause of death was done.

(3) When the cause of death is an omission to observe or perform a duty, the period is reckoned inclusive of the day on which the omission ceased.

(4) When the cause of death is in part an unlawful act, and in part an omission to observe or perform a duty, the period is reckoned inclusive of the day on which the last unlawful act was done or the day on which the omission ceased, whichever is the later.

CHAPTER XX

DUTIES RELATING TO THE PRESERVATION OF LIFE AND HEALTH

210. It is the duty of every person having charge of another who is unable by reason of age, sickness, unsoundness of mind, detention or any other cause to withdraw himself from such charge, and who is unable to provide himself with the necessaries of life, whether the charge is undertaken under a contract, or is imposed by law, or arises by reason of any act, whether lawful or unlawful, of the person who has such charge, to provide for that other person the necessaries of life; and he shall be deemed to have caused any consequences which adversely affect the life or health of the other person by reason of any omission to perform that duty.

Responsibility of person who has charge of another

211. It is the duty of every person who, as head of a family, has charge of a child under the age of fourteen years, being a member of his household, to provide the necessaries of life for such child; and he shall be deemed to have caused any consequences which adversely affect the life or health of the child by reason of any omission to perform that duty, whether the child is helpless or not.

Duty of head of family

212. It is the duty of every person who as master or mistress has contracted to provide necessary food, clothing, or lodging for any servant or apprentice under the age of sixteen years to provide the same; and he or she shall be deemed to have caused any consequences which adversely affect the life or health of the servant or apprentice by reason of any omission to perform that duty.

Duty of masters and mistresses

213. It is the duty of every person who, except in a case of necessity, undertakes to administer surgical or medical treatment to any other person, or to do any other lawful act which is or may be dangerous to human life or health, to have reasonable skill and to use reasonable care in doing such act; and he shall be deemed to have caused any

Duty of persons doing dangerous acts

consequences which adversely affect the life or health of any person by reason of any omission to observe or perform that duty.

214. It is the duty of every person who has in his charge or under his control anything, whether living or inanimate, and whether moving or stationery, of such a nature that, in the absence of care or precaution in its use or management, the life, safety, or health of any person may be endangered, to use reasonable care and take reasonable precautions to avoid such danger; and he shall be deemed to have caused any consequences which adversely affect the life or health of any person by reason of any omission to perform that duty.

Duty of persons in charge of dangerous things

CHAPTER XXI

OFFENCES CONNECTED WITH MURDER

215. Any person who-

Attempt to murder

(a) attempts unlawfully to cause the death of another; or

(b) with intent unlawfully to cause the death of another does any act, or omits to do any act which it is his duty to do, such act or omission being of such a nature as to be likely to endanger human life;

is guilty of a felony and is liable to imprisonment for life.

216. Any person who, being under sentence of imprisonment for three years or more, attempts to commit murder, is liable to imprisonment for life.

Attempt to murder by convict

(As amended by No. 26 of 1933)

217. Any person who becomes an accessory after the fact to murder is guilty of a felony and is liable to imprisonment for seven years.

Accessory after the fact to murder

218. Any person who, knowing the contents thereof, directly or indirectly causes any person to receive any writing threatening to kill any person, is guilty of a felony and is liable to imprisonment for seven years.

Written threat to murder

219. Any person who conspires with any other person to kill any

Conspiracy to murder

person, whether such person is in Zambia or elsewhere, is guilty of a felony and is liable to imprisonment for fourteen years.

220. Any person who, when a woman is delivered of a child, endeavours, by any secret disposition of the dead body of the child, to conceal the birth, whether the child died before, at, or after its birth, is guilty of a misdemeanour.

Concealing the birth of children

221. (1) Subject as hereinafter in this subsection provided, any person who, with intent to destroy the life of a child capable of being born alive, by any wilful act causes a child to die before it has an existence independent of its mother, is guilty of felony, to wit, of child destruction, and is liable on conviction thereof to imprisonment for life:

Child destruction

Provided that no person shall be found guilty of an offence under this section unless it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother.

(2) For the purposes of this section, evidence that a woman had at any material time been pregnant for a period of twenty-eight weeks or more shall be *prima facie* proof that she was at that time pregnant of a child capable of being born alive.

(No. 28 of 1931)

CHAPTER XXII

OFFENCES ENDANGERING LIFE OR HEALTH

222. Any person who, by any means calculated to choke, suffocate or strangle, and with intent to commit or to facilitate the commission of a felony or misdemeanour, or to facilitate the flight of an offender after the commission or attempted commission of a felony or misdemeanour, renders or attempts to render any person incapable of resistance, is guilty of a felony and is liable to imprisonment for life.

Disabling with intent to commit felony or misdemeanour

(As amended by No. 26 of 1933)

223. Any person who, with intent to commit or to facilitate the commission of a felony or misdemeanour, or to facilitate the flight of an

Stupefying with intent to commit felony or

offender after the commission or attempted commission of a felony or misdemeanour, administers or attempts to administer any stupefying or overpowering drug or thing to any person, is guilty of a felony and is liable to imprisonment for life.

misdemeanour

224. Any person who, with intent to maim, disfigure or disable any person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person-

Acts intended to cause grievous harm or prevent arrest

(a) unlawfully wounds or does any grievous harm to any person by any means whatever; or

(b) unlawfully attempts in any manner to strike any person with any kind of projectile or with a spear, sword, knife, or other dangerous or offensive weapon; or

(c) unlawfully causes any explosive substance to explode; or

(d) sends or delivers any explosive substance or other dangerous or noxious thing to any person; or

(e) causes any such substance or thing to be taken or received by any person; or

(f) puts any corrosive fluid or any destructive or explosive substance in any place; or

(g) unlawfully casts or throws any such fluid or substance at or upon any person, or otherwise applies any such fluid or substance to the person of any person;

is guilty of a felony and is liable to imprisonment for life.

225. Any person who unlawfully-

Preventing escape from wreck

(a) prevents or obstructs any person who is on board of, or is escaping from a vessel which is in distress or wrecked, in his endeavours to save his life; or

(b) obstructs any person in his endeavours to save the life of any person so situated;

is guilty of a felony and is liable to imprisonment for life.

226. (1) Any person who, with intent either to injure or endanger the safety of any person travelling by any railway, whether a particular person or not, or to affect or endanger the free and safe use of any railway or who, with intent to derail or cause to be derailed any railway engine, tender, wagon or carriage-

Acts endangering railways and persons travelling thereon

- (a) places anything on such railway; or
 - (b) interferes with such railway or with anything whatsoever upon or near such railway; or
 - (c) shoots or throws anything at, into or upon, or causes anything to come into contact with, any person or thing on such railway; or
 - (d) shows any light or signal or in any way deals with any existing light or signal upon or near such railway; or
 - (e) wilfully fails to do any act which it is his duty to do;
- is guilty of a felony and is liable to imprisonment for life.

(2) Subject to the provisions of the Juveniles Act, where a person has been convicted of an offence under subsection (1) and his intent was to derail or cause to be derailed any railway engine, tender, wagon or carriage, he shall be sentenced to not less than five years' imprisonment.
(No. 34 of 1960)

Cap. 53

227. (1) Any person who, save with the express authority of the Zambia Railways or with some other lawful authority or lawful excuse, enters or remains or is found upon any portion of the railway reserve is guilty of a misdemeanour and is liable to a fine not exceeding three thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

Trespass on railway

(2) Any person guilty of an offence under the provisions of subsection (1) who was, at the time such offence was committed, in possession without lawful excuse of any article or implement capable of being used to destroy, damage or dismantle any railway line or part thereof or any railway engine or rolling stock using such railway line, is guilty of a felony and is liable to imprisonment for a period not exceeding fourteen years.

(3) Without prejudice to any other defence which may be open to him, a person shall be deemed to have lawful authority for the purposes of this section if he proves-

(a) that he was on a public way or an authorised path; or

(b) that he was on a portion of the railway reserve upon which members of the public are admitted for the purposes of the Zambia Railways.

(4) A Divisional Commander of Police may, in his discretion and after consultation with the Zambia Railways, authorise such paths across the railway reserve as he deems necessary for the passage of persons across such reserve, and any path so authorised-

(a) shall be entered in a register kept or caused to be kept by the Divisional Commander of Police concerned; and

(b) shall be signposted by the Zambia Railways in such manner as the Minister responsible for power, transport and works may from time to time, by statutory notice, prescribe.

(5) In any proceedings under the provisions of this section-

(a) the onus of proving that any person had express or other authority or had lawful excuse shall lie upon such person; and

(b) every railway line, other than the Zambesi Sawmills Railway Line, over which goods and passengers are carried for fee or reward shall be presumed to be owned by the Zambia Railways unless the contrary is proved; and

(c) any document purporting to be an extract or copy of any entry in a register kept under the provisions of subsection (4) and to be certified under the hand of a police officer of or above the rank of Sub-Inspector shall be received in evidence as to the matters stated therein.

(6) For the purposes of this section-

"authorised path" means a path entered in any register kept under the provisions of subsection (4);

"railway reserve" means the strip of land along any railway line owned by the Zambia Railways extending-

(a) where the said line consists of a single track, for a distance of one hundred feet outwards from each rail; and

(b) where the said line consists of two or more tracks, for a distance of one hundred feet outwards from the outermost rail on each side of such tracks;

and including all the land between the outermost rails.

(No. 34 of 1960 as amended by G.N. No. 493 of 1964 and No. 24 of 1977)

228. Any person who, with intent either to injure or to endanger the safety of any person travelling in any motor vehicle as defined in the Roads and Road Traffic Act, shoots or throws anything at, into or upon or causes anything to come into contact with any such person or any such vehicle, is guilty of a felony and is liable to imprisonment for life.

Acts endangering the safety of persons travelling in motor vehicles. Cap. 464

(No. 26 of 1961)

229. Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for seven years.

Grievous harm

230. Any person who unlawfully, and with intent to do any harm to another, puts any explosive substance in any place whatever, is guilty of a felony and is liable to imprisonment for fourteen years.

Attempting to injure by explosive substances

231. Any person who unlawfully, and with intent to injure or annoy another, causes any poison or noxious thing to be administered to, or taken by, any person, and thereby endangers his life, or does him some grievous harm, is guilty of a felony and is liable to imprisonment for fourteen years.

Maliciously administering poison with intent to harm

232. Any person who-

Unlawful wounding or poisoning

(a) unlawfully wounds another; or

(b) unlawfully, and with intent to injure or annoy any person, causes any poison or other noxious thing to be administered to, or taken by, any

person;

is guilty of a felony and is liable to imprisonment for three years.

233. Any person who, being charged with the duty of providing for another the necessaries of life, without lawful excuse fails to do so, whereby the life of that other person is or is likely to be endangered, or his health is or is likely to be permanently injured, is guilty of a felony and is liable to imprisonment for three years.

Failure to supply
necessaries

234. A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time, and to all the circumstances of the case.

Responsibility as
to surgical
operation

235. Any person authorised by law or by the consent of the person injured by him to use force is criminally responsible for any excess, according to the nature and quality of the act which constitutes the excess.

Criminal
responsibility

236. Notwithstanding anything contained in section *two hundred and thirty-five*, consent by a person to the causing of his own death or his own maim does not affect the criminal responsibility of any person by whom such death or maim is caused.

Exception

CHAPTER XXIII

CRIMINAL RECKLESSNESS AND NEGLIGENCE

237. Any person who in a manner so rash or negligent as to endanger human life or to be likely to cause harm to any other person-

Reckless and
negligent acts

(a) drives any vehicle or rides on any public way; or

(b) navigates, or takes part in the navigation or working of any vessel; or

(c) does any act with fire or any combustible matter, or omits to take

precautions against any probable danger from any fire or any combustible matter in his possession; or

(d) omits to take precautions against any probable danger from any animal in his possession; or

(e) gives medical or surgical treatment to any person whom he has undertaken to treat; or

(f) dispenses, supplies, sells, administers, or gives away any medicine or poisonous or dangerous matter; or

(g) does any act with respect to, or omits to take proper precautions against any probable danger from any machinery of which he is solely or partly in charge;

is guilty of a misdemeanour.

(As amended by No. 45 of 1969)

238. Any person who unlawfully does any act, or omits to do any act which it is his duty to do, not being an act or omission specified in the preceding section, by which act or omission harm is caused to any person, is guilty of a misdemeanour and is liable to imprisonment for six months.

Unlawful acts causing harm

239. Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such care with any poisonous substance in his possession as is sufficient to guard against probable danger to human life from such poisonous substance, is guilty of a misdemeanour and is liable to imprisonment for six months or to a fine not exceeding three thousand penalty units.

Dealing with poisonous substances in negligent manner

(No. 26 of 1940 and Act No. 13 of 1994)

240. Any person who, by any unlawful act or omission not specified in section *two hundred and twenty-six*, causes the safety of any person travelling by any railway to be endangered, is guilty of a misdemeanour.

Endangering safety of persons travelling by railway

241. Any person who exhibits any false light, mark or buoy, intending

Exhibition of false

or knowing it to be likely that such exhibition will mislead any navigator, is liable to imprisonment for seven years.

light, mark or buoy

242. Any person who knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to be unsafe, is guilty of a misdemeanour.

Conveying person by water for hire in unsafe or overloaded vessel

243. (1) Any person who, without lawful cause or reasonable excuse, does any act with intent to obstruct or impede the navigation by any vessel of any waters capable of being used for navigation is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding three years.

Obstruction of waterways

(2) For the purposes of this section, "vessel" includes any canoe, boat, ship or raft.

(No. 18 of 1962)

244. Any person who, by doing any act, or by omitting to take reasonable care with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, is liable to a fine.

Danger or obstruction in public way or line of navigation

245. (1) Any person who enters upon an aerodrome is guilty of a misdemeanour unless such person proves-

Trespass on aerodromes

(a) that he did not know that the land on which he entered was an aerodrome; or

(b) that he had reasonable cause for being on such aerodrome.

(2) Any person who, being in charge of an animal, causes or permits such animal to trespass on an aerodrome is guilty of a misdemeanour.

(3) A misdemeanour under this section is punishable with imprisonment for a period not exceeding one month or with a fine not exceeding seven hundred and fifty penalty units, or both.

(4) For the purposes of this section, "aerodrome" includes an airport, landing ground, or other place normally used by aircraft for landing and taking off.

(No. 28 of 1949 and Act No. 13 of 1994)

246. (1) Any person who, without lawful cause or reasonable excuse, does any act with intent to obstruct, whether partially or otherwise, any road or runway is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding three years.

Obstruction of roads or runways

(2) For the purposes of this section-

Cap. 464

"road" shall have the meaning assigned to it by section *two* of the Roads and Road Traffic Act;

"runway" includes any landing ground or other place ordinarily used by aircraft for landing or taking off.

(No. 18 of 1962)

CHAPTER XXIV

ASSAULTS

247. Any person who unlawfully assaults another is guilty of a misdemeanour and, if the assault is not committed in circumstances for which a greater punishment is provided in this Code, is liable to imprisonment for one year.

Common assault

248. Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years.

Assaults occasioning actual bodily harm

248A. Any person who commits an assault or battery on a child occasioning actual bodily harm commits an offence and is liable, upon conviction, to a term of imprisonment of not less than five years and not exceeding ten years.

Assault or battering of child

(As amended by Act No. 15 of 2005)

249. Any person who assaults and strikes or wounds any magistrate, officer, or other person lawfully authorised in or on account of the execution of his duty in or concerning the preservation of any vessel in distress, or of any vessel or goods or effects wrecked, stranded, or cast

Assaults on persons protecting wrecks

on shore, or lying under water, is guilty of a felony and is liable to imprisonment for seven years.

250. Any person who-

(a) assaults any person with intent to commit a felony or to resist or prevent the lawful apprehensive or detainer of himself or of any other person for any offence; or

(b) assaults, resists, or wilfully obstructs any police officer in the due execution of his duty, or any person acting in aid of such officer; or

(c) assaults any person in pursuance of any unlawful combination or conspiracy to raise the rate of wages, or respecting any trade, business, or manufacture or respecting any person concerned or employed therein; or

(d) assaults, resists, or obstructs any person engaged in lawful execution of process, or in making a lawful distress, with intent to rescue any property lawfully taken under such process or distress; or

(e) assaults any person on account of any act done by him in the execution of any duty imposed on him by law;

is guilty of a misdemeanour and is liable to imprisonment for five years.

Assaults punishable with five years' imprisonment

CHAPTER XXV

OFFENCES AGAINST LIBERTY

251. Any person who conveys any person beyond the limits of Zambia without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from Zambia.

Definition of kidnapping from Zambia

252. Any person who takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Definition of kidnapping from lawful guardianship

253. Any person who by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

Definition of abduction

- 254.** Any person who kidnaps any person from Zambia or from lawful guardianship, is guilty of a felony and is liable to imprisonment for seven years. Punishment for kidnapping
- 255.** Any person who kidnaps or abducts any person in order that such person may be murdered, or may be so disposed of as to be put in danger of being murdered, is guilty of a felony and is liable to imprisonment for ten years. Kidnapping or abducting in order to murder
- 256.** Any person who kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, is guilty of a felony and is liable to imprisonment for seven years. Kidnapping or abducting with intent to confine person
- 257.** Any person who kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous harm, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, is guilty of a felony and is liable to imprisonment for ten years. Kidnapping or abducting in order to subject person to grievous harm, slavery, etc.
- 258.** Any person who, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, is guilty of a felony and shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose, as that with or for which he conceals or detains such person in confinement. Wrongfully concealing or keeping in confinement kidnapped or abducted person
- 259.** Any person who kidnaps or abducts any child under the age of fourteen years with the intention of taking dishonestly any movable property from the person of such child, is guilty of a felony and is liable to imprisonment for seven years. Kidnapping or abducting child under fourteen with intent to steal from its person
- 260.** Whoever wrongfully confines any person is guilty of a misdemeanour and is liable to imprisonment for one year or to a fine not exceeding six thousand penalty units. Punishment for wrongful confinement
(No. 26 of 1940 and Act No. 13 of 1994)
- 261.** Any person who imports, exports, removes, buys, sells or Buying or

disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, is guilty of a felony and is liable to imprisonment for seven years. disposing of any person as a slave

262. Any person who habitually imports, exports, removes, buys, sells, traffics or deals in slaves is guilty of a felony and is liable to imprisonment for ten years. Habitual dealing in slaves

263. Any person who unlawfully compels any person to labour against the will of that person is guilty of a misdemeanour. Unlawful compulsory labour

DIVISION V

OFFENCES RELATING TO PROPERTY

CHAPTER XXVI

THEFT

264. (1) Every inanimate thing whatever which is the property of any person, and which is movable, is capable of being stolen. Things capable of being stolen

(2) Every inanimate thing which is the property of any person, and which is capable of being made movable, is capable of being stolen as soon as it becomes movable, although it is made movable in order to steal it.

(3) Every tame animal, whether tame by nature or wild by nature and tamed, which is the property of any person, is capable of being stolen.

(4) Animals wild by nature, of a kind which is not ordinarily found in a condition of natural liberty in Zambia, which are the property of any person, and which are usually kept in a state of confinement, are capable of being stolen, whether they are actually in confinement or have escaped from confinement.

(5) Animals wild by nature, of a kind which is ordinarily found in a

condition of natural liberty in Zambia, which are the property of any person, are capable of being stolen while they are in confinement and while they are being actually pursued after escaping from confinement, but not at any other time.

(6) An animal wild by nature is deemed to be in a state of confinement so long as it is in a den, cage, sty, tank, or other small enclosure, or is otherwise so placed that it cannot escape, and that its owner can take possession of it at pleasure.

(7) Wild animals in the enjoyment of their natural liberty are not capable of being stolen, but their dead bodies are capable of being stolen.

(8) Everything produced by or forming part of the body of an animal capable of being stolen is capable of being stolen.

265. (1) A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person other than the general or special owner thereof anything capable of being stolen, is said to steal that thing.

Definition of theft

(2) A person who takes or converts anything capable of being stolen is deemed to do so fraudulently if he does so with any of the following intents, that is to say:

(a) an intent permanently to deprive the general or special owner of the thing of it;

(b) an intent to use the thing as a pledge or security;

(c) an intent to part with it on a condition as to its return which the person taking or converting it may be unable to perform;

(d) an intent to deal with it in such a manner that it cannot be returned in the condition in which it was at the time of the taking or conversion;

(e) in the case of money, an intent to use it at the will of the person

who takes or converts it, although he may intend afterwards to repay the amount to the owner.

(3) When a thing stolen is converted, it is immaterial whether it is taken for the purpose of conversion, or whether it is at the time of the conversion in the possession of the person who converts it. It is also immaterial that the person who converts the thing in question is the holder of a power of attorney for the disposition of it, or is otherwise authorised to dispose of it.

(4) When a thing converted has been lost by the owner and found by the person who converts it, the conversion is not deemed to be fraudulent if at the time of the conversion the person taking or converting the thing does not know who is the owner, and believes on reasonable grounds that the owner cannot be discovered.

(5) A person shall not be deemed to take a thing unless he moves the thing or causes it to move.

(6) For the purposes of this section, "special owner" includes any person who has any charge or lien upon the thing in question, or any right arising from or dependent upon holding possession of the thing in question.

266. (1) When a factor or agent pledges or gives a lien on any goods or document of title to goods entrusted to him for the purpose of sale or otherwise for any sum of money not greater than the amount due to him from his principal at the time of pledging or giving the lien, together with the amount of any bill of exchange or promissory note accepted or made by him for or on account of his principal, such dealing with the goods or document of title is not deemed to be theft. Special cases

(2) When a servant, contrary to his master's orders, takes from his possession any food in order that it may be given to an animal belonging to or in the possession of his master, such taking is not deemed to be theft.

267. When a person receives, either alone or jointly with another person, any money or valuable security or a power of attorney for the Funds, etc., held under direction

sale, mortgage, pledge, or other disposition of any property, whether capable of being stolen or not with a direction in either case that such money or any part thereof, or any other money received in exchange for it, or any part thereof, or the proceeds or any part of the proceeds of such security, or of such mortgage, pledge, or other disposition, shall be applied to any purpose or paid to any person specified in the direction, such money and proceeds are deemed to be the property of the person from whom the money, security, or power of attorney was received until the direction has been complied with.

(As amended by No. 9 of 1968)

268. When a person receives, either alone or jointly with another person, any property from another on terms authorising or requiring him to sell it or otherwise dispose of it, and requiring him to pay or account for the proceeds of the property, or any part of such proceeds, or to deliver anything received in exchange for the property, to the person from whom it is received, or some other person, then the proceeds of the property, and anything so received in exchange for it, are deemed to be the property of the person from whom the property was so received, until they have been disposed of in accordance with the terms on which the property was received, unless it is a part of those terms that the proceeds, if any, shall form an item in a debtor and creditor account between him and the person to whom he is to pay them or account for them, and that the relation of debtor and creditor only shall exist between them in respect thereof.

Funds, etc.,
received by agents
for sale

269. When a person receives, either alone or jointly with another person, any money on behalf of another, the money is deemed to be the property of the person on whose behalf it is received, unless the money is received on the terms that it shall form an item in a debtor and creditor account, and that the relation of debtor and creditor only shall exist between, the parties in respect of it.

Money received
for another

270. When any person takes or converts anything capable of being stolen, under such circumstances as would otherwise amount to theft, it is immaterial that he himself has a special property or interest therein, or that he himself is the owner of the thing taken or converted subject to some special property or interest of some other person therein, or that he is lessee of the thing, or that he himself is one of two or more joint owners of the thing, or that he is a director or officer of a corporation or company or society who are the owners of it.

Theft by persons
having an interest
in the thing stolen

271. A person who, while a man and his wife are living together, procures either of them to deal with anything which is, to his knowledge, the property of the other in a manner which would be theft if they were not married, is deemed to have stolen the thing, and may be charged with theft. Husband and wife

272. Any person who steals anything capable of being stolen is guilty of the felony termed "theft", and, unless owing to the circumstances of the theft or the nature of the thing stolen some other punishment is provided, is liable to imprisonment for five years. General punishment for theft

(As amended by Act No. 29 of 1974)

273. If the thing stolen is a testamentary instrument, whether the testator is living or dead, the offender is liable to imprisonment for ten years. Stolen wills

(As amended by No. 28 of 1931)

274. If the thing stolen is postal matter or any chattel, money, or valuable security contained in any postal matter, the offender is liable to imprisonment for ten years. Stealing postal matter, etc.

275. (1) If the thing stolen is any of the following, that is to say: a horse, mare, gelding, ass, mule, camel, ostrich, ram, ewe, wether, goat or pig, or the young of any such animal, the offender is liable- Stock theft

(a) in the case of a first offence, to imprisonment not exceeding fifteen years;

(b) in the case of a second and subsequent offence to imprisonment for a period of not less than seven years and not exceeding fifteen years.

(2) If the thing stolen is a bull, cow or ox, or the young of any such animal, the offender is liable to imprisonment for a period-

(a) in the case of a first offence, of not less than five years and not exceeding fifteen years;

(b) in the case of a second or subsequent offence, of not less than

seven years and not exceeding fifteen years.

275A. (1) Notwithstanding subsection (2) of section *twenty-six*, if the thing stolen is copper cathodes, copper bars, cobalt, lead, zinc or vanadium the offender is liable to imprisonment for a period not exceeding fifteen years.

Stealing copper cathodes, copper bars, cobalt, lead, zinc or vanadium

(2) Where a person is convicted of an offence under this Act the court which convicts him shall, in addition to any other penalty imposed under subsection (1), order the forfeiture of all the property which is the subject of that offence or which has been used for the commission of that offence:

Provided that no conveyance which has been used for the commission of the offence shall be forfeited if the offence was committed by a person other than the owner or person in charge of the conveyance and it is proved to the court that the use of the conveyance for the commission of the offence was without the consent and knowledge of the owner or person in charge of the conveyance and was not due to any neglect, default or lack of reasonable care by the owner or the person in charge of the conveyance.

(3) Where it is proved to the satisfaction of the court that an offence has been committed under this Section, the court shall make an order for the forfeiture of all property which is the subject matter of that offence or which has been used for the commission of that offence, notwithstanding that no person may have been convicted of the offence:

Provided that the proviso to subsection (2) shall apply in relation to an order for forfeiture under this subsection.

(As amended by Act No. 23 of 1993)

276. If a theft is committed under any of the circumstances following, that is to say:

Stealing from the person; stealing goods in transit, etc.

(a) if the thing is stolen from the person of another;

(b) if the thing is stolen in a dwelling-house and its value exceeds one hundred and fifty fee units or the offender, at or immediately before or after the time of stealing uses or threatens to use violence to any person in the dwelling-house;

- (c) if the thing is stolen from any kind of vessel or vehicle or place of deposit used for the conveyance or custody of goods in transit from one place to another;
 - (d) if the thing stolen is attached to or forms part of a railway;
 - (e) if the thing is stolen from a vessel which is in distress or wrecked or stranded;
 - (f) if the thing is stolen from a public office in which it is deposited or kept;
 - (g) if the offender, in order to commit the offence, opens any locked room, box, or other receptacle, by means of a key or other instrument;
- the offender is liable to imprisonment for seven years.

(As amended by Act No. 13 of 1994)

277. If the offender is a person employed in the public service and the thing stolen is the property of the Government, a local authority or a corporation, body or board, including an institution of higher learning in which the Government has a majority or controlling interest, or came into his possession by virtue of his employment, he is liable to imprisonment for fifteen years.

Stealing by persons
in public service

(As amended by Act No. 29 of 1974)

278. If the offender is a clerk or servant and the thing stolen is the property of his employer, or came into the possession of the offender on account of his employer, he is liable to imprisonment for seven years.

Stealing by clerks
and servants

279. If the offender is a director or officer of a corporation or company and the thing stolen is the property of the corporation or company, he is liable to imprisonment for seven years

Stealing by
directors or
officers of
companies

280. If the thing stolen is any of the things following, that is to say:

Stealing by agents
etc.

- (a) property which has been received by the offender with a power of attorney for the deposition thereof;
- (b) property which has been entrusted to the offender either alone or jointly with any other person for him to retain in safe custody or to apply, pay, or deliver for any purpose or to any person the same or any part thereof or any proceeds thereof;
- (c) property which has been received by the offender either alone or jointly with any other person for or on account of any other person;

(d) the whole or part of the proceeds of any valuable security which has been received by the offender with a direction that the proceeds thereof should be applied to any purpose or paid to any person specified in the direction;

(e) the whole or part of the proceeds arising from any disposition of any property which has been received by the offender by virtue of a power of attorney for such disposition, such power of attorney having been received by the offender with a direction that such proceeds should be applied to any purpose or paid to any person specified in the direction;

the offender is liable to imprisonment for seven years.

281. If the thing stolen is a fixture or chattel let to the offender to be used by him with a house or lodging and its value exceeds one hundred and fifty fee units, he is liable to imprisonment for seven years. Stealing by tenants or lodgers

(As amended by Act No. 13 of 1994)

281A. (1) If the thing stolen is a motor vehicle, the offender is liable to imprisonment for a period- Stealing of motor vehicle

(a) in the case of a first offence, of not less than five years and not exceeding fifteen years;

(b) in the case of a second or subsequent offence, of not less than seven years and not exceeding fifteen years.

(2) In this section, "motor vehicle" means a motor vehicle or trailer-

(a) which is registered or registrable under the provisions of section *sixty-six* of the Roads and Road Traffic Act; or Cap. 464

(b) which is exempted from the need for registration under any of the provisions of the Roads and Road Traffic Act or any regulation made thereunder. Cap. 464

(3) Where a person is convicted of an offence under subsection (1) the court which convicts the person shall, in addition to any other penalty imposed under that subsection, order the forfeiture of all the property

which has been used for or derived from the commission of that offence:

Provided that no property which has been used for the commission of the offence shall be forfeited if the offence was committed by a person other than the owner or person in charge of the property and it is proved to the court that the use of the property for the commission of the offence was without the consent and knowledge of the owner or person in charge of the property.

(4) Where a person is charged with an offence under subsection (1) the trial court may, notwithstanding that the person was not originally charged with that offence, convict the person of a lesser offence and the person shall, upon such conviction, be liable to a fine of not less than fifty-eight thousand penalty units or to imprisonment for a term of not less than five years, or to both.

281B. (1) A police officer may, without a warrant, stop, search and arrest any person found driving, or in possession, charge or control of a motor vehicle, where the officer believes, on reasonable grounds, that the vehicle is stolen.

Search, seizure and arrest of person in relation to theft of motor vehicle

(2) Where an arrest is made under subsection (1) the police officer may seize the vehicle and any documents relating to the vehicle.

(3) A police officer who arrests any person or seizes a motor vehicle under this section shall as soon as practicable take the person, the vehicle and any documents relating to the nearest police station.

(4) A person arrested and any motor vehicle seized under this section shall, within forty-eight hours of arrest and seizure, be brought before a court.

(5) Any motor vehicle-

(a) returned, by the court, to the police at the conclusion of the case;
or

(b) found abandoned on any road or inn any public place or premises; and of which the owner is not known or cannot be found, may be removed to a police station, and if not previously claimed by its owner, shall be dealt with in accordance with the provisions of subsection (6).

(6) The Officer-In-Charge of the police station to which a motor vehicle is removed in terms of subsection (5) shall cause to be published, once in the *Gazette*, and once in a newspaper of general circulation in Zambia, a notice containing-

(a) particulars of the vehicle concerned; or
(b) where no particulars are available, fair description of the vehicle;
and

(c) a warning that if the vehicle remains unclaimed within six months from

the date of publication of the notice, it shall be forfeited to the

State

and dealt with as the Minister may, by notice in the *Gazette*,
direct,
which may include sale by public auction.

(As amended by Act No. 9 of 1974 and No. 20 of 2000)

282. Repealed by Act No. 29 of 1974

CHAPTER XXVII

OFFENCES ALLIED TO STEALING

283. Any person who, with intent to defraud, conceals or takes from its place of deposit any register which is authorised or required by law to be kept for authenticating or recording the title to any property, or for recording births, baptisms, marriages, deaths or burials, or a copy of any part of any such register which is required by law to be sent to any public office, is guilty of a felony and is liable to imprisonment for ten years.

Concealing registers

284. Any person who, with intent to defraud, conceals any testamentary instrument, whether the testator is living or dead, is guilty of a felony and is liable to imprisonment for ten years.

Concealing wills

285. Any person who, with intent to defraud, conceals the whole or part of any document which is evidence of title to any land or estate in land, is guilty of a felony and is liable to imprisonment for three years.

Concealing deeds

286. Any person who kills any animal capable of being stolen with intent to steal the skin or carcass, or any part of the skin or carcass, is guilty of an offence and is liable to the same punishment as if he had stolen the animal.

Killing animals with intent to steal

287. Any person who makes anything movable with intent to steal it is guilty of an offence and is liable to the same punishment as if he had stolen the thing after it had become movable.

Severing with intent to steal

288. (1) Any person who, being the mortgagor of mortgaged goods, removes or disposes of the goods without the consent of the mortgagee, and with intent to defraud, is guilty of a misdemeanour.

Fraudulent disposition of mortgaged goods

(2) In this section, "mortgaged goods" includes any goods and chattels of any kind, and any animals, and any progeny of any animals, and any crops or produce of the soil, whether growing or severed, which are subject for the time being, by virtue of the provisions of any Act or of any written instrument, to a valid charge or lien by way of security for any debt or obligation.

289. Notwithstanding subsection (2) of section *twenty-six*, any person who takes, conceals, or otherwise disposes of any ore or any metal or mineral with intent to defraud any person, is guilty of a felony and is liable to imprisonment for a period not exceeding fifteen years.

Fraudulently
dealing with metals
or minerals

289B. (1) Any person who-

(a) takes, conceals, sells, or otherwise disposes of a motor vehicle or any part of it with intent to defraud any person;

Fraudulently
dealing with motor
vehicles

or

(b) knowing or believing that a motor vehicle is stolen, dishonestly receives such motor vehicle or undertakes or assists in its retention, removal disposal or realisation by or for the benefit of another person or arranges to do so;

commits an offence and is liable, upon conviction, to a fine of not less than twenty-eight thousand penalty units but not exceeding fifty-six thousand penalty units or imprisonment for a term of five years or to both.

(2) Where a person is convicted of an offence under this section the court which convicts the person shall, in addition to any penalty imposed under subsection (1), order the forfeiture of all property which is used for or derived from the commission of the offence.

(3) Any sentence imposed under subsection (1) shall be consecutive to, and not concurrent with, any sentence imposed on the convicted person and no part of such sentence shall be suspended.

(As amended by Act No. 23 of 1993 and No. 20 of 2000)

290. Any person who fraudulently abstracts or diverts to his own use or to the use of any other person any mechanical, illuminating, or electrical power derived from any machine, apparatus, or substance, the property of another person, is guilty of a felony and is liable to imprisonment for five years.

Fraudulent
appropriation of
power

291. Any person who unlawfully and without colour of right, but not so as to be guilty of theft, takes or converts to his use or to the use of any other person any draught or riding animal or any vehicle or cycle however propelled, or any vessel, is guilty of a misdemeanour and is liable to imprisonment for six months or to a fine not exceeding one thousand five hundred penalty units, or to both.

Conversion not amounting to theft

(As amended by Act No. 13 of 1994)

CHAPTER XXVIII

ROBBERY AND EXTORTION

292. Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained, is guilty of the felony of robbery and is liable on conviction to imprisonment for fourteen years.

Robbery

(No. 18 of 1963)

293. Any person who assaults any person with intent to steal anything is guilty of a felony and is liable on conviction to imprisonment for seven years.

Assault with intent to steal

(No. 18 of 1963)

294. (1) Any person who, being armed with any offensive weapon or instrument, or being together with one person or more, steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained, is guilty of the felony of aggravated robbery and is liable on conviction to imprisonment for life, and, notwithstanding subsection (2) of section *twenty-six*, shall be sentenced to imprisonment for a period of not less than fifteen years.

Aggravated robbery

(2) Notwithstanding the provisions of subsection (1), the penalty for the felony of aggravated robbery under subsection (1) shall be death-

(a) where the offensive weapon or instrument is a firearm, unless

the court is satisfied by the evidence in the case that the accused person was not armed with a firearm and-

(i) that he was not aware that any of the other persons involved in committing the offence was so armed; or

(ii) that he dissociated himself from the offence immediately on becoming so aware; or

(b) where the offensive weapon or instrument is not a firearm and grievous harm is done to any person in the course of the offence, unless the court is satisfied by the evidence in the case that the accused person neither contemplated nor could reasonably have contemplated that grievous harm might be inflicted in the course of the offence.

(3) In this section "firearm" has the meaning assigned to it in section *two* of the Firearms Act. Cap. 110

(No. 18 of 1963 as amended by No. 40 of 1969 and Act No. 29 of 1974)

295. Any person who, being armed with any offensive weapon or instrument, or being together with one person or more, assaults any person with intent to steal anything, is guilty of a felony and is liable on conviction to imprisonment for a period (notwithstanding subsection (2) of section *twenty-six*) of not less than ten years and not exceeding twenty years.

Aggravated assault
with intent to steal

(No. 18 of 1963 as amended by No. 40 of 1969)

296. Any person who, with intent to extort or gain anything from any person, and knowing the contents of the writing, causes any person to receive any writing demanding anything from any person without reasonable or probable cause, and containing threats of any injury or detriment of any kind to be caused to any person, either by the offender or any other person, if the demand is not complied with, is guilty of a felony and is liable to imprisonment for fourteen years.

Demanding
property by written
threats

297. (1) Any person who, with intent to extort or gain anything from any person-

Attempts at
extortion by threats

(a) accuses or threatens to accuse any person of committing any felony or misdemeanour, or of offering or making any solicitation or

threat to any person as an inducement to commit or permit the commission of any felony or misdemeanour; or

(b) threatens that any person shall be accused by any other person of any felony or misdemeanour, or of any such act; or

(c) knowing the contents of the writing, causes any person to receive any writing containing any such accusation or threat as aforesaid;

is guilty of a felony, and if the accusation or threat of accusation is of-

(i) an offence for which the punishment of death or imprisonment for life may be inflicted; or

(ii) any of the offences defined in Chapter XV, or an attempt to commit any of such offences; or

(iii) an assault with intent to have carnal knowledge of any person against the order of nature, or an unlawful and indecent assault upon a male person; or

(iv) a solicitation or threat offered or made to any person as an inducement to commit or permit the commission of any of the offences aforesaid;

the offender is liable to imprisonment for fourteen years. In any other case the offender is liable to imprisonment for three years.

(2) It is immaterial whether the person accused or threatened to be accused has or has not committed the offence or act of which he is accused or threatened to be accused.

298. Any person who, with intent to defraud, and by means of any unlawful violence to, or restraint of, the person of another, or by means of any threat of violence or restraint to be used to the person of another, or by means of accusing or threatening to accuse any person of committing any felony or misdemeanour, or by offering or making any solicitation or threat to any person as an inducement to commit or permit the commission of any offence, compels or induces any person-

Procuring
execution of deeds,
etc., by threats

(a) to execute, make, accept, endorse, alter, or destroy the whole or any part of any valuable security; or

(b) to write any name or impress or affix any seal upon or to any paper or parchment, in order that it may be afterwards made or

converted into or used or dealt with as a valuable security;
is guilty of a felony and is liable to imprisonment for fourteen years.

299. Any person who, with intent to steal any valuable thing, demands it from any person with menaces or force, is guilty of a felony and is liable to imprisonment for five years.

Demanding property with menaces with intent to steal

CHAPTER XXIX

BURGLARY, HOUSEBREAKING AND SIMILAR OFFENCES

300. (1) A person who breaks any part, whether external or internal, of a building, or opens by unlocking, pulling, pushing, lifting, or any other means whatever, any door, window, shutter, cellar flap, or other thing, intended to close or cover an opening in a building, or an opening giving passage from one part of a building to another, is deemed to break the building.

Definition of breaking and entering

(2) A person is deemed to enter a building as soon as any part of his body or any part of any instrument used by him is within the building.

(3) A person who obtains entrance into a building by means of any threat or artifice used for that purpose, or by collusion with any person in the building, or who enters any chimney or other aperture of the building permanently left open for any necessary purpose, but not intended to be ordinarily used as a means of entrance, is deemed to have broken and entered the building.

301. Any person who-

House-breaking and burglary

(a) breaks and enters any dwelling house with intent to commit a felony therein; or

(b) having entered any dwelling house with intent to commit a felony therein, or having committed a felony in any such dwelling house, breaks out thereof;

is guilty of the felony termed "housebreaking" and is liable to imprisonment for seven years. If the offence is committed in the night, it is termed "burglary" and the offender is liable to imprisonment for ten years.

(As amended by Act No. 3 of 1990)

302. (1) Any person who enters or is in any dwelling house with intent to commit a felony in it is guilty of a felony and liable upon conviction to imprisonment for a period not exceeding five years or if the offence is committed at night to imprisonment for a period not exceeding seven years.

Entering dwelling house or other building with intent to commit felony

(2) Any person who enters or is in any building other than a dwelling house, with intent to commit a felony in it is guilty of a felony and liable upon conviction to imprisonment for a period not exceeding five years or if the offence is committed at night to imprisonment for a period not exceeding seven years.

(As amended by Act No. 3 of 1990)

303. Any person who-

(a) breaks and enters into any building other than a dwelling house and commits a felony in it; or

(b) having committed a felony in any building other than a dwelling house, breaks out of it, is guilty of a felony and is liable to imprisonment for seven years;

is guilty of a felony and is liable to imprisonment for seven years.

(As amended by Act No. 3 of 1990)

Breaking into building and committing felony

304. Any person who breaks and enters a schoolhouse, shop, warehouse, store, office, or counting-house, or a building which is adjacent to a dwelling-house and occupied with it but is not part of it, or any building used as a place of worship with intent to commit a felony therein, is guilty of a felony and is liable to imprisonment for five years.

Breaking into building with intent to commit felony

305. Any person who is found under any of the circumstances following, that is to say:

(a) being armed with any dangerous or offensive weapon or instrument, and being so armed with intent to break or enter a dwelling-house, and to commit a felony therein;

(b) being armed as aforesaid by night, and being so armed with intent to break or enter any building whatever, and to commit a felony therein;

(c) having in his possession by night without lawful excuse, the

Persons found armed, etc., with intent to commit felony

proof of which lies on him, any instrument of housebreaking, explosive or petroleum;

(d) having in his possession by day any such instrument, explosive or petroleum with intent to commit a felony;

(e) having his face masked or blackened or being otherwise disguised with intent to commit a felony;

(f) being in any building whatever by night with intent to commit a felony therein;

(g) being in any building whatever by day with intent to commit a felony therein, and having taken precautions to conceal his presence;

is guilty of a felony and is liable to imprisonment for three years. If the offender has been previously convicted of a felony relating to property, he is liable to imprisonment for seven years.

(As amended by No. 7 of 1960)

306. Any person who-

Criminal trespass

(a) unlawfully enters into or upon any property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property;

(b) having lawfully entered into or upon such property unlawfully remains there with intent thereby to intimidate, insult or annoy any such person or with intent to commit any offence;

is guilty of the misdemeanour termed "criminal trespass" and is liable to imprisonment for three months. If the property upon which the offence is committed is any building, tent or vessel used as a human dwelling or any building used as a place of worship or as a place for the custody of property, the offender is liable to imprisonment for one year.

(No. 26 of 1940)

307. When any person is convicted of an offence under this Chapter, the court shall order that any dangerous or offensive weapon or instrument of housebreaking carried or used in connection with any such offence shall be forfeited.

Forfeiture

(As amended by S.I. No. 63 of 1964 and No. 5 of 1972)

CHAPTER XXX

FALSE PRETENCES

308. Any representation made by words, writing or conduct, of a matter of fact or of law, either past or present, including a representation as to the present intentions of the person making the representation or of any other person, which representation is false in fact, and which the person making it knows to be false or does not believe to be true, is a false pretence.

Definition of false pretence

(As amended by No. 5 of 1972)

309. Any person who, by any false pretence and with intent to defraud, obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, is guilty of a misdemeanour and is liable to imprisonment for three years.

Obtaining goods by false pretences

309A. (1) Any person who, by any false pretence, dishonestly obtains for himself or another any pecuniary advantage, is guilty of a misdemeanour and is liable to imprisonment for five years.

Obtaining pecuniary advantage by false pretences

(2) The cases in which a pecuniary advantage within the meaning of this section is to be regarded as obtained for a person are cases where-

(a) any debt or charge for which he makes himself liable or is or may become liable (including one not legally enforceable) is reduced or in whole or in part evaded or deferred; or

(b) he is allowed to borrow by way of overdraft, or to take out any policy of insurance or annuity contract, or obtains an improvement of the terms on which he is allowed to do so; or

(c) he is given the opportunity to earn remuneration or greater remuneration in an office or employment, or to win money by betting.

(No. 5 of 1972)

310. Any person who, by any false pretence and with intent to defraud, induces any person to execute, make, accept, endorse, alter, or destroy the whole or any part of any valuable security, or to write any name or impress or affix any seal upon or to any paper or parchment in order that it may be afterwards made or converted into or used or dealt with as a valuable security, is guilty of a misdemeanour and is liable to

Obtaining execution of a security by false pretences

imprisonment for three years.

310A. An intent to deceive exists where one person induces another person- Intent to deceive

(a) to believe that a thing is true which is false, and which the person practising the deceit knows or believes to be false; or

(b) to believe a thing to be false which is true, and which the person practising the deceit knows or believes to be true;

and in consequence of having been so induced does or omits to do an act whether or not any injury or loss is thereby suffered by any person.

(As amended by Act No. 5 of 1972)

311. Any person who, by means of any fraudulent trick or device, obtains from any other person anything capable of being stolen or induces any other person to deliver to any person anything capable of being stolen or to pay or deliver to any person any money or goods or any greater sum of money or greater quantity of goods than he would have paid or delivered but for such trick or device, is guilty of a misdemeanour and is liable to imprisonment for three years. Cheating

312. Any person who-

(a) in incurring any debt or liability, obtains credit by any false pretence or by means of any other fraud; or

(b) with intent to defraud his creditors or any of them, makes or causes to be made any gift, delivery, or transfer of or any charge on his property; or

(c) with intent to defraud his creditors or any of them, conceals, sells or removes any part of his property after or within three months before the date of any unsatisfied judgment or order for payment of money obtained against him;

is guilty of a misdemeanour and is liable to imprisonment for one year. Obtaining credit, etc., by false pretences

313. Any person who conspires with another by deceit or any fraudulent means to affect the market price of anything publicly sold, or to defraud the public, or any person, whether a particular person or not, or to extort any property from any person, is guilty of a misdemeanour and is liable to imprisonment for three years. Conspiracy to defraud

314. Any person who, being a seller or mortgagor of any property, or being the solicitor or agent of any such seller or mortgagor, with intent Frauds on sale or mortgage of

to induce the purchaser or mortgagee to accept the title offered or produced to him, and with intent to defraud- property

(a) conceals from the purchaser or mortgagee any instrument material to the title, or any incumbrance; or

(b) falsifies any pedigree on which the title depends or may depend; or

(c) makes any false statement as to the title offered or conceals any fact material thereto;

is guilty of a misdemeanour.

315. Any person who for gain or reward undertakes to tell fortunes, or pretends from his skill or knowledge in any occult science to discover where or in what manner anything supposed to have been stolen or lost may be found, is guilty of a misdemeanour. Pretending to tell fortunes

316. Any person who wilfully procures or attempts to procure for himself or any other person any registration, licence or certificate under any Act by any false pretence, is guilty of a misdemeanour and is liable to imprisonment for one year. Obtaining registration, etc., by false pretences

317. Any person who makes a statement which is to his knowledge untrue for the purpose of procuring a passport, whether for himself or for any other person, is guilty of a misdemeanour. False declaration for passport

CHAPTER XXXI

RECEIVING PROPERTY STOLEN OR UNLAWFULLY OBTAINED AND LIKE OFFENCES

318. (1) Any person who receives or retains any chattel, money, valuable security or other property whatsoever, knowing or having reason to believe the same to have been feloniously stolen, taken, extorted, obtained or disposed of, is guilty of a felony and is liable to imprisonment for seven years. Receiving stolen property, etc.

(2) Any person who received or retains any chattel, money, valuable security or other property whatsoever, knowing or having reason to believe the same to have been unlawfully taken, obtained, converted or disposed of in a manner which constitutes a misdemeanour, is guilty of a Receiving property unlawfully obtained

misdemeanour and is liable to the same punishment as the offender by whom the property was unlawfully obtained, converted or disposed of.

(As amended by No. 26 of 1940)

319. Any person who shall be brought before a court charged with-

(a) having in his possession anything which may be reasonably suspected of having been stolen or unlawfully obtained; or

(b) conveying in any manner anything which may be reasonably suspected of having been stolen or unlawfully obtained;

and who shall not give an account to the satisfaction of such court of how he came by the same, is guilty of a misdemeanour.

(No. 22 of 1969)

Person suspected of having or conveying stolen property

320. Every person who, without lawful excuse, knowing or having reason to believe the same to have been stolen or obtained in any way whatsoever under such circumstances that if the act had been committed in Zambia the person committing it would have been guilty of felony or misdemeanour, receives or has in his possession any property so stolen or obtained outside Zambia, is guilty of an offence of the like degree (whether felony or misdemeanour) and is liable to imprisonment for seven years.

(No. 26 of 1940)

Receiving goods stolen outside Zambia

CHAPTER XXXII

ILLEGAL POSSESSION OF DIAMONDS AND EMERALDS

321. (1) Any person who, without the written permission of the Chief Mining Engineer, has in his possession or disposes of any diamond or emerald shall be guilty of a misdemeanour.

Illegal possession of diamonds or emeralds

(2) For the purposes of this section-

"Chief Mining Engineer" means the person appointed as such in pursuance of section *six* of the Mines and Minerals Act, 1969;

"diamond" means any rough or uncut diamond and includes any diamond which has been partially cut, shaped or polished out of the rough;

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"emerald" means any rough or uncut emerald and includes any emerald which has been partially cut, shaped or polished out of the rough.

(3) Any police officer of or above the rank of Sub Inspector may arrest without warrant any person reasonably suspected by him of having committed or of attempting to commit an offence under this section.

322. (1) When a person has been found guilty by a court of an offence under section *three hundred and twenty one* in addition to any other punishment imposed on the accused person, the diamonds or emeralds in respect of which the offence has been committed shall be forfeited to the state upon such finding by the court.

Forfeiture on conviction

(2) Any diamonds or emeralds which have been forfeited under subsection (1) shall be released to the Minister of Finance or such other person as may be authorised by him in writing.

(As amended by Act No. 5 of 1972)

CHAPTER XXXIII

FRAUDS BY TRUSTEES AND PERSONS IN A POSITION OF TRUST, AND FALSE ACCOUNTING

323. (1) Any person who, being a trustee of any property, destroys the property with intent to defraud, or, with intent to defraud, converts the property to any use not authorised by the trust, is guilty of a felony and is liable to imprisonment for seven years.

Trustees fraudulently disposing of trust property

(2) For the purposes of this section, "trustee" includes the following persons and no others, that is to say:

(a) trustees upon express trusts created by a deed, will, or instrument in writing, whether for a public or private or charitable purpose;

(b) trustees appointed by or under the authority of an Act or Statute for any such purpose;

(c) persons upon whom the duties of any such trust as aforesaid

devolve;

(d) executors and administrators.

324. Any person who-

(a) being a director or officer of a corporation or company, receives or possesses himself as such of any of the property of the corporation or company otherwise than in payment of a just debt or demand, and, with intent to defraud, omits either to make a full and true entry thereof in the books and accounts of the corporation or company, or to cause or direct such an entry to be made therein; or

(b) being a director, officer, or member of a corporation or company, does any of the following acts with intent to defraud, that is to say:

(i) destroys, alters, mutilates or falsifies any book, document, valuable security or account, which belongs to the corporation or company, or any entry in any such book, document, or account, or is privy to any such act; or

(ii) makes, or is privy to making, any false entry in any such book, document, or account; or

(iii) omits, or is privy to omitting, any material particular from any such book, document or account;

is guilty of a felony and is liable to imprisonment for seven years.

Directors and officers of corporations or companies fraudulently appropriating property or keeping fraudulent accounts or falsifying books or accounts

325. Any person who, being a promoter, director, officer or auditor of a corporation or company, either existing or intended to be formed, makes, circulates or publishes, or concurs in making, circulating, or publishing, any written statement or account which, in any material particular, is to his knowledge false, with intent thereby to effect any of the purposes following, that is to say:

(a) to deceive or to defraud any member, shareholder, or creditor of the corporation or company, whether a particular person or not;

(b) to induce any person, whether a particular person or not, to become a member of, or to entrust or advance any property to, the corporation or company, or to enter into any security for the benefit thereof;

is guilty of a felony and is liable to imprisonment for seven years.

False statements by officials of companies

326. Any person who, being a clerk or servant, or being employed or acting in the capacity of a clerk or servant, does any of the acts following with intent to defraud, that is to say:

Fraudulent false accounting

(a) destroys, alters, mutilates or falsifies any book, document, valuable security or account, which belongs to or is in the possession of his employer, or has been received by him on account of his employer, or any entry in any such book, document or account, or is privy to any such act; or

(b) makes, or is privy to making, any false entry in any such book, document, or account; or

(c) omits, or is privy to omitting, any material particular from any such book, document or account;

is guilty of a felony and is liable to imprisonment for seven years.

327. Any person who, being an officer charged with the receipt, custody or management of any part of the public revenue or property, knowingly furnishes any false statement or return of any money or property received by him or entrusted to his care, or of any balance of money or property in his possession or under his control, is guilty of a misdemeanour.

False accounting by public officer

DIVISION VI

MALICIOUS INJURIES TO PROPERTY

CHAPTER XXXIV

OFFENCES CAUSING INJURY TO PROPERTY

328. Any person who wilfully and unlawfully sets fire to-

Arson
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(a) any building or structure whatever, whether completed or not; or

(b) any vessel or any motor vehicle as defined in the Roads and Road Traffic Act, whether completed or not; or

(c) any stack of cultivated vegetable produce, or of mineral or vegetable fuel; or

(d) a mine, or the workings, fittings, or appliances of a mine;

is guilty of a felony and is liable to imprisonment for life.

(As amended by No. 26 of 1961)

329. Any person who-

Attempts to
commit arson

(a) attempts unlawfully to set fire to any such thing as is mentioned in the last preceding section; or

(b) wilfully and unlawfully sets fire to anything which is so situated that any such thing as is mentioned in the last preceding section is likely to catch fire from it;

is guilty of a felony and is liable to imprisonment for fourteen years.

330. Any person who wilfully and unlawfully sets fire to-

Setting fire to crops
and growing plants

(a) a crop of cultivated produce, whether standing, picked or cut; or

(b) a crop of hay or grass under cultivation, whether the natural or indigenous product of the soil or not, and whether standing or cut; or

(c) any standing trees, saplings, or shrubs, whether indigenous or not, under cultivation;

is guilty of a felony and is liable to imprisonment for fourteen years.

(As amended by No. 26 of 1940)

331. Any person who-

Attempts to set fire
to crops, etc.

(a) attempts unlawfully to set fire to any such thing as is mentioned in the last preceding section; or

(b) wilfully and unlawfully sets fire to anything which is so situated that any such thing as is mentioned in the last preceding section is likely to catch fire from it;

is guilty of a felony and is liable to imprisonment for seven years.

332. Any person who-

Casting away
vessels

(a) wilfully and unlawfully casts away or destroys any vessel, whether completed or not; or

(b) wilfully and unlawfully does any act which tends to the immediate loss or destruction of a vessel in distress; or

(c) with intent to bring a vessel into danger, interferes with any light, beacon, buoy, mark, or signal used for purposes of navigation, or exhibits any false light or signal;

is guilty of a felony and is liable to imprisonment for life.

(As amended by No. 26 of 1933)

333. Any person who attempts unlawfully to cast away or destroy a vessel, whether completed or not, or attempts unlawfully to do any act tending to the immediate loss or destruction of a vessel in distress, is guilty of a felony and is liable to imprisonment for fourteen years.

Attempts to cast away vessels

(As amended by No. 26 of 1933)

334. (1) Any person who wilfully and unlawfully kills, maims or wounds any animal capable of being stolen is guilty of an offence.

Injuring animals

(2) If the animal in question is a horse, mare, gelding, ass, mule, camel, bull, cow, ox, goat, pig, ram, ewe, wether, or ostrich, or the young of any such animal, the offender is guilty of a felony and is liable to imprisonment for seven years. In any other case the offender is guilty of a misdemeanour.

335. (1) Any person who wilfully and unlawfully destroys or damages any property is guilty of an offence, which, unless otherwise stated, is a misdemeanour and he is liable, if no other punishment is provided, to imprisonment for two years.

Punishment for malicious injuries in general

(2) If the property in question is a dwelling-house or a vessel, and the injury is caused by the explosion of any explosive substance, and if-

In special cases-destroying or damaging an inhabited house or a vessels with explosives

(a) any person is in the dwelling-house or vessel; or

(b) the destruction or damage actually endangers the life of any person;

the offender is guilty of a felony and is liable to imprisonment for life.

(3) If the property in question-

River bank or wall, or navigation works, or bridges

(a) is a bank or wall of a river, canal, aqueduct, reservoir, or inland

water, or work which appertains to a dock, reservoir, or inland water, and the injury causes actual danger of inundation or damage to any land or building; or

(b) is a railway or is a bridge, viaduct, or aqueduct which is constructed over a highway, railway, or canal, or over which a railway, highway, or canal passes, and the property is destroyed; or

(c) being a railway or being any such bridge, viaduct, or aqueduct, is damaged, and the damage is done with intent to render the railway, bridge, viaduct, or aqueduct, or the highway, or canal passing over or under the same or any part thereof, dangerous or impassable, and the same or any part thereof is thereby rendered dangerous or impassable; the offender is guilty of a felony and is liable to imprisonment for life.

(4) If the property in question is a testamentary instrument, whether the testator is living or dead, or a register which is authorised or required by law to be kept for authenticating or recording the title to any property or for recording births, baptisms, marriages, deaths, or burials, or a copy of any part of any such register which is required by law to be sent to any public officer, the offender is guilty of a felony and is liable to imprisonment for fourteen years.

Wills and registers

(5) If the property in question is a vessel in distress or wrecked, or stranded, or anything which belongs to such vessel, the offender is guilty of a felony and is liable to imprisonment for seven years.

Wrecks

(6) If the property in question is any part of a railway, or any work connected with a railway, the offender is guilty of a felony and is liable to imprisonment for fourteen years.

Railways

(7) If the property in question-

Other things of special value

(a) being a vessel, whether completed or not, is destroyed; or

(b) being a vessel, whether completed or not, is damaged, and the damage is done with intent to destroy it or render it useless; or

(c) is a light, beacon, buoy, mark, or signal, used for the purposes of

navigation, or for the guidance of persons engaged in navigation; or

(*d*) is a bank or wall of a river, canal, aqueduct, reservoir, or inland water, or a work which appertains to a dock, canal, aqueduct, reservoir, or inland water, or which is used for the purposes of lading or unloading goods; or

(*e*) being a railway, or being a bridge, viaduct, or aqueduct which is constructed over a highway, railway, or canal, or over which a highway, railway, or canal passes, is damaged, and the damage is done with intent to render the railway, bridge, viaduct, or aqueduct, or the highway, railway, or canal passing over or under the same, or any part thereof, dangerous or impassable; or

(*f*) being anything in process of manufacture, or an agricultural or manufacturing machine, or a manufacturing implement, or a machine or appliance used or intended to be used for performing any process connected with the preparation of any agricultural or pastoral produce, is destroyed; or

(*g*) being any such thing, machine, implement, or appliance, as last aforesaid, is damaged, and the damage is done with intent to destroy the thing in question or to render it useless; or

(*h*) is a shaft or a passage of a mine, and the injury is done with intent to damage the mine or to obstruct its working; or

(*i*) is a machine, appliance, apparatus, building, erection, bridge, or road, appertaining to or used with a mine, whether the thing in question is completed or not; or

(*j*) being a rope, chain, or tackle, of whatever material, which is used in a mine, or upon any way or work appertaining to or used with a mine, is destroyed; or

(*k*) being any such rope, chain, or tackle, as last aforesaid, is damaged, and the damage is done with intent to destroy the thing in question or to render it useless; or

(*l*) is a well, or bore for water, or the dam, bank, wall, or floodgate of a millpond or pool;

the offender is guilty of a felony and is liable to imprisonment for seven

years.

(8) If the property in question is a document which is deposited or kept in a public office, or which is evidence of title to any land or estate in land, the offender is guilty of a felony and is liable to imprisonment for seven years.

Deeds and records

(As amended by No. 26 of 1933)

336. Any person who, unlawfully and with intent to destroy or damage any property, puts any explosive substance in any place whatever, is guilty of a felony and is liable to imprisonment for fourteen years.

Attempts to destroy property by explosives

337. Any person who wilfully and unlawfully causes, or is concerned in causing, or attempts to cause, any infectious disease to be communicated to or among any animal or animals capable of being stolen, is guilty of a felony and is liable to imprisonment for seven years.

Communi-cating infectious diseases to animals

338. Any person who wilfully and unlawfully, and with intent to defraud, removes or defaces any object or mark which has been lawfully erected or made as an indication of the boundary of any land, is guilty of a felony and is liable to imprisonment for three years.

Removing boundary marks with intent to defraud

339. Any person who-

Wilful damage, etc., to survey and boundary marks

(a) wilfully removes, defaces or injures any survey mark or boundary mark which shall have been made or erected by or under the direction of any Government department or in the course of or for the purposes of a Government survey; or

(b) being under an obligation to maintain in repair any boundary mark made or erected as aforesaid, neglects or refuses to repair the same; or

(c) wilfully removes, defaces or injures any mark erected by an intending applicant for any lease, licence or right under an Act relating to mines or minerals;

is guilty of a misdemeanour and is liable to imprisonment for three months or to a fine of six hundred penalty units, and may further be ordered by the court to pay the cost of repairing or replacing the survey mark or boundary mark and of making any survey rendered necessary by the offender's act or neglect.

(As amended by No. 13 of 1994)

340. Any person who-

(a) wilfully damages, injures, or obstructs any work, way, road, building, turnstile, gate, toll bar, fence, weighing machine, engine, tender, carriage, wagon, truck, material or plant, acquired for or belonging to any railway works; or

(b) pulls up, removes, defaces, or destroys, or in any way interferes with, any poles, stakes, flags, pegs, lines, marks, or anything driven or placed in or upon the ground, trees, stones, or buildings, or any other material, belonging to any railway works; or

(c) commits any nuisance or trespass in or upon any land, buildings, or premises, acquired for or belonging to any railway works; or

(d) wilfully molests, hinders, or obstructs the officer in charge of any railway or his assistants or workmen in the execution of any work done or to be done in reference to the construction or maintenance of any such railway;

is guilty of a misdemeanour and is liable to imprisonment for three months or to a fine of six hundred penalty units.

(As amended by No. 13 of 1994)

Penalties for damage, etc., to railway works

341. Any person who, knowing the contents thereof, sends, delivers, utters or directly or indirectly causes to be received any letter or writing threatening to burn or destroy any house, barn, or other building, or any rick or stack of grain, hay, or straw, or other agricultural produce, whether in or under any building or not, or any vessel, or to kill, maim, or wound any cattle, is guilty of a felony and is liable to imprisonment for ten years.

Threats to burn or destroy

DIVISION VII

FORGERY, COINING, COUNTERFEITING AND SIMILAR OFFENCES

CHAPTER XXXV

DEFINITIONS

342. Forgery is the making of a false document with intent to defraud or to deceive.

(As amended by No. 26 of 1940)

Definition of forgery

343. In this Division, "document" does not include a trade mark or any other sign used in connection with articles of commerce though they may be written or printed.

Definition of document

344. Any person makes a false document who-

Making a false document

(a) makes a document purporting to be what in fact it is not;

(b) alters a document without authority in such a manner that if the alteration had been authorised it would have altered the effect of the document;

(c) introduces into a document without authority whilst it is being drawn up matter which if it had been authorised would have altered the effect of the document;

(d) signs a document-

(i) in the name of any person without his authority whether such name is or is not the same as that of the person signing;

(ii) in the name of any fictitious person alleged to exist, whether the fictitious person is or is not alleged to be of the same name as the person signing;

(iii) in the name represented as being the name of a different person from that of the person signing it and intended to be mistaken for the name of that person;

(iv) in the name of a person personated by the person signing the document, provided that the effect of the instrument depends upon the identity between the person signing the document and the person whom he professes to be.

344A. An intent to deceive exists where one person induces another person-

Intent to deceive

(a) to believe that a thing is true which is false, and which the person practising the deceit knows or believes to be false; or

(b) to believe a thing to be false which is true, and which the person practising the deceit knows or believes to be true;

and in consequence of having been so induced does or omits to do an act whether or not any injury or loss is thereby suffered by any person.

(No. 5 of 1972)

345. An intent to defraud is presumed to exist if it appears that, at the time when the false document was made, there was in existence a specific person ascertained or unascertained capable of being defrauded thereby, and this presumption is not rebutted by proof that the offender took or intended to take measures to prevent such person from being defrauded in fact, nor by the fact that he had or thought he had a right to the thing to be obtained by the false document.

Intent to defraud

CHAPTER XXXVI

PUNISHMENTS FOR FORGERY

346. In this Chapter, "currency notes" includes any notes (by whatever name called) which are legal tender in the country in which they are issued.

Definition of
currency notes

(No. 48 of 1938)

347. Any person who forges any document is guilty of an offence which, unless otherwise stated, is a felony and he is liable, unless owing to the circumstances of the forgery or the nature of the thing forged some other punishment is provided, to imprisonment for three years.

General
punishment for
forgery

348. Any person who forges any will, document of title to land, judicial record, power of attorney, bank note, currency note, bill of exchange, promissory note or other negotiable instrument, policy of insurance, cheque or other authority for the payment of money by a person carrying on business as a banker, is liable to imprisonment for life and the court may in addition order that any such document as aforesaid shall be forfeited.

Forgeries
punishable by
imprisonment for
life

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

349. Any person who forges any judicial or official document is liable to imprisonment for seven years.

Forgery of judicial
or official
document

350. Any person who-

(a) forges any stamp, whether impressed or adhesive, used for the purpose of revenue or accounting by any Government department; or

Forgeries
punishable by
imprisonment for
seven years

(b) without lawful excuse, the proof whereof shall lie upon him, makes or has knowingly in his possession any die or instrument capable of making the impression of any such stamp; or

(c) fraudulently cuts, tears in any way, or removes from any material any stamp used for purposes of revenue or accounting by the Government, with intent that another use shall be made of such stamp or any part thereof; or

(d) fraudulently mutilates any such stamp as last aforesaid, with intent that another use shall be made of such stamp;
or

(e) fraudulently fixes or places upon any material or upon any such stamp as last aforesaid any stamp or part of a stamp which, whether fraudulently or not, has been cut, torn, or in any way removed from any other material or out of or from any other stamp; or

(f) fraudulently erases or otherwise either really or apparently removes from any stamped material any name, sum, date, or other matter or thing whatsoever written thereon with the intent that another use shall be made of the stamp upon such material; or

(g) knowingly and without lawful excuse, the proof whereof shall lie upon him, has in his possession any stamp or part of a stamp which has been fraudulently cut, torn, or otherwise removed from any material, or any stamp which has been fraudulently mutilated, or any stamped material out of which any name, sum, date, or other matter or thing has been fraudulently erased or otherwise really or apparently removed;

is liable to imprisonment for seven years.

351. Any person who, without lawful authority or excuse, the proof whereof lies upon him-

Making or having in possession paper or implements for forgery

(a) makes, uses, or knowingly has in his custody or possession any paper intended to resemble and pass as special paper such as is provided and used for making any currency note or bank note;

(b) makes, uses, or knowingly has in his custody or possession, any frame, mould or instrument for making such paper, or for producing in or on such paper any words, figures, letters, marks, lines or devices peculiar to and used in or on any such paper;

(c) engraves or in any wise makes upon any plate, wood, stone, or other material, any words, figures, letters, marks, lines or devices, the print whereof resembles in whole or in part any words, figures, letters, marks, lines or devices peculiar to and used in or on any bank note, or in or on any document entitling or evidencing the title of any person to any share or interest in any public stock, annuity, fund, or debt of the

Republic or of any foreign state, or in any stock, annuity, fund or debt of any body corporate, company or society, whether within or without the Republic;

(d) uses or knowingly has in his custody or possession any plate, wood, stone, or other material, upon which any such words, figures, letters, marks, lines, or devices have been engraved or in any wise made as aforesaid; or

(e) uses or knowingly has in his custody or possession, any paper upon which any such words, figures, letters, marks, lines or devices have been printed or in any wise made as aforesaid;

is guilty of a felony and is liable to imprisonment for seven years.

(No. 48 of 1938 as amended by S.I. No. 63 of 1964)

352. Any person who knowingly and fraudulently utters a false document is guilty of an offence of the same kind, and is liable to the same punishment, as if he had forged the thing in question.

Uttering false documents

353. Any person who knowingly utters as and for a subsisting and effectual document, any document which has by any lawful authority been ordered to be revoked, cancelled, or suspended, or the operation of which has ceased by effluxion of time, or by death, or by the happening of any other event, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had forged the document.

Uttering cancelled or exhausted documents

354. Any person who, by means of any false and fraudulent representations as to the nature, contents or operation of a document, procures another to sign or execute the document, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had forged the document.

Procuring execution of documents by false pretences

355. Any person who, with intent to defraud-

(a) obliterates, adds to, or alters the crossing on a cheque; or

(b) knowingly utters a crossed cheque, the crossing on which has been obliterated, added to, or altered;

is guilty of a felony and is liable to imprisonment for seven years.

Obliterating crossings on cheques

356. Any person who, with intent to defraud or to deceive-

(a) without lawful authority or excuse, makes, signs, or executes,

Making documents without authority

for or in the name or on account of another person, whether by procuration or otherwise, any document or writing; or

(b) knowingly utters any document or writing so made, signed, or executed by another person;

is guilty of a felony and is liable to imprisonment for seven years.

(As amended by No. 26 of 1940)

357. Any person who procures the delivery or payment to himself or any other person of any property or money by virtue of any probate or letters of administration granted upon a forged testamentary instrument, knowing the testamentary instrument to have been forged, or upon or by virtue of any probate or letters of administration obtained by false evidence, knowing the grant to have been so obtained, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had forged the document or thing by virtue whereof he procures the delivery or payment.

Demanding property upon forged testamentary instrument

358. Any person who, without lawful authority or excuse, the proof of which lies on him, purchases or receives from any person, or has in his possession a forged bank note or currency note, whether filled up or in blank, knowing it to be forged, is guilty of a felony and is liable to imprisonment for seven years.

Purchasing forged notes

359. Any person who, being employed in the public service, knowingly and with intent to defraud makes out or delivers to any person a warrant for the payment of any money payable by public authority, for a greater or less amount than that to which the person on whose behalf the warrant is made out is entitled, is guilty of a felony and is liable to imprisonment for seven years.

Falsifying warrants for money payable under public authority

360. Any person who, having the actual custody of any register or record kept by lawful authority, knowingly permits any entry which in any material particular is to his knowledge false, to be made in the register or record, is guilty of a felony and is liable to imprisonment for seven years.

Falsification of register

361. Any person who signs or transmits to a person authorised by law to register marriages, a certificate of marriage, or any document purporting to be a certificate of marriage, which in any material particular is to his knowledge false, is guilty of a felony and is liable to

Sending false certificate of marriage to registrar

imprisonment for seven years.

362. Any person who, knowingly and with intent to procure the same to be inserted in a register of births, deaths, or marriages, make any false statement touching any matter required by law to be registered in any such register, is guilty of a felony and is liable to imprisonment for three years.

False statements for registers of births, deaths and marriages

CHAPTER XXXVII

OFFENCES RELATING TO COIN

363. In this Chapter-

Definitions of counterfeit coin and current coin

"counterfeit coin" means coin not genuine but resembling or apparently intended to resemble or pass for genuine current coin; and includes genuine current coin prepared or altered so as to pass for current coin of a higher denomination;

"current", applied to any coin, includes any coin coined in Zambia or lawfully current in Zambia or any coin lawfully current in any foreign country.

(No. 48 of 1938 as amended by S.I. No. 63 of 1964)

364. Any person who makes or begins to make any counterfeit coin is guilty of a felony and is liable to imprisonment for life.

Counterfeiting coin

(As amended by No. 48 of 1938)

365. Any person who-

Preparations for coining

(a) gilds or silvers any piece of metal of a fit size or figure to be coined, with intent that it shall be coined into counterfeit coin; or

(b) makes any piece of metal into a fit size or figure to facilitate the coining from it of any counterfeit coin, with intent that such counterfeit coin shall be made from it; or

(c) without lawful authority or excuse, the proof of which lies on him-

(i) buys, sells, receives, pays, or disposes of any counterfeit coin at a lower rate than it imports or is apparently intended to import, or offers to do any such thing; or

(ii) brings or receives into Zambia any counterfeit coin, knowing it to be counterfeit; or

(iii) makes or mends, or begins or prepares to make or mend, or has in his possession, or disposes of any stamp or mould which is adapted to make the resemblance of both or either of the sides of any coin, or any part of either side thereof, knowing the same to be a stamp or mould or to be so adapted; or

(iv) makes or mends, or begins or prepares to make or mend, or has in his possession, or disposes of any tool, instrument or machine which is adapted and intended to be used for marking coin round the edges with marks or figures apparently resembling those on the edges of any coin, knowing the same to be so adapted and intended; or

(v) makes or mends, or begins or prepares to make or mend, or has in his possession, or disposes of any press for coinage, or any tool, instrument, or machine which is adapted for cutting round blanks out of gold, silver, or other metal, knowing such press, tool, instrument, or machine to have been used or to be intended to be used for making any counterfeit coin;

is guilty of a felony and is liable to imprisonment for life.

(As amended by No. 48 of 1938)

366. Any person who deals with any current coin in such a manner as to diminish its weight, with intent that when so dealt with it may pass as current coin is guilty of a felony and is liable to imprisonment for seven years.

Clipping

(As amended by No. 48 of 1938)

367. Any person who melts down, breaks up, defaces by stamping thereon any name, word or mark, or uses otherwise than as currency, any silver coin current for the time being in Zambia, is guilty of a misdemeanour and is liable to imprisonment for six months or to a fine not exceeding three thousand penalty units, or to both.

Melting down of
currency

(As amended by Act No. 26 of 1940 and No. 13 of 1994)

368. Any person who unlawfully has in his possession, or disposes of any filings, or clippings of gold or silver, or any gold or silver in bullion, dust, solution, or any other state, obtained by dealing with current gold or silver coin in such a manner as to diminish its weight, knowing the same to have been so obtained, is guilty of a felony and is liable to imprisonment for seven years.

Possession of clippings

369. Any person who utters any counterfeit coin, knowing it to be counterfeit, is guilty of a misdemeanour.

Uttering counterfeit coin

(As amended by No. 48 of 1938)

370. Any person who-

Repeated uttering

(a) utters any counterfeit coin, knowing it to be counterfeit, and at the time of such uttering has in his possession any other counterfeit coin; or

(b) utters any counterfeit coin, knowing it to be counterfeit, and either on the same day or on any of the ten days next ensuing, utters any other counterfeit coin, knowing it to be counterfeit; or

(c) has in his possession three or more pieces of counterfeit coin, knowing them to be counterfeit, and with intent to utter any of them; is guilty of a felony and is liable to imprisonment for three years.

(As amended by No. 48 of 1938)

371. Any person who, with intent to defraud, utters as and for current coin-

Uttering foreign coin or metal as current coin

(a) any coin which is not such current coin; or

(b) any medal or piece of metal, whether a coin or not, which is of less value than the current coin as and for which it is uttered;

is guilty of a misdemeanour and is liable to imprisonment for one year.

(As amended by No. 48 of 1938)

372. Any person who, without lawful authority or excuse, the proof of which lies on him, exports or puts on board of a vessel or vehicle of any kind for the purpose of being exported from Zambia, any counterfeit coin whatever, knowing it to be counterfeit, is guilty of a felony and is liable to imprisonment for fourteen years.

Exporting counterfeit coin

(As amended by No. 48 of 1938)

373. When any person is convicted of an offence under this Chapter, or Chapter XXXVI, the court shall order the forfeiture of any forged bank note or currency note or of any counterfeit coin, or any stamp, mould, tool, instrument, machine, press, or any coin, bullion or metal used or employed in the commission of any such offence. Forfeiture

(As amended by No. 48 of 1938 and S.I. No. 63 of 1964)

CHAPTER XXXVIII

COUNTERFEIT STAMPS

374. Any person who, without lawful authority or excuse, the proof of which lies on him- Possession of die used for purpose of making stamps

(a) makes or mends, or begins or prepares to make or mend, or uses, or knowingly has in his possession, or disposes of any die, plate, or instrument capable of making an impression resembling that made by any die, plate or instrument used for the purpose of making any stamp, whether impressed or adhesive, which is used for the purposes of the public revenue or of the postal administration in Zambia, or in any foreign country, or capable of producing in or on paper any words, figures, letters, marks or lines resembling any words, figures, letters, marks, or lines used in or on any paper specially provided by the proper authority for any such purpose; or

(b) knowingly has in his possession or disposes of any paper or other material which has on it the impression of any such die, plate, or instrument, or any paper which has on it or in it any such words, figures, letters, marks or lines as aforesaid; or

(c) fraudulently, and with intent that use may be made of any such stamp as aforesaid, or of any part of it, removes the stamp from any material in any way whatever; or

(d) fraudulently, and with intent that use may be made of any part of such stamp, mutilates the stamp; or

(e) fraudulently fixes or places upon any material or upon any such stamp, any stamp or part of a stamp which has been in any way removed from any other material, or out of or from any other stamp; or

(f) fraudulently, and with intent that use may be made of any such stamp which has been already impressed upon or attached to any material, erases or otherwise removes, either really or apparently, from

such material anything whatever written on it; or

(g) knowingly has in his possession or disposes of anything obtained or prepared by any such unlawful act as aforesaid; or

(h) fraudulently or with intent to cause loss to the public revenue, uses for any purpose a stamp issued by Government for the purposes of revenue which he knows to have been previously used;

is guilty of a felony and is liable to imprisonment for seven years, and any die, plate, instrument, paper or other thing as aforesaid which is found in his possession shall be forfeited.

(As amended by No. 26 of 1940, G.N. No. 303 of 1964 and S.I. No. 63 of 1964)

375. (1) Any person who, without lawful authority or excuse, the proof of which lies on him- Paper and dies for postage stamps

(a) makes, or begins or prepares to make, or uses for any postal purpose, or has in his possession, or disposes of any imitation or representation on paper or any other material, of any stamp used for denoting any rate of postage of the Republic, or of any foreign country; or

(b) makes or mends, or begins or prepares to make or mend, or uses, or has in his possession or disposes of any die, plate, instrument, or material for making any such imitation or representation;

is guilty of a misdemeanour, and is liable to imprisonment for one year, or to a fine of one thousand and five hundred penalty units, and any stamps and any other such things as aforesaid, which are found in his possession, shall be forfeited.

(2) For the purposes of this section, a stamp purporting to denote a rate of postage of any country is to be taken to be a stamp used for postal purposes in that country until the contrary is shown.

(As amended by S.I. No. 63 of 1964 and Act No. 13 of 1994)

CHAPTER XXXIX

COUNTERFEITING TRADE MARKS

376. A trade mark is-

Definition of trade mark

(a) a mark lawfully used by any person to denote any chattel to be an article or thing of the manufacture, workmanship, production, or merchandise of such person or to be an article or thing of any peculiar or particular description made or sold by such person;

(b) any mark or sign which in pursuance of any written law in force for the time being relating to registered designs is to be put or placed upon or attached to any chattel or article during the existence or continuance of any copyright or other sole right acquired under the provision of such law.

377. (1) Any person who does any of the following things with intent to defraud or to enable another to defraud any person, that is to say:

Counterfeiting
trade marks a
misdemeanour

(a) forges or counterfeits any trade mark;

(b) applies any trade mark or any forged or counterfeited trade mark to any chattel or article not being the merchandise of any person whose trade mark is so forged or counterfeited;

(c) applies any trade mark or any forged or counterfeited trade mark to any chattel or article not being the particular or peculiar description of merchandise denoted or intended to be denoted by such trade mark or by such forged or counterfeited trade mark;

(d) applies any trade mark or any forged or counterfeited trade mark to any thing intended for any purpose of trade or manufacture, or in, on, or with which any chattel or article is intended to be sold, or is sold or offered or exposed for sale;

(e) encloses or places any chattel or article in, upon, under, or with anything to which any trade mark has been falsely applied, or to which any forged or counterfeit trade mark has been applied;

(f) applies or attaches any chattel or article to any case, cover, reel, ticket, label, or other thing to which any trade mark has been falsely applied, or to which any false or counterfeit trade mark has been applied;

(g) encloses, places, or attaches any chattel or article in, upon, under, with, or to any thing having thereon any trade mark of any other person;

is guilty of a misdemeanour.

(2) Every person committing any such misdemeanour as mentioned in subsection (1) shall forfeit-

(a) all chattels and articles to which any such trade mark or counterfeit trade mark is applied or caused or procured to be applied;

(b) every instrument for applying any such trade mark or counterfeit trade mark in his possession or power;

(c) the chattels and articles and the things mentioned in paragraphs (d), (e) and (g) of subsection (1), and all similar things made to be used in like manner in his possession or power.

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

CHAPTER XL PERSONATION

378. (1) Any person who, with intent to defraud any person, falsely represents himself to be some other person, living or dead, is guilty of a misdemeanour.

Personation in general

(2) If the representation is that the offender is a person entitled by will or operation of law to any specific property and he commits the offence to obtain such property or possession thereof, he is liable to imprisonment for seven years.

379. Any person who, without lawful authority or excuse, the proof of which lies on him, makes in the name of any other person, before any court or person lawfully authorised to take such an acknowledgment, an acknowledgment of liability of any kind, or an acknowledgment of a deed or other instrument, is guilty of a misdemeanour.

Falsely acknowledging deeds, recognizances, etc.

380. Any person who utters any document which has been issued by lawful authority to another person, and whereby that other person is certified to be a person possessed of any qualification recognised by law for any purpose, or to be the holder of any office, or to be entitled to exercise any profession, trade or business, or to be entitled to any right

Personation of person named in certificate

or privilege, or to enjoy any rank or status, and falsely represents himself to be the person named in the document, is guilty of an offence of the same kind and is liable to the same punishment as if he had forged the document.

381. Any person who, being a person to whom any document has been issued by lawful authority whereby he is certified to be a person possessed of any qualification recognised by law for any purpose, or to be the holder of any office, or to be entitled to exercise any profession, trade or business, or to be entitled to any right or privilege, or to enjoy any rank or status, sells, gives, or lends the document to another person with intent that that other may represent himself to be the person named therein, is guilty of a misdemeanour.

Lending, etc.,
certificate for
personation

382. Any person who, for the purpose of obtaining any employment, utters any document of the nature of a testimonial of character given to another person, is guilty of a misdemeanour and is liable to imprisonment for one year.

Personation of
person named in
testimonial of
character

383. Any person who, being a person to whom any such document as is mentioned in the last preceding section has been given, gives, sells, or lends such document to another person with the intent that that other person may utter such document for the purpose of obtaining any employment, is guilty of a misdemeanour.

Lending, etc.,
testimonial for
personation

DIVISION VIII

CHAPTER XLI

384. Repealed by Act 14 of 1980.

385. Repealed by Act 14 of 1980.

386. Repealed by Act 14 of 1980.

387. Repealed by Act 14 of 1980.

388. Repealed by Act 14 of 1980.

DIVISION IX

ATTEMPTS AND CONSPIRACIES TO COMMIT CRIMES, AND ACCESSORIES AFTER THE FACT

CHAPTER XLII

ATTEMPTS

389. (1) When a person, intending to commit an offence, begins to put his intention into execution by means adapted to its fulfilment, and manifests his intention by some overt act, but does not fulfil his intention to such an extent as to commit the offence, he is deemed to attempt to commit the offence.

Definition of attempt

(2) It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfilment of his intention is prevented by circumstances independent of his will, or whether he desists of his own motion from the further prosecution of his intention.

(3) It is immaterial that by reason of circumstances not known to the offender it is impossible in fact to commit the offence.

390. Any person who attempts to commit a felony or misdemeanour is guilty of an offence which, unless otherwise stated, is a misdemeanour.

Attempts to commit offences

391. Any person who attempts to commit a felony of such a kind that a person convicted of it is liable to the punishment of death or imprisonment for a term of fourteen years or upwards, with or without other punishment, is guilty of a felony and is liable, if no other punishment is provided, to imprisonment for seven years.

Punishment of attempts to commit certain felonies

392. (1) Any person who attempts to procure another to do an act or make an omission of such a nature that if he himself were to do the act or make the omission he would be guilty of an offence, is himself to be deemed guilty of attempting to commit such offence and to be

Attempts to procure commission of criminal acts

punishable accordingly.

(2) Any person who, while in Zambia, attempts to procure another to do an act or make an omission at a place not in Zambia of such a nature-

(a) that if he were himself to do the act or make the omission in Zambia he would be guilty of an offence; and

(b) that if he were himself to do the act or make the omission at the place where the act or omission is proposed to be done or made he would himself be guilty of an offence under the laws in force at that place;

is guilty of an offence of the same kind and is liable to the same punishment as if he were himself to attempt to do the same act or make the same omission in Zambia.

(No. 28 of 1931)

393. Every person who, knowing that a person designs to commit or is committing a felony, fails to use all reasonable means to prevent the commission or completion thereof, is guilty of a misdemeanour.

Neglect to prevent
commission of a
felony

CHAPTER XLIII

CONSPIRACIES

394. Any person who conspires with another to commit any felony, or to do any act in any part of the world which if done in Zambia would be a felony, and which is an offence under the laws in force in the place where it is proposed to be done, is guilty of a felony and is liable, if no other punishment is provided, to imprisonment for seven years, or, if the greatest punishment to which a person convicted of the felony in question is liable is less than imprisonment for seven years, then to such lesser punishment.

Conspiracy to
commit felony

395. Any person who conspires with another to commit a misdemeanour, or to do any act in any part of the world which if done in Zambia would be a misdemeanour, and which is an offence under the laws in force in the place where it is proposed to be done, is guilty of a misdemeanour.

Conspiracy to
commit
misdemeanour

396. Any person who conspires with another to effect any of the purposes following, that is to say:

Other conspiracies

- (a) to prevent or defeat the execution or enforcement of any Act, Statute, or Order; or
 - (b) to cause any injury to the person or reputation of any person, or to depreciate the value of any property of any person; or
 - (c) to prevent or obstruct the free and lawful disposition of any property by the owner thereof for its fair value; or
 - (d) to injure any person in his trade or profession; or
 - (e) to prevent or obstruct, by means of any act or acts which if done by an individual person would constitute an offence on his part, the free and lawful exercise by any person of his trade, profession, or occupation; or
 - (f) to effect any unlawful purpose; or
 - (g) to effect any lawful purpose by any unlawful means;
- is guilty of a misdemeanour:

Provided that an agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute, as defined in the Industrial and Labour Relations Act, shall not be punishable under the provisions of this section if such act committed by one person would not be punishable as a crime.

Cap. 269

(As amended by No. 1 of 1952 and No. 7 of 1958)

CHAPTER XLIV

ACCESSORIES AFTER THE FACT

397. (1) Any person who receives or assists another who is, to his knowledge, guilty of an offence, in order to enable him to escape punishment, is said to become an accessory after the fact to the offence.

Definition of accessories after the fact

(2) A wife does not become an accessory after the fact to an offence of which her husband is guilty by receiving or assisting him in order to enable him to escape punishment; or by receiving or assisting, in her husband's presence and by his authority, another person who is guilty of an offence in the commission of which her husband has taken part, in order to enable that other person to escape punishment; nor does a

husband become accessory after the fact to an offence of which his wife is guilty by receiving or assisting her in order to enable her to escape punishment.

398. Any person who becomes an accessory after the fact to a felony is guilty of a felony, and is liable, if no other punishment is provided, to imprisonment for three years.

Punishment of accessories after the fact to felonies

399. Any person who becomes an accessory after the fact to a misdemeanour is guilty of a misdemeanour.

Punishment of accessories after the fact to misdemeanours

SCHEDULE

(No. 23 of 1952 as amended by No. 6 of 1965 and Repealed by No. 10 of 2003)

SECOND SCHEDULE

(Section 33)

PARTICULARS OF NON CITIZEN CONVICTED OF OFFENCES

1. Full name of the accused
2. Postal address
3. Residential address
4. Sex
5. Date and place of birth
6. Father's full name
7. Date of first entry into Zambia
8. Duration of stay in Zambia
9. Occupation in Zambia
10. Offence for which accused was charged and convicted
11. Term of Imprisonment
12. Date on which accused commenced serving imprisonment
13. Previous Conviction (if any)
14. Offence for which previously convicted
15. Sentence for the previous conviction
16. Race or declared national status
17. Name of the country of which he is a citizen
18. Passport Number (if any)
19. Date and place of issue
20. Dated at this day of 19.....

SUBSIDIARY LEGISLATION

SECTION 227-SIGNPOSTING OF AUTHORISED PATHS ACROSS THE RAILWAY RESERVE Notice by the Minister

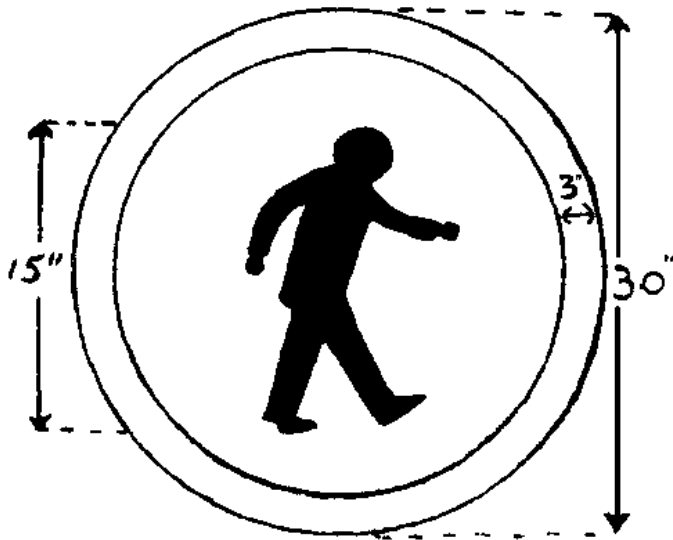
Government
Notice
261 of 1960

It is hereby prescribed that any path authorised by a Divisional Commander of Police under the powers conferred upon him by subsection (4) of section *two hundred and twenty-seven* of the Penal Code for the passage of persons across the railway reserve shall be signposted by the Zambia Railways in the following manner:

- (a) a signpost shall be erected where an authorised path enters the railway reserve on each side of the railway track or tracks and it shall bear a circular sign of approximately thirty inches in diameter facing outwards from such reserve;
- (b) the design of such circular sign and the figure thereon shall be as set forth in the Schedule;
- (c) the background colour of such circular sign shall be yellow and it shall have a band approximately three inches wide and coloured red around its circumference;
- (d) there shall be placed centrally within the red band a figure coloured black representing a man walking. The figure shall be approximately fifteen inches in height.

SCHEDULE

SIGN INDICATING AUTHORISED PEDESTRIAN CROSSING



Diameter of sign-approximately 30 inches.

Width of outer band-approximately 3 inches.

Height of figure representing a man walking-approximately 15 inches.

Background colour-yellow.

Colour of outer band-red.

Colour of figure representing a man walking-black.

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CHAPTER 88

THE CRIMINAL PROCEDURE CODE ACT

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CHAPTER 88
CRIMINAL PROCEDURE CODE

An Act to make provision for the procedure to be followed in criminal cases

[1st 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
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30 of 1952
20 of 1953
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26 of 1956
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28 of 1979
35 of 1993
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5 of 1997
13 of 2000
9 of 2003
9 of 2005

PART I

PRELIMINARY

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

Short title
Cap. 88

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 and No. 13 of 2000)

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

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.

Reconciliation

(No. 5 of 1962)

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.

Power of High Court to order preliminary inquiry

(No. 26 of 1956)

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 only

Cases 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. Repealed By Act No. 9 of 2003

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

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 Power to break out of any house for

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. 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- Search of arrested persons

(a) by a police officer under a warrant which does not provide for the taking of bail or under a warrant which provides for the taking of bail 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.

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. Power of police officer to detain and search vehicles and persons in certain circumstances

(No. 28 of 1940)

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. Power to seize offensive weapons

Arrest without Warrant

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

Arrest by police officer without warrant
Cap. 94

- (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)

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

Arrest of vagabonds, habitual robbers, etc.

- (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;

(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 deposes 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

Detention of persons arrested without warrant

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.

(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.

Arrest by magistrate

Escape and Retaking

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-

Duty to assist
magistrate, etc.

(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 Behaviour

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 occasion 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-

Security for good
behaviour from
persons
disseminating
seditious matters
Cap. 87

(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)

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-

Security for good behaviour from habitual offenders
Cap. 87

(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.

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-

Order to be made

- (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.

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.

Discharge of person informed against

Proceedings in all Cases Subsequent to Order to Furnish Security

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

Procedure on failure of person to give security

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.

(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

Power of High

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.

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

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 to 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.

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(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.

Ordinary place of
inquiry and trial

(No. 28 of 1940)

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

Trial at place
where act done or
where consequence

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. of offence ensues

71. When an act or omission 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 committed; 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 Offence committed on a journey

person against whom, or the thing in respect of which, the offence was committed passed in the course of that journey or voyage.

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

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Court under section *twenty-three* of the High Court Act.
(As amended by No. 16 of 1959)

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

Delegation of

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:

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.

Signature of
Director of Public
Prosecutions to be
evidence

(No. 50 of 1957 as amended by S.I. No. 63 of 1964)

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

Withdrawal from prosecution in

Public Prosecutions, at any time before judgment is pronounced, withdraw from the prosecution of any person; and upon such withdrawal-

trials before
subordinate courts

(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)

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

Warrants to whom directed

officers of such area. But any court issuing such a warrant may, if its immediate execution is necessary, and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.

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

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.

Irregularities in
warrant

Miscellaneous Provisions Regarding Processes

114. Where any person for whose appearance or arrest the magistrate presiding in any court is empowered to issue a summons or warrant is

Power to take bond
for appearance

present in such court, such magistrate may require such person to execute a bond, with or without sureties, for his appearance in such court.

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.

Provisions of this Part generally applicable to summonses and warrants

Search 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

Power to issue search 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)

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 trial, 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
applicable to
search warrants

Provisions as to Bail

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;
- (iv) theft of motor vehicle, if such person has previously been convicted of theft of motor vehicle.

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, Act No. 9 of 2005)

(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.

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(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.

Additional
conditions of bail
bond

(No. 50 of 1957)

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.

Death of surety

(As amended by No. 50 of 1957)

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.

Power to direct levy of amount due on recognizance

Charges and Informations

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 charge or information if the offences charged are founded on the same facts or form, or are a part of, a series of offences of the same or 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:

Joinder of two or more accused in one charge or information
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(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)

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:

Mode in which offences are to be charged

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

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

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

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 court 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", "Commissioners" 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

Person may be tried again for

the former trial under subsection (1) of section *one hundred and thirty-five*.

separate offence

(No. 28 of 1940)

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.

Summons for witness

(As amended by No. 28 of 1940)

144. If, without sufficient excuse, a witness does not appear in obedience to the summons, the court, on proof of the proper service of

Warrant for witness who

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. 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.

Procedure where person charged is called for defence

(As amended by Act No. 6 of 1972)

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, exercise 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.

Adjournment of
inquiry or trial

Evidence for Defence

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;
- (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;
- (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;
- (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;
- (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;
- (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-
- (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

Own application

No comment if not called as witness

Spouses

Communications during marriage

Cross-examination

No question to show commission of offence not charged

Exceptions

(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;

(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.

Procedure where person charged is called for defence

(No. 6 of 1972)

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.

Question whether accused capable of making his defence

(No. 76 of 1965 as amended by No. 18 of 1966)

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

Procedure where accused unfit to make his defence

and, to the extent that it has not already done so, shall hear the evidence for the prosecution and (if any) for the 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.

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(No. 76 of 1965)

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

Resumption of trial
Cap 1

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.

(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-

Preliminary
inquiries

(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)

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

Defence of insanity
at the time of the
offence

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.

(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 *commencement of Act No. 76 of 1965.

Application to persons detained in terms of orders made under former provisions

* *7th January, 1966.

(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-

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"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)

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 prosecution 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)

173. 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.

Compensation recovered to be taken into account in subsequent civil suit

(As amended by No. 28 of 1940)

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.

Wrongful conversion and detention of property

Restitution 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.

Person charged with any offence may be convicted of attempt

(No. 28 of 1940)

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

Alternative verdicts in various

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.

offences involving
the homicide of
children
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(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.

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(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.

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(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.

Person charged
with manslaughter
in connection with
the driving of a
motor vehicle may
be convicted of
reckless or
dangerous driving.
Cap. 464

(No. 28 of 1940)

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.

Cap. 87

(No. 28 of 1940)

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

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with it;

(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.

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(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*.

Construction of sections 181 to 188

(No. 28 of 1940)

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 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).

Evidence to be taken in presence of accused

(No. 33 of 1972)

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

Cap. 297

and Allied Professions Act.

(No. 33 of 1972)

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

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 summons 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.

Non-appearance of complainant at hearing

(As amended by No. 28 of 1940)

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. Acquittal

(As amended by No. 2 of 1960)

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 Defence

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)

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.

Evidence reply

(No. 16 of 1959)

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.

Prosecutor's reply

(No. 16 of 1959)

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 address the court on his own behalf.

Where the accused person does not give evidence or make unsworn statement

(No. 16 of 1959)

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.

The decision

(As amended by No. 28 of 1940)

215. The conviction or order may, if required, be afterwards drawn up,

Drawing up of

and shall be signed by the court making the conviction or order, or by the clerk or other officer of the court. 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. Order of acquittal bar to further proceedings

(As amended by No. 2 of 1960)

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

(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; or Cap. 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

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 Court to hold preliminary inquiry

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.

(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.

(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

Variance between evidence and charge

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.

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:

Provisions as to taking statement or evidence of accused person

"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."

(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

Discharge of
accused person

inquiry; but such discharge shall not be a bar to any subsequent charge in respect of the same facts:

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

(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

Complainant and
witnesses to be
bound over

examination concerning the charge which may be held by direction of the Director of Public Prosecutions.

(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.

Notice to be given

(As amended by No. 24 of 1950)

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

Transmission of statement

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

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.

Use of statement in evidence

(As amended by No.24 of 1950)

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.

Transmission of records to High Court and Director of Public Prosecutions

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

242. If, after receipt of the authenticated copy of the depositions 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

Power of Director of Public Prosecutions to direct further investigation

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)

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.

Powers of Director of Public Prosecutions as to additional witnesses

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

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

Notice of trial.
Cap. 27

may be:

"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

Postponement of trial

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.

(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.

Informations by
Director of Public
Prosecutions

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

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

(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.

Certifying of case as a summary procedure case

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

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.

No preliminary inquiry in summary procedure case

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

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.

Record to be forwarded

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

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

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.

Practice of High Court in its criminal jurisdiction

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

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.

Trials before High Court

List of Assessors

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.

Preparation of list of assessors

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

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:

Exemptions

- (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)

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,

Penalty for non-attendance of assessor

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.

(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.

Arrestment

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

(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 commenced; 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:

Procedure in case of previous convictions

(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:

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.

Refusal to plead

(No. 11 of 1963)

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.

Assessors to attend at adjourned sittings

Case for the Prosecution

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 committing 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

Statement or evidence of

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)

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

The defence

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.

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.

Evidence in reply

(No. 28 of 1940)

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.

Prosecutor's reply

(As amended by No. 16 of 1959)

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.

Where accused person does not give evidence

(As amended by No. 50 of 1957)

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

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

Procedure where woman convicted of capital offence alleges she is

woman is pregnant shall, before sentence is passed on her, be determined by the court.

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

306A. (1) A court may make an order for the community service where in the case of an adult, the offence is misdemeanour and is punishable with imprisonment.

Court to make community service order

(2) Before making an order for community service, the court shall consider the report submitted by a superior police officer or other person or institution as the court may consider appropriate as regards the character, antecedents, home surroundings, health or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which the offence was committed.

Insertions of new sections 306A, 306B, 306C, 306D and 306E

(3) Before making an order for community service, the court shall explain to the offender in the language the offender understands, the effect of the order and shall obtain the consent of the offender to perform community service and explain that where the offender fails to comply with the order the offender shall be liable to the term of imprisonment the court has imposed in respect of that offence.

306B. 1. An order for community service shall specify-

- (a) the number of hours to be worked;
- (b) the days on which the work is to be performed;
- (c) the period of community service;
- (d) the place where the offender is to perform

community service;

(e) that the offender shall, during the period of the community

service, be under the supervision of an authorised officer; and

(f) any other special terms and conditions of the order.

Contents of
community
service
order

(2) For the purposes of section *three hundred and six A*, this section and of section *three hundred and six C*-

"authorised police officer" has the meaning assigned to it in the

Prison act; and

"superior police officer" has the meaning assigned to it in the

Zambia Police Act.

Cap. 97

306C. Upon making an order for community service, the court shall order is made to report forthwith to an authorised officer in the area community service will be performed.

Cap. 107

306D. (1) If at any one time during the community service period it appears to the court that the offender has failed to comply with the requirements of the community service order, the court may issue summons requiring the offender to appear at the place and time specified therein or may issue a warrant of arrest.

Offender to
report to an
authorised
officer

Failure of
offender to
comply with
community
service
order

(2) A summons or warrant shall direct the offender to appear or to be brought before the court by which the community service order was made.

(3) If it is proved to the satisfaction of the court that the offender has failed to comply with any of the requirements of the community service order, the court may-

(a) vary the order to suit the circumstances of the case;

(b) impose on the offender a fine not exceeding three hundred

penalty units; or

(c) cancel the order and send the offender is liable, subject nevertheless to a reduction of the number of days, if any, for

which community service has already been performed.

306E. Where an offender has been ordered to undergo community service on conviction by an original court but has been sentenced to imprisonment by a subsequent court for another offence committed during the period of community service, the following shall apply:

Commission
of further
offence

(a) the subsequent court may add to the sentence imposed a

further term of imprisonment which might have been passed by

the original court and cancel the order of community service;

(b) in making the sentence the subsequent court may take into

account the period of community service served in reduction of

the additional imprisonment;

(c) where the original court was the High Court and the subsequent court is the subordinate court, the subordinate

court shall send the copy of the proceedings to the High Court

and on receipt, the High Court shall proceed under paragraphs

(a) and (b) of this section;

(d) where the original court was a subordinate court, and the

subsequent court is the High Court dealing with the matter at

first instance or an appeal or otherwise, the High Court shall

proceed under paragraphs (a) and (b) of this section;

(e) where both the original court and the subsequent court are

subordinate courts, the subsequent court shall proceed under

paragraphs (a) and (b) of this section;

(f) where a subsequent court has convicted the offender of an

offence, that court may pass the sentence other than imprisonment and order the offender to continue undergoing

community service.

(As amended by No. 13 of 2000)

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.

Warrant in case of sentence of imprisonment

(As amended by No. 28 of 1940 and No. 16 of 1959)

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 deposited 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

Payment in full after commitment

authorised (if any), to the person in whose custody he is, and that person shall, thereupon, discharge him, if he is in custody for no other matter.

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.

Limitation of
imprisonment

Previously Convicted Offenders

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

Person twice
convicted may be
subjected to police
supervision

exceeding five years from the date of his release from prison.

(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.

Failure to comply with requirements under section 318

Defects in Order or Warrant

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

Errors and omissions in orders

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.

and warrants

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

Appeals by
Director of Public
Prosecutions

court.

(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-

Limitation

(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.

(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 perusing 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. *I(As amended by No. 14 of 1938, No. 11 of 1963 and Repealed by Act No. 9 of 2003)*

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-

Suspension of orders on conviction

(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)

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
Court

(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.

Order to be certified to lower court

(As amended by G.N. No. 493 of 1964)

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

Case stated by subordinate court

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)

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.

Constitution of court hearing case stated

(No. 2 of 1960)

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 appellants.

(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;

Case may be sent back for amendment or rehearing

(b) to remit the case to the subordinate court for rehearing and determination, with such directions as it may deem necessary.

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-

Contents of case stated

- (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)

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*.

High Court may enlarge time

(As amended by No. 5 of 1962)

351A. In this Part, "appellate court" means the High Court.

Interpretation

(No. 23 of 1971)

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.

Proceedings in wrong place

(As amended by No. 16 of 1959)

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.

Distress not illegal nor distrainer a trespasser for defect or want of form in proceedings

Miscellaneous

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. Prescribed fees

(As amended by No. 2 of 1960)

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 Non-application
not apply to the Republic.

FIRST SCHEDULE

(Section 2)

OFFENCES UNDER THE PENAL CODE

Explanatory Note.-The entries in the second and fourth columns of this Schedule, headed respectively "Offence" and "Punishment under the Penal Code", are not intended as definitions of the offences and punishments described in the several corresponding sections of the Penal Code or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

Chapter V-Parties to Offences

1	2	3	4
Section	Offence	Whether the police may arrest without warrant or not	Punishment under the Penal Code. (N.B.- <i>Vide</i> also sections 26 and 38, Penal Code.)
21.	Aiding, abetting, counselling or procuring for the offence aided the commission of an offence.	May arrest without warrant, but not otherwise.	Same punishment as abetted, counselled or procured.

DIVISION I-OFFENCES AGAINST PUBLIC ORDER

Chapter VII-Treason and other offences

43.	Treason.	May arrest without warrant	Death
44.	Misprision of treason.	Ditto.	Imprisonment for life.
45.	Treason-felony.	May arrest without warrant	Imprisonment for twenty years.
46.	Promoting tribal war.	Ditto.	Imprisonment for life.

48.	Inciting to mutiny.	Ditto.	Ditto.
49.	Aiding in acts of mutiny Imprisonment for two	warrant.	Shall not arrest without years.
50.	Inducing desertion.	Ditto.	Imprisonment for six months.
51 (a)	Aiding prisoner of war to escape.	May arrest without warrant.	Imprisonment for life.
51 (b)	Permitting prisoner of war to escape.	Shall not arrest without warrant.	Imprisonment for two years.
54.(1)	Offences in respect of prohibited publication.	May arrest without warrant.	Imprisonment for two years or fine of three thousand penalty units or both for first offence. Imprisonment for three years for subsequent offence.
54.(2)	Possession of prohibited publication		Ditto. Imprisonment for one year or fine of one thousand five hundred penalty units or both for first offence. Imprisonment for two years for subsequent offence.
55.	Failure to deliver pos- session of prohibited publication.	May arrest without warrant.	Imprisonment for one year or fine of one thousand five hundred penalty units or both.
57.(1)	Offences in respect of seditious practices.	Ditto.	Imprisonment for seven years or fine of six thousand penalty units or both for first offence.
57.(2)	Possession seditious publication.	Ditto.	Imprisonment for two years or fine of three thousand penalty units or both for first offence. Imprisonment for five years for subsequent offence.

58D.	Insulting National Anthem Imprisonment for two warrant	May arrest without years
58E.	Defamation of President	Ditto Imprisonment for three years.
58.F.	Expressing or showing Ditto hatred, ridicule or contempt for persons because of race, tribe, place of origin or colour	Imprisonment for two years.
63.	Administering or taking - oath to commit capital offence.	Ditto. Imprisonment for life.
64. seven	Administering or taking - other unlawful oaths.	Ditto. Imprisonment for years.
66.(1)	Unlawful drilling. Ditto.	Ditto.
66.(2)	Being unlawfully drilled.	Ditto. Imprisonment for two years.
67	False information with Ditto. certain intents.	Imprisonment for three years.
68.	Insulting national anthem.	Ditto. Imprisonment for two years.
69.	Defamation of President.	Ditto. Imprisonment for three years.
70.	Expressing or showing Ditto. hatred, ridicule or contempt for persons because of race, tribe, place of origin or colour.	Imprisonment for two years.

(As amended by Act 9 of 1968)

Chapter VIII-Offences affecting Relations with Foreign States and External Tranquillity

71.	Defamation of foreign princes.	Shall not arrest without warrant.	Imprisonment for two years.
72.	Foreign enlistment.	Ditto.	Ditto.
72A.(1) seven	Possession of firearms and other offensive weapons	Ditto	Imprisonment for years.
72A.(2)	Consorting with persons in	Ditto	Imprisonment for five

	possession of firearms and other offensive weapons		years.
72A.(3)	Delivery of firearms to persons for purposes prejudicial to public order	Ditto	Imprisonment for five years.
72A.(4)	Possession of offensive weapons in public		Ditto Imprisonment for one year.
73.	Piracy.	May arrest without warrant.	Punishment prescribed by law of England.

Chapter IX-Unlawful Assemblies, Riots and other Offences against Public Tranquility

<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
<i>Section</i>	<i>Offence</i>	<i>Whether the police may arrest without warrant or not</i>	<i>Punishment under the Penal Code. (N.B.-Vide also sections 26 and 38, Penal Code.)</i>
75.	Unlawful assembly.	May arrest without warrant.	Imprisonment for five years.
76.	Riot.	Ditto.	Imprisonment for seven years.
79.	Rioting after proclamation.		Ditto. Imprisonment for ten years.
80.	Obstructing proclamation.		Ditto. Ditto.
81.	Rioters destroying buildings.	Ditto.	Imprisonment for life.
82. seven	Rioters injuring buildings.		Ditto. Imprisonment for years.
83.	Riotously interfering with railway, etc.		Ditto. Imprisonment for two years.
84.	Going armed in public.	Ditto.	Ditto.
85.(1)	Possession of offensive weapons or materials.	Ditto.	Imprisonment for seven years.
86.	Forcible entry.	Ditto.	Imprisonment for two years.
87.	Forcible detainer.	Ditto.	Ditto.
88.	Committing affray.	Ditto.	Imprisonment for six

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| | | | months or fine of seven hundred and fifty penalty units. |
| 89. | Challenging to fight a duel.
Imprisonment for two | out warrant. | Shall not arrest with-
years. |
| 90. | Threatening violence. | May arrest without
warrant. | Imprisonment for five
years. |
| 91. | Proposing violence. | Ditto. | Imprisonment for
seven years. |
| 92. | Wrongfully inducing
boycott. | Ditto. | Imprisonment for six
months. |
| 93. | Assembling for purpose of
smuggling. | | Ditto. Imprisonment for six
months or fine of three
thousand penalty units. |

DIVISION II-OFFENCES AGAINST THE ADMINISTRATION OF LAWFUL AUTHORITY

Chapter X-Corruption and Abuse of Office

98.	False claims by officials.	Ditto.	Imprisonment for two years.
99.	Abuse of office. Ditto (if for purposes of gain).	Ditto.	Ditto. Imprisonment for three years.
100.	False certificates by public officers.		Ditto. Imprisonment for two years.
101.	False assumption of authority.	Ditto.	Ditto.
102.	Personating public officers. Imprisonment for	warrant.	May arrest without three years.
103.	Threat of injury to persons Imprisonment for two employed in public service.		Shall not arrest without warrant. years.

Chapter XI-Offences Relating to the Administration of Justice

105. for	False statements by interpreters.	Shall not arrest without warrant.	Same punishment as perjury.
106. seven	Perjury or subornation of perjury.		Ditto. Imprisonment for years.
108.	Fabricating evidence.	Ditto.	Ditto.
109.	False swearing.	Ditto.	Imprisonment for two years.
110.	Deceiving witnesses.	Ditto.	Ditto.
111.	Destroying evidence.	Ditto.	Ditto.
112.	Conspiracy to defeat justice, and interference with witnesses.	Ditto.	Ditto.

113.	Compounding felonies.	Ditto.	Ditto.
114.	Compounding penal actions.	Ditto.	Ditto.
115.	Advertising for stolen property.	Ditto.	Ditto.
116.(1)	Contempt of court.	Ditto.	Imprisonment for six months or fine of seven hundred and fifty penalty units.
116.(2)	Contempt of court (if committed in view of court).	May arrest without warrant.	Fine of six hundred penalty units-in default of payment imprisonment for one month.
117. for	Prohibition on taking photographs, etc., in court.	Ditto.	Fine of one thousand five hundred penalty units each offence.

Chapter XII-Rescues, Escapes and Obstructing Officers of Court of Law

118.(1)	Rescue-		
	(a) If person rescued is under sentence of death or imprisonment for life or charged with offence punishable with death or imprisonment for life;	May arrest without warrant.	Imprisonment for life.
seven	(b) If person rescued is imprisoned on a charge or under sentence for any other offence;		Ditto. Imprisonment for years.
	(c) In any other case.	Ditto.	Imprisonment for two years.
119.	Escape.	Ditto.	Ditto.
120. seven	Aiding prisoners to escape.		Ditto. Imprisonment for years.
121.	Removal, etc., of property under lawful seizure.		Ditto. Imprisonment for three years.
122.	Obstructing court officers.		Ditto. Imprisonment for one

year.

Chapter XIII-Miscellaneous Offences against Public Authority

1	2	3	4
Section	Offence	Whether the police may arrest without warrant or not	Punishment under the Penal Code. (N.B.- <i>Vide</i> also sections 26 and 38, Penal Code.)
123.	Frauds and breaches of trust by public officers.	Shall not arrest without warrant.	Imprisonment for two years.
125.	False information to public officer.		Ditto. Imprisonment for six months or fine of one thousand five hundred penalty units or both.
126.	Disobedience of statutory duty.		Ditto. Imprisonment for two years.
127.	Disobedience of lawful orders.	Ditto.	Ditto.

DIVISION III-OFFENCES INJURIOUS TO THE PUBLIC IN GENERAL

Chapter XIV-Offences Relating to Religion

128.	Insult to religion of any Imprisonment for two class.	warrant.	May arrest without years.
129.	Disturbing religious assemblies.	Ditto.	Ditto.
130.	Trespassing on burial places.	May arrest without warrant.	Imprisonment for two years.
131.	Uttering words with intent Imprisonment for one to wound religious feelings.		Shall not arrest without warrant. year.

Chapter XV-Offences Against Morality

133.	Rape.	May arrest without warrant.	Imprisonment for life.
134.	Attempted rape.	Ditto.	Ditto.
135.	Abduction.	Ditto.	Imprisonment for seven years.
136.	Abduction of girl under sixteen.	Ditto.	Imprisonment for two years.
137.(1)	Indecent assault on females.		Ditto. Imprisonment for fourteen years.
137.(3)	Indecently insulting or annoying females.	Ditto.	Imprisonment for one year.
138.(1)	Defilement of girl under sixteen.		Ditto. Imprisonment for life.
138.(2)	Attempted defilement of girl under sixteen.		Ditto. Imprisonment for fourteen years.
139.	Defilement of an idiot or imbecile.		Ditto. Ditto.
140.	Procuration.	Ditto.	Imprisonment for two years.
141.	Procuring defilement by threats or fraud or		Ditto. Ditto.

	administering drugs.		
142.	Householder permitting defilement of girl under twelve on his premises.	Ditto.	Imprisonment for five years.
143.	Householder permitting defilement of girl under sixteen on his premises.	Ditto.	Imprisonment for two years.
144.	Detention with unlawful intent or in brothel.		Ditto. Ditto.

Chapter XV-Offences Against Morality-Continued

1	2	3	4
Section	Offence	Whether the police may arrest without warrant or not	Punishment under the Penal Code. (N.B.- <i>Vide</i> also sections 26 and 38, Penal Code.)
146.	Male person living on earnings of prostitution or persistently soliciting.	Ditto.	Ditto.
147.	Woman aiding, etc., for gain prostitution of another woman.		Ditto. Ditto.
149.	Keeping a brothel.	Ditto.	Ditto.
150.	Conspiracy to defile.	Ditto.	Imprisonment for three years.
151.	Attempt to procure abortion.	Ditto.	Imprisonment for fourteen years.
152.	Woman attempting to procure her own abortion.	May arrest without	Imprisonment for seven years.
153.	Supplying drugs or instruments to procure abortion.	Ditto.	Imprisonment for three years.
155.	Unnatural offences.	Ditto.	Imprisonment for fourteen years.
156.	Attempt to commit unnatural offence.	Ditto.	Imprisonment for seven years.
157.	Indecent assault on boys		Ditto. Ditto.

	under fourteen years.		
158.	Indecent practices between males.	Ditto.	Imprisonment for five years.
159.(1)	Incest by males.	Ditto.	Ditto.
	If female person is under the age of twelve years.	Ditto.	Imprisonment for life.
159.(3)	Attempt to commit incest		Ditto. Imprisonment for two years.
161.	Incest by females.	Ditto.	Imprisonment for five years.

Chapter XVI-Offences Relating to Marriage and Domestic Obligations

165.	Fraudulent pretence of marriage.	May arrest without warrant.	Imprisonment for ten years.
166.	Bigamy.	Ditto.	Imprisonment for five years.
167.	Dishonestly or fraudulently - going through ceremony of marriage.		Ditto. Ditto.
168.	Desertion of children.	Shall not arrest without warrant.	Imprisonment for two years.
169.	Neglecting to provide food, etc., for children.	Ditto.	Ditto.
170.	Master not providing for servants or apprentices.		Ditto. Ditto.
171.	Child stealing.	May arrest without warrant.	Imprisonment for seven years.

Chapter XVII-Nuisances and Offences Against Health and Convenience

1	2	3	4
Section	Offence	Whether the police may arrest without warrant or not	Punishment under the Penal Code. (N.B.-Vide also sections 26 and 38, Penal Code.)
172.	Committing common	Shall not arrest without	Imprisonment for one

	nuisance.	warrant.	year.
173.	Watching and besetting. three thousand		May arrest without Fine of
		warrant.	penalty units or imprisonment for six months or both.
174.(3)	Keeping common gaming Imprisonment for two house.	warrant.	Shall not arrest without years.
174.(4) and	Being found in common gaming house		Ditto. Fine of one hundred fifty penalty units for first offence, and for each subsequent offence a fine of six hundred penalty units or imprisonment for three months or both.
175.	Keeping or permitting the keeping of a common betting house.		Ditto. Imprisonment for one year.
177.	Trafficking in obscene publications.	May arrest without warrant.	Imprisonment for two years or fine of three thousand penalty units.
178.	Being an idle or disorderly person		Ditto. Imprisonment for one month or fine of sixty penalty units or both.
179.	Use of insulting language.	Ditto.	Fine of four hundred and fifty penalty units or imprisonment for three months or both.
181.	Being a rogue or vagabond.		Ditto. Imprisonment for three months for first offence, and for each subsequent offence imprisonment for one year.
182.(1)	Wearing uniform without authority.		Ditto. Imprisonment for one month or fine of three hundred penalty units.
182.(2)	Bringing contempt on uniform.	Ditto.	Imprisonment for three months or fine of six hundred penalty units.
182.(3)	Importing or selling uniform without authority.	Ditto.	Imprisonment for six months or fine of three

182.(5)	Unauthorised wearing of medals, etc.		thousand penalty units. Ditto. Imprisonment for three months or fine of three hundred penalty units.
183.	Doing any act likely to spread infection of dangerous disease.	Ditto.	Imprisonment for two years.
184.	Adulteration of food or drink intended for sale.	Shall not arrest without warrant.	Ditto.
185.	Selling, or offering or exposing for sale, noxious food or drink.	Ditto.	Ditto.
186.	Adulteration of drugs intended for sale.	Shall not arrest without warrant.	Imprisonment for two years.
187.	Selling adulterated drugs.		Ditto. Ditto.

Chapter XVII-Nuisances and Offences Against Health and Convenience-Continued

<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
<i>Section</i>	<i>Offence</i>	<i>Whether the police may arrest without warrant or not</i>	<i>Punishment under the Penal Code. (N.B.-Vide also sections 26 and 38, Penal Code.)</i>
188.	Fouling water of public spring or reservoir.	warrant.	May arrest without warrant. Ditto.
189.	Making the atmosphere noxious to health.	Ditto. warrant.	Shall not arrest without warrant.
190.	Carrying on offensive trade.	Ditto.	Imprisonment for one year.

Chapter XVIII-Defamation

191.	Libel.	Shall not arrest without warrant.	Imprisonment for two years.
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DIVISION IV-OFFENCES AGAINST THE PERSON

Chapter XIX-Murder and Manslaughter

201.	Murder.	May arrest without warrant.	Death.
202.	Manslaughter.	Ditto.	Imprisonment for life.
203.	Infanticide.	Ditto.	Ditto.

Chapter XXI-Offences Connected with Murder

215.	Attempted murder.	May arrest without warrant.	Imprisonment for life.
216.	Attempted murder by convict.	Ditto.	Ditto.
217.	Being accessory after the fact to murder.		Ditto. Imprisonment for seven years.
218.	Sending written threat to murder.		Ditto. Ditto.
219.	Conspiracy to murder.	Ditto.	Imprisonment for fourteen years.
220.	Concealing the birth of a child.		Ditto. Imprisonment for two years.
221.	Child destruction.	Ditto.	Imprisonment for life.

Chapter XXII-Offences Endangering Life or Health

222.	Disabling in order to commit felony or misdemeanour.	May arrest without warrant.	Imprisonment for life.
223.	Stupefying in order to commit felony or misdemeanour.	Ditto.	Ditto.
224.	Acts intended to cause grievous harm or prevent arrest.	Ditto.	Ditto.
225.	Preventing escape from wreck.	Imprisonment for life. warrant.	May arrest without
226.	Intentionally endangering		Ditto. Ditto.

	safety of persons travelling by railway.		
227.(1)	Trespass on railway.	Ditto.	Fine of three thousand penalty units or imprisonment for two years or both.
227.(2)	Trespass on railway while in possession of articles or implements.		Ditto. Imprisonment for fourteen years.
228.	Acts endangering the safety of persons travelling in motor vehicles.	Ditto.	Imprisonment for life.
229.	Doing grievous harm.	Ditto.	Imprisonment for seven years.
230.	Attempting to injure by explosive substances.		Ditto. Imprisonment for fourteen years.
231.	Administering poison with intent to harm.	Ditto.	Ditto.
232.	Wounding and similar acts.	Ditto.	Imprisonment for three years.
233.	Failing to provide necessaries of life.	Ditto.	Ditto.

Chapter XXIII-Criminal Recklessness and Negligence

237.	Rash and negligent acts. Imprisonment for two		May arrest without
		warrant.	years.
238.	Other negligent acts causing harm.	Ditto.	Imprisonment for six months.
239.	Dealing with poisonous substances in negligent manner.		Shall not arrest without months or fine of three thousand penalty units.
240.	Endangering safety of persons travelling by railway.	May arrest without warrant.	Imprisonment for two years.
241. seven	Exhibiting false light, mark or buoy.		Ditto. Imprisonment for years.

242.	Conveying person by water for hire in unsafe or overloaded vessel.		Ditto. Imprisonment for two years.
243.	Obstruction of waterways.		Ditto. Imprisonment for three years.
244.	Causing danger or obstruction in public way or line of navigation.	Shall not arrest without warrant.	Fine.
245.	Trespass on aerodrome.	May arrest without warrant.	Fine of seven hundred and fifty penalty units or imprisonment for one month or both.
246.	Obstruction of roads or runways.	Ditto.	Imprisonment for three years.

Chapter XXIV -Assaults

247.	Common assault.	Shall not arrest without warrant.	Imprisonment for one year.
248.	Assault occasioning actual bodily harm.	Imprisonment for five years.	May arrest without warrant.
249.	Assaulting person protecting wreck.	Ditto.	Imprisonment for seven years.
250.	Various assaults.	Ditto.	Imprisonment for five years.

Chapter XXV-Offences Against Liberty

1	2	3	4
Section	Offence	Whether the police may arrest without warrant or not	Punishment under the Penal Code. (N.B.-Vide also sections 26 and 38, Penal Code.)
254.	Kidnapping.	May arrest without warrant	Imprisonment for seven years.
255.	Kidnapping or abducting in order to murder.		Ditto. Imprisonment for ten years.
256.	Kidnapping or abducting seven		Ditto. Imprisonment for

	with intent to confine a person.		years.
257.	Kidnapping or abducting in order to subject person to grievous harm, slavery, etc.		Ditto. Imprisonment for ten years.
258. for abduction.	Wrongfully concealing or keeping in confinement a kidnapped or abducted person.		Ditto. Same punishment as kidnapping or
259. seven	Kidnapping or abducting child under fourteen with intent to steal from its person.		Ditto. Imprisonment for years.
260.	Wrongful confinement.	Ditto.	Imprisonment for one year or fine of six thousand penalty units.
261. seven	Buying or disposing of any person as a slave.		Ditto. Imprisonment for years.
262.	Habitually dealing in slaves.	Ditto.	Imprisonment for ten years.
263.	Unlawful compulsory labour.	Ditto.	Imprisonment for two years.

DIVISION V-OFFENCES RELATING TO PROPERTY

Chapter XXVI-Theft

272.	Theft.	May arrest without warrant.	Imprisonment for three years.
273.	Stealing wills.	Ditto.	Imprisonment for ten years.
274.	Stealing postal matter, etc.		Ditto. Ditto
275.	Stealing cattle, etc.	Ditto.	Imprisonment for seven to fifteen years.
276.	Stealing from the person, seven		Ditto. Imprisonment for
	in a dwelling-house, in transit, etc.		years.
277.	Stealing by person in the public service.		Ditto. Ditto.
278.	Stealing by clerks and servants.	Ditto.	Ditto.
279.	Stealing by directors or officers of companies.		Ditto. Ditto.
280.	Stealing by agents, etc.	Ditto.	Ditto.
281.	Stealing by tenants or lodgers.	Ditto.	Ditto.
282.	Stealing after previous conviction.	Ditto.	Ditto.

Chapter XXVII-Offences Allied to Stealing

283.	Concealing registers.	May arrest without warrant.	Imprisonment for ten years.
284.	Concealing wills.	Ditto.	Ditto.
285.	Concealing deeds.	Ditto.	Imprisonment for three years.
286.	Killing animals with intent to steal. stolen.	Ditto.	Same punishment as if the animal had been

287.	Severing with intent to steal.	Ditto.	Same punishment as if the thing had been stolen.
288.	Fraudulent disposition of mortgaged goods.		Ditto. Imprisonment for two years.
289.	Fraudulently dealing with ore or minerals in mines.		Ditto. Imprisonment for five years.
290.	Fraudulent appropriation of mechanical or electrical power.		Ditto. Ditto.
291.	Conversion not amounting to theft.		Ditto. Imprisonment for six months or fine of one thousand five hundred penalty units or both.

Chapter XXVII-Robbery and Extortion

292.	Robbery.	May arrest without warrant.	Imprisonment for fourteen years.
293. seven	Assault with intent to steal.		Ditto. Imprisonment for years.
294.	Aggravated robbery.	Ditto.	Imprisonment for life; with a minimum of fifteen years.
295. to	Aggravated assault with intent to steal.		Ditto. Imprisonment for ten twenty years.
296.	Demanding property by written threats.		Ditto. Imprisonment for fourteen years.
297.	Threatening with intent to extort- in certain specified cases; in any other case.	Ditto.	Ditto. Ditto. Imprisonment for three years.
298.	Procuring execution of deeds, etc., by threats.	Ditto.	Imprisonment for fourteen years.
299.	Demanding property with menaces with intent to steal.		Ditto. Imprisonment for five years.

Chapter XXIX-Burglary, Housebreaking and Similar Offences

301.	Housebreaking.	May arrest without warrant.	Imprisonment for seven years.
301.	Burglary.	Ditto.	Imprisonment for ten years.
302.	Entering dwelling-house with intent to commit felony.		Ditto. Imprisonment for five years.
seven	If offence is committed in the night.		Ditto. Imprisonment for years.
303.	Breaking into building and committing felony.		Ditto. Ditto.
304.	Breaking into building with intent to commit felony.	Ditto.	Imprisonment for five years.
305.	Being found armed, etc., with intent to commit felony.		Ditto. Imprisonment for three years.
	If offender has been previously convicted of a felony relating to property.	Ditto.	Imprisonment for seven years.
306.	Criminal trespass.	Ditto.	Imprisonment for three months.
	If property upon which offence committed is building used as human dwelling or as place of worship or place for custody of property.	Ditto.	Imprisonment for one year.
309.	Obtaining property by false pretence.	May arrest without warrant.	Imprisonment for three years.
310.	Obtaining execution of a security by false pretence.		Ditto. Ditto.
311.	Cheating.	Ditto.	Ditto.
312.	Obtaining credit, etc., by false pretences.		Ditto. Imprisonment for one year.
313.	Conspiracy to defraud.	Ditto.	Imprisonment for three years.

314.	Frauds on sale or mortgage of property.		Ditto. Imprisonment for two years.
315.	Pretending to tell fortunes.		Ditto. Ditto.
316.	Obtaining registration, etc., by false pretence.	Ditto.	Imprisonment for one year.
317.	False declaration for passport.	Ditto.	Imprisonment for two years.

Chapter XXXI-Receiving Property Stolen or Unlawfully Obtained and Like Offences

318. (1)	Receiving or retaining stolen property.	May arrest without warrant.	Imprisonment for seven years.
318. (2)	Receiving property unlawfully obtained, converted or disposed of. unlawfully	Ditto.	Same punishment as for offender by whom the property was obtained, converted or disposed of.
319.	Failing to account for possession of property suspected to be stolen or unlawfully obtained.	Ditto.	Imprisonment for two years.
320.	Receiving goods stolen outside Zambia	Ditto.	Imprisonment for seven years.

Chapter XXXIII-Frauds by Trustees and Persons in a Position of Trust, and False Accounting

323.	Fraudulently disposing of trust property.	Imprisonment for seven years.	May arrest without warrant.
324.	Directors and officers of corporations fraudulently appropriating property, or keeping fraudulent accounts, or falsifying books or accounts.		Ditto. Ditto.
325.	False statements by officials of corporations.	May arrest without warrant.	Imprisonment for seven years.
326.	Fraudulent false accounting by clerk or servant.		Ditto. Ditto.

327.

False accounting by
public officer.

Ditto.

Imprisonment for two
years.

DIVISION VI-MALICIOUS INJURIES TO PROPERTY

Chapter XXXIV-Offences Causing Injury to Property

328.	Arson.	May arrest without warrant.	Imprisonment for life.
329.	Attempt to commit arson.	Ditto.	Imprisonment for fourteen years.
330.	Setting fire to crops or growing plants.	Ditto.	Ditto.
331. seven	Attempting to set fire to crops or growing plants.	Ditto.	Imprisonment for seven years
332.	Casting away a vessel.	Ditto.	Imprisonment for life.
333.	Attempt to cast away a vessel.	Ditto.	Imprisonment for fourteen years.
334. seven	Injuring animals- In certain specified cases;	Ditto.	Imprisonment for seven years.
	In any other case.	Ditto.	Imprisonment for two years.
335. (1)	Destroying or damaging property in general.	Ditto.	Ditto.
335. (2)	Destroying or damaging an inhabited house or a vessel with explosives.	Ditto.	Imprisonment for life.
335. (3)	Destroying or damaging river bank or wall, or navigation works or bridges.	Ditto.	Ditto.
335. (4)	Destroying or damaging wills or registers.	Ditto.	Imprisonment for fourteen years.
335. (5) seven	Destroying or damaging wrecks.	Ditto.	Imprisonment for seven years.
335. (6)	Destroying or damaging	Ditto.	Imprisonment for

railways.

fourteen years.

1	2	3	4
Section	Offence	Whether the police may arrest without warrant or not	Punishment under the Penal Code. (N.B.- <i>Vide</i> also sections 26 and 38, Penal Code.)
335.(7) seven	Destroying or damaging property of special value.		Ditto. Imprisonment for seven years.
335.(8)	Destroying or damaging deeds or records.		Ditto. Ditto.
336.	Attempt to destroy or damage property by use of explosives.	May arrest without warrant	Imprisonment for fourteen years.
337. seven	Communicating infectious disease to animals.		Ditto. Imprisonment for seven years.
338.	Removing boundary marks with intent to defraud.		Ditto. Imprisonment for three years.
339.	Removing or injuring survey or boundary marks.	Ditto.	Imprisonment for three months or fine or six hundred penalty units.
340.	Injuring or obstructing railway works, etc.,	Ditto.	Ditto.
341.	Threatening to burn any building, etc., or to kill or wound any cattle.		Ditto. Imprisonment for ten years.

DIVISION VII-FORGERY, COINING, COUNTERFEITING AND SIMILAR OFFENCES

Chapter XXXVI-Forgery

347.	Forgery (where no special Imprisonment for three punishment is provided).	Ditto.	May arrest without warrant. years.
348.	Forgery of a will, document of title, security, cheque, etc.	Ditto.	Imprisonment for life.
349.	Forgery of judicial or official document.	Ditto.	Imprisonment for seven years.
350.	Forgery, etc., of stamps.	Ditto.	Ditto.
351.	Making of instruments, etc., for forgery.	Ditto.	Ditto.
352. for	Uttering false document.	Ditto.	Same punishment as forgery of document.
353.	Uttering cancelled or exhausted document.	Ditto.	Ditto.
354.	Procuring execution of document by false pretences.	Ditto.	Ditto.
355. seven	Obliterating or altering the crossing on a cheque.	Ditto.	Imprisonment for years.
356.	Making or executing document without authority.	Ditto.	Ditto.
357. instrument.	Demanding property upon forged testamentary instrument.	Ditto.	Same punishment as for forgery of
358.	Purchasing or receiving forged bank note.	Ditto.	May arrest without warrant. years.
359.	Falsifying warrant for	Ditto.	Ditto.

money payable under public authority.

1	2	3	4
Section	Offence	Whether the police may arrest without warrant or not	Punishment under the Penal Code. (N.B.- <i>Vide</i> also sections 26 and 38, Penal Code.)
360.	Permitting falsification of register or record.		Ditto. Ditto.
361.	Sending false certificate of marriage to registrar.		Ditto. Ditto.
362.	Making false statement for insertion in register of births, deaths or marriages.		Ditto. Imprisonment for three years.
<i>Chapter XXXVII-Offences Relating to Coin</i>			
364.	Counterfeiting coin.	May arrest without warrant.	Imprisonment for life.
365.	Making preparations for coining.		Ditto. Ditto.
366.	Clipping current coin.	Ditto.	Imprisonment for seven years.
367.	Melting down of currency.		Ditto. Imprisonment for six months or fine of three thousand penalty units or both.
368.	Being in possession of clippings.	Ditto.	Imprisonment for seven years.
369.	Uttering counterfeit coin.		Ditto. Imprisonment for two years.
370.	Repeated uttering of counterfeit coin.	Ditto.	Imprisonment for three years.
371.	Uttering foreign coin or metal as current coin.		Ditto. Imprisonment for one year.
372.	Exporting counterfeit coin.		Ditto. Imprisonment for fourteen years.

Chapter XXXVIII-Counterfeit Stamps

374. Being in possession etc., of, Imprisonment for seven die or paper used for warrant. purpose of making revenue stamps. May arrest without years.
375. Being in possession, etc., of die or paper used for postage stamps. Ditto. Imprisonment for one year or fine of one thousand five hundred penalty units.

Chapter XXXIX-Counterfeiting Trade Marks

377. Counterfeiting, etc., trade Imprisonment for two mark. warrant. Shall not arrest without years.

Chapter XL-Personation

378. Personation in general. May arrest without warrant. Imprisonment for two years.
If representation that the seven offender is a person entitled by will or operation of law to any specific property and he commits the offence to obtain such property. Ditto. Imprisonment for years.
379. Falsely acknowledging deeds, recognizances, etc. Ditto. Imprisonment for two years.
380. Personation of a person for named in a certificate. Ditto. Same punishment as forgery of certificate.
381. Lending, etc., certificate for purposes of personation. Ditto. Imprisonment for two years.
382. Personation of person named in a testimonial of character. Ditto. Imprisonment for one year.
383. Lending, etc., testimonial of character for purposes of Ditto. Imprisonment for two years.

personation.

DIVISION IX-ATTEMPTS AND CONSPIRACIES TO COMMIT CRIMES, AND ACCESSORIES AFTER THE FACT

Chapter XLII-Attempts

- | | | | |
|------|--|--|--|
| 390. | Attempt to commit a felony or misdemeanour. years, unless otherwise | According as to whether or not the offence is one for which the police may arrest without a warrant. | Imprisonment for two or stated. |
| 391. | Attempt to commit a felony punishable with death or imprisonment for fourteen years or upwards. | May arrest without warrant. | Imprisonment for seven years. |
| 392. | Attempts to procure commission of criminal an attempt to commit the acts in Zambia or elsewhere. | May arrest without attempted to be procured may be made without warrant, but not otherwise. | Same punishment as for warrant if arrest for offence act attempted to be procured. |
| 393. | Neglecting to prevent commission or completion of a felony. | Shall not arrest without warrant. | Imprisonment for two years. |

Chapter XLIII-Conspiracies

- | | | | |
|------|---|--|---|
| 394. | Conspiracy to commit a felony. Imprisonment for seven | warrant. | May arrest without years. |
| 395. | Conspiracy to commit a misdemeanour. Imprisonment for two | or not the misdemeanour is one for which the police may arrest without | According as to whether years. warrant. |
| 396. | Conspiracy to effect certain specified purposes. | Shall not arrest without | Ditto. warrant. |

Chapter XLIV-Accessories after the Fact

- | | | | |
|------|---|--------------------|--|
| 398. | Being an accessory
after the fact to a felony. | May arrest without | Imprisonment for three
warrant. years. |
| 399. | Being an accessory after
Imprisonment for two
the fact to a misdemeanour. | | Shall not arrest without
warrant. years. |

*(As amended by No. 28 of 1940, No. 5 of 1962, Nos. 11 and 18 of 1963,
No. 1 of 1967, No. 9 of 1968 and No. 40 of 1969)*

SECOND SCHEDULE

(Section 137)

(As amended by G.N. No. 55 of 1939 and Act No. 11 of 1963)

FORMS OF STATING OFFENCES IN INFORMATIONS

1-MURDER

Murder, contrary to section 200 of the Penal Code.

Particulars of Offence

A.B., on the _____ day of _____, in the _____ District
of _____
the Province of Zambia, murdered J.S.

2-ACCESSORY AFTER THE FACT TO MURDER

Accessory after the fact to murder, contrary to section 217 of the Penal Code.

Particulars of Offence

A.B., well knowing that one, H.C., did on the _____ day of _____,
in the _____ District of the _____ Province of
Zambia,
murder C.C., did on the _____ day of _____, in the _____ District
of the _____ Province of Zambia, and on other days thereafter,
receive, comfort, harbour, assist and maintain the said H.C.

3-MANSLAUGHTER

Manslaughter, contrary to section 199 of the Penal Code.

Particulars of Offence

A.B., on the _____ day of _____, in the _____ District
of _____
the Province of Zambia, unlawfully killed J.S.

4-RAPE

Rape, contrary to section 132 of the Penal Code.

Particulars of Offence

A.B., on the day of , in the District
of
the Province of Zambia, had carnal knowledge of E.F., without her consent.

5-WOUNDING

First Count

Wounding with intent, contrary to section 224 of the Penal Code.

Particulars of Offence

A.B., on the day of , in the District
of
the Province of Zambia, wounded C.D., with intent to maim, disfigure or disable, or to do
some
grievous harm, or to resist the lawful arrest of him the said A.B. (*as the case may be*).

Second Count

Wounding, contrary to section 232 of the Penal Code.

Particulars of Offence

A.B., on the day of , in the District
of the Province of Zambia, unlawfully wounded C.D.

6-THEFT

First Count

Theft, contrary to section 272 of the Penal Code.

Particulars of Offence

A.B., on the day of , in the District of
the Province of Zambia, stole a bag, the property of C.D.

Second Count

Receiving stolen goods, contrary to section 318 of the Penal Code.

Particulars of Offence

A.B., on the day of , in the District of
the Province of Zambia, did receive a bag, the property of
C.D., knowing the same to have been stolen.

7-THEFT BY CLERK

Theft by clerk or servant, contrary to section 272 and section 278 of the Penal Code.

Particulars of Offence

A.B., on the day of , in the District
of
the Province of Zambia, being clerk or servant to
M.N.,
stole from the said M.N. ten yards of cloth.

8-ROBBERY

Robbery with violence, contrary to section 292 of the Penal Code.

Particulars of Offence

A.B., on the day of , in the District
of
the Province of Zambia, robbed C.D. of a watch, and
at
or immediately before or immediately after the time of such robbery did use personal
violence to
the said C.D.

9-BURGLARY

Burglary, contrary to section 301 of the Penal Code.

Particulars of Offence

A.B., in the night of the day of , in the District
of
the Province of Zambia, did break and
enter
the dwelling-house of C.D., with intent to commit a felony therein.

10-BURGLARY AND THEFT

Burglary and theft, contrary to section 301 and section 272 of the Penal Code.

Particulars of Offence

A.B., in the night of the day of , in the District
of
the Province of Zambia, did break and
enter
the dwelling-house of C.D. with intent to steal therein, and did steal therein one watch, the
property of S.T., the said watch being of the value of twenty kwacha.

11-THREATS

Demanding property by written threats, contrary to section 296 of the Penal Code.

Particulars of Offence

A.B., on the day of , in the District
of
the Province of Zambia, with intent to extort money from
C.D., caused the said C.D. to receive a letter containing threats of injury or detriment to be
caused to E.F.

12-ATTEMPTS TO EXTORT

Attempt to extort by threats, contrary to section 297 of the Penal Code.

Particulars of Offence

A.B., on the day of , in the District of
the Province of Zambia, with intent to extort money from
C.D., accused or threatened to accuse the said C.D. of an unnatural offence.

13-FALSE PRETENCES

Obtaining goods by false pretences, contrary to section 309 of the Penal Code.

Particulars of Offence

A.B., on the day of , in the District
of
the Province of Zambia, with intent to defraud, obtained
from S.P. five yards of cloth by falsely pretending that the said A.B. was a servant to J.S.,
and that he, the said A.B., had then been sent by the said J.S. to S.P., for the said cloth, and
that he, the said A.B., was then authorised by the said J.S. to receive the said cloth on behalf
of the said J.S.

14-CONSPIRACY TO DEFRAUD

Conspiracy to defraud, contrary to section 313 of the Penal Code.

Particulars of Offence

A.B., and C.D., on the day of , and on divers days between that
day and the day of , in the District of the Province of Zambia,
conspired together with intent to defraud by means of an advertisement inserted by them,
the said A.B. and C.D., in the H.S. newspaper, falsely representing that A.B. and C.D. were
then carrying on a genuine business as jewellers at , in the Province
of , and that they were then able to supply certain articles of jewellery to
whomsoever would remit to them the sum of four kwacha.

15-ARSON

Arson, contrary to section 328 of the Penal Code.

Particulars of Offence

A.B., on the _____ day of _____, in the _____ District of
the _____ Province of Zambia, wilfully and unlawfully set fire to a house.

16-ARSON AND ACCESSORY BEFORE THE FACT

A.B., arson, contrary to section 328 of the Penal Code.

C.D., accessory before the fact to same offence.

Particulars of Offence

A.B., on the _____ day of _____, in the _____ District of
the _____ Province of Zambia, wilfully and unlawfully set fire to a house.

C.D., on the same day, in the _____ District of the
Province of Zambia, did counsel or procure the said A.B. to commit the said offence.

17-DAMAGE

Damaging trees, contrary to section 335 of the Penal Code.

Particulars of Offence

A.B., on the _____ day of _____, in the _____ District of
the _____ Province of Zambia, wilfully and unlawfully damaged
a cocoa tree there growing.

18-FORGERY

First Count

Forgery, contrary to section 348 of the Penal Code.

Particulars of Offence

A.B., on the _____ day of _____, in the _____ District of
the _____ Province of Zambia, forged a certain will purporting to
be
the will of C.D.

Second Count

Uttering a false document, contrary to section 352 of the Penal Code.

Particulars of Offence

A.B., on the _____ day of _____, in the _____ District of the _____ Province of Zambia, knowingly and fraudulently uttered a certain forged will purporting to be the will of C.D.

19-COUNTERFEIT COIN

Uttering counterfeit coin, contrary to section 369 of the Penal Code.

Particulars of Offence

A.B., on the _____ day of _____, at _____ market in the _____ District of the Province of Zambia, uttered a counterfeit ngwee, knowing the same to be counterfeit.

20-PERJURY

Perjury, contrary to section 104 of the Penal Code.

Particulars of Offence

A.B., on the _____ day of _____, in the _____ District of the _____ Province of Zambia, being a witness upon the trial of an action in the High Court for Zambia at Lusaka, in which one _____ was plaintiff, and one _____ was defendant, knowingly gave false testimony that he saw one M.W. in the street called _____ on the day of _____

21-DEFAMATORY LIBEL

Publishing defamatory matter, contrary to section 191 of the Penal Code.

Particulars of Offence

A.B., on the _____ day of _____, in the _____ District of the _____ Province of Zambia, published defamatory matter affecting E.F., in the form of _____ a letter (book, pamphlet, picture, or as the case may be).
(Innuendo should be stated where necessary.)

22-FALSE ACCOUNTING

First Count

Fraudulent false accounting, contrary to section 326 of the Penal Code.

Particulars of Offence

A.B., on the _____ day of _____, in the _____ District of the _____ Province of Zambia, being clerk or servant to C.D., with intent to defraud, made *or* was privy to making a false entry in a cash book belonging to _____

the said C.D., his employer, purporting to show that on the said day two hundred kwacha had been paid to L.M.

Second Count

Same as first count.

Particulars of Offence

A.B., on the day of , in the District of the Province of Zambia, being clerk or servant to C.D., with intent to defraud, omitted *or* was privy to omitting from a cash book belonging to the said C.D., his employer, a material particular, that is to say, the receipt of the said day of one hundred kwacha from H.S.

23-THEFT BY AGENT

First Count

Theft by agent, contrary to section 272 and section 280 of the Penal Code.

Particulars of Offence

A.B., on the day of , in the District of the Province of Zambia, stole two hundred kwacha which had been entrusted to him by H.S., for him, the said A.B., to retain in safe custody.

Second Count

Theft by agent, contrary to section 272 and section 280 of the Penal Code.

Particulars of Offence

A.B., on the day of , in the District of the Province of Zambia, stole two hundred kwacha which had been received by him, for an on account of L.M.

24-PREVIOUS CONVICTION

Prior to the commission of the said offence, the said A.B. had been previously convicted of on the day of at the held at

THIRD SCHEDULE

(Sections 342, 343 and 357)

PRESCRIBED FEES

A-FEES GENERALLY

	Units
On every summons or warrant	4
On certifying a copy of a document as an office copy . . . . .	.. ..
8	
On copies of proceedings, for every 100 words or part of 100 words. . . . .	.. ..
2	

B-FEES TO BE TAKEN BY MAGISTRATE UNDER SECTION 342

	Units
On drawing case and copy-	
when the case does not exceed 5 folios of 100 words each . . . . .	.. .. 15
when the case exceeds 5 folios, then for every additional folio . . . . .	.. .. ..
2	
On recognizance	8
On every enlargement or renewal thereof . . . . .	.. .. 4
On certificate of refusal of case.	3

(As amended by Act No. 13 of 1994)

FOURTH SCHEDULE

(Section 358)

PRESCRIBED FORMS

1. Charge.
2. Summons to accused.
3. Proof of previous convictions.
4. Warrant to arrest accused.
5. Warrant to bring a prisoner before the court.
6. Information to ground search warrant.
7. Search warrant for stolen goods.
8. Summons to a witness.
- 8a. Summons to a Witness.
9. Warrant where witness has not obeyed summons.
10. Warrant for witness in first instance.
11. Warrant for prisoner to give evidence.
12. Deposition of witnesses on investigation before commitment.
13. Statement of accused on investigation before commitment.
14. Warrant of commitment on remand.
15. Warrant of commitment on remand.
16. Commitment of witness for refusing to enter into recognizance.
17. Recognizance to surrender for trial.
18. Recognizance to surrender after remand or adjournment.
19. Recognizance of witness under arrest, to give evidence.
20. Recognizance of witness to give evidence.
21. Recognizance of witness to give evidence.
22. Recognizance to keep the peace or be of good behaviour.
23. Recognizance of person sentenced, pending confirmation of sentence.
24. Recognizance of appellant to prosecute appeal and submit to judgment.
25. Notice to witness bound over that he is to be treated as having been bound over conditionally.
26. Notice directing witness to appear at a Sessions of the High Court other than that specified in his recognizance.
27. Notice requiring attendance of witness bound over or treated as bound over conditionally.
28. Certificate and order to be endorsed on recognizance on non-performance.
29. Conviction for a penalty to be levied by distress, and, in default of sufficient distress, imprisonment.
30. Warrant of distress.
31. Warrant of commitment (on default of distress or of payment).
32. Warrant of commitment to undergo sentence of imprisonment (where no alternative punishment).

33. Notice of appeal against conviction and/or sentence.
34. Case stated.
35. Summons to assessor.
36. Notification of acquittal.
37. Certificate of previous convictions.

1-CHARGE

In the Subordinate Court of

A.B., of , being first duly sworn, charges that (state the offence with time and place where committed).

(Complainant)

Taken and sworn at this day of , 19 ,

before me:

(Magistrate)

2-SUMMONS TO ACCUSED

In the Subordinate Court of _____ .

To A.B., of _____ .

Whereas your attendance is necessary to answer to a complaint of (state shortly the offence complained of with time and place).

You are hereby commanded in the name of the President to appear (in person), before this Court at _____ , 19 _____ ,
and on every adjournment of the Court until the case be disposed of.

Issued at _____ the _____ day of _____ , 19 _____ .

(Magistrate)

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

3-PROOF OF PREVIOUS CONVICTIONS

PART I

NOTICE OF INTENTION TO CITE PREVIOUS CONVICTIONS (*Section 142 (3)*)

In the Subordinate Court (Class) of the
holden at

THE PEOPLE

v.

.....

You are hereby given notice that
if, but only if, you are convicted of (any of) the offence(s) of

in respect of which you are required to appear, or are entitled, having signed an Admission
of Guilt, under the provisions of section 221 of the Criminal Procedure Code, to appear
before the above-mentioned Subordinate Court on the 19
the undermentioned convictions which are recorded against you will be brought to the
notice of the Court; and if you are not present in person before the Court, the Court may
take account of any such previous conviction as if you had appeared and admitted it.

Item No.	Date of conviction	Court	Offence	Sentence
----------	--------------------	-------	---------	----------

(Signed)

for Officer in Charge

If you do not intend to appear in person at the hearing and you dispute any of the
above convictions, or any of the details in connection with them, you should
immediately notify the officer in charge of the Police*
at so that further inquiries can be made.

Nothing in this notice limits in any way your right to appear in person on the date
fixed for the hearing and to dispute any conviction alleged against you.

NOTE.-This form and the provisions of sections 142 (3) and 221, Criminal Procedure
Code, have no application to charges against juveniles.

*Insert
"Station"
or "Traffic
Section" or
otherwise
as
appropriate

PART II

NOTICE THAT RECORD OF PREVIOUS CONVICTIONS IS DISPUTED

(To be completed by the person served with the notice in Part I above, then detached and handed to the police officer who served Part I or to the addressee.)

To Officer in Charge,

(Insert designation of police formation.)

1. I, ., acknowledge receipt of a notice of intention to cite previous convictions in the event of my being convicted of the charge(s) to be made against me in the Subordinate Court (Class) at . on the day of 19

2. I dispute the accuracy of the statement of previous convictions contained in the said notice in respect of the following particulars:

(i) I deny the following convictions:

Item No.	Date of conviction	Court	Offence	Sentence
----------	--------------------	-------	---------	----------

(Here insert particulars of convictions recorded in the notice in Part I which are not admitted.)

(ii) I say that the particulars of the conviction shown in item(s) No(s).....are incorrect and should be as stated below:

Item No.	Date of conviction	Court	Offence	Sentence
----------	--------------------	-------	---------	----------

(Here insert against the appropriate date the particulars of the court, offence and sentence which are admitted .)

Witness
.....
.....

(Signature or thumbprint)

(G.N. No. 1 of 1961)

4-WARRANT TO ARREST ACCUSED

In the Subordinate Court of .

To X.Y., Police Officer, and other Officers.

Whereas of is accused of the offence of (state the offence with time and place.).

You are hereby commanded in the name of the President forthwith to apprehend the said and produce him before the Court at .

Issued at the day of , 19 .

(Magistrate)

If the said shall give bail himself in the sum of with one surety in the sum of (or two sureties each in the sum of to attend before the Court at on the day of and to continue so to attend until otherwise directed by the Court, he shall be released.

Issued at the day of , 19 .

(Magistrate)

(As amended by S.I. No. 152 of 1965 and S.I. No. 177 of 1968)

5-WARRANT TO BRING A PRISONER BEFORE THE COURT

In the Subordinate Court of _____ .

To the Officer in charge of the Prison at _____

Whereas A.B., a prisoner under your custody, is accused of the offence of (state offence).

You are hereby commanded to produce the said A.B. before the Court at
on _____ the _____ day of _____, 19 _____ .

Issued at _____ the _____ day of _____, 19 _____ .
(Magistrate)

6-INFORMATION TO GROUND SEARCH WARRANT

In the Subordinate Court of _____ .

A.B., of _____ , being first duly sworn, complains that on the _____ day of _____ the following goods (here describe the goods) were stolen and unlawfully carried away from and out of _____ at _____ and that he has reasonable cause to suspect, and does suspect that these goods, or some of them, are concealed in the dwelling-house or premises (or as the case may be) of C.D., situate at _____ , for he, the said A.B., deposes and says that (state shortly the grounds on which the warrant is applied for).

(Signature of the person applying for warrant)

Taken and sworn at this _____ day
of _____ ,19 _____ ,
before me:
(Magistrate)

7-SEARCH WARRANT FOR STOLEN GOODS

In the Subordinate Court of .

To X.Y., Police Officer, and other Officers.

A.B., of has this day made information on oath that (copy No. 6 from "the following" down to "for he").

You are hereby authorised and commanded in the name of the President with proper assistance, to enter the of C.D. aforesaid (in the daytime), and there diligently search for the said goods, and if the same or any thereof are found on search, to bring the goods so found, and also the said C.D., before this Court to be dealt with according to law.

Issued at the day of , 19 .
(Magistrate)

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

8-SUMMONS TO A WITNESS

In the Subordinate Court of .

A.B.

v.

C.D.

To

You are hereby commanded in the name of the President to attend in person before this Court at on the day of and so from day to day till the above cause be tried, to testify all that you know in the said cause.

You are summoned at the instance of

Issued at the day of 19 .

(Clerk of the Court)

(G.N. No. 470 of 1964 as amended by S.I. No. 152 of 1965)

APPENDIX *(Paragraph 2 (b))*

8A-SUMMONS TO A WITNESS

In the High Court for Zambia

.....holden at

THE PEOPLE

versus

To of

You are hereby commanded in the name of the President to attend in person before this Court at

on the day of 19..... and so from day to day till the above cause be tried, to testify all that you know in the said cause.

You are summoned at the instance of the STATE.

Issued at theday of ,
19.....

(Clerk of Sessions)

(As Amended by S.I. No. 224 of 1979)

9-WARRANT WHERE WITNESS HAS NOT OBEYED SUMMONS

In the Subordinate Court of _____ .

A.B.

v.

C.D.

To X.Y., Police Officer, and other Officers.

E.F. was commanded to appear before this Court at _____ on the day of _____, 19____, and subsequent days, to testify what he knew in the above cause; but he has not appeared according to the said summons and has not excused his failure.

Therefore you are hereby commanded in the name of the President to apprehend and to bring and have the said E.F. before this Court at on the _____ day of _____, 19____.

Issued _____ at _____ the _____ day of _____, 19____.
(Magistrate)

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

10-WARRANT FOR WITNESS IN FIRST INSTANCE

In the Subordinate Court of .

A.B.

v.

C.D.

To X.Y., Police Officer, and other Officers.

It appears to the Court that E.F. is likely to give material evidence concerning the above cause, and will not probably attend unless compelled to do so.

Therefore you are hereby commanded in the name of the President to apprehend and to bring and have the said E.F. before this Court at on the day of , 19 .

Issued at the day of , 19 .

(Magistrate)

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

11-WARRANT FOR PRISONER TO GIVE EVIDENCE

In the Subordinate Court of _____ .

A.B.

v.

C.D.

To the Officer in charge of the Prison at _____

You are hereby commanded to have E.F., a prisoner under your custody, before the Court at _____ on the _____ day of _____ next, to give evidence in the above-named cause, and immediately after he has there and then given his evidence to return.

Issued at _____ the _____ day of _____, 19____ .
(Magistrate)

12-DEPOSITION OF WITNESSES ON INVESTIGATION BEFORE COMMITMENT

In the Subordinate Court of _____ .

A.B., of _____ , stands charged before the Court for that he (state offence as in summons or warrant) and (in the presence and hearing of the said A.B.) C.D., E.F., etc., depose on oath as follows:

First. The said C.D., being sworn, says as follows: (state the deposition of the witness in the precise words he uses, or as nearly as possible. when his deposition is complete it shall be read to the witness and he shall sign it. The Magistrate shall also sign it).

Secondly. The said E.F., being sworn, etc. (record successively, in like manner as the first, the deposition of all the witnesses for the prosecution and for the defence, distinguishing the latter by placing the words " called for defendant", or to the like effect, after their names. Where the witness deposes in any language but English, the language shall be stated, with the name and description of the interpreter, who also shall sign the deposition).

The above depositions of C.D., E.F., etc., were taken before me at the day of _____ , 19 _____ .(a)

(Magistrate)

(Interpreter)

(a) If the depositions have been taken on more days than one, the date of each is to be stated.

13-STATEMENT OF ACCUSED ON INVESTIGATION BEFORE COMMITMENT

In the Subordinate Court of _____ .

A.B., of _____ , stands accused before the Court for that he (state offence as in the summons or warrant), and C.D., E.F., etc., the witnesses for the prosecution, having been severally examined in his presence and hearing, these questions are now put to the said A.B. by the Court, and the answer noted after each question are returned thereto by the said A.B., namely:

(a) Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing and may be given in evidence upon your trial.

(b) Do you wish to call any witnesses before this Court?

(c) Do you wish to call any witnesses at your trial? If so, do you wish to give their names, so that they may be summoned?

(Each question, with its answer, is to be noted before putting the subsequent question. Where the statement of the accused is made through an interpreter, it is to be so stated, with the name and description of the interpreter, who shall also sign.)

And I certify that the foregoing was taken at _____ on the _____ day of _____ , 19 _____ , in my presence and hearing, and contains accurately the whole of the statement of the said A.B.

Taken at _____ the _____ day of _____ , 19 _____ .

(Accused)

(Magistrate)

(Interpreter)

14-WARRANT OF COMMITMENT ON REMAND (*Sections 202 and 227*)

In the Subordinate Court (Class _____) of the
holden at _____

Case No. _____ /19 _____ .

To each and all Police Officers of Zambia and to the Superintendent/Officer in Charge of the Government Prison at _____

WHEREAS (hereinafter called the accused) appeared this day before this Court charged with*

AND the hearing being adjourned, and the accused remanded in custody:

YOU, the said Police Officers, are hereby commanded to convey the accused to the said prison and there deliver the accused to the Superintendent/Officer in Charge thereof, together with this warrant; and you, the Superintendent/Officer in Charge of the said prison to receive him/her into your custody and, unless he/she shall have been bailed in the meantime, to keep him/her until the day of _____ 19 _____ , † and on that day to convey him/her at the hour of _____ o'clock in the _____ noon before this Court to be further dealt with according to law, unless you, the said Superintendent/Officer in Charge, shall be otherwise ordered in the meantime.

Dated at the _____ day of _____ , 19 _____ .

(*Magistrate*)

*State the offence.

† No adjournment shall be for more than fifteen clear days.

NOTE.-For endorsement for bail, *see* back.

ENDORSEMENT

(*To be completed only where bail is allowed*)

The Court hereby certifies that the accused may be bailed by recognizance, himself/herself in the sum of _____

_____, with _____ (each), to

surety/ies in the sum of _____ appear before this Court on

the _____ day of _____ , 19 _____ , at the hour

of _____ o'clock in the _____ noon (and at every time

and place to which during the course of the proceedings against the accused the hearing may be from time to time adjourned), and that the accused has (not) entered into his/her recognizance.

(*G.N. No. 366 of 1962*)

15-WARRANT OF COMMITMENT IN CUSTODY FOR TRIAL (*Section 231*)

In the Subordinate Court (Class) of the holden at

Case No. /19 .

To each and all Police Officers of Zambia and to the Superintendent/Officer in Charge of the Government Prison at and to any Prison Officer into whose hands this warrant shall come.

WHEREAS (hereinafter called the accused) appeared this day before this Court charged with*

AND WHEREAS the said Court, after due inquiry, committed the accused for trial at the next sessions of the High Court for the Province and remanded him in custody,

NOW THEREFORE YOU, the said Police Officers, are hereby commanded to convey the accused to the said prison and there deliver the accused to the Superintendent/Officer in Charge thereof, together with this warrant; and you the Superintendent/Officer in Charge of the said prison are hereby commanded to receive the accused into your custody and to keep the accused until delivered in due course of law.

Dated at the day of 19 .
(Magistrate)

(G.N. No. 366 of 1962)

*State the offence.

16-COMMITMENT OF WITNESS FOR REFUSING TO ENTER INTO RECOGNIZANCE

In the Subordinate Court of _____ .

To X.Y., Police Officer, and other Officers.

A.B., of _____, has been charged before this Court with the offence
of (state the offence).

And E.F., of _____, having been now examined before this Court
concerning the said charge, and being required, refuses to enter into a recognizance to give
evidence concerning the said charge.

Therefore you are hereby commanded in the name of the President to lodge the said E.F. in
the prison at _____
, there to be imprisoned by the officer in charge of the said prison until after the trial of the
said A.B. for the said offence, unless the said E.F. in the meantime consents to enter into
such recognizance as aforesaid.

Dated _____ at _____ the _____ day of _____, 19 ____ .
(Magistrate)

17-RECOGNIZANCE TO SURRENDER FOR TRIAL (*Section 231*)

In the Subordinate Court of _____ .

Whereas (state cause of complaint with time and place).

The undersigned principal party to this recognizance hereby binds himself to perform the following obligation:

To attend the Sessions at _____ on the
day
of _____, 19____, and there
to surrender himself, and
plead to any information filed against him for the said offence, and so from day to day, and
take his trial for the same and not depart the Court without leave, and also to attend at any
investigation or proceeding concerning the said charge, before the trial, when and where he
may be required.

And the said principal party, together with the undersigned sureties, hereby severally
acknowledge themselves bound to forfeit the sums following, viz.:

The said principal party the sum of _____ kwacha, and
the said sureties the sum of _____ kwacha each, in case the said
principal party fails to perform the above obligation or any part thereof.

(Signed) _____ Principal Party.

(Signed)

(Signed) _____ } Sureties.

Taken before me at the _____ day of _____, 19____ .
(Magistrate)

(G.N. No. 128 of 1961 as amended by S.I. No. 152 of 1965)

18-RECOGNIZANCE TO SURRENDER AFTER REMAND OR ADJOURNMENT (Section 123 or 227)

In the Subordinate Court of _____ .

Whereas _____ (hereinafter called "the principal party") stands charged with _____ (state cause of complaint with time and place) *contra* section _____ of _____ .

The undersigned principal party to this recognizance hereby binds himself to perform the following obligations:

To appear before the Court at _____ . on _____ and on any other prior or subsequent day when required by the Court to answer the said charge and to be dealt with according to law.

And the said principal party, together with the undersigned sureties, hereby severally acknowledge themselves bound to forfeit the sums following viz.:

The said principal party the sum of _____ kwacha and the said sureties the sum of _____ kwacha each, in case the said principal party fails to perform the above obligation or any part thereof.

(Signed) _____ Principal Party.

(Signed)

(Signed) _____ } Sureties.

Taken before me at _____ the _____ day of _____, 19 _____ .
(Magistrate)

(G.N. No. 128 of 1961 as amended by S.I. No. 152 of 1965)

19-RECOGNIZANCE OF WITNESS UNDER ARREST, TO GIVE EVIDENCE (Section 146)

In the Subordinate Court of _____ .

Whereas _____ stands charged before this Court for
that he (state cause of
complaint with time and place).

The undersigned principal party to this recognizance hereby binds himself to perform the following obligation:

To attend the Court at _____ on the _____ day of
, 19____, and on any other prior or subsequent
day when required by the Court, and there to give evidence touching and concerning the
said charge.

And the said principal party, together with the undersigned sureties, hereby severally
acknowledge themselves bound to forfeit the sums following, viz.:

The said principal party the sum of _____ kwacha and the said sureties the
sum of _____ kwacha each. in case the said principal party fails to
perform the above obligation or any part thereof.

(Signed) _____ Principal Party.

(Signed)

(Signed) _____ } Sureties.

Taken before me at _____ the _____ day of _____, 19____.
(Magistrate)

(G.N. No. 128 of 1961 as amended by S.I. No. 152 of 1965)

20-RECOGNIZANCE OF WITNESS TO GIVE EVIDENCE (*Section 233*)

(This form is to be used where the next Sessions of the High Court for the Province or District in which the subordinate court is situate are due to be held more than fourteen days from the date of the committal.)

In the Subordinate Court of _____ .

Whereas _____ stands charged before this Court for that he (state cause of complaint with time and place).

The undersigned principal party to this recognizance hereby binds himself to perform the following obligation (*see note below*):

To attend the Sessions of the High Court to be held at _____ on the _____ day of _____, 19____, or such other Sessions of _____ which the principal party may be notified in writing, and there to give evidence touching and concerning the said charge, and also to attend and give evidence at any further examination, investigation or proceeding concerning the said charge, before the trial, when and where he may be required by notice in writing.

And the said principal party, together with the undersigned sureties, hereby severally acknowledge themselves bound to forfeit the sums following, viz.:

The said principal party the sum of _____ kwacha and the said sureties the sum of _____ kwacha each, in case the said principal party fails to perform the above obligation or any part thereof.

(Signed) _____ Principal Party.

(Signed)

(Signed) _____ } Sureties.

Taken before me at _____ the _____ day of _____, 19____.
(Magistrate)

NOTE.-*In the case of a conditional recognizance made under section 236, Criminal Procedure Code here insert: "conditionally upon receipt of a notice in that behalf".*

(G.N. No. 128 of 1961 as amended by S.I. No. 152 of 1965)

21-RECOGNIZANCE OF WITNESS TO GIVE EVIDENCE (*Section 233*)

(This form is to be used where the next Sessions of the High Court for the Province or District in which the subordinate court is situate are due to be held within fourteen days or less from the date of committal.)

In the Subordinate Court of _____ .

Whereas _____ stands charged before this Court for that he _____ (state cause of complaint with time and place).

The undersigned principal party to this recognizance hereby binds himself to perform the following obligation (*see note below*):

To attend the Sessions of the High Court of which the principal party shall be notified in writing, and there to give evidence touching and concerning the said charge, and also to attend and give evidence at any further examination, investigation or proceeding concerning the said charge, before the trial, when and where he may be required by notice in writing.

And the said principal party, together with the undersigned sureties, hereby severally acknowledge themselves bound to forfeit the sums following, viz.:

The said principal party the sum of _____ kwacha and the said sureties the sum of _____ kwacha each, in case the said principal party fails to perform the above obligation or any part thereof.

(Signed) _____ Principal Party.

(Signed)

(Signed) _____ } Sureties.

Taken before me at _____ the _____ day of _____, 19 _____ .
(Magistrate)

NOTE.-*In the case of a conditional recognizance made under section 236, Criminal Procedure Code, here insert: "conditionally upon receipt of a notice in that behalf".*
(G.N. No. 128 of 1961 as amended by S.I. No. 152 of 1965)

**22-RECOGNIZANCE TO KEEP THE
PEACE OR BE OF GOOD BEHAVIOUR**
*(Section 51, Criminal Procedure Code, or
Section 31, Penal Code)*

In the Subordinate Court of _____ .

Whereas _____ (state cause of complaint with time and place).

The undersigned principal party to this recognizance hereby binds himself to perform the following obligation:

To keep the peace (*or* be of good behaviour) towards all persons within Zambia, and particularly _____ towards _____ of _____ for _____ the space of _____ months.

And the said principal party, together with the undersigned sureties, hereby severally acknowledge themselves bound to forfeit the sums following, viz.:

The said principal party the sum of _____ kwacha and the said sureties the sum of _____ kwacha each, in case the said principal party fails to perform the above obligation or any part thereof.

(Signed) _____ Principal Party.

(Signed)

(Signed) _____ } Sureties.

Taken before me at _____ the _____ day of _____, 19____ .
(Magistrate)

(G.N. No. 128 of 1961 as amended by S.I. No. 152 of 1965)

23-RECOGNIZANCE OF PERSON SENTENCED, PENDING CONFIRMATION OF SENTENCE (*Section 13 (1)*)

In the Subordinate Court of _____ .

Whereas the undersigned principal party was convicted by this Court on the day of _____, 19____, for the offence of (state offence with particulars of law contravened and date and place of offence) and was sentenced *or* ordered to (state sentence or order).

And whereas the said sentence requires to be confirmed by the High Court. The principal party to this recognizance hereby binds himself to perform the following obligation:

Unless the said sentence *or* order shall not be confirmed and no other sentence *or* order substituted by the High _____ Court, to appear before this Court at _____ within ten days after the principal party shall be notified of the decision of the High Court with regard to the said conviction *or* order.

And the said principal party, together with the undersigned sureties, hereby severally acknowledge themselves bound to forfeit the sums following, viz.:

The said principal party the sum of _____ kwacha and the said sureties the sum of _____ kwacha each, in case the said principal party fails to perform the above obligation or any part thereof.

(Signed) _____ Principal Party.

(Signed)

(Signed) _____ } Sureties.

Taken before me at _____ the _____ day of _____, 19____.
(Magistrate)

(G.N. No. 128 of 1961 as amended by G.N. No. 493 of 1964 and S.I. No. 152 of 1965)

24-RECOGNIZANCE OF APPELLANT TO PROSECUTE APPEAL AND SUBMIT TO JUDGMENT (*Section 332*)

In the Subordinate Court of _____ .

Whereas the undersigned principal party was convicted by this Court on the day of _____, 19____, for the offence of (state offence with particulars of law contravened and date and place of offence) and was sentenced *or* ordered to (state sentence or order).

And whereas the principal party desires to appeal to the High Court against the said conviction *and/or* sentence.

The principal party to this recognizance hereby binds himself to perform the following obligation:

To prosecute without delay his appeal to the High Court against the said conviction *and/or* sentence, to submit to the judgment of the High Court and pay such costs as may be awarded by such Court and, unless the determination appealed against is reversed, to appear before this Court at _____ within ten days after the _____ said judgment is given.

And the said principal party, together with the undersigned sureties, hereby severally acknowledge themselves bound to forfeit the sums following, viz.:

The said principal party the sum of _____ kwacha and the said sureties the sum of _____ kwacha each, in case the said principal party fails to perform the above obligation or any part thereof.

(Signed) _____ Principal Party.

(Signed)

(Signed) _____ } Sureties.

Taken before me at the _____ day of _____, 19____.
(Magistrate)

(G.N. No. 128 of 1961 as amended by G.N. No. 493 of 1964 and S.I. No. 152 of 1965)

**25-NOTICE TO WITNESS BOUND OVER
THAT HE IS TO BE TREATED AS HAVING
BEEN BOUND OVER CONDITIONALLY
(SECTION 236 (1))**

In the Subordinate Court of _____ .

To (insert name of witness).

Whereas you, _____, of _____, were on the _____ day of _____, 19____, bound by a recognizance in the sum of _____ to attend the Sessions of the High Court to be held at _____ on the _____ day of _____, 19____, or such other Sessions of which you may be notified in writing and there to give evidence on the trial of :

And whereas the subordinate court has (since committed the said _____ for trial at the next Sessions of the High Court for the Province of _____ to be held at _____, and has) directed that you are to be treated as having been bound over to attend the trial conditionally upon notice being given to you:

THIS IS TO GIVE YOU NOTICE that you are NOT required to attend the said Sessions of the High Court for the purpose aforesaid unless you subsequently receive notice directing you to appear thereat.

Dated _____ the _____ day of _____, 19____ .
(Magistrate)

(G.N. No. 128 of 1961)

**26-NOTICE DIRECTING WITNESS TO
APPEAR AT A SESSIONS OF THE HIGH
COURT OTHER THAN THAT SPECIFIED
IN HIS RECOGNIZANCE *Section 233 (2)*)**

In the Subordinate Court of _____ .

To (insert name of witness).

Whereas you, _____ of _____ , were on the day of _____ , 19 _____ , bound by a recognizance in the sum of _____ to attend the Sessions of the High Court to be held at on the _____ day of _____ , 19 _____ , or such other Sessions of which you may be notified in writing and there to give evidence on the trial of _____ :

THIS IS TO GIVE YOU NOTICE that you are no longer required to attend the Sessions of the High Court as aforesaid, but you are hereby DIRECTED AND REQUIRED to attend at the next Sessions of the High Court, to be held at _____ on the _____ day of _____ 19 _____ .

And unless you so attend and give evidence, the said recognizance entered into by you will be forthwith enforced against you.

Dated the _____ day of _____ , 19 _____ .
(Magistrate)

(G.N. No. 128 of 1961)

27-NOTICE REQUIRING ATTENDANCE OF WITNESS BOUND OVER OR TREATED AS BOUND OVER CONDITIONALLY (*Section 236 (2)*)

In the High Court for Zambia
or in the Subordinate Court of _____ .

To (insert name of witness).

Whereas you _____ , of _____ , were on the
day _____ of _____ 19 _____ , bound
over by a recognizance in
the sum of to attend *upon notice being given to you at the Sessions of the High Court
specified in such notice and there to give evidence on the trial of :
(Or (Where witness has been treated as bound over conditionally and served with a notice
in Form 25, insert instead after asterisk*) at the next Sessions of the High Court to be held
at on the _____ day of _____ , 19 _____ , or
such other Sessions of the High Court of which you may be notified, to give evidence on the
trial of
; and whereas notice was subsequently given
to you that you would not be required to attend the said Sessions for the said purpose unless
you received notice:)

THIS IS TO GIVE YOU NOTICE that you ARE required to attend at the next Sessions
of the High Court to be held at _____ on the day of _____ , 19 _____ , and there to give evidence
accordingly, and that unless you do so the said recognizance will be forthwith enforced
against you.

Dated this _____ day of _____ , 19 _____ .
(Registrar/Senior/Resident Magistrate/ Magistrate Class)

(G.N. No. 128 of 1961)

28-CERTIFICATE AND ORDER TO BE ENDORSED ON RECOGNIZANCE ON NON-PERFORMANCE

I certify that the within has not performed the foregoing obligation.

Dated at the day of , 19 .
(Magistrate)

I order that the sum of be levied off the goods of the said and the sum of off the goods of each of the said and

Dated at the day of , 19 .
(Magistrate)
(G.N. No. 128 of 1961)

29-CONVICTION FOR A PENALTY TO BE LEVIED BY DISTRESS, AND, IN DEFAULT OF SUFFICIENT DISTRESS, IMPRISONMENT

In the Subordinate Court of _____ .

The _____ day of _____ 19 _____ .

C.D., of _____ , is this day convicted before this Court for that (state offence and time and place when and where committed).

And this Court adjudges the said C.D., for his said offence, to pay a fine of (state the penalty, compensation, if any, to the party aggrieved, and costs according to the order made).

And if the said sums be not paid forthwith (or on or before next), then this Court orders that the same be levied by distress and sale of the property of the said C.D.

And, in default of such distress, this Court adjudges the said C.D. to be imprisoned (with hard labour) for the space of _____ unless the said sums and all costs of the said distress be sooner paid.
(Magistrate)

30-WARRANT OF DISTRESS

In the Subordinate Court of _____ .

To _____ and other Officers of this Court.

Whereas C.D., of _____, was on the _____ day of _____ ordered by this Court forthwith (or on or before the _____) to pay (state the penalty, compensation or costs according to the order made), which he has not paid.

This is to command you to levy the said sum of _____ by distress of the property of the said C.D.

And, if within _____ days next after the distress, the said sum of K _____ together with the costs of distress shall not be paid, that you do sell the property of the said C.D. and that you do pay the money so levied to _____.

This warrant is to be returned in _____ days.

Issued at _____ the _____ day of _____, 19_____.
(Magistrate)

Officer's Return, if no Sufficient Distress, to be endorsed on Warrant

I, _____, Officer of the Court, do hereby certify to the Court that by virtue of the above written warrant, I have made diligent search for the property of the within named C.D. and that I can find no sufficient property of the said C.D. whereon the said sums can be levied.

(Officer)

31-WARRANT OF COMMITMENT (ON DEFAULT OF DISTRESS OR OF PAYMENT)

In the Subordinate Court of _____ .

To _____ and other Officers of this Court.

Whereas C.D., of _____, was on the _____ day
of _____ convicted before this Court of the offence of (state offence) and
was ordered to pay forthwith (or on or before the _____) (state penalty,
compensation or costs according to the order), and the said order has not been satisfied.

This is to command you to lodge the said C.D. in the prison of _____
together with this warrant, in which prison the said C.D. shall be imprisoned (with hard
labour) for the space of _____
unless the said sums (with K _____ for costs of distress) be sooner paid.

Dated at _____ the _____ day of _____, 19____
(Magistrate)

32-WARRANT OF COMMITMENT TO UNDERGO SENTENCE OF IMPRISONMENT (WHERE NO ALTERNATIVE PUNISHMENT) (SECTION 307)

In the Subordinate Court (Class _____).

To

Whereas _____ of _____ was convicted before this Court of the offence of (state offence with place and date), and was sentenced to (state the punishment fully and distinctly. If it is intended to backdate the sentence by virtue of section 37 of the Penal Code care should be taken ascertain whether the prisoner is already serving a sentence or not).

You are required to lodge the said _____ in the prison of _____ together with this warrant, in which prison the aforesaid sentence shall be carried into execution according to law and for this the present warrant shall be a sufficient authority to all whom it may concern.

Dated at _____ the _____ day of _____, 19____.

(Magistrate)

(G.N. No. 168 of 1961)

33-NOTICE OF APPEAL AGAINST CONVICTION AND/OR SENTENCE (Sections 321-323)

In the High Court for Zambia.

H A /19

Name of appellant

Convicted on the _____ day of 19.....
in the (1) Subordinate Court of the _____ class for the
District, holden at _____ (Case No. of 19.....)
(2) of the offence(s) of

(1) Details
of
Subordinate
Court and
Case No.
(2)

and on the day of 19..... , committed to the High Court for sentence/sentenced* to

Statement of Offence(s)
*Delete as appropriate

To the Clerk of the above Court:

I, the above-named appellant, hereby give notice that I desire to appeal to the High Court against my conviction and/or* sentence on the grounds set forth overleaf.

The following legal practitioner is acting for me

of (address).

I desire/do not desire* to be present when the court considers the appeal.

Dated this day of , 19

.....
(Witness)

(3))

.....
(Address of witness)
address

not in custody)

.....
The above notice was handed to me ..
filed
this day of
..... 19

.....
Officer in Charge
of the Court

..... Prison

The above notice was
day of 19.....

(Appellant

(Prison or full if

Clerk

(3) This notice MUST be signed by the appellant. If he cannot write he must affix his mark in the presence of a witness. The name and address of such attesting witness must be given

NOTES-(1) This notice must be submitted in triplicate and within fourteen days of-

- (a) the date of sentence, if the Subordinate Court has sentenced the appellant;
- (b) the date of conviction, if the Subordinate Court has committed the appellant to the High Court for sentence.

(2) If the fourteen-day period has expired and if it is desired to appeal out of time, the

appellant should also complete the attached Application to Appeal out of Time.

(3) The Clerk of the Court will forward to the appropriate Assistant Registrar of the High Court the three copies of this notice together with the original record and copies thereof.

GROUNDS OF APPEAL (4)

(4)The Appellant MUST here set out the grounds or reasons he alleges why his conviction should be quashed or his sentence reduced. The Appellant can also, if he wishes, set out, in addition to his above reasons, his case and argument fully

APPLICATION TO APPEAL OUT OF TIME

(Section 324)

I, the above-named appellant, apply to the High Court for my appeal to be heard although entered out of time. The reasons for the delay in entering the appeal and the grounds on which I submit that the court should hear the appeal are as follows:

(Applicant)

DECISION BY JUDGE

(Judge)

(Date). 19.....
(S.I. No. 312 of 1967)

34-CASE STATED

In the Subordinate Court of .

A.B.

v.

C.D.

1. On the . day of , before , Magistrate presiding over the Subordinate Court of , C.D. was charged with the following offence: (here set out charge in full).

2. At the hearing the following facts were proved: (here set out in order all relevant facts proved).

3. The following submissions of law were made during the trial: (here set out the submissions made by the complainant and by the accused).

4. The Court, being of opinion that (state the grounds of the decision) did adjudicate and determine as follows:

5. The questions on which the opinion of the High Court is desired are: (here set out the questions desired to be submitted by the Court or any of the parties or the Director of Public Prosecutions).

(Magistrate)

35-SUMMONS TO ASSESSOR

In the Subordinate Court of _____ .

To _____ ,
of _____ .

You are hereby required to attend on the _____ day of _____ ,
19 _____ , at the hour of _____ o'clock in the _____ noon
at the Subordinate
Court at _____ to serve as an assessor, and to continue in attendance until duly discharged by the
said Court from further attendance.

Dated at the day of _____ , 19 _____ .
(Magistrate)

36-NOTIFICATION OF ACQUITTAL

*In the High Court for Zambia.

at

*In the Subordinate Court (Class) of the
holden at

To: The Officer in Charge prison.

WHEREAS on the..... day of , 19.....
¹ stood charged before this Court for that he
on the day of , at
..... did ² .

I hereby notify you that he has been found not guilty of the said charge and has been
acquitted.

Dated at this..... day
of 19.....

Clerk

*(Deputy Assistant Registrar or
of the Court)*

* Delete where inapplicable.

¹ Here insert name of accused.

² Here insert brief details of charge including section and Act alleged to have been
contravened.

(G.N. No. 212 of 1962)

37-CERTIFICATE OF PREVIOUS CONVICTIONS (*Section 142 (2)*)

Criminal Investigation Department,
P.O. Box RW.104,
Lusaka.

..... , 19....

F.P.R. No.

To

.....

I (name and rank)
being an officer authorised by the President in that behalf certify that-

(a) I have compared the fingerprints shown on the attached Form ZP.83 with those of
C.R.O.

No. CB/CP in the Criminal
Record Office and find that they are identical; and

(b) that the previous convictions of the said convict recorded in that office are as set forth
overleaf.

I have, for better identification, signed and dated the said Form ZP.83.

NOTES-(1) One copy to be handed in to Court.

(2) Duplicate to be attached to Warrant of Commitment for information of prison.

(3) Triplicate to be returned to the Criminal Record Office, together with fingerprints, or
Form ZP.84, certified with conviction and sentence on present charge IMMEDIATELY
after completion of case.

(4) If charge is withdrawn, or the accused is acquitted or discharged, one copy of this form
will be endorsed appropriately and returned to the Criminal Record Office.

Name	C.R.O. No.			
Place and C.C.R.B. No.	Date of Sentence	Sentence	Offence	Name of



FIFTH SCHEDULE

(Section 16)

OFFENCES FOR WHICH COURTS MAY NOT SUSPEND SENTENCE

Any offence punishable by death.

Any offence against section 226 of the Penal Code.

Arson.

Robbery.

Any offence in respect of which any written law imposes a minimum punishment.

Any conspiracy, incitement or attempt to commit any of the above-mentioned offences.
(No. 16 of 1959 as amended by No. 2 of 1960)

SUBSIDIARY LEGISLATION

**SECTION 11-THE OFFENCES TO BE TRIED BY THE
HIGH COURT ORDER, 1973**

Order by the Chief Justice

- | | |
|---|--|
| <p>1. This Order may be cited as the Offences to be Tried by the High Court Order.</p> | Title |
| <p>2. The classes of offences specified in the Schedule hereto shall be tried by the High Court:</p> | Offences to be tried by the High Court |
| <p>Provided-</p> | Cap. 99 |
| <p>(i) that where the accused is a juvenile, and the case is required to be disposed of in accordance with the provisions of section <i>sixty-five</i> of the Juvenile Act, this Order shall not apply; and</p> | |
| <p>(ii) that this Order shall not apply in respect of offences committed prior to the 23rd day of March, 1973.</p> | |

SCHEDULE

(Paragraph 2)

Cap. 88

<i>Offence</i>	<i>Section of the State Security Act Contravened</i>
Espionage	3
Communication of certain information. . . . .	.. 4
Protection of classified information .. .. .	.. .. 5
Unauthorised use of uniforms, passes, etc. . . . .	.. .. 6
Interfering with persons on guard at protected places	.. .. .. 7
Harbouring	8
Attempted espionage .. .. .	.. 9

(As amended by S.I. No. 186 of 1973)

CRIMINAL PROCEDURE CODE

**SECTION 11-CLASS OF OFFENCE FOR TRIAL BY
HIGH COURT
Order by the Chief Justice**

Government
Notices
5 of 1962
172 of 1962
135 of 1963
Statutory
Instrument
277 of 1965

It is hereby ordered that the classes of offences specified in the Schedule shall be tried by the High Court:

Provided that where the accused is a juvenile and the case is required to be disposed of in accordance with the provisions of subsection (1) of section *sixty-four* of the Juveniles Act, this Order shall not apply. Cap. 53

SCHEDULE

<i>Offence</i>	<i>Section of Penal Code contravened</i>
Concealment of treason.	44
Treason-felony	45
Piracy	73
Attempt by any person to procure abortion of a woman	151
Attempt by woman with child to procure her own abortion	152
Bigamy	166
Manslaughter	199
Infanticide.	203
Attempted murder	215
Attempted murder by a convict	216
Accessory after the fact to murder.	217
Conspiracy to murder.	219
Child destruction.	221
Disabling in order to commit felony or misdemeanour	222
Stupefying in order to commit felony or misdemeanour	223
Any prescribed act intended to maim, disfigure, disable or do grievous harm to any person, or done in resistance to, or prevention of the lawful arrest or detention of any person.	224
Preventing escape from wreck	225
Intentionally endangering safety of persons travelling by railway.	226
Attempting to injure by explosive substances	230
Maliciously administering poison with intent to harm.	231
Aggravated robbery	294
Aggravated assault with intent to steal	295
Demanding property by written threats	296
Attempted extortion by threats or accusations	297
Procuring execution, etc., of deeds, or valuable securities by threats, violence, restraint or accusation.	298
False statements by company officials	325
Casting away vessels, etc.	332
Attempts to cast away vessels.	333
Malicious injuries	335 (2), 335 (3) (a), 335 (3) (b), 335 (3) (c), 335 (6), 335 (7) (e), 335 (7) (h)
Attempt to destroy property by explosives	336
Sending, etc., written threats to burn or destroy any building, agricultural produce or vessel, or to kill, maim or wound any cattle	364
Making counterfeit coins	364
Preparations for coining	365

Attempts to commit any of the foregoing offences, if not already specified 390, 391	..
Conspiracy to commit any of the foregoing offences, if not already specified	394
Conspiracy to commit any of the foregoing misdemeanours, if not already specified.	395
	<i>Section of Roads and Road Traffic Act contravened</i>
Causing death by reckless or dangerous driving of motor vehicles . .	199

**SECTIONS 194 AND 358-THE CRIMINAL
PROCEDURE
(EVIDENCE OF PLANS BY CERTIFICATE) RULES**

Government
Notice
262 of 1960

Rules by the Chief Justice

1. These Rules may be cited as the Criminal Procedure (Evidence of Plans by Certificate) Rules. Title

2. Any one of the following persons is hereby authorised to give a certificate for the purposes of section *one hundred and ninety-four* of the Criminal Procedure Code, that is to say- Persons authorised to sign certificates

(a) any person licensed as a land surveyor under the provisions of the Land Survey Act; and Cap. 188
Cap. 438

(b) any person registered as an architect or quantity surveyor under the provisions of the Architects and Quantity Surveyors Act.

3. A certificate given for the purposes of subsection (1) of section *one hundred and ninety-four* of the Criminal Procedure Code shall be endorsed on the plan or drawing, as the case may be, and shall be in the following form: Form of certificate

"I hereby certify that the plan (*or drawing*) exhibited hereon was made by me of (*here specify the place or object*); that it was correctly drawn to the scale of (*here specify the scale*); and (*where applicable*) that the direction of North in relation to the places or objects depicted hereon is clearly indicated.

.....(Signature)

... ..(Qualification)

.....(No. of Gazette

notice notifying signatory's licensing or registration, as the case may be)"

**SECTION 221-FORMS PRESCRIBED FOR
ADMISSION OF GUILT PROCEDURE**

Government
Notices
252 of 1959
497 of 1964

REPUBLIC OF ZAMBIA

The Criminal Procedure Code

FORM 1
(Section 221 (1) (b))

NOTICE TO DEFENDANT AND STATEMENT OF FACTS

In the Subordinate Court (Class) of

To:

Name	Tribe
Address	Village
.....	Chief
.....	District
Occupation	

1. You are charged with the offence(s) of Charge
at (*place*) on (*date*)
at (*time*) particulars whereof are set forth in the
Statement of Facts written on the back of this form.

2. Proceedings in respect of this charge (these charges) will be instituted before the Fixed
magistrate at the above-mentioned court on (*date*)..... (hereinafter called the Fixed Day). Day

3. If you admit the offence(s) referred to above and do not wish to appear before the Conditions
court you may be relieved of the obligation of personal attendance under the following for
conditions: admission
of guilt

(a) that you sign an Admission of Guilt form and deliver it to the Police
at Police Station; *and*

(b) that you deposit with the Police either-

(i) the sum of K *or*

(ii) property of such value as may be required by the Police to secure
the payment within one

month of such fine as may be imposed by the court in respect of such charge(s).

Notwithstanding that you have complied with these conditions, the magistrate may, in
his discretion and for reasons stated, order your attendance before the court. You would
be informed of such an order and there would be no need for you to attend unless notified
provided you have complied with the above conditions.

4. If you deposit the sum of money referred to in paragraph 3 it will be used to defray whatever fine may be imposed by the court. If the amount deposited is insufficient to meet the fine you will be called upon to pay the balance and if you fail to pay this on demand, sufficient of your property may be seized and sold to pay the balance. If the fine imposed is less than the sum deposited the surplus will be returned to you if you will call at the Police Station not less than one day after the Fixed Day. Disposal of money deposited

5. If you deposit property as stated in paragraph 3 (b) (ii) above it will be held for up to one month after the Fixed Day. If before the expiry of that month you pay the fine imposed by the court your property will be returned to you upon your applying at the Police Station. If you fail to pay the fine before the expiry of the month the property you deposit will be sold and the proceeds of sale will be used to defray the fine. If the proceeds of sale are insufficient to meet the fine you will be called on to pay the balance and if you fail to pay such balance on demand more of your property may be seized and sold as required to meet the balance. If the proceeds of the sale of the property you deposit are more than sufficient to meet the fine the surplus will be returned to you if you will call at the Police Station not less than two months after the Fixed Day. Disposal of property deposited

6. If you sign an Admission of Guilt and make a deposit in accordance with paragraph 3 above you will nevertheless have the following rights: Remaining rights where Admission of Guilt signed

(a) You may by written notice addressed to the above-mentioned court withdraw the Admission of Guilt. Such notice of withdrawal must be delivered to the Clerk of the Court *before* the Fixed Day. In that case you must attend at the above court on the Fixed Day to answer the charge. The court may then proceed with the trial of the charge immediately or may adjourn the case for trial on another day. If you fail to attend at the court on the Fixed Day a summons may be issued against you and if such summons is not served on you within twenty-eight days thereafter the sum of money or the property you deposit, which will remain in the hands of the Police in the meantime, may be forfeited by court order. If you withdraw the Admission of Guilt and the charge is tried by the court the prosecution will not be permitted to prove that Admission against you or to cross-examine you about it.

(b) You may *before* the Fixed Day deliver to the Clerk of the above-mentioned court a written submission to the court setting out any facts which you may wish the court to take into account with a view to reducing the sentence. If you deliver a written submission in this way you will not be permitted by yourself or by your advocate to address the court further on the Fixed Day.

(c) You may attend the court by yourself or by your advocate on the Fixed Day and provided you have delivered no written submission under sub-paragraph (b) above you or your advocate may address the court in mitigation before sentence is passed.

NOTE 1-*If you intend to consult a solicitor about the case you would be well advised to*

do so before the signing the Admission of Guilt or if you have done so, then before withdrawing the Admission or delivering a written submission in mitigation of sentence.

NOTE 2-If you are charged with an offence under the Roads and Road Traffic Act, you should note that the court may in addition to any fine imposed, whether after an Admission of Guilt or other disposal of the case, exercise the powers of suspension, cancellation, disqualifying and endorsement conferred upon courts by the Act.

NOTE 3-Deliver any letter or notice to -

The Clerk of the Court,
.....Subordinate Court,
(Street).....
(Town).....

I, , have fully understood the contents of the above notice (which has been interpreted to me).

Signed .

(or thumbprint)

INTERPRETER'S CERTIFICATE

(Where applicable)

I, , certify that I have this day interpreted the above notice to in the language and, to the best of my knowledge and belief, he has understood its meaning and signed (impressed his thumbprint) in my presence.

Signed

(DATE STAMP)

Witness.....

(to be signed by a prescribed officer)

Rank.....

STATEMENT OF FACTS

(Section 221 (1) (b) Criminal Procedure Code)

If you sign an Admission of Guilt in respect of the charge(s) specified at the head of the notice printed overleaf and the court proceeds to hear and dispose of the case in your absence under section 221 of the Criminal Procedure Code, the following Statement of Facts will be read out in open court before the court proceeds to judgment. If you do not withdraw the Admission of Guilt the court will not hear any other statements on behalf of the prosecution with respect to any facts relating to the charge unless an issue has been raised in any statement in mitigation which you may have delivered and which requires further investigation. In this event the case will be adjourned to enable you to appear and call evidence as to the facts in dispute.

STATEMENT OF FACTS

Signed

(Rank)

On behalf of the Prosecutor

REPUBLIC OF ZAMBIA

THE CRIMINAL PROCEDURE CODE

FORM 2
(Section 221)

ADMISSION OF GUILT FORM

THE PEOPLE *versus*

WITH REFERENCE to the charge of

in answer to which I have been required to appear before the Subordinate Court
(Class)

on the 19 I hereby admit that I am guilty of the offence
charged and request that sentence may be passed in my absence. I deposit herewith-

(a) the sum of kwacha and ngwee being the
maximum amount of the fine which may be imposed by the court (*or, as the case may
be, the amount fixed by the prescribed officer*);

(b) as security for the payxment within one month,
of any fine which may be imposed on me by the court.

Strike out
(a) or
(b)
whichever
is
inapplicable

I have received a Notice and Statement of Facts relating to the charge referred to
above (which has been interpreted and explained to me).

Signature

(or Thumbprint)

INTERPRETER'S CERTIFICATE

(Where applicable)

I certify that I have interpreted the foregoing to the accused person whose signature
appears above, and to the best of my knowledge he has understood its meaning.

(Signed)

DEPOSIT RECEIPT

RECEIVED:

(a) the sum of kwaccha and ngwee; or

(b) the above-mentioned security.

(Signed).....

(DATE STAMP)

(Prescribed officer)

Witness

NOTES-(a) In no circumstances whatsoever is a member of the Zambia Police Force other than a prescribed officer to accept any sum of money the subject of this receipt.

(b) A receipt for the sum deposited, or any portion thereof, which is subsequently refunded should be obtained wherever practicable on the reverse of the triplicate copy of this form.

**SECTION 221-APPLICATION
Notices by the Chief Justice**

Statutory
Instruments
10 of 1967
343 of 1968

The offences set out in the First Schedule are hereby specified as offences to which the provisions of section *two hundred and twenty-one* of the Criminal Procedure Code shall apply, and the offences set out in the Second Schedule are hereby specified as offences to which the provisions of section *two hundred and twenty-one* of the Criminal Procedure Code shall not apply.

SCHEDULE

(Paragraph 2)

**OFFENCES TO WHICH THE
PROVISIONS OF SECTION 221
OF THE CRIMINAL
PROCEDURE
CODE SHALL APPLY**

Offences-

- (a) created by sections 23, 25(10), 77, 83, 98, 160, 161(2), 177(b), 192, 193, 195 (1), 214 and 215 of the Roads and Road Traffic Act;
- (b) against the provisions of the Roads and Road Traffic Act in respect of which no penalty is provided other than by section 241 of the said Act;
- (c) against the provisions of the Roads and Road Traffic (Public Service Vehicles, Licensing and Use) Regulations in respect of which no penalty is provided other than by regulation 26 of the said Regulations;
- (d) against the provisions of the Roads and Road Traffic (Registration and Licensing) Regulations in respect of which no penalty is provided other than by regulation 28 of the said Regulations;

- (e) created by the Roads and Road Traffic (International Circulation) Regulations;
- (f) against the provisions of the Roads and Road Traffic (Construction Equipment and Use) Regulations in respect of which no penalty is provided other than by regulation 59 of the said Regulations;
- (g) against the provisions of the Rules of the Road Regulations in respect of which no penalty is provided other than by regulation 19 of the said Regulations;
- (h) against the provisions of the Roads and Road Traffic (Bus and Taxicab Drivers Uniform) Regulation, 1982, in respect of which no penalty is provided other than by regulation 5 of the said Regulations;
- (i) created by sections 7 (1) and 14 (1) (a), (b) and (c) of the Broadcasting Act;
- (j) created by section 82 (1) (a) (iii) of the Posts and Telecommunications Corporation Act.
(As amended by S.I. No. 50 of 1986)

**SECTION 318-THE CRIMINAL PROCEDURE CODE
(POLICE SUPERVISION) RULES**

Government
Notices
397 of 1963
493 of 1964
497 of 1964

Rules by the President

1. These Rules may be cited as the Criminal Procedure Code (Police Supervision) Rules. Title
2. Every person subject to police supervision under section *three hundred and eighteen* of the Criminal Procedure Code, hereinafter referred to as a police supervisee, shall before the date on which he is entitled to be released from prison inform a prison officer of his residential address after his release. Residential address to be notified
3. On his release from prison every such police supervisee shall be issued by a prison officer with an identity book in the form of the Schedule, in which shall be completed the several particulars respecting Identity book

such police supervisee, and further, there shall be endorsed therein-

(a) a certificate that the provisions concerning his supervision have been explained to the police supervisee in a language which he understands, which certificate shall be signed by a prison officer and interpreter, if used, or, in the absence of such interpreter, witnessed by a person who was present when such provisions were explained to the police supervisee and such explanation shall be acknowledged as understood by the police supervisee by impressing thereon his right thumbprint;

(b) the name of the place at which and the officer in charge of the police station, or the Administrative Officer, to whom he shall report.

4. Every police supervisee shall, on receiving such identity book as provided for in rule 3, report himself-

Police supervisee
to report

(a) immediately on his release to a police officer at the police station or to an Administrative Officer at the administrative office at the place of release;

(b) and then to a police officer at the police station or to an Administrative Officer at the administrative office specified in such identity book within seven days of his arrival at his residential address and shall declare to such officer his residential address.

5. Every police supervisee shall report himself to a police officer at the police station or to an Administrative Officer at the administrative office specified in his identity book at such intervals of time as may be directed by such officer.

Time for reporting

6. Whenever any police supervisee intends to change his residential address to any other residential address, he shall notify a police officer at the police station or an Administrative Officer at the administrative office specified in his identity book not less than forty-eight hours before he so changes his residential address of the fact of such intention and of the address at which thereafter he intends to reside. Such officer shall amend the endorsement in the identity book of such police supervisee to accord with the change of residential address and shall, if necessary, specify therein the police station or administrative office to which he shall report. Every such police supervisee shall, within forty-eight hours of his change of residential address, report himself to a police officer at the police station or to an Administrative Officer at the administrative office specified in his identity book and shall notify to such officer his residential address and thereafter shall continue to report himself at such intervals of time as may be directed by such officer.

Change of
residential
address

7. Every notification of report required to be made by any police supervisee shall be made by him in person: Manner of reporting

Provided that if from illness (the proof of which shall lie upon him) any police supervisee is prevented from making in person any notification or report required by these Rules, he may do so in any one of the following ways:

- (i) in person, to any Administrative Officer or to any police officer residing in the township or Government station nearest to the place of his residence; or
- (ii) in person, to the village headman or a member of the local authority exercising jurisdiction in the area in which he resides; or
- (iii) by oral communication sent by a messenger, and production of the identity book to a police officer at the police station or to an Administrative Officer at the administrative office specified in his identity book.

(As amended by No. 493 of 1964)

8. In any case where a notification or report has been made under the provisions of paragraph (i) or (ii) of the proviso contained in rule 7, it shall be incumbent on the person receiving such report to inform a police officer of the police station or an Administrative Officer of the administrative office at which such police supervisee should have reported, as soon as may be convenient, of the fact and date of such report. Officer mentioned in identity book to be informed of any report

9. (1) On the occasion of every notification or report required to be made under these Rules, the identity book issued to the police supervisee making such notification or report shall be produced. Identity book to be produced

(2) If any police supervisee loses his identity book, he shall forthwith report the loss to a police officer at the nearest police station or Administrative Officer in the district in which he resides and shall apply for a new identity book, which shall be issued to him with the necessary particulars entered therein.

10. At the end of the term of police supervision ordered by the court, the police supervisee shall surrender his identity book to the officer to Surrender of identity books

whom he last reported, who shall forward the identity book to the officer in charge of the Criminal Investigation Department, Zambia Police.

11. A copy of these Rules shall be printed in each identity book issued to a police supervisee. Copy of Rules to be included in identity books

SCHEDULE

(Rule 3)

POLICE SUPERVISION-CRIMINAL PROCEDURE CODE

(Sections 317 to 319)

Name

Aliases

Tribe or Nationality..... Village or Town

Chief or Local Authority District

Criminal Records Office Reference

Order of police supervision made by

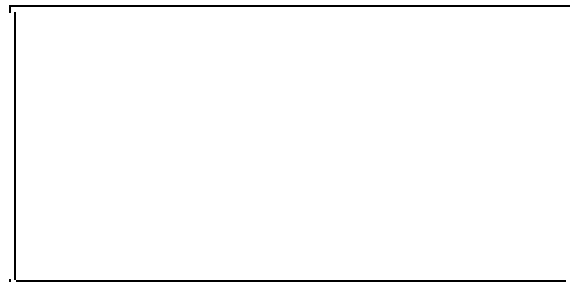
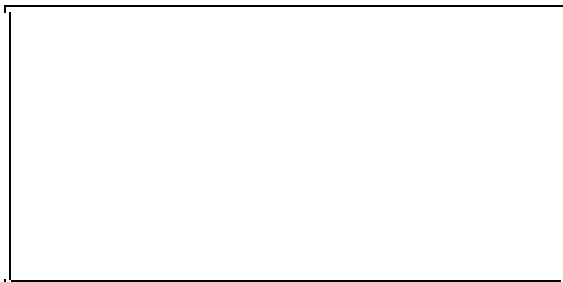
Court at on for a

period of years from date of his release from prison (*see* page 2)

(Page

1)

PHOTOGRAPHS



..... Government Prison No.

(Page 2)

(Rule 3 (a))

To be completed by prison officer at prison of release

Date of release from Government Prison

Order of police supervision will accordingly expire on

I certify that I have explained the requirements of the Criminal Procedure Code (Police Supervision) Rules to Police supervisee (name) in the language which he understands and acknowledges beneath. I have informed him that if he does not comply with them, he may be guilty of an offence and I have instructed him to report to a police/administrative officer (*delete as applicable*) at (*place*) directly upon his release and thereafter as instructed.

Address and destination

Right thumbprint

PRISON

DATE STAMP

Signature of interpreter/witness

Signature and rank of prison officer issuing identity book

.....

(Pages 3 and 4)

Police supervisee is hereby required to report himself in accordance with the Rules annexed hereto, to a police officer at the police station or an Administrative Officer at the administrative office shown, at such intervals of time specified.

<i>Intervals of time</i>	<i>To</i>	<i>Signature and rank of police officer, or Admini- strative Officer</i>
.....
.....
.....
.....

(Pages 5 and 6)

CHANGE OF RESIDENTIAL ADDRESSES

(Rule 6)

<i>Date</i>	<i>To</i>
.....
.....
.....
.....

(Pages 7, 8, 9 and 10)

REPORTS

Police supervisee has reported at:

<i>Place</i>	<i>Date</i>	<i>Signature and rank of police officer, or Admini- strative Officer</i>
.....
.....
.....
.....

(Pages 11, 12 and 13)

SUPERVISION RULES

**SECTION 359-THE CRIMINAL PROCEDURE
(WITNESSES' AND ASSESSORS' ALLOWANCES AND
EXPENSES) RULES**

Rules by the Chief Justice

Government
Notices
6 of 1963
497 of 1964
Statutory
Instruments
63 of 1964
424 of 1968

1. These Rules may be cited as the Criminal Procedure (Witnesses' and Assessors' Allowances and Expenses) Rules. Title

2. For the purposes of these Rules- Interpretation

"Registrar" means the Registrar of the High Court, a Deputy Registrar or District Registrar;

"witness" includes an interpreter who attends and interprets at any criminal proceedings.

3. These Rules shall apply to all criminal proceedings in the High Court and subordinate courts. Application

4. The following persons shall be entitled to allowances and expenses: Persons entitled

(a) witnesses and assessors who have duly attended at or for the criminal proceedings at the instance of the People, unless the Judge or magistrate presiding at such proceedings shall, for sufficient reason, disallow the allowances or expenses of any such witness or assessor;

(b) witnesses who have duly attended at or for the criminal proceedings at the instance of any party, other than the People, when a certificate for the payment of allowances and expenses is granted-

(i) by the Judge or magistrate presiding at such proceedings; or

(ii) if such Judge or magistrate is not available for any sufficient reason, by the Registrar, in respect of proceedings before the High Court, and in respect of proceedings in a subordinate court by the magistrate presiding over such court at the time of the application for any such certificate.

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

5. (1) The allowances for witnesses and assessors shall be as follows: Amounts

<i>Class of Person</i>	<i>Minimum sum payable per day</i>	<i>Maximum sum payable per day</i>
Professional persons, owners, directors or managers of businesses and expert witnesses	K250	K500
Clerks and artisans and persons of similar status:	K.150	K.350

Provided that the sum payable under class (b) shall not, unless otherwise ordered by the presiding Judge or magistrate, exceed the sum of K75 per day if the witness has lost no wages or earnings or other income by reason of attending the proceedings, or where the period during which he has been away from home or in respect of which he has lost wages, earnings or other income by reason of his attendance does not exceed four hours

(2) The above-mentioned allowances will be paid during the time for which a witness or assessor is necessarily detained and for the time reasonably occupied in travelling.

(3) No additional allowance will be paid merely because the witness or assessor attends in respect of more than one case on the same day.

(4) If, in the opinion of the Registrar or magistrate to whom a claim has been submitted in terms of rule 7-

(a) a strict adherence to the above scales in any particular case would result in hardship, he may at his discretion increase the amounts payable; or

(b) a reduction in any of the allowances provided for by this rule is justified in any particular case, he may at his discretion reduce or disallow the amounts payable.

(As amended by S.I. No. 177 of 1990)

6. (1) In addition to any sum to which a witness or assessor may be entitled under rule 5, all witnesses and assessors provided for in rule 4 shall also be entitled to be reimbursed in respect of any expenses actually and reasonably incurred in travelling to and from the court, or for necessary accommodation and subsistence.

Travelling
expenses

(2) If, in the opinion of the Registrar or magistrate to whom a claim has been submitted for the reimbursement of expenses, the sums expended and claimed exceed what is reasonable, he may in his discretion reduce or disallow the amounts payable.

(3) A witness or assessor who is entitled to claim travelling expenses under rule 6 (1) shall be paid-

(a) thirty ngwee per kilometre where he uses his own motor car;

(b) ten ngwee per kilometre where he uses his own motor cycle.

(As amended by S.I. No. 51 of 1981)

7. For the purpose of determining the amount payable to witnesses and assessors under these Rules, claims for payment of allowances and expenses shall be submitted to and dealt with by-

Submission of
claims

(a) the Registrar, in respect of proceedings before the High Court:

Provided that any person wishing to submit a claim for the minimum sum payable to him under the provisions of rule 5, may submit his claim, together with his claim, if any, for expenses payable under rule 6, to a Deputy Assistant Registrar who shall have full power to deal with such claims, including the powers vested in the Registrar by rule 6(2);

(b) the magistrate who presided over the proceedings, in respect of proceedings in a subordinate court, or if he is not available for any sufficient reason then the magistrate who, at the time of the submission of the claim is presiding over the court in which the proceedings took place:

Provided that any person wishing to submit a claim for the minimum sum payable to him under the provisions of rule 5, may submit his claim to the clerk of the court, who shall have full power to deal with such claim.

(As amended by No. 424 of 1968)

8. No allowances or travelling expenses shall be paid to public officers under these Rules: Public officers

Provided that any public officer who has attended any criminal proceedings for the purpose of interpreting any African language not ordinarily spoken in Zambia or any other foreign language, shall be entitled to the same allowances as any other interpreter under these Rules.

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CHAPTER 89

THE SUICIDE ACT

ARRANGEMENT OF SECTIONS

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4. Warrant to issue for person attempting suicide
5. Apprehension without warrant of person attempting suicide
6. Inquiry into state of mind of person apprehended
7. Suicide pacts
8. Criminal liability for complicity in another's suicide
9. Power to prescribe

CHAPTER 89

SUICIDE

1 of 1967

An Act to amend the law relating to suicide, and for purposes connected therewith and consequential thereon.

[27th January, 1967]

1. This Act may be cited as the Suicide Act.

Short title

2. In this Act-

Interpretation

"officer" means an Administrative Officer, a police officer or any person or class of persons prescribed.

3. The rule of law whereby it is an offence against the common law for a person to kill himself is hereby abrogated.

Suicide not to be an offence

4. (1) Where a magistrate empowered to preside over a subordinate court of the first class or the second class is satisfied upon information on oath that a person has attempted to kill himself and is apparently mentally disordered or defective, he shall issue a warrant directing an officer to apprehend the person and bring him before the magistrate issuing the warrant.

Warrant to be issued for person attempting suicide

(2) Any person may swear an information for the purposes of this section.

5. (1) An officer, if he has reason to believe that a person has attempted to kill himself and is apparently mentally disordered or defective, may, without warrant, apprehend and convey the person to a hospital, prison or other suitable place for detention.

Apprehension without warrant of person attempting suicide

(2) The officer apprehending a person and the person in charge of the hospital, prison or other place where a person is detained under subsection (1) shall forthwith notify a magistrate empowered to preside

over a subordinate court of the first class or the second class of the admission of the person.

6. The magistrate before whom a person apprehended under section *four* is brought, or who is notified as in section *five* is provided, shall forthwith institute an inquiry into the state of mind of the person apprehended or admitted into the hospital, prison or other place under and in accordance with the provisions of the Mental Disorders Act and that Act shall apply in the case of such a person as it applies in the case of a patient under that Act.

Inquiry into state of mind of person apprehended
Cap. 305

7. (1) It shall be manslaughter, and shall not be murder, for a person acting in pursuance of a suicide pact between him and another to kill the other or be a party to the other being killed by a third person.

Suicide pacts

(2) Where it is shown that a person charged with the murder of another killed the other, or was a party to his being killed, the onus shall be on the defence to prove that the person charged was acting in pursuance of a suicide pact between him and the other.

(3) For the purposes of this section, "suicide pact" means a common agreement between two or more persons having for its object the death of all of them, whether or not each is to take his own life, but nothing done by a person who enters into a suicide pact shall be treated as done by him in pursuance of the pact, unless it is done while he has the settled intention of dying in pursuance of the pact.

8. (1) Any person who-

Criminal liability for complicity in another's suicide

(a) procures another to kill himself; or

(b) counsels another to kill himself and thereby induces him to do so; or

(c) aids another in killing himself;

shall be guilty of a felony and be liable to imprisonment for life.

(2) When a person is charged with murder or manslaughter and the court is of the opinion that he is not guilty of murder or manslaughter, but that he is guilty of an offence under subsection (1), he may be convicted of that offence although he is not charged with it.

(3) A person shall not be prosecuted for an offence under this section, except with the written consent of the Director of Public Prosecutions.

9. The Attorney-General may, by statutory instrument, prescribe the persons or class of persons who shall be officers for the purposes of this Act. Power to prescribe

CHAPTER 90

THE WITCHCRAFT ACT

ARRANGEMENT OF SECTIONS

Section

1. Short title
2. Interpretation
3. Penalty for naming or imputing witchcraft
4. Penalty on professional witch doctors
5. Penalty for professing knowledge of witchcraft
6. Acts constituting witchcraft
7. Employment or solicitation of persons in matters of witchcraft
8. Presence at tests
9. Carrying out advice in matters of witchcraft
10. Deceiving or imposing by means of witchcraft
11. Possessing charms, etc.
12. Penalty on chief or headman encouraging witchcraft
13. Obtaining goods, etc., by false pretences

47 of 1963
Government
Notice
493 of 1964
24 of 1977
26 of 1993
*Act No. 13 of
1994*

An Act to provide for penalties for the practice of witchcraft; and to provide for matters incidental to or connected therewith.

[9th May, 1914]

1. This Act may be cited as the Witchcraft Act.

Short title

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

Interpretation

"act complained of" includes any death, injury, damage, disease or calamity, whether of an accidental or of a tortious character;

"boiling water test" means the dipping into boiling water of the limbs or any portion of the body of a person;

"property" includes animals;

"witchcraft" includes the throwing of bones, the use of charms and any other means, process or device adopted in the practice of witchcraft or sorcery.

3. Whoever-

Penalty for naming
or imputing
witchcraft

(a) names or indicates or accuses or threatens to accuse any person as being a wizard or witch; or

(b) imputes to any person the use of non-natural means in causing any death, injury, damage or calamity; or

(c) asserts that any person has, by committing adultery, caused in some non-natural way death, injury, damage or calamity;

shall be liable upon conviction to a fine not exceeding seven hundred and fifty penalty units or to imprisonment with or without hard labour for any term not exceeding one year, or to both:

Provided that this section shall not apply to any person who makes a report to a police officer of or above the rank of Sub Inspector or, where there is no such police officer, to a District Secretary or an Assistant District Secretary.

(As amended by No. 47 of 1948, No. 31 of 1952, No. 47 of 1963 G.N. No. 493 of 1964), No. 24 of 1977, No. 26 of 1993 and Act No. 13 of 1994)

4. Whoever shall be proved to be by habit or profession a witch doctor or witch finder shall be liable upon conviction to a fine of not more than one thousand five hundred penalty units or to imprisonment with or without hard labour for any term not exceeding two years, or to both.

Penalty on professional witch doctors

(As amended by No. 47 of 1948, No. 31 of 1952, No. 26 of 1993 and Act No. 13 of 1994)

5. Any person who-

Penalty for professing knowledge of witchcraft

(a) represents himself as able by supernatural means to cause fear, annoyance, or injury to another in mind, person or property; or

(b) pretends to exercise any kind of supernatural power, witchcraft, sorcery or enchantment calculated to cause such fear, annoyance or injury;

shall be liable to a fine of not more than one thousand five hundred penalty units or to imprisonment with or without hard labour for any term not exceeding two years.

(No. 47 of 1948 as amended by Act No. 26 of 1993 and Act No. 13 of 1994)

6. Whoever shall-

Acts constituting witchcraft

(a) by the exercise of any witchcraft or any non-natural means whatsoever, pretend or attempt to discover where and in what manner any property supposed or alleged to have been stolen or lost may be found or to name or indicate any person as a thief or as the perpetrator of any crime or any other act complained of; or

(b) in the pretence of discovering or in the attempt to discover whether or not any person has committed any crime or any other act complained of, administer or cause to be administered to any person with or without his consent any emetic or purgative or apply or cause to be applied to any person with or without his consent the boiling water

test or any other test whatsoever; or

(c) instigate, direct, control or preside at the doing of any act specified in the foregoing part of this section;

shall be liable upon conviction to the punishments provided by section *four*.

7. Whoever employs or solicits any person-

(a) to name or indicate any person as being a wizard or witch;

(b) to name or indicate by means of witchcraft or by the use of any non-natural means or by the administration of any emetic or purgative or by the application of any test whatsoever any person as the perpetrator of any alleged crime or other act complained of;

(c) to advise him or any person how by means of witchcraft or by the use of any non-natural means or by means of any emetic or purgative or test whatsoever the perpetrator of any alleged crime or other act complained of may be discovered;

(d) to advise him on any matter or for any purpose whatsoever by means of witchcraft or non-natural means;

shall be liable upon conviction to the punishments provided in section *three*.

Employment or solicitation of persons in matters of witchcraft

8. Any person who is present at the administration to any person of any test, the administration of which is punishable under the provisions of this Act, shall be liable upon conviction to a fine not exceeding two hundred penalty units or to imprisonment with or without hard labour for any term not exceeding one year, or to both.

Carrying out advice in matters of witchcraft

Provided that no person called as a witness to prove the administration of any test as aforesaid shall be deemed to be an accomplice or to need corroboration as such by reason only that he was present at the administration of any test as aforesaid.

(As amended by No. 31 of 1952, No. 26 of 1993 and Act No. 13 of 1994)

9. Whoever, on the advice of any person pretending to have the knowledge of witchcraft or of any non-natural processes or in the exercise of any witchcraft or of any non-natural means, shall use or cause to be put into operation such means or processes as he may have been advised or may believe to be calculated to injure any person or any

Deceiving or imposing by means of witchcraft

property shall be liable upon conviction to the punishments provided by section *four*

10. Every person professing to be able to control by non-natural means the course of nature or using any subtle craft, means or device by means of witchcraft, charms or otherwise to deceive or impose upon any other person shall be liable upon conviction to a fine not exceeding two hundred penalty units or to imprisonment with or without hard labour for any term not exceeding one year, or to both.

(As amended by No. 31 of 1952, No. 26 of 1993 and Act No. 13 of 1994)

11. (1) Any person who collects, makes, sells or uses or assists or takes part in collecting, selling, marking or using any charm or poison or thing which he intends for use either by himself or by some other person for the purpose of any act punishable by this Act shall be liable upon conviction to a fine not exceeding two hundred penalty units or to imprisonment with or without hard labour for any term not exceeding one year, or to both.

Possessing charms,
etc.

(2) Any person who has in his possession any charm or poison or thing which he intends for use either by himself or by some other person for the purpose of any act punishable by this Act shall be liable upon conviction to a fine of not more than one hundred penalty units or to imprisonment with or without hard labour for any term not exceeding six months, or to both.

(3) A person found in possession of anything commonly used for the purpose of an act punishable by this Act shall be deemed to have intended such thing for use for the purpose of an act punishable by this Act unless and until the contrary be proved.

(As amended by No. 31 of 1952, No. 26 of 1993 and Act No. 13 of 1994)

12. Any chief or headman who directly or indirectly permits, promotes, encourages or facilitates the commission of any act punishable by this Act or who knowing of such act or intended act does not forthwith report the same to a police officer of or above the rank of Sub Inspector or, where there is no such police officer, to a District Secretary or an Assistant District Secretary, shall be liable upon

Penalty on chief or
headman
encouraging
witchcraft

conviction to a fine or to imprisonment with or without hard labour for any term not exceeding three years.

(As amended by G.N. No. 493 of 1964, No. 24 of 1977, No. 26 of 1993 and Act No. 13 of 1994)

13. (1) Any person who shall receive or obtain any consideration whatsoever or the promise thereof for or in respect of the doing by such person of any act punishable by this Act shall, if he has actually received such consideration, be deemed guilty of the offence of obtaining by false pretences and, if he has not actually received such consideration but only the promise thereof, be deemed guilty of the offence of attempting to obtain by false pretences and shall be liable upon conviction to punishment accordingly.

Obtaining goods,
etc., by false
pretences

(2) Any agreement for the giving of any consideration for or in respect of the doing of any act punishable by this Act shall be null and void.

CHAPTER 91

THE ANTI-CORRUPTION COMMISSION ACT

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

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2. Application
3. Interpretation

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6. Seal of Commission

7. Composition of Commission
8. Tenure of office and vacancy
9. Functions of Commission
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19. Investigating officers, Secretary and other staff of Commission
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25. Prohibition of disclosure of information to unauthorised persons by staff
26. Immunity of Director-General, Deputy Director-General and other staff of Commission
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OATH OF SECRETARY OR STAFF OF COMMISSION

CHAPTER 91

ANTI-CORRUPTION COMMISSION

An Act to provide for the establishment of the Anti-Corruption Commission as an autonomous body, its powers and functions; provide

*Act No.
46 of 1996
Statutory
Instrument*

for the composition of the Commission; the powers and functions of the Director-General; repeal and replacement of the Corrupt Practices Act, 1980, and to provide for matters connected with or incidental to the foregoing. 33 of 1997

[12th December, 1996

PART I

PRELIMINARY

1. This Act may be cited as the Anti-Corruption Commission Act. Short title

2. All offences under this Act shall be enquired into, tried, and otherwise dealt with in accordance with the Criminal Procedure Code and Part I of the Penal Code. Application
Cap. 88
Cap. 87

3. In this Act, unless the context otherwise requires- Interpretation

"agent" means a trustee, an executor, an administrator, or any person not employed by a public or private body who acts for or on behalf, or in the name, of a public body or a private body or any other person;

"appointed date" means such date as the President may appoint under section *one*;

"appropriate authority" means any person or institution to whom a recommendation has been made;

"casual gift" means any conventional hospitality on a modest scale or unsolicited gift of modest value offered to a person in recognition or appreciation of that person's services, or as a gesture of goodwill towards that person and includes any inexpensive seasonal gift offered to staff or associates by public and private bodies or private individuals on festive or other special occasions, which is not in any way connected with the performance of a person's official duty so as to constitute an offence under Part IV;

"Chairperson" means the person appointed as Chairperson under section

seven;

"Commission" means the Anti-Corruption Commission established under section *four*;

"Commissioner" means a person appointed as Commissioner under section, *seven*;

"corrupt" means the soliciting, accepting, obtaining, giving, promising or offering of a gratification by way of a bribe or other personal temptation or inducement, or the misuse or abuse of a public office for private advantage or benefit, and "corruptly" shall be construed accordingly;

"Deputy Director-General" means a person appointed as Deputy Director-General under section *eighteen*;

"Director-General" means the person appointed under section *sixteen*;

"former Commission" means the Anti-Corruption Commission established under the repealed Act;

*Act No.
14 of 1980*

"Government" includes any ministry, department, service or undertaking of the Government;

"gratification" means any corrupt payment, whether in cash or in kind, any rebate, bonus, deduction or material gain, benefit, amenity, facility, concession or favour of any description and any loan, fee, reward, advantage or gift, or any other thing obtained as a result of the corrupt misuse or abuse of public funds or property, other than a casual gift;

"Investigation officer" means the person appointed under section *nineteen*;

"local authority" shall have the meaning assigned to it in the Local Government Act.

Cap. 281

"parastatal" means any company, association, statutory corporation, body or board or any institution of learning, in which the State has a financial interest;

"principal" includes an employer, beneficiary under a trust, and a trust estate as though it were a person, and any person beneficiary interested in the estate of a deceased person as though the estate were a person, and, in relation to a public officer, a public body;

"private body" means any person or organisation not being a public body, a voluntary organisation, charitable institution, company, partnership or a club;

"public body" means the Government, any ministry or department of the Government, a local authority, parastatal board, council, authority, commission or other body appointed by the Government, or established by or under any written law;

"public officer" means any person who is a member of, or holds office in, or is employed in the service of, a public body, whether such membership, office or employment is permanent or temporary, whole or part-time, paid or unpaid, and "public office" shall be construed accordingly;

"repealed Act" means the Corrupt Practices Act, 1980;

Act No.
14 of 1980

"Secretary" means the person appointed Secretary under section *nineteen*;

"staff" means the staff of the Commission appointed under section *nineteen*;

"senior police officer" means any police officer of or above the rank of Assistant Superintendent; and

"Vice-Chairperson" means the person appointed as Vice-Chairperson under section *seven*.

PART II

THE ANTI-CORRUPTION COMMISSION

4. (1) There is hereby established the Anti-Corruption Commission which shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name,

The
Anti-Corruption
Commission

and with power, subject to the provisions of this Act, to do all such things as a body corporate may, by law do or perform.

Act No.14 of 1980

(2) The First Schedule shall apply to the Commission.

5. The Commission shall not, in the performance of its duties, be subject to the direction or control of any person or authority.

Extent of
Commission's
autonomy

6. (1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Secretary.

Seal of
Commission

(2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson or any other person authorised in that behalf by a resolution of the Commission.

(3) Any document purporting to be under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

7. (1) The Commission shall consist of the following Commissioners:

Composition of
Commission

(a) the Chairperson and

(b) four other persons.

(2) The Commissioners referred to in paragraph (a) and (c) shall be appointed by the President, subject to ratification by the National Assembly.

(3) The Chairperson shall be a person who has held or is qualified to hold high judicial office.

8. (1) A Commissioner referred to in subsection (1) of section *seven* shall be appointed for a term not exceeding three years, subject to renewal:

Tenure of office
and vacancy

(2) A Commissioner may resign upon giving one month's notice in writing to the President.

(3) The Office of a Commissioner shall become vacant-

(a) if the Commissioner is absent without reasonable excuse from three consecutive meetings of the Commission of which the Commissioner has had notice;

(b) if the Commissioner becomes bankrupt;

(c) if the Commissioner becomes insane or is declared to be of unsound mind; and

(d) upon the Commissioner's death.

9. (1) The functions of the Commission shall be to-

Functions of
Commission

(a) prevent and take necessary and effective measures for the prevention of corruption in public and private bodies, including, in particular, measures for-

(i) examining the practices and procedures of public and private bodies in order to facilitate the discovery of corrupt practices and secure the revision of methods of work or procedures which in the opinion of the Commission, may be prone or conducive to corrupt practices;

(ii) advising public bodies and private bodies on ways and means of preventing corrupt practices, and on changes in methods of work or procedures of such public bodies and private bodies compatible with the effective performance of their duties, which the Commission considers necessary to reduce the likelihood of the occurrence of corrupt practices:

(iii) disseminating information on the evil and dangerous effects of corrupt practices on society; and

(iv) enlisting and fostering public support: against corrupt practices.

(b) receive and investigate complaints of alleged or suspected corrupt practices, and, subject to the directions of the Director of Public Prosecutions, prosecute-

(i) offences under this Act; and

(ii) such other offence under any other written law as may have come to the notice of the Commission during the investigation of an offence under this Act:

Provided that nothing in this paragraph shall be considered as precluding any public prosecutor from prosecuting, subject to the directions of the Director of Public Prosecutions, any offence under this Act which has come to the notice of the police during investigation of an offence under any written law;

(c) investigate any conduct of any public officer which, in the opinion of the Commission may be connected with or conducive to corrupt practices; and

(d) do all such things as are incidental or conducive to the attainment of the functions.

(2) The Commission may refuse to conduct, or may decide to discontinue an investigation where it is satisfied that the complaint or allegation is malicious, trivial, frivolous, vexatious or the particulars accompanying it are insufficient to allow a proper investigation to be conducted and shall indicate accordingly in the report.

(3) The Commission shall, in any case in which it decides not to conduct an investigation, or decides to discontinue an investigation inform the complainant in writing accordingly, and give reasons therefor.

(4) The Commission may in any inquiry make such orders and give such directions as it may consider necessary for the purpose of conducting any investigation.

10. (1) The Commission may depending on the findings made, make such recommendation as it considers necessary to the appropriate

Reports and
recommendation

authority.

by Commission

(2) The appropriate authority shall, within thirty days from the date of such recommendation make a report to the Commission, on any action taken by such authority.

11. (1) Subject to the other provisions of this Act, the Commission may regulate its own procedure.

Proceedings of
Commission

(2) The Commission shall meet for the transaction of business at least once every three months at such places and times as the Chairperson may determine.

(3) The Chairperson may at any time call a meeting of the Commission and shall call a special meeting to be held within fourteen days of receipt of a written request addressed to the Chairperson by at least two other Commissioners.

(4) If the urgency of any particular matter does not permit the giving of such notice as is required under subsection (3), a special meeting may be called by the Chairperson, upon giving a shorter notice.

(5) The Chairperson with two other Commissioners shall constitute a quorum at any meeting of the Commission.

(6) There shall preside at any meeting of the Commission-

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice-Chairperson; or

(c) in the absence of both the Chairperson and the Vice-Chairperson, such other Commissioner as the Commissioners present may elect for the purposes of that meeting.

(7) A decision of the Commissioner on any question shall be by a majority of the Commissioners present and voting at the meeting and in

the event of an equality of votes, the person presiding at the meeting shall have a casting vote, in addition to such person's deliberative vote.

(8) The Commission may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of the meeting of the Commission, but such person shall have no vote.

(9) The validity of any proceedings, acts or decisions of the Commission shall not be affected by any vacancy in the membership of the Commission or by any defect in the appointment of any Commissioner or by reason that any person not entitled to do so, took part in the proceedings.

12. (1) The Commission may, for the purpose of performing its functions under this Act, establish such committees as it considers necessary and delegate to any of those committees such of its functions as it considers fit.

Committees

(2) Subject to subsection (1), the Commission may appoint as members of a committee, persons who are, or are not, Commissioners, except that at least one member of a committee shall be a Commissioner.

(3) A person serving as a member of a committee shall hold office for such period as the Commission may determine.

(4) Subject to any specific or general direction of the Commission, a committee may regulate its own procedure.

13. (1) If any person is present at a meeting of the Commission or any committee at which any matter is the subject of consideration, and in which matter that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall as soon as practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question touching such matter.

Disclosure of interest

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding five thousand penalty units.

14 (1) A person shall not, without the consent in writing given by, or on behalf of, the Commission, publish or disclose to any person otherwise than in the course of such person's duties, the contents of any documents, communication, or information which relates to, and which has come to such person's knowledge in the course of such person's duties under this Act.

Prohibition of disclosure of information to unauthorised persons

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding ten thousand penalty units or to imprisonment, for a term not exceeding three years, or to both.

(3) If any person having information which to such person's knowledge has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates any such information to any other person, such person shall be guilty of an offence and shall be liable upon conviction, to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

15. (1) No proceedings, civil, or criminal, shall lie against any Commissioner of the Commission, for anything done in the exercise of such person's functions under this Act.

Immunity of Commissioners

(2) Subject to the provisions of this Act, a Commissioner shall not be called to give evidence before any court or tribunal in respect of anything coming to such person's knowledge in the exercise of such person's functions under this Act.

(3) For the avoidance of any doubts, nothing in this section shall protect any Commissioner, for anything done outside the functions of the person's office.

PART III

THE DIRECTORATE OF THE COMMISSION

16. (1) There shall be a Director-General who shall be appointed by the President subject to ratification by the National Assembly. Director-General

(2) The Director-General shall be-

(a) responsible for the management and administration of the Commission;

(b) a full-time officer; and

(c) responsible for the implementation of any matters referred to such Director-General by the Commission.

(3) The Director-General shall attend meetings of the Commission and may address such meetings, but shall have no vote.

(4) A person shall not be qualified to be appointed Director-General unless the person is qualified to be appointed judge of the High Court.

(5) The Director-General shall not, while he holds the office of Director-General, discharge the duties of any other office of emolument in the Republic.

(6) The Director-General may, subject to any specific or general direction of the Commission, make standing orders providing for-

(a) the control, direction and administration of the Commission;

(b) the discipline, training, classification and promotion of officers of the Commission;

(c) the duties of officers of the Commission; or

(d) such other matters as he may consider necessary or expedient for preventing the abuse of power or neglect of duty by officers or other staff.

17. (1) Subject to subsection (2), a person appointed Director-General shall vacate that office on attaining the age of sixty-five years; Tenure of office of
Director-General

Provided that the Commission may permit a person who has attained that age to continue in office for such period as may be necessary to enable him do anything in relation to proceedings that were commenced before he attained that age.

(2) A person appointed Director-General may be removed from office for inability to perform the function of his office, whether arising from infirmity of body or mind or from any other cause, or for misbehaviour, and shall not be removed except by or in accordance with a resolution passed by the National Assembly pursuant to subsection (2) calling for an investigation into the question of the removal of the Director-General.

(3) If the National Assembly, by resolution supported by the votes of not less than two-thirds of all the members of the National Assembly, resolves that the question of removing the Director-General ought to be investigated, the Speaker of the National Assembly shall send a copy of such resolution to the Chief Justice who shall appoint a tribunal consisting of a chairman and two other persons to inquire into the matter.

(4) The Chairperson and one other member of the tribunal shall be persons who hold or have held high judicial office.

(5) The tribunal shall inquire into the matter and send a report on the facts of that matter to the President and a copy to the National Assembly.

(6) Where a tribunal appointed under subsection (2) advises the President that the Director-General ought to be removed from office for inability as aforesaid or for misbehaviour, the President shall remove the

Director-General from office.

(7) If the question of removing the Director-General from office has been referred to a tribunal under subsection (2), the President may suspend him from performing the functions of his office, and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the tribunal advises the President that the Director-General ought to be removed from office.

18. (1) The Commission may appoint a Deputy Director-General on such terms and conditions as it thinks fit:

Appointment of
Deputy
Director-General

Provided that no person shall qualify for appointment as a Deputy Director-General unless he is qualified to be appointed a Judge of the High Court.

(2) If the office of the Director General is vacant or the Director-General is absent from duty or unable for any other reason to perform the functions of his office, the Deputy Director-General shall, save where the Commission otherwise directs, act as Director-General.

(3) If both the Director-General and the Deputy Director-General are absent from duty or unable for any other reason to perform the functions of their office, the Commission shall appoint another person to act as Director-General.

19. (1) The Commission may appoint investigating officers, the Secretary and such other officers of the Commission on such terms and conditions as the Commission may consider necessary to assist the Director-General in the performance of his functions under this Act.

Investigating
officers, Secretary
and other staff of
Commission

(2) The Director-General may, if he is satisfied that it is in the best interest of the Commission, terminate the appointment of any officer of the Commission and shall assign the reasons therefor, subject to any directions by the Commission.

(3) The Commission may engage the services of such advisors and experts as it thinks necessary.

(4) The Secretary, advisors, experts and other members of staff shall on appointment, take an oath or affirmation as set out in the Second Schedule.

20. (1) For the performance of the Commission's functions under this Act, the Director-General may-

Powers of
Director-General

(a) authorise in writing any officer of the Commission to conduct an inquiry or investigation into alleged or suspected offences under this Act;

(b) require any person in charge of any department, office or establishment of the Government, or the head, chairperson, manager or chief executive officer of any public body, to produce or furnish within such time as may be specified by the Director-General, any document or a certified true copy of any document which is in his possession or under his control and which the Director-General considers necessary for the conduct of investigation into alleged or suspected offences under this Act:

Provided that the document is not classified or does not fall under the State Security Act.

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(2) In the performance of his duties under this Act, the Director-General, the Deputy Director-General or an officer, may apply to a judge or a magistrate for a warrant and the judge or the magistrate shall immediately make a decision.

(3) A warrant issued under subsection (2) shall confer on the Director-General, the Deputy Director-General or an officer powers of-

(a) access to all books, records, returns, reports and other documents relating to the work of any Government department, public body or private body;

(b) access at any time to the premises of any Government department, public body or private body, or to any vessel, boat, aircraft or other vehicle whatsoever, and may search such premises or such vessel, boat, aircraft, or other vehicle if he has reason to suspect that any

property corruptly acquired has been placed, deposited or concealed therein.

(4) In the exercise of his power to access and search under paragraph (b) of subsection (2), the Director-General, the Deputy Director-General or other officer of the Commission, may use such reasonable force as is necessary and justifiable in the circumstances, and may be accompanied or assisted by such other persons as he considers necessary to assist him to enter into or upon any premises, or upon any vessel, boat, aircraft or other vehicle, as the case may be.

(5) Any person who accompanies or assists the Director-General, the Deputy Director-General or other officer of the Commission to enter into or upon any premises, or upon any vessel, boat, aircraft or other vehicle, as the case may be, shall, during the period of such accompaniment or assistance, enjoy the same immunity as is conferred under section *twenty-six* upon the Director-General, the Deputy Director-General or other officer of the Commission.

21. (1) The Director-General or any officer of the Commission shall after obtaining a court order have powers to investigate any bank account, share account, purchase account, expense account or any other account, or any safe deposit box in any bank.

Special powers of investigation

(2) An order made under section (1) shall be sufficient for the disclosure or production by any person of all or any information, accounts, documents or articles as may be required by the officer of the Commission so authorised.

22. (1) The Director-General, the Deputy Director-General or any officer of the Commission authorised in that behalf by the Director-General may arrest a person without warrant if he reasonably suspects that such person has committed or is about to commit an offence under this Act.

Powers of Commission's officers to arrest

(2) Where a person has been arrested without warrant under subsection (1) such person may, at any time before appearing, in court, while he is in custody be admitted to bail upon providing surety or sureties sufficient in the opinion of the Director-General, Deputy Director-General or an officer authorised in that behalf by the

Director-General to secure his appearance before court or such person may be released upon his own recognisance on such conditions as the officer thinks fit.

(3) A bail bond issued under this section shall be dealt with in accordance with the provisions of the Criminal Procedure Code.

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23. The Director-General may issue to an officer of the Commission an identity card which shall be *prima facie* evidence of the officer's appointment as such.

Identity card

24. (1) The Director-General may, by written notice to a person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed under this Act, or against whom a prosecution for such offence has been instituted, direct that such person shall not dispose of or otherwise deal with any property specified in such notice without the consent of the Director-General.

Restriction on disposal of property, etc.

(2) A notice issued under subsection (1) may be served by delivering it personally to the person to whom it is addressed or may, where the Director-General is satisfied that such person cannot be found, or is not in the Republic, be served on or brought to the knowledge of, such person in such other manner as the Director-General may direct.

(3) A notice issued under subsection (1) shall have effect from the time of service and shall continue in force for a period of twelve months or until cancelled by the Director-General, whichever is earlier.

(4) Any person who, having been served with, or having knowledge of a notice issued under subsection (1), disposes of or otherwise deals with any property specified in the notice other than in accordance with the consent of the Director-General shall be guilty of an offence, and liable, upon conviction, to imprisonment for a term not exceeding ten years or to a fine not exceeding ten thousand penalty units or to both.

(5) Any person aggrieved by a directive contained in a notice issued under subsection (1) may, at any time, apply to the High Court for an order to reverse or vary such directive.

(6) An application under subsection (5) shall give to the Director-General such notice of the day appointed for the hearing of the application as a Judge of the High Court may order.

(7) On the hearing of an application under subsection (5), the High Court may-

(a) confirm the directive;

(b) reverse the directive and consent to the disposal of or other dealing with any property specified in the notice, subject to such terms and conditions as it thinks fit; or

(c) vary the directive as it thinks fit.

25. Section *fourteen* shall apply with necessary modifications to the staff of the Commission.

Prohibition of disclosure or publication of information to unauthorised persons by staff

26. Section *fifteen* shall apply with necessary modifications to the Director-General, Deputy Director-General and other staff of the Commission.

Immunity of Director-General, Deputy Director-General and other staff

27. Any person who-

Obstructing officers of Commission and false reports to Commission

(a) gives or causes to be made false testimony or a false report in any material particular to any matter under investigation;

(b) makes or causes to be made to the Commission a false report of the Commission of any offence under this Act;

(c) misleads the Director-General, the Deputy Director-General or

other officers of the Commission by giving any false information, statement or accusation;

(d) insults, interrupts, assaults or otherwise obstructs, resists, hinders or delays the Director-General, any Commissioner or any member of staff in the performance of such person's functions under this Act or in effecting entry into any premises, boat, aircraft or vehicle; or

(e) disobeys any order made under this Act;

shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding ten thousand penalty units, or to imprisonment for a term not exceeding ten years or to both.

28. Any person who pretends that-

Impersonation and procurement of Commission's officer

(a) he is an officer of the Commission or has any of the powers of such officer under this Act, or under any authorisation or warrant issued under this Act; or

(b) he is able to procure an officer of the Commission to do or refrain from doing anything in connection with the duties of such officer;

shall be guilty of an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding seven years, or to a fine not exceeding seven thousand penalty units or to both.

PART IV

OFFENCES, PENALTIES AND RECOVERY OF GRATIFICATION

29. (1) Any public officer who, by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any gratification as an inducement or reward for

Corrupt practices by or with public officers

doing or forbearing to do, or for having done or forborne to do, anything in relation to any matter or transaction, actual or proposed, with which any public body is or may be concerned, shall be guilty of an offence.

(2) Any person who by himself, or by or in conjunction with any other person, corruptly gives, promises or offers any gratification to any public officer, whether for the benefit of that public officer or of any other public officer, as an inducement or reward for doing or forbearing to do, anything in relation to any matter or transaction, actual or proposed, with which any public body is or may be concerned, shall be guilty of an offence.

30. (1) Any public officer who, being concerned with any matter or transaction falling within, or connected with, his jurisdiction, powers, duties or functions, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain for himself or for any other person any gratification in relation to such matter or transaction, shall be guilty of an offence.

Corrupt use of official powers and procuring corrupt use of official powers

(2) Any person who, being concerned with any matter or transaction falling within the scope of authority, or connected with the jurisdiction, powers, duties or functions of any public officer, by himself, or by or in conjunction with any other person, corruptly gives, promises or offers any gratification, whether directly or indirectly, to such public officer either for himself or for any other person, shall be guilty of an offence.

31. (1) Any person who, by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for and having done or forborne to do, any thing in relation to any matter or transaction actual or proposed, with which any private body is or may be concerned, shall be guilty of an offence.

Corrupt transactions by or with private bodies

(2) Any person who, by himself, or by or in conjunction with any other person, corruptly gives, promises or offers any gratification to any person, whether for the benefit of that person or of any other person, as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to any matter or transaction, actual or proposed, with which any private body is or may be concerned, shall be guilty of an offence.

32. (1) Any agent who corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to his principal's affairs or business, or for showing or having shown favour or disfavour to any person in relation to his principal's affairs or business, shall be guilty of an offence.

Corrupt transactions by or with agents

(2) Any person who corruptly gives, promises or offers any gratification to any agent as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to his principal's affairs or business, or for showing or having shown favour or disfavour to any person in relation to his principal's affairs or business, shall be guilty of an offence.

(3) Any person who gives to an agent, or any agent who, with intent to deceive his principal, uses any receipt, account or other document in respect of which the principal is interested or which relates to his principal's affairs or business and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge or belief is intended to mislead the principal, shall be guilty of an offence.

(4) For the purposes of subsections (1) and (2), the permission of a principal to the soliciting, accepting or obtaining of any gratification by his agent shall constitute a valid defence.

33. (1) Any person who being a member of any public body by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any gratification as an inducement or reward for-

Corruption of members of public bodies in regard to meetings, etc.

(a) his voting or abstaining from voting at any meeting of such public body in favour of or against any measure, matter, resolution or question submitted to such public body; or

(b) his performing or abstaining from performing, or for his aid in procuring, expediting, delaying, hindering or preventing the

performance of, any official act by such public body; or

(c) his aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person;

shall be guilty of an offence.

(2) Any person who, by himself or by or in conjunction with any other person, corruptly gives, promises or offers any gratification to a member of any public body in any such circumstances as are referred to in subsection (1), shall be guilty of an offence.

34. (1) Any public officer who directly or indirectly by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any gratification as an inducement or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in-

Gratification for giving assistance, etc., in regard to contracts

(a) the promotion, execution or procurement of-

(i) any contract with a public body or private body for the performance of any work, the provisions of any service, the doing of anything or the supplying of any article, material or substance; or

(ii) any sub-contract to perform any work, provide any service, do anything or supply any article, material or substance required to be performed, provided, done or supplied under any contract with a public body or private body; or

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or sub-contract as aforesaid;

shall be guilty of an offence.

(2) Any person who corruptly gives, promises or offers any gratification to any public officer as an inducement or reward for or otherwise on account of such public officer giving assistance or using influence in, or

having given assistance or used influence in-

- (i) the promotion, execution or procurement of; or
- (ii) the payment of the price, consideration or other moneys stipulated or otherwise provided for in;

any such contract or sub-contract as is referred to in subsection (1), shall be guilty of an offence.

35. (1) Any person who directly or indirectly by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain from any person for himself or for any other person, any gratification as an inducement or reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for any contract with a public body or private body for the performance of any work, the provision of any service, the doing of anything or the supplying of any article, material or substance, shall be guilty of an offence.

Gratification for procuring withdrawal of tenders

(2) Any person who corruptly gives, promises or offers any gratification to any other person as an inducement or reward for or otherwise on account of the withdrawal of a tender, or the refraining from making of a tender, for such a contract as is referred to in subsection (1), shall be guilty of an offence.

36. (1) Any person who directly or indirectly by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any gratification as an inducement or reward for or otherwise on account of his refraining or having refrained from bidding at any sale by auction conducted by or on behalf of any public body or private body, shall be guilty of an offence.

Gratification in regard to bidding at auction sales

(2) Any person who corruptly gives, promises or offers any gratification to any other person as an inducement or reward for or otherwise on account of that other person's refraining or having refrained from bidding at any auction as is referred to in subsection (1), shall be guilty of an offence.

37. (1) The Director-General, the Deputy Director-General or any officer of the Commission authorised in writing by the Director-General may investigate any public officer where there are reasonable grounds to believe that such public officer-

Possession of unexplained property

(a) has abused or misused his office position or authority to obtain property, wealth, advantage or profit directly or indirectly for himself or any other person;

(b) maintains a standard of living above that which is commensurate with his present or past official emoluments;

(c) is in control or possession of pecuniary resources or property disproportionate to his present or past official emoluments; or

(d) is in receipt of the benefit of any services which he may reasonably be suspected of having received corruptly or in circumstances which amount to an offence under this Act.

(2) Any public officer who, after due investigation carried out under subsection (1), is found to-

(a) have misused or abused his office, position, or authority to obtain advantage, wealth, property or profit directly or indirectly;

(b) maintain a standard of living above which is commensurate with his present or past official emoluments;

(c) be in control or possession of pecuniary resources or property disproportionate to his present or past official emoluments; or

(d) be in receipt of the benefit of any services which he may reasonably be suspected of having received corruptly or in circumstances which amount to an offence under this Act;

shall, unless he gives a reasonable explanation, be charged with having, or having had under his control or in his possession of pecuniary resources or property reasonably suspected of having been corruptly acquired, or having misused or abused his office, as the case may be, and shall, unless he gives a satisfactory explanation to the court as to

how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control or into his possession or, as the case may be, how he came to enjoy the benefit of such services, be guilty of an offence.

(3) Where a court is satisfied in proceedings for an offence under subsection (2) that, having regard to the closeness of his relationship to the accused and to other relevant circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused, or acquired such pecuniary resources or property as a gift, or loan without adequate consideration, from the accused, such pecuniary resources or property shall, in the absence of a satisfactory explanation by or on behalf of the accused be deemed to have been under the control or in the possession of the accused.

(4) In this section, "official emoluments" include a pension, gratuity or other terminal benefits.

38. (1) If, in any proceedings for an offence under any section of this Part, it is proved that the accused accepted any gratification believing or suspecting or having reasonable grounds to believe or suspect that the gratification was given as an inducement or reward for or otherwise on account of his doing or forbearing to do, or having done or forborne to do, any act referred to in that section, it shall be no defence that-

Certain matters not to constitute defence

(a) he did not actually have the power, right or opportunity so to do or forbear;

(b) he accepted the gratification without intending so to do or forbear; or

(c) he did not in fact so do or forbear.

(2) If, in any proceedings for an offence under any section of this Part it is proved that the accused offered any gratification to any other person as an inducement or reward for or otherwise on account of that other person's doing or forbearing to do, or having done or forborne to do, any act referred to in that section, believing or suspecting or having reasonable grounds to believe or suspect that such other person had the power, right or opportunity so to do or forbear, it shall be no defence that

such other person had no such power, right or opportunity.

39. Any person who attempts to commit, or who aids, abets or counsels, or conspires with, any person to commit an offence under this Part, shall be guilty of committing that offence and shall be punished accordingly.

Attempts,
conspiracies, etc.,

40. (1) A public officer to whom any gratification is corruptly given, promised or offered shall make a full report of the circumstances of the case to a police officer or an officer of the Commission within twenty-four hours of the occurrence of the event, and if he fails to do so without reasonable cause, he shall be guilty of an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand penalty units or to both.

Public officer's
powers of report,
etc.

(2) Any police officer or officer of the Commission may arrest without warrant any person in respect of whom a report is made under subsection (1).

(3) Any police officer or officer of the Commission may search any person arrested for an offence under this Part and take possession of all articles found upon him which the police officer or officer of the Commission believes upon reasonable grounds to constitute evidence of the commission of an offence by him under this Part:

Provided that a female person shall not be searched except by a female police officer, or female officer of the Commission, or by any female authorised in that behalf by a police officer or officer of the Commission.

41. Any person who is guilty of an offence under this Part shall be liable-

General penalty

(a) upon conviction to imprisonment for a term not exceeding twelve years;

(b) upon a second or subsequent conviction, to imprisonment for a term of not less than five years but not exceeding twelve years; and

(c) in addition to any other penalty imposed under this Act, to forfeit to the State of any pecuniary resource, property, advantage, profit or gratification received in the commission of an offence under this Act.

42. Where any person is convicted of any offence under this Part, the court shall, in addition to the sentence that it may impose under section *forty-one*, order the convicted person to pay to the rightful owner the amount or value, as determined by the court, of any gratification actually received by him, and such order shall be deemed to form part of the sentence:

Penalty additional to other punishment

Provided that where, after reasonable inquiry, the rightful owner cannot be ascertained or traced, or where the rightful owner is himself implicated in the giving of the gratification, the court shall order that the amount or value thereof shall be paid into the general revenues of the Republic.

43. Any fine imposed under the provisions of this Part and the amount or value of any gratification ordered to be paid under section *forty-two* may be recovered in accordance with the provisions of sections *three hundred and eight* and *three hundred and nine* of the Criminal Procedure Code by distress and sale of the movable and immovable property of the person sentenced.

Recovery of gratification by distress, etc. Cap. 88

44. (1) Where any gratification has been given by any person to or for or on account of an agent in contravention of any provision of this Act, the principal may recover, as a civil debt, the amount or value of such gratification from the agent, and the acquittal of the agent or such person in respect of an offence under this Part shall not operate as a bar to any proceedings for such recovery.

Principal may recover gratification corruptly received by agent

(2) Nothing in subsection (1) shall be deemed to prejudice or affect any right which any principal may have under any written law or rule to recover from his agent any money or property.

45. In any proceedings under this Act, a certificate by a Government Valuation Officer or other specialist valuer with respect to the value of any gratification or of any movable or immovable property shall be sufficient proof of such value, unless the contrary is proved.

Certificate of Government Valuation Officer or other specialist valuer

PART V

POWERS OF THE DIRECTOR OF PUBLIC PROSECUTIONS

46. (1) No prosecution for an offence under Part IV shall be instituted except by or with the written consent of the Director of Public Prosecutions.

Consent of
Director of Public
Prosecutions

(2) Notwithstanding the provisions of subsection (1), a person may be charged with an offence under Part IV and may be arrested therefor or a warrant for his arrest may be issued and executed, and any such person may be remanded by the Court in custody or on bail notwithstanding that the written consent of the Director of Public Prosecutions to the institution of a prosecution for the offence with which he is charged has not been obtained, but no such person shall be remanded in custody or on bail for a period longer than fourteen days on such charge unless in the meantime the written consent of the Director of Public Prosecutions aforesaid has been obtained.

(3) When a person is brought before a court before the written consent of the Director of Public Prosecutions to the institution of a prosecution against him is obtained, the charge shall be explained to the person accused but he shall not be called upon to plead.

47. If, in the course of any investigation into or proceeding relating to any offence under Part IV, the Director of Public Prosecutions has reasonable grounds to believe that it would assist or expedite such investigation or proceeding, he may, by notice require the Commissioner of Taxes to furnish all information in his possession relating to the affairs of any suspected person and to produce or furnish any document or a certified true copy of any document relating to such suspected person which is in the possession or under the control of the Commissioner of Taxes.

Power of Director
of Public
Prosecutions to
obtain information

48. (1) If any person, against whom investigations or proceedings for an offence under Part IV are pending, is preparing or about to leave Zambia, whether temporarily or permanently, the Director of Public Prosecutions or any officer authorised by him in that behalf, may apply

Bail where suspect
or accused person
about to leave
Zambia

to any court for an order requiring such person to furnish bail in any sum, or, if he has already been admitted to bail, in such greater sum and on such additional conditions, as the case may be, with or without sureties, and in any such application the court may make such order as it deems fit.

(2) Every order made under this section whether originally or on review shall be reviewed within thirty days by the court which made the order.

(3) A right of appeal against an order made under this section shall lie to a higher court.

PART VI

EVIDENCE, PRESUMPTIONS AND OTHER MATTERS

49. (1) Where, in any proceeding under this Act, it is proved that any gratification has been received by any person with the knowledge and acquiescence or consent of the accused person, and the court is satisfied, having regard to his relationship to the accused person or to any other circumstances that such person has received the gratification for or on behalf of the accused person, or otherwise on account of or in connection with the office or duties of the accused person, the gratification in the absence of a satisfactory explanation, shall be presumed to have been received by the accused person.

Presumptions of
corrupt intention

(2) Where, in any proceedings for an offence under Part IV, it is proved that any person solicited, accepted or obtained or agreed to accept or attempted to receive or obtain any payment in any of the circumstances set out in the relevant section under which he is charged, then such payment shall in the absence of a satisfactory explanation be presumed to have been solicited, accepted or obtained or agreed to be accepted, received or obtained corruptly.

(3) For the purposes of subsection (2) "payment" means any corrupt payment, whether in cash or in kind.

50. (1) In any proceedings in respect of an offence under Part IV, the

Corroborative
evidence of

fact that an accused person is in possession, for which he cannot satisfactorily account of pecuniary resources or property disproportionate to his known sources of income or that he had at or about the time of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken into consideration by the court as corroborating the testimony of any witness in such proceedings that the accused person accepted or obtained or agreed to accept or attempted to obtain the gratification and as showing that such gratification was accepted or obtained or agreed to be accepted or attempted to be obtained corruptly as an inducement or reward.

pecuniary
resources or
property

(2) For the purposes of subsection (1), an accused person shall be deemed to be in possession of pecuniary resources or property, or to have obtained an accretion thereto, notwithstanding that such pecuniary resources or property is held, or such accretion thereto is obtained, by any other person as to whom there is reason to believe, having regard to his relationship to the accused person or to any other circumstances, that he is holding such pecuniary resources or property or has obtained such accretion thereto in trust for, or for or on behalf of, the accused person, or as a gift from him unless the contrary is proved.

51. For the purpose of any proceedings in respect of an offence under Part IV, the court may at any stage of the proceedings direct that any specified fact may be proved at the trial by affidavit with or without the attendance of the deponent for cross examination.

Affidavit evidence

52. (1) In any proceedings for an offence under Part IV, it shall be no defence that any gratification solicited, accepted or obtained or agreed to be accepted, given, offered or promised, is customary in any profession, business, trade, vocation or calling.

Evidence of
custom
inadmissible

(2) Notwithstanding the provisions of subsection (1), no entertainment or casual gift offered or accepted under such conditions as may be prescribed in regulations made under this Act shall constitute an offence under Part IV.

53. Where any public officer has corruptly solicited, accepted, obtained, or agreed to accept or attempted to receive or obtain any gratification, it shall not be a defence in any trial in respect of an offence under Part IV that-

Absence of power,
authority or
opportunity, no
defence

- (a) the appointment, nomination or election of such person or any other person as a public officer was invalid or void; or
- (b) such public officer or any other public servant did not have the power, authority or opportunity of doing or of forbearing from doing the act, favour or disfavour to which the gratification related; or
- (c) he did not actually do any act, favour or disfavour to induce the gratification, or never had the intention of doing so.

54. (1) The Director of Public Prosecutions may, at any time, with a view to obtaining at a trial the evidence of any person directly or indirectly concerned with or privy to an offence under Part IV, tender, or by writing under his hand, authorise any court named by him to tender, a pardon to such person on condition that he makes a full and true disclosure of all facts or circumstances within his knowledge relating to the offence and to every other person involved in the commission thereof, whether as principal or in any other capacity, together with the delivery up of any document or thing constituting evidence or corroboration of the Commission of the offence by the person to be charged or the accused person, as the case may be.

Tender of pardon

(2) The court shall record in the manner prescribed by the Criminal Procedure Code the evidence on oath of every person accepting a pardon under subsection (1) and shall transmit the record of such evidence to the Attorney-General.

Cap. 88

(3) Every person accepting a tender of pardon under this section shall be examined as a witness at the trial.

(4) Where a person who has accepted a tender of pardon under this section has, either by wilfully concealing anything material to the case, or by giving false evidence, not complied with the condition on which the tender of pardon was made, he may be prosecuted for the offence in respect of which the pardon was tendered or for any other offence of which he appears to have been guilty in connection with the same matter.

(5) A person to whom a tender of pardon has been made under

subsection (1), who in the opinion of the court, has made a true and full disclosure of all things as to which he is lawfully examined, shall be entitled to receive a certificate of indemnity under the hand of the Director of Public Prosecutions stating that he has made a true and full disclosure of all things as to which he was examined, and such certificate shall be a bar to all legal proceedings against him in respect of all such things as aforesaid.

55. Where any commission established by or under the Constitution, or appointed under the Inquiries Act, in the course, or upon conclusion, of any proceedings before it, is of the opinion that the conduct of any person appears to constitute an offence under this Act and ought to be inquired into for the purposes of this Act, the commission concerned shall, subject to any prohibition, restriction or restraint imposed upon it by or under the Constitution or any other written law, communicate its opinion to the Director of Public Prosecutions, together with the particulars of the person concerned and such other facts of the case as the Commission may deem necessary.

Corrupt practice
coming to notice of
Commission
Cap. 1
Cap. 41

56. (1) Where, at the conclusion of the trial of a person charged with an offence under Part IV, the court is of the opinion that any person has wilfully, and with intent to harm or injure the accused person in any manner made a false, frivolous or groundless complaint or allegation against him, the court shall certify that opinion in writing and shall transmit it together with a certified copy of the record of the proceedings to the Director of Public Prosecutions.

False, frivolous or
groundless
complaints or
allegations

(2) Any person who, in the opinion of the court certified under subsection (1) has made a false, frivolous or groundless complaint or allegation to the effect that any person has committed or attempted to commit, or aided, abetted or counselled the commission of, or conspired with any other person to commit, any offence under Part IV, shall be guilty of an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding ten years or to a fine not exceeding ten thousand penalty units, or to both.

57. (1) If, on the trial of any offence under Part IV, it is not proved that the accused is guilty of the offence charged but it is proved that the accused is guilty of some other offence under Part IV, the accused may, notwithstanding the absence of the written consent of the Director of Public Prosecutions in respect of such other offence, be convicted of such other offence, and be liable to be dealt with accordingly.

Alternative
conviction and
amending
particulars

(2) If, on the trial of any person for any offence under Part IV, there is any material variance between the particulars of the offence charged and the evidence adduced in support thereof, such variance shall not, of itself, entitle the accused to an acquittal of the offence charged if, in the opinion of the court, there is *prima facie* evidence of the commission of that offence, and in such a case the court may, notwithstanding the absence of the written consent of the Director of Public Prosecutions in respect of the particulars supported by the evidence adduced, make the necessary amendment to the particulars, and shall thereupon read and explain the same to the accused and the parties shall thereupon be allowed to recall and examine on matters relevant to such amendment any witness who may have been examined and, subject to the provisions of subsection (3), to call any further witness.

(3) If an amendment is made under the provisions of subsection (2) after the prosecution's case is closed, no further witness may be called by the prosecution other than a witness on such matters only as it would, apart from the provisions of this subsection, be permissible to call and put in evidence in rebuttal.

58. In any proceeding for an offence under this Act it shall be a valid defence that the gratification offered or accepted is an entertainment or a casual gift.

Defences

59. (1) In relation to a public officer or a citizen of Zambia, or a person ordinarily resident in Zambia, this Act shall have effect within as well as outside Zambia, and notwithstanding where any offence is committed by such person, he may be dealt with in respect of such offence as if it has been committed within Zambia.

Liability of public officers, citizens of Zambia, etc for offences committed outside Zambia

(2) Any proceedings against any person under this section which would be a bar to subsequent proceedings against such person for the same offence, if such offence had been committed in Zambia, shall be a bar to further proceedings against him, under any written law for the time being in force relating to the extradition of persons, in respect of the same offence outside Zambia.

PART VII

MISCELLANEOUS

60. (1) Subject to the other provisions of this Act, a person who immediately before the appointed date held office as Commissioner of the former Commission established under the repealed Act, shall continue to hold such office as Commissioner for a period of three months.

Savings and
transitional
provisions
Act. No. 14 of
1980

(2) After the period referred to in subsection (1), the Commissioner of the former Commission shall perform the functions and powers of the Director-General of the Commission established under this Act.

(3) Nothing in this Act affects the rights of any person employed by the former Commission immediately before the appointed date.

(4) Notwithstanding section *sixty-six*, all the property, assets, rights, liabilities and obligations of the former Commission existing immediately before the appointed date, shall vest and continue to vest in, or subsist against the Commission, together with the rights, liabilities and obligations arising out of any contract or otherwise as if this Act had not come into force.

(5) Any proceedings or cause of action instituted or pending by or against the former Commission immediately prior to the appointed date, shall continue by or against the Commission as if instituted under this Act.

61. (1) The investigating officers and other employees of the former Commission shall be deemed to be transferred to the Commission from the commencement of this Act.

Transfer of staff

(2) The service of the persons referred to in subsection (1) shall be treated as continuous service.

62. The Commission may, by statutory instrument, make rules for the-

Rules

(a) appointment, including the power to confirm appointments of

persons, to any office in respect of which he is charged with the responsibility under this Act;

(b) disciplinary control of persons holding or acting in such offices;

(c) termination of appointments and the removal of such persons from office;

(d) practice and procedure of the Commission in the exercise of its functions under this Act; and

(e) delegation of its functions or powers.

63. The President may, by statutory instrument and on the recommendation of the Commission make regulations for the better carrying out of the purposes of this Act.

Regulations

64. The Corrupt Practices Act, 1980, is hereby repealed.

Repeal of
Act No. 14 of 1980

FIRST SCHEDULE

(Section 4)

FINANCIAL AND OTHER PROVISIONS

- | | |
|---|--------------------------------|
| <p>1. (1) The funds of the Commission shall consist of such moneys as may-</p> <ul style="list-style-type: none">(a) be appropriated by the Parliament for the purposes of this Act;(b) be paid to the Commission by way of grants or donations; and(c) vest in or accrue to the Commission. <p>(2) The Commission may-</p> <ul style="list-style-type: none">(a) subject to the approval of the President, accept money by way of grants or donations from any source; and(b) subject to the approval of the President, raise by way of loans or otherwise, such money as it may require for the discharge of its functions. <p>(3) There shall be paid from the funds of the Commission-</p> <ul style="list-style-type: none">(a) the salaries, allowances, pensions and loans of the staff;(b) such reasonable travelling, transport and subsistence allowances for the Commissioners and members of any committee of the Commission, when engaged in the business of the Commission; and(c) any other expenses incurred by the Commission in the performance of its functions. | <p>Funds of
Commission</p> |
| <p>2. The financial year of the Commission shall be the period of twelve months ending on 31st December in each year.</p> | <p>Financial
year</p> |
| <p>3. (1) The Commission shall cause to be kept proper books of account and other records relating to its accounts.</p> <p>(2) The accounts of the Commission shall be audited annually by the Auditor-General.</p> <p>(3) The Auditor-General's fees shall be paid by the Commission.</p> | <p>Accounts</p> |
| <p>4. (1) As soon as practicable, but not later than ninety days after the end of the financial</p> | <p>Annual</p> |

year, the Commission shall submit to the President a report concerning its activities during the financial year.

(2) The report referred to in subsection (1) shall include information on the financial affairs of the Commission and there shall be appended to the report-

(a) an audited balance sheet;

(b) an audited statement of income and expenditure; and

(c) such other information as the President may require.

(3) The President shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subsection (1), lay the report before the National Assembly.

SECOND SCHEDULE

(Section 19)

OATH OF SECRETARY OR STAFF OF COMMISSION

I, having
been appointed to exercise the functions of Secretary of the
Commission/a member of the staff of the Commission, do
swear/ affirm that I will not,directly or indirectly, reveal to any
unauthorised person or otherwise than in the course or duty the
contents or any part of the contents of any document.
communication or information whatsoever which may come to
my knowledge in the course of my duties as such.

SO HELP ME GOD

Sworn/Declared before me this day
of..... ,
19.....

Puisne Judge

SUBSIDIARY LEGISLATION

SECTION 63-THE CORRUPT PRACTICES (DISCLOSURE BY PUBLIC OFFICERS OF INTEREST IN CONTRACTS AND PROPOSED CONTRACTS) REGULATIONS.

Statutory
Instrument
210 of 1987

Regulations by the Commissioner

1. These Regulations may be cited as the Corrupt Practices Disclosure by Public Officers of Interest in Contracts and Proposed (Contracts) *Regulations. Title

*These Regulations are continued in operation by virtue of Section 15 of the Interpretation and General Provisions Act Cap. 2.

2. In these Regulations, unless the context otherwise requires "interested" means interested in a private capacity. Interpretation

3. (1) Subject to Sub-regulation (2), where a public officer is present at any meeting at which a contract or a proposed contract is the subject of consideration and in which contract the public officer or his spouse is directly or indirectly interested, the public officer shall as soon as practicable after the commencement of the meeting, declare the nature of his interest and shall not, unless the meeting otherwise directs, take part in any consideration or discussion of or vote on any question touching upon the contract or proposed contract. Disclosure of interest

(2) In the case of a proposed contract the disclosure required by this regulation to be made by a public officer shall be made at the meeting at which the question of entering into the contract is first taken into consideration, or if the public officer was not at the date of that meeting interested in the proposed contract then at the next meeting held after he became interested.

4. (1) Any public officer who- Offence

(a) fails to disclose any interest required to be disclosed by regulation 3;

(b) in disclosing any such interest makes any statement which he knows to be false or which he has no reason to believe to be true;

(c) otherwise contravenes regulation 3;

is guilty of an offence and liable upon conviction to a fine not exceeding thirty-eight penalty units or to a term of imprisonment not exceeding three months or to both.

(2) A public officer shall not be guilty of an offence for failing to disclose the interest of his spouse in any contract or proposed contract if he proves to the satisfaction of the court that after the exercise of all due diligence having regard to all the circumstances, he did not know of such interest and had no cause to believe that any such interest existed.

(As amended by Act No. 13 of 1994)

**SECTION 63-THE CORRUPT PRACTICES
(PROHIBITION OF ABUSE OF INFORMATION
OBTAINED IN OFFICIAL CAPACITY)
REGULATIONS.**

Statutory
Instrument
211 of 1987

Regulations by the Commissioner

1. These Regulations may be cited as the Corrupt Practices (Prohibition of Abuse of Information Obtained in Official Capacity) *Regulations.

Title

*These Regulations are continued in operation by virtue of Section 15 of the Interpretation and General Provisions Act Cap. 2.

2. In these Regulations, unless the context otherwise requires, "public officer" means any person who has held public office at any time since the coming into force of the Act.

Interpretation

3. These Regulations apply to any information which-

Information to
which Regulations
apply

(a) is held by a public officer by virtue of his office;

(b) it would be reasonable to expect a person in the position of the public office not to disclose except for the proper performance of the functions of his office; and

(c) the person holding it knows or ought to know is unpublished tender information in relation to any contract or proposed contract of a public body.

4. A public officer holding information to which these Regulations apply or any other person who has obtained any such information directly or indirectly from a public officer whom that person knows or has reasonable cause to believe held the information by virtue of his position as a public officer shall not-

Prohibition of abuse of information

(a) deal in any contract or proposed contract to which the information relates and in which a public body is concerned;

(b) counsel or procure any other person to deal in any such contract or proposed contract, knowing or having reasonable cause to believe that the other person would deal in any such contract or proposed contract;

(c) communicate to any other person the information held or as the case may be, obtained by him if he knows or has reasonable cause to believe that that person or some other person would make use of that information for the purpose of dealing in or counselling or procuring any other person to deal in any contract or proposed contract to which the information relates in which a public body is concerned.

5. Any public officer or any other person who contravenes these Regulations is guilty of an offence and liable to a fine not exceeding thirty eight penalty units or to a term of imprisonment not exceeding three months or to both.

Offence

(As amended by Act No. 13 of 1994)

SECTION 63-THE CORRUPT PRACTICES (DISPOSAL OF RECOVERED PROPERTY) REGULATIONS.

Statutory Instrument
194 of 1986

Regulations by the Commissioner

1. These Regulations may be cited as the Corrupt Practices (Disposal of Recovered Property) *Regulations. Title

*These Regulations are continued in operation by virtue of Section 15 of the Interpretation and General Provisions Act Cap. 2.

2. In these Regulations, unless the context otherwise requires, "recovered property" means any monies, property or thing of any description which was the subject of, and was recovered during the course of an investigation into, any offence alleged or suspected to have been committed under the Act.

Interpretation

3. (1) Any recovered property which comes into the possession of the Commission shall, subject to the other provisions of these Regulations, vest in the State if such recovered property cannot be returned because-

How recovered property may vest in State

(a) the rightful owner thereof, being the subject of an investigation in respect of an offence alleged or suspected to have been committed by him under the Act, leaves Zambia for the purpose, or apparent purpose, of evading the consequences of such investigation or of the trial of a prosecution brought against him.

(b) the rightful owner or the person in possession thereof absconds; or

(c) the rightful owner cannot be traced or ascertained; or

(d) the person in possession thereof admits his involvements in the alleged corrupt act and agrees to the surrender of such recovered property to the State because of such involvement.

(2) No recovered property shall vest in the State under paragraphs (a), (b) or (c) of sub-regulation (1) unless-

(a) the Commissioner gives, in accordance with these Regulations, notice to the effect that such recovered property is liable to vest in the State if it is not claimed within three months; and

(b) three months after the giving of such notice, such recovered property remains unclaimed.

(3) The notice referred to in sub-regulation (2) shall be deemed to have been duly given if it is published in the *Gazette* and a copy is-

(a) served on the person concerned; or

(b) left at, or posted to, the usual or last known place of abode or business of the person concerned; or

(c) published in a national newspaper if the person concerned is unknown or if his address or whereabouts are unknown.

4. (1) If the Commissioner is of the opinion that any recovered property is subject to speedy or natural decay, or that its immediate sale would be for the benefit of the owner, the Commissioner may, at any time, direct that such property be sold or destroyed:

Recovered property subject to decay

Provided that no sale or disposal of any such property shall be ordered without proper permission being first obtained from the court before which such property may be required as evidence.

(2) On the completion of any sale under sub-regulation (1) the right of any person to take legal proceedings for the recovery of the property sold shall cease; but a claim may be established to the proceeds of such sale.

5. All proceeds from the sale or other disposal of any recovery property which vests in the State in accordance with these Regulations shall be paid into the general revenues of the Republic.

Proceeds to be paid into general revenues

CHAPTER 92

THE GAMING MACHINES (PROHIBITION) ACT

An Act to repeal the Gaming Machines Act and to prohibit the keeping of gaming machines.

[22nd February 1974]

Act No.
2 of 1974
13 of 1994

1. This Act may be cited as the Gaming Machines (Prohibition) Act.

Short title

2. In this Act, unless context otherwise requires-

Interpretation

"gaming machine" means a machine for playing a game of chance, being a game which requires no action by any player other than the actuation or manipulation of the machine.

3. (1) Any person who, not being the holder of a casino licence under the Casino Act-

Penalty for keeping gaming machine for the purpose of gaming.
Cap 157

(a) keeps; or

(b) allows to be kept;

on any premises a gaming machine for the purpose of gaming shall be guilty of an offence and liable to a fine not exceeding ten thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

(2) When any person is convicted of an offence under the provisions of sub-section (1), the court by which he is convicted shall, in addition to any fine or imprisonment imposed under subsection (1), order the forfeiture to the Government of the gaming machine which was the subject-matter of the offence.

(As amended by Act No. 13 of 1994)

4. The Gaming Machine Act is hereby repealed.

Repeal of Cap. 431 of the 1971 edition

CHAPTER 93

THE PROBATION OF OFFENDERS ACT

ARRANGEMENT OF SECTIONS

Section

1. Short title and application
2. Interpretation
3. Power to make probation orders
4. Contents of probation orders
5. Probation order may require probationer to submit to treatment of mental condition
6. Copies of orders
7. Failure of probationer to comply with probation order
8. Commission of further offences by probationers
9. Transmission of documents when case is remitted to another court
10. No conviction in case where probation order made
11. Amendment of probation orders
12. Discharge of probation orders
13. Selection of probation officers
14. Contribution towards probationers and institutions
15. Appointments
16. Powers and duties and delegation
17. Probation Committee
18. Regulations

CHAPTER 93

PROBATION OF OFFENDERS

15 of 1953
13 of 1961
14 of 1963
21 of 1964
13 of 1994
*Government
Notices*
276 of 1964
497 of 1964

An Act to provide for the probation of offenders; and to provide for matters incidental thereto.

[4th December 1953]

1. This Act may be cited as the Probation of Offenders Act.

Short title and application

(As amended by G.N. No. 276 of 1964)

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

Interpretation

"probation officer" means a probation officer appointed under the provisions of section *fifteen*;

"probation order" has the meaning assigned to it by section *three*;

"probation period" means the period for which a probationer is placed under supervision by virtue of a probation order;

"probationer" means a person placed under supervision by a probation order;

"senior probation officer" means a senior probation officer appointed under the provisions of section *fifteen*.

(As amended by No. 13 of 1961)

3. (1) Where a court by or before which a person is convicted of an offence, not being an offence the sentence for which is fixed by law, is of the opinion that, having regard to the youth, character, antecedents, home surroundings, health or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which the offence was committed, it is expedient to do so, the court may, instead of sentencing him, make an order, hereinafter in this Act referred to as a "probation order", requiring him to be under the supervision of a probation officer for a period to be specified in the order of not less than one year nor more than three years.

Power to make probation orders

(2) Before making a probation order, the court shall satisfy itself that the offender understands the effects of the order, including any additional requirements proposed to be inserted therein under subsections (2) and (3) of section *four*, and that if he fails to comply therewith or commits another offence during the probation period he will be liable to be sentenced for the original offence; and if the offender

is not less than nineteen years of age the court shall not make the order unless he expresses his willingness to comply with the requirements thereof.

(As amended by No. 14 of 1963)

4. (1) A probation order shall name the District in which the probationer resides or will reside, and the probationer shall notify the probation officer responsible for his supervision of any change of residence.

Contents of
probation orders

(2) A probation order may require the probationer to comply during the whole or any part of the probation period with such requirements as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition by him of the same offence or the commission of other offences:

Provided that, without prejudice to the powers of the court to make an order for the payment of sums by way of costs, damages or compensation, the payment of such sums shall not be included among the requirements of a probation order.

(3) Without prejudice to the generality of subsection (2), a probation order may include requirements relating to the residence of the probationer:

Provided that-

(i) before making an order containing any such requirements, the court shall consider the home surroundings of the offender; and

(ii) where the order requires the probationer to reside in an institution, the name of the institution and the period for which he is so required to reside shall be specified in the order, and that period shall not extend beyond twelve months from the date of the order.

(4) Where a probation order requires the probationer to reside in any institution, the court making the order shall forthwith give notice of the terms of the order to the Minister.

(5) Where the District named in a probation order as the District in which the probationer resides or will reside is not the District in which the order is made, the court shall transmit to the court for the District named all documents and information relating to the case, and thereupon the last-mentioned court shall be deemed for all the purposes of this Act to be the court by which the probation order was made.

(As amended by No. 13 of 1961)

5. (1) Where the court is satisfied, on the evidence of a registered medical practitioner, appearing to the court to be experienced in the diagnosis of mental disorders, that the mental condition of an offender is such as requires and may be susceptible to treatment, but is not such as to justify his being adjudicated as a mentally disordered or defective person under the Mental Disorders Act, the court may, if it makes a probation order, include therein a requirement that the offender shall submit for such period, as may be specified therein, not extending beyond twelve months from the date of the order, to treatment by or under the direction of a duly qualified medical practitioner with a view to the improvement of the offender's mental condition.

Probation order may require probationer to submit to treatment of mental condition
Cap. 305

(2) The treatment required by any such order shall be such one of the following kinds of treatment as may be specified in the order, that is to say:

(a) treatment as a resident patient in such institution or place prescribed for the purpose of this section as may be specified in the order;

(b) treatment as a non-resident patient at such institution or place as may be specified in the order;

(c) treatment by or under the direction of such duly qualified medical practitioner as may be specified in the order;

but, except as aforesaid, the nature of the treatment shall not be specified in the order.

(3) A court shall not make a probation order containing such a requirement as aforesaid unless it is satisfied that arrangements have been or can be made for the treatment intended to be specified in the

order, and, if the offender is to be treated as a resident patient as aforesaid, for his reception.

(4) While the probationer is under treatment as a resident patient in pursuance of a requirement of the probation order, the probation officer responsible for his supervision shall carry out the supervision to such extent only as may be necessary for the purpose of the discharge or amendment of the order.

(5) Where the medical practitioner by whom or under whose direction a probationer is being treated for his mental condition in pursuance of a probation order, is of the opinion that part of the treatment can be better or more conveniently given in or at an institution or place not specified in the order, being an institution or place in or at which the treatment of the probationer will be given by or under the direction of a duly qualified medical practitioner, he may, with the consent of the probationer, make arrangements for him to be treated accordingly, and to receive part of his treatment as a resident patient in an institution or place notwithstanding that the institution or place is not one which could have been specified in that behalf in the probation order.

(As amended by No. 13 of 1961)

6. The court by which a probation order is made or which makes an order amending or discharging a probation order shall furnish copies of the order to the probationer, the principal probation officer, the probation officer responsible for the supervision of the probationer, and to the person in charge of the institution, if any, in which the probationer is to reside or is residing.

Copies of orders

(As amended by No. 13 of 1961 and No. 21 of 1964)

7. (1) If at any time during the probation period it appears to any Judge or magistrate that a probationer has failed to comply with any of the provisions of the probation order, he may issue a summons to the probationer requiring him to appear at the place and time specified therein or may issue a warrant for his arrest:

Failure of probationer to comply with probation order

Provided that a magistrate shall not issue such a summons or such a warrant except on information on oath.

(2) A summons or warrant under this section shall direct the probationer

to appear or to be brought before the court by which the probation order was made.

(3) If it is proved to the satisfaction of the court by which the probation order was made that the probationer has failed to comply with any of the provisions of the probation order, then-

(a) without prejudice to the continuance in force of the probation order, the court may impose a fine not exceeding three hundred penalty units; or

(b) the court may pass any sentence in respect of the original offence in respect of which the probation order was made which it could pass if the probationer had just been convicted before the court of that offence:

Provided that where a court has, under the provisions of paragraph (a), imposed a fine on the probationer, then, upon any subsequent sentence being passed upon the probationer under the provisions of this section or the next following section, the imposition of the said fine shall be taken into account in fixing the amount of the said sentence.

(As amended by Act No. 13 of 1994)

8. (1) If it appears to any Judge or magistrate that a probationer has been convicted of an offence committed during the probation period, he may issue a summons requiring the probationer to appear at the place and time specified therein or may issue a warrant for his arrest: Commission of further offences by probationers

Provided that a magistrate shall not issue such a summons or such a warrant except on information on oath.

(2) A summons or warrant issued under subsection (1) shall direct the probationer to appear or to be brought before the court by which the probation order was made.

(3) Where a probationer is convicted by a magistrate of an offence committed during the probation period, the magistrate may commit the probationer to custody or release him on bail, with or without sureties, until he can be brought or appear before the court by which the probation order was made.

(4) Where it is proved to the satisfaction of the court by which the probation order was made that the probationer has been convicted of an offence committed during the probation period, such court may pass any sentence in respect of the original offence which it could pass if the probationer had just been convicted before that court of such offence.

(5) Where a probationer is convicted before the High Court of an offence committed during the probation period, the High Court may pass any sentence which the court which made the probation order could pass if the probationer had just then been convicted before that court of the original offence.

9. Where a magistrate commits a probationer to custody, or releases him on bail, under the provisions of subsection (3) of section *eight*, the magistrate shall transmit to the court by which the probation order was made-

Transmission of documents when case is remitted to another court

(a) such particulars of the matter as he thinks fit; and

(b) a signed certificate of the conviction for the offence committed during the probationary period;

and, for the purposes of the proceedings in the court to which it is transmitted, such certificate, if purporting to be so signed, shall be admissible as evidence of the conviction.

10. (1) Subject as hereinafter provided, a conviction for an offence for which a probation order is made shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under the foregoing provisions of this Act.

No conviction in case where probation order made

Provided that where an offender, being not less than nineteen years of age at the time of his conviction for an offence for which he is placed on probation, is subsequently sentenced under this Act, the provisions of this subsection shall cease to apply to the conviction.

(2) Without prejudice to the provisions of subsection (1), the conviction of an offender who is placed on probation shall, in any event, be disregarded for the purposes of any enactment which imposes any disqualification or disability upon convicted persons, or authorises or

requires the imposition of any such disqualification or disability.

(3) The foregoing provisions of this section shall not affect-

(a) any right of such offender as aforesaid to appeal against his conviction, or to rely thereon in bar of any subsequent proceedings for the same offence;

(b) the reversioning or restoration of any property in consequence of the conviction of any such offender.

(As amended by No. 21 of 1964)

11. (1) Subject to the provisions of this section, where, on the application of a probationer or of the probation officer responsible for the supervision of the probationer, the court which made the probation order is satisfied that the provisions of the probation order should be varied, or that any provision should be inserted or cancelled, the court may by order amend the probation order accordingly:

Amendment of
probation
orders

Provided that no order shall be made under this section reducing the probation period, or extending that period beyond a period of three years from the date of the probation order.

(2) An order under subsection (1) may require a probationer to reside in an institution for any period not extending beyond twelve months from the date of that order, if the total period or aggregate of the periods for which he is required to reside in any institution or institutions under the probation order does not exceed twelve months.

(3) The court shall, if it is satisfied on the application of the probation officer responsible for the supervision of the probationer that the probationer has changed, or is about to change, his residence from the District named in the order to another District, by order vary the probation order by substituting for the reference to the District named therein a reference to the District where the probationer is residing or about to reside, and shall transmit to the court for the new District all documents and information relating to the case, and thereupon the last-mentioned court shall be deemed for all the purposes of this Act to be the court by which the probation order was made.

(4) Where an application is made by the probation officer responsible for the supervision of the probationer under this section, the court shall summon the probationer to appear before the court; and if the probationer is not less than nineteen years of age, the court shall not amend a probation order unless the probationer expresses his willingness to comply with the requirements of the order as amended:

Provided that this subsection shall not apply to an order cancelling a requirement of the probation order or reducing the period of any requirement or substituting a new District for the District named in the order.

(5) Where an order is made under this section for the variation, insertion, or cancellation of a provision requiring a probationer to reside in an institution, the court shall forthwith give notice of the terms of the order to the Minister.

(As amended by No. 13 of 1961 and No. 21 of 1964)

12. (1) The court by which a probation order was made may, on the application of the probationer or the probation officer responsible for the supervision of the probationer, discharge the probation order, and, where the application is made by the probation officer responsible for the supervision of the probationer, the court may deal with it without summoning the probationer.

Discharge of probation orders

(2) Where an offender in respect of whom a probation order has been made is subsequently sentenced for the offence in respect of which the probation order was made, the probation order shall cease to have effect.

(As amended by No. 13 of 1961)

13. (1) The probation officer who is to be responsible for the supervision of any probationer shall be selected by a senior probation officer.

Selection of probation officers

(2) Where a woman or girl is placed under the supervision of a probation officer, the probation officer shall be a woman.

(As amended by No. 13 of 1961)

14. Such contribution may be made towards the maintenance of probationers and the establishment or maintenance of institutions for the reception of probationers as Parliament may approve.
(As amended by No. 13 of 1961 and G.N. No. 276 of 1964)

Contribution towards probationers and institutions

15. The Minister may appoint-

Appointments

(a) a principal probation officer;

(b) such number of senior probation officers as he may deem necessary;

(c) a sufficient number of probation officers to perform such duties as may be prescribed.

(As amended by No. 13 of 1961)

16. (1) The principal probation officer may exercise or perform all the powers and duties of a senior probation officer or of a probation officer.

Powers and duties and delegation

(2) The principal probation officer may delegate all or any of his powers or duties in relation to any probationer to a senior probation officer, or to the probation officer who is responsible for the supervision of the probationer.

(3) A senior probation officer may exercise or perform all or any of the powers and duties of a probation officer.

(As amended by No. 13 of 1961)

17. (1) The Minister may, by Gazette notice, establish a Probation Committee which shall consist of such persons as the Minister may appoint.

Probation Committee

(2) The Probation Committee shall exercise and perform such powers and duties, incur such expenses and regulate its procedure in such manner as may be prescribed.

(As amended by No. 13 of 1961)

18. (1) The Minister may, by statutory instrument, make regulations for

Regulations

carrying this Act into effect.

(2) Without prejudice to the generality of the foregoing power, such regulations may prescribe-

- (a) the duties of the principal probation officer;
- (b) the duties of senior probation officers and of probation officers;
- (c) the constitution and duties of a probation committee or probation committees;
- (d) the form of records to be kept under this Act;
- (e) what shall be an institution for the purposes of this Act;
- (f) the remuneration of any person appointed to carry out any duties under this Act, and the fees and charges to be made for any act, matter or thing under this Act to be done or observed;
- (g) anything to be prescribed under this Act.

(As amended by No. 13 of 1961)

SUBSIDIARY LEGISLATION

SECTION 18-THE PROBATION OF OFFENDERS (PRESCRIBED FORMS) REGULATIONS

Government Notices
143 of 1955
198 of 1961
Statutory Instrument
53 of 1965

Regulations by the Minister

1. These Regulations may be cited as the Probation of Offenders (Prescribed Forms) Regulations. Title

2. The forms set out in the Schedule are hereby prescribed for use, with such variations as the circumstances of each case may require, in the cases to which they refer. Prescribed forms

SCHEDULE

(Regulation 2)

PRESCRIBED FORMS

THE PROBATION OF OFFENDERS ACT

P.O. Form 1

(Section 3)

PROBATION ORDER

IN THE SUBORDINATE COURT (CLASS) of the holden
at

THE PEOPLE v.....

..... (hereinafter called the
defendant) is this day convicted/found guilty for that he/she on the..... day
of, 19....., at.....
did

and the Court is of opinion, having regard to the nature of the offence, including any
extenuating circumstances, and the character of the defendant, that it is expedient to make a
probation order;

And the Court has explained to the defendant the effect of this order, including the additional
requirement specified below, and that if he/she fails to comply therewith or commits another
offence during the probation period, he/she will be liable to be sentenced/have an order made
against him/her, for the offence in respect of which he/she has now been convicted/found
guilty (and the defendant being not less than nineteen years of age has expressed his/her
willingness to comply with the requirements of this order);

It is therefore ordered that the defendant, who resides (or will reside) in the District
of

be required for the period of years from the date of this order to be under
the supervision of a probation officer appointed for or assigned to that District: and it is
further ordered that the defendant shall, during the said period, notify forthwith to the said
probation officer any change of his/her residence and comply with the following
requirements:

** () That he/she shall notify forthwith to his/her supervising probation officer any change of
employment.*

** () That he/she shall keep in touch with his/her supervising probation officer in accordance
with such instructions as may from time to time be given by the probation officer and in*

particular that he/she will, if the probation officer so requires, receive visits from the probation officer at his/her home.

()
.....
.....

()
.....
.....

(And it is ordered that the defendant do pay to.....
..... the sum of
(as damages for injury or compensation for loss) and do further pay to
.....the sum
of
for costs, the same sums to be paid (by instalments of
.....for every
days/months, the
first instalment to be paid) forthwith (or on the
day of, 19 ..).)

Dated the day of, 19 ..
.....

Magistrate

Copy to: Probationer.
Probation Officer.
Principal Probation Officer.
† Person in Charge
† Minister of Labour and Social Services.

*These are specimens of additional requirements which are commonly inserted and are not part of the prescribed form.

† In cases where institutional residence ordered by the Court.
(No. 198 of 1961 as amended by No. 53 of 1965)

THE PROBATION OF OFFENDERS ACT
P.O. FORM 2
(Section 7 (1))

INFORMATION FOR FAILURE TO COMPLY WITH PROBATION ORDER

IN THE SUBORDINATE COURT (CLASS) of the
holden at

THE PEOPLE v

THE INFORMATION of who upon
oath states:

..... was on the day of
....., 19....., convicted by the Subordinate Court
(Class)
of the holden at of *

and on the said date the said Court made a probation order requiring the
said
for the period of years then next ensuing to be under the supervision of
a probation officer appointed for or to the District of and
further requiring the said.....

*State
offence

*

.....
..
.....

And the said did on the
day of, 19....., fail to comply with the last-mentioned requirement inasmuch as he

*

.....
.....
Taken and sworn before me

Magistrate

(As amended by No. 53 of 1965)

THE PROBATION OF OFFENDERS ACT

P.O. FORM 3

(Section 7 (2))

SUMMONS FOR FAILURE TO COMPLY WITH PROBATION ORDER

IN THE SUBORDINATE COURT (CLASS) of the

holden at

..

THE PEOPLE v

INFORMATION on oath has been laid this day by

for that you on the day of, 19....., were convicted by or before the Subordinate Court (Class.....) of the

holden at..... of *

*State offence

and that on the said date the said Court made a probation order requiring you for the period of

years then next ensuing to be under the supervision of a probation officer appointed for or assigned to the District

of and further requiring you

to*.

*State requirement contravened

and by the said information it is further alleged that you did on the..... day of, 19....., fail to comply with the last-mentioned requirement of the said order.

You are therefore hereby summoned to appear on the day of 19....., at the hour of in thenoon, before the Court of the sitting at to answer the said information.

Dated the day of, 19.....

.....

(Magistrate

(As amended by No. 53 of 1965)

THE PROBATION OF OFFENDERS ACT
P.O. FORM 4
(Section 7 (2))

WARRANT OF ARREST FOR FAILURE TO COMPLY WITH PROBATION ORDER
IN THE SUBORDINATE COURT (CLASS.....) of the
holden at

*State
offence

To:

Commissioner of Police.

INFORMATION on oath has been laid this day (on the.....
day of....., 19.....)

by.....that.....hereinafter called the defendant, was on
the.....day of....., 19....., convicted by or before the
Subordinate Court (Class.....) of
the holden

at..... of *

and that on the said date the said Court made a probation order requiring the defendant for
the period of.....years then next ensuing to be under the supervision of a probation
officer appointed for or assigned to the District of.....and further requiring the
defendant to *

And by the said information it is further alleged that the defendant did on
the.....day of....., 19....., fail to comply with the
last-mentioned requirement of the said order.

*State
require-
ment
contra-
vened

You are therefore hereby commanded to bring the said defendant forthwith before the
(said) Court of the.....sitting at..... to answer the said
information.

Dated the day of, 19.....

.....

(Magistrate

ENDORSEMENT AS TO BAIL

It is directed that the defendant on arrest be released on bail on his/her entering into a
recognizance in the sum of.....with.....surety in the sum
of.....(each) for his/her appearance before the Court last within mentioned, at
the hour ofin thenoon on the day
of....., 19.....

.....

(Magistrate

THE PROBATION OF OFFENDERS ACT
P.O. Form 5
(Section 7 (3))

ORDER ON FAILURE TO COMPLY WITH REQUIREMENTS OF PROBATION
ORDER
IN THE SUBORDINATE COURT (CLASS.....) of the.....
holden at.....

*State
offence

THE PEOPLE v.....
.....(hereinafter called the defendant) was on the
.....day of....., 19....., convicted by or
before the Court of the..... holden at..... of
*..... and on the said date the said Court made a probation order
requiring him/her for the period ofyears then next ensuing to be under the supervision
of a probation officer appointed for or assigned to the District
of and further requiring him/her*

And the said defendant has this day appeared (or been brought) before the (said) Court of
the.....sitting at.....and it has been proved to the
satisfaction of the Court that he/she had failed to comply with the last-mentioned
requirement of the said order inasmuch as *

*State
require-
ment
contra-
vened

It is adjudged that the defendant in respect of his/her failure to comply with the said
requirement do forfeit and pay a fine of.....((or, where defendant is dealt
with for original offence) for the said offence in respect of which the said order was made
to *
).

*State
particulars
of breach

.....

(Magistrate

*State
judgment

(As amended by No. 53 of 1965)

THE PROBATION OF OFFENDERS ACT
P.O. FORM 6
(Section 7 (3))

WARRANT OF COMMITMENT FOR FAILURE TO COMPLY WITH PROBATION ORDER

*State offence

IN THE SUBORDINATE COURT (CLASS.....) of the.....
holden at

THE PEOPLE v.....

To: Commissioner of Police.

Superintendent of the Government Prison at

(hereinafter called the defendant) was on theday
of....., 19....., convicted by or before the Court of the.....

holden at.... of *.....

and on the said date the said Court made a probation order requiring him/her for the period of years then next ensuing to be under the supervision of a probation officer appointed for or assigned to the District of and further requiring him/her*

And the defendant has this day appeared (or been brought) before the (said) Court of the.....sitting at.....and it has been proved to the satisfaction of the Court that he/she has failed to comply with the last-mentioned requirement of the said order inasmuch as *

*State requirement contravened

It is adjudged that the defendant in respect of his/her failure to comply with the said requirement do forfeit and pay a fine of.....((or, where defendant is dealt with for original offence) for the said offence in respect of which the said probation order was made *

*State particulars of breach

You are required to lodge the defendant in the prison of..... together with this warrant, in which prison the aforesaid sentence shall be carried into execution according to law, and for this the present warrant shall be a sufficient authority to all whom it may concern.

*State judgment

.....

(Magistrate

(As amended by No. 53 of 1965)

THE PROBATION OF OFFENDERS ACT
P.O. FORM 7
(Section 8 (1))

INFORMATION ON COMMISSION OF FURTHER OFFENCE DURING PROBATION PERIOD

IN THE SUBORDINATE COURT (CLASS.....) of the
holden at.....

THE PEOPLE v

The information of..... who upon oath
states was on theday
of....., 19....., convicted by or before the Court of
theholden at.....of
*.....

and on the said date the said Court made a probation order requiring him/her for the period * State
of.....years then next ensuing to be under the supervision of a probation officer appointed for or assigned to the District offence
of.....And the said was on
the.....day of..... 19....., convicted by or before the
Court of the.....holden atof the following offence,
namely, *

committed by him/her during the said period, to wit, on the.....day
of, 19....., and was sentenced to (or ordered
to).....

*State
shortly
particulars
of offence

Taken and sworn before me,
.....

(Magistrate

(As amended by No. 53 of 1965)

THE PROBATION OF OFFENDERS ACT
P.O. FORM 8
(Section 8 (1))

SUMMONS ON COMMISSION OF FURTHER OFFENCE DURING PROBATION PERIOD

*State judgment

IN THE SUBORDINATE COURT (CLASS.....) of the.

holden

at

THE PEOPLE v.....

To

of

INFORMATION on oath has been laid this day by

for that you on the day of, 19....., were convicted

by or before the Court of theholden at

.....

of * ... and that on the said date the said Court made a probation order requiring you for the period of years then next ensuing to be under the supervision of a probation officer appointed for or assigned to the District of.....; and by the said information it is further alleged that you were on theday of, 19....., convicted by or before the Court of the holden atof the following offence, namely, *

committed by you during the said period, to wit, on the.....day of, 19....., and that you were sentenced (or ordered) to *

*State shortly particulars of offence

You are therefore hereby summoned to appear on theday of, 19....., at the hour of.....in thenoon, before the Court of the sitting at to answer the said information.

*State judgment

Dated the.....day of....., 19.....

.....

(Magistrate

(As amended by No. 53 of 1965)

THE PROBATION OF OFFENDERS ACT
P.O. FORM 9
(Section 8 (1))

WARRANT OF ARREST ON COMMISSION OF FURTHER OFFENCE DURING
PROBATION PERIOD
IN THE SUBORDINATE COURT (CLASS) of the.
holden at

*State
offence

.....
THE PEOPLE v

To: The Commissioner of Police.

INFORMATION on oath has been laid this day (or on the

day of, 19.....) by that

...
(hereinafter called the defendant) was on the day of.....

....
19....., convicted by or before the Court of holden at
..... of * and that on the
said date

the said Court made a probation order requiring the defendant for the period
ofyears then next ensuing to be under the supervision of a probation officer
appointed for or assigned to the District of..... and by the said information it
is further alleged that the defendant was on the..... day
of, 19....., convicted by or before the Court of
the holden atof the following offence, namely, *

committed by him/her during the said period, to wit, on the day
of, 19....., and was sentenced (or ordered) to *

*State
shortly
particulars
of offence

You are therefore hereby commanded to bring the said defendant forthwith before the
Court of thesitting at to answer the said
information.

*State
judgment

Dated the..... day of, 19.....
.....

(Magistrate

ENDORSEMENT AS TO BAIL

It is directed that the defendant on arrest be released on bail on his/her entering into a recognizance in the sum of withsurety in the sum of (each) for his/her appearance before the last-mentioned Court at the hour of in the noon on the day of, 19

(Magistrate

(As amended by No. 53 of 1965)

THE PROBATION OF OFFENDERS ACT
P.O. FORM 10
(Section 8 (3))

ORDER FOR REMAND OF A PROBATIONER CONVICTED OF FRESH OFFENCE
DURING PROBATION

PERIOD

IN THE SUBORDINATE COURT (CLASS.....) of the holden at

THE PEOPLE.v.....

To: Commissioner of Police.

Superintendent of the Government Prison at

.....(hereinafter called the defendant) has this day been brought before the Subordinate Court (Class.....) of the holden atcharged with the commission of a further offence during the currency of a probation order made in his/her case on the day of, 19....., by the Court of the holden at and sentenced (or ordered) to and it appears to the Court that on the date when the said offence was committed, to wit, the day of, 19....., there was in force a probation order made in his/her case on the day of, 19....., by the Court ofholden at

And whereas it appears necessary to remand the defendant until he/she can be brought before the Court by which the probation order is made.

You, the said Commissioner of Police, are hereby commanded to convey the defendant to the said prison, and there to deliver him/her to the Superintendent thereof, together with this warrant; and you, the Superintendent of the said prison, to receive him/her into your custody and keep him/her until the next Court of the holden at and then convey him/her before the said Court at the hour of in the noon to be further dealt with according to

law.

Dated the day of, 19

.....

(Magistrate)

ENDORSEMENT AS TO BAIL

The Court hereby certifies that defendant may be bailed by recognizance himself/herself in and surety in (each) to appear before the Court of the above mentioned holden at at the hour and on the day above mentioned, and that the defendant has (not) entered into his/her recognizance.

.....

(Magistrate)

(As amended by No. 53 of 1965)

THE PROBATION OF OFFENDERS ACT
P.O. FORM 11
(Section 8 (4))

ORDER IN RESPECT OF ORIGINAL OFFENCE ON COMMISSION OF FURTHER
OFFENCE DURING

PROBATION PERIOD

IN THE SUBORDINATE COURT (CLASS.....) of the
holden at

THE PEOPLE v

..... (hereinafter called the defendant) was on the
day of 19, convicted by or before the Court of the
holden at

of *..... and on the said date the said Court made a probation order *State
requiring him/her for the period of years then next ensuing to be under the offence
supervision of a probation officer appointed for or assigned to the District
of

And the said defendant has this day appeared (or been brought) before the (said) Court of
thesitting at and it has been proved to the
satisfaction of the Court that the defendant had on the day of,
19, been convicted by or before the Court of the holden
at of the following offence,

namely, *.....committed by him/her during the said period, to wit, on *State
the day of, 19....., and that he/she had been dealt with in fresh
respect of that offence. offence

It is adjudged that the defendant for the offence in respect of which such order was made *

.....
(Magistrate *State
judgment

(As amended by No. 53 of 1965)

THE PROBATION OF OFFENDERS ACT
P.O. FORM 12
(Section 8 (4))

ORDER IN RESPECT OF ORIGINAL OFFENCE ON COMMISSION OF FURTHER
OFFENCE DURING
PERIOD OF PROBATION ORDER

*State
offence

IN THE SUBORDINATE COURT (CLASS) of the holden
at

THE PEOPLE v.....

To: Commissioner of Police.

Superintendent of the Government Prison at

..... (hereinafter called the defendant) was on the

.....
day of....., 19....., convicted by or before the Court of the

.....
holden at.....of *..... and on the said date the said Court
made a probation order requiring him/her for the period of years then next
ensuing to be under the supervision of a probation officer appointed for or assigned to the
District of

And the defendant has this day appeared (or been brought) before the (said) Court of
the sitting atand it was proved to the satisfaction of
the Court that the defendant had on theday of....., 19....., been
convicted by or before the Court of theholden at.....of the
following offence, namely, *

committed by him/her during the said period, to wit, on theday
of....., 19....., and that he/she had been dealt with in respect of that offence; and it was adjudged
that the defendant for the offence in respect of which the said order was made*

*State
further
offence

You are hereby required to lodge the defendant in the prison of
together with this warrant, in which prison the aforesaid sentence shall be carried into
execution according to law and for this the present warrant shall be a sufficient authority
to all whom it may concern.

*State
judgment

Dated theday of....., 19.....

.....

(Magistrate

(As amended by No. 53 of 1965)

THE PROBATION OF OFFENDERS ACT

P.O. FORM 13 (Section 11)

ORDER DISCHARGING OR AMENDING A PROBATION ORDER

IN THE SUBORDINATE COURT (CLASS) of the..... holden at (District).....

....

THE PEOPLE v.....

A probation order having on theday of....., 19....., been made in the case ofby the Subordinate Court (Class.....) of the holden at requiring him/her to be under the supervision of a probation officer appointed for or assigned to the

District of..... (and further requiring him/her to

*

.....).

*State requirement amended

Upon the application of the principal probation officer/probationer the Court hereby discharges (or amends) the said probation order (as follows: *).

Dated the.....day of....., 19.....

.....

*State details of amendment

(Magistrate

NOTE.-If the amendment requires the probationer to reside in an institution, the name of the institution and the period for which he/she is so required to reside must be stated, and a copy of the order must be sent to the Minister of Labour and Social Services. See section 11 (5) of the Act.

(As amended by No. 53 of 1965)

THE PROBATION OF OFFENDERS ACT
P.O. FORM 14
(Section 11 (3))

ORDER AMENDING A PROBATION ORDER DUE TO CHANGE OF ADDRESS
IN THE SUBORDINATE COURT (CLASS.....) of the..... holden at
(District)

A probation order having on the day of..... 19....., been made in
the case of..... by the Subordinate Court (Class) of
the..... holden at.....requiring him/her to be under the
supervision of a probation officer appointed for or assigned to the District
of and further requiring him/her to notify the probation officer of
any change of residence.

Upon the application of the principal probation officer the Court hereby amends the said
probation order by substituting the District of..... for the District
of.....

Dated the.....day of....., 19.....

.....

(Magistrate

THE PROBATION OF OFFENDERS ACT
P.O. FORM 15
(Section 11 (4))

SUMMONS TO PROBATIONER AS REQUIRED UNDER THE ACT

IN THE SUBORDINATE COURT (CLASS.....) of the..... holden at
(District).....

THE PEOPLE v

To of

YOU are hereby summoned to appear before the Court of the sitting
aton the.....day of....., 19....., at the hour
of.....in the.....noon on the hearing of an application by the principal
probation officer to amend in the following manner the probation order made in your case
on the.....day of....., 19....., by the Subordinate Court (Class.....)
of the..... for the District of
holden

at.....*

.....
Dated the.....day of....., 19.....
.....

(Magistrate

*State
proposed
amendment
of
probation
order

(As amended by No. 53 of 1965)

SECTION 18-THE PROBATION COMMITTEE REGULATIONS

Government
Notices
271 of 1961
497 of 1964
Statutory
Instrument
52 of 1964
1 of 1976
37 of 1985

Regulations by the Minister

1. These Regulations may be cited as the Probation Committee Regulations.

Title

2. In these Regulations, unless the context otherwise requires-

Interpretation

"Committee" means the Probation Committee.

3. It shall be the duty of the Committee to advise the Minister on all matters of policy affecting the probation of offenders and the development of the probation system in Zambia.

Duties of
Committee

4. The chairman of the Committee shall be the Commissioner for Social Development in his capacity as the Principal Probation Officer and the deputy chairman shall be the Deputy Commissioner for Social Development.

Chairman and
Deputy Chairman

(No. 52 of 1964 . As amended by S.I. No. 52 of 1964, No. 1 of 1976 and No. 37 of 1985)

5. The Minister shall appoint a person to be secretary of the Committee.

Appointment of
secretary

6. (1) The Committee shall hold a meeting within three months of the 30th June of each year, and may meet more frequently at the discretion of the chairman:

Meetings of
Committee

Provided the chairman may, at any time, and shall at the request in writing of not less than half the number of members, within twenty-eight

days then next ensuing, call a meeting of the Committee.

(2) The Committee shall cause minutes of every Committee meeting to be kept.

(3) The Committee shall submit to the Minister a report of the activities of the Committee at the end of each calendar year.

7. (1) At all meetings of the Committee the chairman or in his absence the deputy chairman, or, in the absence of both, such member as the members present shall select, shall preside as chairman of the meeting. **Quorum and proceedings of Committee**

(2) At any meeting of the Committee one-third of the members of the Committee shall constitute a quorum for the transaction of business.

(3) At a meeting of the Committee every question shall be determined by a majority of the members voting on that question and, if the votes are equally divided, the chairman of the meeting shall have a second or casting vote, in addition to a deliberative vote.

(4) The proceedings of the Committee shall not be invalidated by any defect in the appointment or qualification of any member of the Committee so long as there is a quorum at any meeting.

(5) The Committee may appoint any sub-committee for any purpose that it may deem expedient, and may co-opt any person willing to be a member of any sub-committee so appointed.

8. Members of the Committee and persons co-opted to any sub-committee under the provisions of regulation 7 (5), other than public officers, shall be paid such subsistence and travelling allowances as the Minister may from time to time determine. **Allowances payable to members**

CHAPTER 94

THE EXTRADITION ACT

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CHAPTER 94

EXTRADITION

*Statutory
Instrument
8 of 1983
47 of 1968*

An Act to amend and consolidate the law relating to extradition to and from foreign and Commonwealth countries; to provide for the reciprocal backing of warrants; to repeal the Extradition and Fugitive Offenders Act and the Fugitive Offenders (Interim Provision) Act; and also to repeal the Fugitive Offenders Act, 1881, and the Extradition Acts, 1870 to 1906, of the United Kingdom, in their application to the Republic; and to provide for matters connected with and related to the foregoing.

[Parts I and IX-25th October, 1968]

[Rest*]

*Not in operation pending statutory order by the Attorney-General.

PART I

PRELIMINARY

1. (1) This Act may be cited as the Extradition Act.

Short title and
commencement

(2) The provisions of Parts II to VIII inclusive, and of Part X shall, respectively, come into operation on such date, or on such different dates, as the Attorney-General may, by statutory order, appoint.

2. (1) In this Act, unless the context otherwise requires-

Interpretation

"act" includes omission;

"authenticated", when used in relation to any document submitted by a foreign or Commonwealth country for purposes of any request or application made by such country pursuant to this Act or for the purpose

of any proceedings under this Act, has the meaning attributed to it by subsection (3) of section *fifty-four*;

"conviction" and "convicted" do not include or refer to a conviction which under the law of some other country is a conviction for contumacy, but the term "accused person" includes a person convicted of contumacy;

"date of commencement", in relation to Parts I and IX, means the 25th October, 1968, and, in relation to Parts II to VIII and Part X, respectively, means the date appointed by the Attorney-General in respect of each such Part pursuant to subsection (2) of section *one*;

"declared Commonwealth country" means a country declared by an order made under section *sixteen* to be a Commonwealth country in relation to which Part III applies;

"detention order", in relation to another country, means any order involving deprivation of liberty which has been made by a criminal court in that country in addition to or instead of a prison sentence;

"diplomatic agent" means an ambassador extraordinary and plenipotentiary, envoy extraordinary and minister plenipotentiary or *charge d'affaires* and includes a consular representative of a country for which no ambassador, envoy, minister or *charge d'affaires* has been accredited to the Republic;

"external warrant" means a judicial or other document issued under the law of, or of a part of, a country other than the Republic and authorising the apprehension of a person, and includes a warrant referred to in section *forty-six*;

"extraditable crime" means an offence against the law of the Republic for which extradition may be sought by the Republic-

(a) from any foreign country under any extradition agreement or under reciprocal facilities pursuant to Part II; or

(b) from any declared Commonwealth country pursuant to Part III;

"extraditable offence" means-

(a) an offence against the law of any foreign country for which extradition may be sought from the Republic under any extradition agreement or under reciprocal facilities pursuant to Part II; or

(b) an offence that is described in the First Schedule and for which extradition may be granted to a declared Commonwealth country pursuant to Part III;

"extradition" means the surrender of a person under the provisions of Part II or of Part III to or by a country in relation to which one of such Parts respectively applies;

"extradition agreement" has the meaning assigned to it by subsection (1) of section *three*;

"extradition provisions" means the provisions of an extradition agreement or of an order under section *three* applying Part II otherwise than in pursuance of an extradition agreement; or of an order under section *sixteen* applying Part III in relation to a declared Commonwealth country;

"foreign country" means any State outside the Republic other than a Commonwealth country, and includes every constituent part, colony or dependency of such State;

"*habeas corpus*" means the writ of *habeas corpus ad subjiciendum*;

"imprisonment" includes deprivation of liberty under a detention order;

"magistrate", except in subsection (3), means a senior resident magistrate or a resident magistrate;

"magistrate's court" means a subordinate court of the first class presided over by a senior resident magistrate or a resident magistrate;

"person claimed" means a person whose extradition is requested under Part II or III;

"prescribed country" means a country to which Part V applies by virtue of an order made pursuant to section *forty-five*;

"prison" includes a gaol, lock-up or other place of detention;

"requested country" means a country which, under Part II or III, as the case may be, is requested to surrender a person to the Republic for prosecution or punishment for an offence;

"requesting country" means a country which, under Part II or III, as the case may be, requests extradition from the Republic;

"sentence" includes detention under a detention order or restriction under a restriction order.

(2) This Act applies, except where otherwise provided, in relation to an offence whether committed or alleged to have been committed before or after the commencement of this Act.

(3) Where a person, who has been arrested in pursuance of the provisions of this Act, is brought before a magistrate who has no power to exercise jurisdiction under this Act, that magistrate shall have power to order such person to be brought before some magistrate having such jurisdiction and to remand or admit such person to bail, and effect shall be given to any such order.

PART II

EXTRADITION TO AND FROM FOREIGN COUNTRIES

A. Application of this Part

3. (1) Where by any international agreement or convention to which the Republic is a party an arrangement (in this Act referred to as an "extradition agreement") is made with a foreign country for the surrender by each country to the other of persons wanted for prosecution or punishment or where the President is satisfied that reciprocal facilities to that effect will be afforded by a foreign country, the President may, by statutory order, apply this Part in relation to that country. Application of Part II

(2) Where the Republic is a party to an arrangement amending an extradition agreement, the President may, by statutory order, so declare and the extradition agreement shall thereupon have effect as so amended.

(3) An order relating to an extradition agreement or an amendment thereof shall recite or embody the terms of the agreement or amendment and shall be evidence of the making of the agreement or amendment and of its terms.

(4) An order applying this Part in relation to any country otherwise than in pursuance of an extradition agreement may be made subject to such conditions, exceptions and qualifications as to its application as may be specified in the order.

(5) Every extradition agreement and every order applying this Part otherwise than in pursuance of an extradition agreement shall, subject to the provisions of this Part and of Part IV, have the force of law in accordance with its terms.

(6) The President may, by statutory order, revoke or amend any order

made under this section.

(7) On the revocation of an order applying this Part in relation to any country, this Part shall cease to apply in relation to that country.

(8) Every order made under this section shall be laid before the National Assembly as soon as may be after the making thereof.

4. (1) Subject to subsection (2), extradition under this Part shall be granted only in respect of an offence which is punishable under the laws of the requesting country and of the Republic by imprisonment for a maximum period of not less than one year or by a more severe penalty or for which, if there has been a conviction and sentence in the requesting country, imprisonment for a period of not less than four months or a more severe penalty has been imposed. Extraditable offences

(2) If a request is made for extradition in respect of an offence to which subsection (1) applies and the request includes also any other offence which is punishable under the laws of the requesting country and of the Republic but does not comply with the conditions as to the period of imprisonment which may be, or has been, imposed, then extradition may, subject to the provisions of this Part, be granted also in respect of the latter offence.

(3) In this section, any reference to an offence punishable under the laws of the Republic shall be construed as including references to an act which, if it had been committed in the Republic, would constitute such an offence.

B. Extradition to Foreign Countries

5. Where a country in relation to which this Part applies duly requests the surrender of a person who is being proceeded against in that country for an offence or who is wanted by that country for the carrying out of a sentence, that person shall, subject to and in accordance with the provisions of this Part and of Part IV, be surrendered to that country. Obligation to extradite

6. A request for the extradition of any person under this Part shall be made in writing to the Attorney-General and shall be communicated by- Request for extradition

- (a) a diplomatic agent of the requesting country, accredited to the Republic; or
- (b) any other means provided in the relevant extradition provisions.

7. A request for extradition under this Part shall be accompanied by the following documents: Documents to support request

- (a) the original or an authenticated copy of the conviction and sentence immediately enforceable or, as the case may be, of the external warrant or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting country;
- (b) a statement of each offence for which extradition is requested specifying, as accurately as possible, the time and place of commission, its legal description and a reference to the relevant provisions of the law of the requesting country;
- (c) a copy of the relevant enactments of the requesting country or, where this is not possible, a statement of the relevant law; and
- (d) as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality.

8. (1) If the Attorney-General receives a request made in accordance with this Part for the extradition of any person he shall, subject to the provisions of this section, signify to a magistrate that the request has been made and order the magistrate to issue a warrant for the arrest of that person and the magistrate shall issue a warrant accordingly. Warrant of arrest

(2) A warrant issued under this section may be executed in any part of the Republic and it shall not be necessary to have it endorsed by a magistrate exercising jurisdiction in the place where it is to be executed.

(3) If the Attorney-General is of opinion that the information communicated to him in pursuance of section *seven* is insufficient, he may request the requesting country to furnish such further information as he thinks proper and may fix a time limit for the receipt thereof.

(4) The Attorney-General shall refuse extradition if he is of opinion that the case is one in which extradition is prohibited under any provision of this Part or of Part IV or under the relevant extradition provisions.

(5) A person arrested under a warrant issued under this section shall be informed, in a language that he understands, of the reasons for his arrest and detention and shall be brought before a magistrate as soon as practicable.

(6) The provisions of section *twenty-nine* pertaining to the seizure and handing over of property of the person claimed shall apply to the execution of a warrant under this section.

9. (1) A magistrate, if he so thinks proper, may, without an order of the Attorney-General under section *eight*, issue a provisional warrant for the arrest of any person on the sworn information of a police officer not below the rank of Assistant Superintendent that a request for the provisional arrest of that person has been made, on the ground of urgency, on behalf of a country in relation to which this Part applies and on being satisfied that the request complies with the requirements of this section.

(2) A request for the provisional arrest of any person shall-

(a) state that one of the documents mentioned in paragraph (a) of section *seven* exists in respect of that person and that it is intended to send a request for his extradition;

(b) specify the nature of the offence and the time at which and the place where the offence is alleged to have been committed; and

(c) give a description of the person whose arrest is sought.

(3) A request for provisional arrest may be transmitted by post or telegraph or by any other means affording evidence in writing of the making of such request.

(4) Where a magistrate issues a warrant under subsection (1) he shall forthwith inform the Attorney-General of the issue of the warrant and the Attorney-General may, if he is of opinion that the case is one in which extradition is prohibited under the provisions of this Part or of Part IV or of the relevant extradition provisions, order the warrant to be cancelled and the person arrested thereunder to be discharged.

(5) A warrant issued under this section may be executed in any part of the Republic and it shall not be necessary to have it endorsed by a magistrate exercising jurisdiction in the place where it is to be executed.

(6) A person arrested under a warrant issued under this section shall be informed, in a language that he understands, of the reasons for his arrest and detention and shall, unless the warrant is cancelled under subsection (4), be brought, as soon as practicable, before a magistrate, and the magistrate shall remand the said person, either in custody or on bail, pending the receipt from the Attorney-General of a notice or order signifying that the request for extradition has been duly received, or ordering the release of that person under section *thirty*, and for this purpose the magistrate shall have the same powers of remand as if that person were brought before him on a preliminary inquiry.

(7) If, within the period of eighteen days after such person's arrest, no such notice or order, as is referred to in subsection (6), is received, he shall be released.

(8) The release of any person under subsection (4) or (7) shall not prejudice his re-arrest and extradition if a request for his extradition is afterwards made.

10. (1) Where a person claimed is before a magistrate pursuant to section *eight* or *nine* and-

Committal or discharge of person whose extradition is requested

(a) there is adduced before such magistrate-

(i) in the case of a person who is accused of an extraditable offence, such evidence as would, in the opinion of the magistrate, according to the law, justify the committal for trial of the person if the act constituting that offence had taken place in the Republic; or

(ii) in the case of a person who is alleged to have been convicted of an extraditable offence, sufficient evidence to satisfy the magistrate that the person had been convicted of that offence and is unlawfully at large; and

- (b) the magistrate is satisfied, after hearing any evidence tendered by the person, that-
- (i) the extradition of that person has been duly requested; and
 - (ii) this Part applies in relation to the requesting country; and
 - (iii) extradition of the person claimed is not prohibited by this Part or Part IV or by the relevant extradition provisions; and
 - (iv) the documents required to accompany a request for extradition under section *seven* have been produced;

the magistrate shall make an order committing that person to a prison there to await the warrant of the Attorney-General for his surrender to the requesting country and shall forward a copy of such committal order to the Attorney-General.

(2) The magistrate may, if of opinion that the information communicated under section *seven* is insufficient to enable a decision to be made, adjourn the hearing for such period as the magistrate thinks proper to enable information to be produced and, pending consideration of the case, the magistrate shall have the same powers of adjournment and remand as if the person claimed were brought before him on a preliminary inquiry.

(3) If after hearing the evidence adduced the magistrate is not satisfied that extradition should be granted under this Act in the case of the person claimed, he shall order that the person claimed be discharged and shall forthwith notify the Attorney-General in writing of the making of such order and of his reasons therefor.

11. A person committed under section *ten* shall not, except with his consent, given before a magistrate, be surrendered to the requesting country until the expiration of fifteen days from the date of his committal or until the conclusion of any *habeas corpus* proceedings brought by him or on his behalf or the determination of any request made pursuant to an application under subsection (2) of section *thirty-one*, whichever is the later.

Lapse of time before surrender

12. (1) Subject to sections *eleven* and *thirty-eight*, the Attorney-General may, if the person claimed is committed under section *ten* and is not discharged by the decision of the High Court in any *habeas corpus* proceedings, or consequent upon any request made pursuant to an application under subsection (2) of section *thirty-one*,

Surrender of prisoner under warrant of Attorney-General

issue a warrant directing that the person claimed be brought to some convenient point of departure from the Republic and there be delivered to such other person as, in the opinion of the Attorney-General, is duly authorised by the requesting country to receive him and convey him from the Republic to the requesting country; and he shall be surrendered accordingly.

(2) Any person to whom a warrant under subsection (1) directs a person claimed to be delivered may, for the purposes of surrender under this Act, receive, hold in custody, and convey out of the Republic the person so delivered to him.

(3) Any person to whom a person claimed is delivered under a warrant pursuant to subsection (1), shall, in execution of such warrant, convey the said person claimed out of the Republic without undue delay for the purpose of his surrender to the requesting country.

(4) The Attorney-General shall not issue a warrant under subsection (1) if he is of the opinion that the extradition of the person claimed would involve transit through any territory where there is reason to believe that his life or his freedom may be threatened by reason of his race, religion, nationality or political opinion, and, in such case, the Attorney-General shall order the discharge of the person claimed.

C. Extradition to Zambia from Foreign Countries

13. For the purposes of this Part, "extraditable crime" means an offence (wherever committed) against the law in force in the Republic and punishable under the laws of the Republic, being an offence for which extradition is provided under the terms of an extradition agreement, or for which reciprocal extradition facilities are afforded, between the Republic and the requested country; the requested country being one to which this Part applies by virtue of an order made pursuant to section *three*.

Definition

14. Where a person accused or convicted of an extraditable crime is, or is suspected of being, in or on his way to a foreign country to which this Part applies, or of being within the jurisdiction of, or of a part of, such a country, the Attorney-General may make a request to that country for the surrender of the person.

Request to foreign country may be made by Attorney-General

15. Where a person accused or convicted of an extraditable crime is surrendered by a foreign country to which this Part applies, the person may be brought into the Republic to be dealt with according to law.

Person surrendered may be brought to the Republic

PART III

EXTRADITION TO AND FROM DECLARED COMMONWEALTH COUNTRIES

A Application of this Part

16. (1) The President may, by statutory order, declare a Commonwealth country other than the Republic to be a Commonwealth country in relation to which this Part applies, and, subject to subsection (2), where any such order for the time being in force so declares, this Part applies in relation to that country.

Application of Part III in relation to Commonwealth countries

(2) Any order made pursuant to subsection (1) may provide that this Part applies in relation to a declared Commonwealth country subject to such limitations, conditions, exceptions or qualifications as are specified in the said order and, where any such order for the time being in force so provides, this Part applies in relation to that country subject to those limitations, conditions, exceptions or qualifications.

(3) The President may, by statutory order, revoke or amend an order under this section.

(4) On the revocation of an order applying this Part in relation to any Commonwealth country, this Part shall cease to apply in relation to that country.

(5) Every order made under this section shall be laid before the National Assembly as soon as may be after the making thereof.

17. For the purposes of this Part, an extraditable offence means an

Extraditable

offence against the law of, or of part of, a declared Commonwealth country-

offences under this Part

(a) the maximum penalty for which is death or imprisonment for not less than twelve months; and

(b) the act constituting which would, if it took place in the Republic, constitute an offence against the law of the Republic that-

(i) is described in the First Schedule;

(ii) would be so described if the description concerned contained a reference to any intent or state of mind on the part of the person committing the offence, or to any circumstance of aggravation, necessary to constitute the offence.

B. Extradition to Declared Commonwealth Countries

18. (1) Every person claimed by a declared Commonwealth country is liable, subject to this Part and to Part IV and to any limitations, conditions, exceptions or qualifications to which the application of this Part in relation to that country is subject, to be arrested and surrendered to that country as provided by this Part and is so liable whether the offence to which the request for the surrender of the person claimed relates is alleged to have been committed, or was committed, before or after the commencement of this Act or before or after the time when that country became a declared Commonwealth country.

Liability of person claimed to be surrendered and request for his surrender

(2) Every request for the surrender of a person claimed under this Part shall be made in writing to the Attorney-General by the declared Commonwealth country, which request shall be accompanied by an external warrant for the arrest of the person claimed issued by and in accordance with the law of the requesting declared Commonwealth country.

19. (1) The Attorney-General shall not give notice under subsection (1) of section *twenty* or issue a warrant under subsection (3) of section *twenty-four* in respect of a person claimed by a declared Commonwealth country if-

Restrictions on power of Attorney-General

(a) he is satisfied that to do so in the circumstances would be contrary to any of the provisions of Part IV expressly prohibiting extradition; or

(b) the President notifies the Attorney-General that he, the President, is satisfied that-

(i) the request for the surrender of the person claimed was made for the purposes of prosecuting or punishing him on account of his political opinions; or

(ii) if the person claimed is surrendered to that country, he may be prejudiced at his trial, or punished, detained or restricted in his personal liberty, by reason of his political opinions.

(2) If the Attorney-General is satisfied that, by reason of-

(a) the trivial nature of the offence that a person claimed is alleged to have committed or has committed; or

(b) the accusation against a person claimed not having been made in good faith or in the interests of justice; or

(c) the passage of time since the offence is alleged to have been committed or was committed;

and having regard to the circumstances under which the offence is alleged to have been committed or was committed, it would be unjust, oppressive or too severe a punishment to surrender the person claimed or to surrender him before the expiration of a particular period, the Attorney-General shall not issue a warrant under subsection (3) of section *twenty-four* in respect of the person claimed or shall not issue such a warrant before the expiration of that period, as the case may be.

20. (1) Subject to the provisions of section *nineteen* and of subsection (2), where a request for the surrender of a person claimed who is, or is suspected of being, in or on his way to the Republic is made to the Attorney-General by a declared Commonwealth country, the Attorney-General shall-

Notices by
Attorney-General

(a) if a warrant for the arrest of the person claimed has not been issued under section *twenty-one*, direct a notice in writing in accordance with Form 1 in the Second Schedule to a magistrate informing the said magistrate that the request has been made and authorising him to issue a warrant for the arrest of the person claimed; or

(b) if a provisional warrant for the arrest of the person claimed has been issued under paragraph (b) of subsection (1) of section *twenty-one*, and a person has been arrested under such warrant, direct a notice in writing in accordance with Form 2 in the Second Schedule to a magistrate before whom the person may be brought, informing the said magistrate that the request has been made.

(2) If the Attorney-General is of the opinion that the person claimed is not liable to be surrendered to the requesting country, he shall not direct a notice under subsection (1) in respect of the person claimed.

(3) If the Attorney-General is of opinion that the person claimed is not liable to be surrendered to the requesting country and a provisional warrant for his arrest has been already issued pursuant to paragraph (b) of subsection (1) of section *twenty-one*, the Attorney-General shall, by order in writing, direct such warrant to be cancelled, and, if the person claimed has been arrested under such warrant, the provisions of subsection (6) of section *twenty-one* shall apply *mutatis mutandis* in the event of such cancellation.

21. (1) Where-

Issue of
warrants

(a) a magistrate is authorised by the Attorney-General by a notice under paragraph (a) of subsection (1) of section *twenty* to issue a warrant for the arrest of a person claimed; or

(b) an application is made to a magistrate for the issue of a provisional warrant for the arrest of any person claimed who is, or is suspected of being, in or on his way to the Republic, and such application is made on the sworn information of a police officer not below the rank of Assistant Superintendent that a request for the provisional arrest of that person has been made, on the ground of urgency, on behalf of a declared Commonwealth country, and that the said country intends to send a request for the surrender of the said person claimed;

and there is produced to the magistrate such evidence as would, in his opinion, if the act constituting the extraditable offence had taken place within the Republic, justify, according to the law-

(i) the arrest by a police officer of the person claimed without the

issue of a warrant; or

(ii) the issue of a warrant for the arrest of the person claimed;

the magistrate shall, in accordance with Form 3 or 4 in the Second Schedule, as the case may be, issue a warrant for the arrest of the person claimed.

(2) A warrant issued under this section may be executed in any part of the Republic and it shall not be necessary to have it endorsed by a magistrate exercising jurisdiction in the place where it is to be executed.

(3) Where a magistrate issues a provisional warrant pursuant to paragraph (b) of subsection (1) he shall forthwith send to the Attorney-General a report stating that he has issued the said warrant and setting forth the evidence adduced on the application therefor.

(4) It is a sufficient compliance with subsection (3) in relation to any evidence consisting of testimony given on oath, or declared or affirmed to be true, by a person if-

(a) where the testimony was given in writing, the magistrate sends to the Attorney-General a copy of that writing certified by him to be a true copy; or

(b) where the testimony was given orally-

(i) if it has been reduced to writing, the magistrate sends to the Attorney-General that writing certified by him to be a true record of the testimony; or

(ii) if it has not been reduced to writing, the magistrate sends to the Attorney-General the notes made by the magistrate in respect of the testimony and certified by him to be a true summary of the testimony.

(5) Where the Attorney-General-

(a) receives a report of the issue of a provisional warrant and of the evidence pursuant to subsection (3); or

(b) otherwise becomes aware of the issue of such provisional warrant;

he may, if he thinks fit, by order in writing direct that the said warrant be cancelled.

(6) Where a person has been arrested under a warrant that is directed to be cancelled pursuant to subsection (5)-

(a) if he is held in custody, the person holding him shall, upon receipt of the order, cause him to be released; or

(b) if he has been admitted to bail, the recognizances upon which he was admitted to bail shall be, by force of this subsection, discharged.

22. (1) A person who is arrested under any warrant issued pursuant to section *twenty-one* shall be informed, in a language that he understands, of the reasons for his arrest and detention and shall, unless he is sooner discharged, be brought as soon as practicable before a magistrate's court. Proceedings after arrest

(2) A magistrate may remand a person brought before the court under this section, either in custody or on bail for a period or periods not exceeding seven days at any one time and, where a magistrate remands a person for such a period, the person may, at the expiration of the period, be brought before a magistrate's court presided over by that magistrate or any other magistrate.

(3) In the application of subsection (4) in relation to a person who has been arrested under a warrant issued pursuant to section *twenty-one*, "the magistrate" means the magistrate who presided over the magistrate's court before which the person is brought after arrest or upon the expiration of a period for which he has been remanded under this section, as the case may be.

(4) If the person was arrested under a provisional warrant issued pursuant to paragraph (b) of subsection (1) of section *twenty-one*, the magistrate shall remand the person pursuant to subsection (2) until the magistrate receives from the Attorney-General a notice under paragraph (b) of subsection (1) of section *twenty*, informing the magistrate that a request for the surrender of the person has been made to the Attorney-General by a declared Commonwealth country, or directing that the said warrant be cancelled pursuant to subsection (3) of that

section.

(5) Where the magistrate does not receive such a notice under paragraph (b) of subsection (1) of section *twenty* within such time as is reasonable having regard to all the circumstances, the magistrate shall order the provisional warrant to be cancelled and shall-

(a) if the person arrested is held in custody, order that he be released; or

(b) if the person arrested has been admitted to bail, make an order discharging the recognizances upon which he was admitted to bail.

(6) If the person was arrested under a warrant issued pursuant to an authority under paragraph (a) of subsection (1) of section *twenty* or the magistrate receives a notice from the Attorney-General under paragraph (b) of that subsection, and-

(a) there is produced to the magistrate an authenticated external warrant in respect of the person issued in the declared Commonwealth country that made the request for the surrender of the person; and

(b) there is adduced before the magistrate-

(i) in the case of a person who is accused of an extraditable offence, such evidence as would, in the opinion of the magistrate, according to the law, justify the committal for trial of the person if the act constituting that offence had taken place in the Republic; or

(ii) in the case of a person who is alleged to have been convicted of an extraditable offence, sufficient evidence to satisfy the magistrate that the person had been convicted of that offence; and

(c) the magistrate is satisfied, after hearing any evidence tendered by the person, that the person is liable to be surrendered to the declared Commonwealth country that made the request for the surrender;

the magistrate shall, subject to the provisions of section *twenty-three*, by warrant in accordance with Form 5 in the Second Schedule, commit the person to prison to await the warrant of the Attorney-General for his surrender.

(7) Where the magistrate is of the opinion that it would be dangerous to

the life or prejudicial to the health of the person to commit him to prison, he may, in lieu of committing him to prison, by warrant order that he be held in custody at the place where he is for the time being, or at any other place to which the magistrate considers he can be removed without danger to his life or prejudice to his health, until such time as he can without such danger or prejudice be committed to prison or he is surrendered, and, in such a case, the warrant shall be in accordance with Form 5 in the Second Schedule with such variations as are necessary to meet the circumstances.

(8) Where, pursuant to this section, a magistrate commits a person to prison or otherwise orders that he be held in custody, he shall forthwith send to the Attorney-General a certificate to that effect and such report, if any, relating to the proceedings as he thinks fit.

23. If the magistrate before whom a person claimed is brought pursuant to section *twenty-two*, or the court to which a person claimed has applied for a writ of *habeas corpus* is satisfied-

Power of
magistrate or
court to
discharge or to
postpone
surrender

(a) that to surrender the person claimed would, in the circumstances, be contrary to any of the provisions of Part IV expressly prohibiting extradition, he or it shall order that the person claimed be discharged; or

(b) that by reason of-

(i) the trivial nature of the offence that the person claimed is alleged to have committed or has committed; or

(ii) the accusation against the person claimed not having been made in good faith, or in the interests of justice; or

(iii) the passage of time since the offence is alleged to have been committed or was committed;

and, having regard to the circumstances under which the offence is alleged to have been committed or was committed, it would be unjust, oppressive, or too severe a punishment to surrender the person claimed to the declared Commonwealth country, or to surrender him before the expiration of a particular period of time, the magistrate or court may-

A. order that the person claimed be discharged; or

B. order that the person claimed be remanded for a period specified in the order and be released on bail until the expiration of that period; and that he, thereafter, unless previously discharged by order of the Attorney-General, under subsection (2) of section *thirty*, be committed to prison to await the warrant of the Attorney-General for his surrender; or

C. make such other order as he or it deems fit.

24. (1) When, in pursuance of this Part, a magistrate commits a person claimed (in this section referred to as "the prisoner") to prison, or otherwise orders that he be held in custody, to await the warrant of the Attorney-General for his surrender to a declared Commonwealth country, the magistrate shall inform the prisoner that he will not be surrendered until after the expiration of the period of fifteen days from the date of the committal or order and that, if he asserts that his detention is unlawful, he may apply to a court of competent jurisdiction for a writ of *habeas corpus*.

Surrender of
person claimed
to
Commonwealth
country

(2) A prisoner committed or ordered to be held in custody under subsection (1) shall not, except with his consent given before a magistrate, be liable to be surrendered to the declared Commonwealth country until the expiration of fifteen days from the date of the committal or order, or until the conclusion of any *habeas corpus* proceedings brought by him or on his behalf, or upon the determination of any request made pursuant to an application under subsection (2) of section *thirty-one*, whichever is the later.

(3) Upon the expiration of the operative period referred to in subsection (2), and subject to the provisions of section *nineteen*, the Attorney-General shall, if he is satisfied that the prisoner is liable to be surrendered to the declared Commonwealth country, by warrant in accordance with Form 6 in the Second Schedule, or where the prisoner is held in custody otherwise than at a prison, in accordance with that Form with such variations as are necessary to meet the circumstances of the case, order that the prisoner be brought to a convenient point of departure from the Republic there to be delivered into the custody of a person specified in the warrant and to be conveyed by that person, without undue delay, to a place in that country or within the jurisdiction of, or of a part of, that country and there surrendered to some person appointed by that country to receive him.

(4) A warrant issued pursuant to subsection (3) may be executed according to its tenor.

(5) The provisions of section *twenty-nine* pertaining to the seizure and handing over of property of the person claimed shall apply to the execution of a warrant under this section.

C. Extradition to Zambia from Declared Commonwealth Countries

25. For the purposes of this Part, "extraditable crime" means an offence (wherever committed) against the law in force in the Republic and punishable under the laws of the Republic by imprisonment for a maximum period of not less than twelve months or by a more severe penalty, being an offence that-

Definition

(a) is described in the First Schedule; or

(b) would be so described if the description concerned contained a reference to any intent or state of mind on the part of the person committing the offence, or to any circumstance of aggravation, necessary to constitute the offence.

26. Where a person accused or convicted of an extraditable crime is, or is suspected of being, in or on his way to a declared Commonwealth country or within the jurisdiction of, or of a part of, such a country, the Attorney-General may make a request to that country for the surrender of the person.

Request to
Commonwealth
country to be
made by
Attorney-General

27. Where a person accused or convicted of an extraditable crime is surrendered by a declared Commonwealth country, the person may be brought into the Republic and delivered to the proper authorities to be dealt with according to law.

Person
surrendered
may be brought
to the Republic

PART IV

GENERAL PROVISIONS ON EXTRADITION

28. This Part shall apply to all requests for extradition made pursuant to Part II and to Part III and to proceedings relating thereto or arising therefrom.

Application of
Part IV

29. (1) A police officer executing a warrant under section *eight, nine, twenty-one* or *twenty-four* may seize and retain any property-

Seizure and
handing over of
property

(a) which appears to him to be reasonably required as evidence for the purpose of proving the offence alleged; or

(b) which appears to him to have been acquired as a result of the alleged offence; and

(c) which-

(i) is found at the time of arrest in the possession of the person arrested under the warrant; or

(ii) is discovered subsequently.

(2) Subject to the provisions of this section, any property seized under subsection (1) shall, if a warrant is issued by the Attorney-General under section *twelve* or *twenty-four* for the surrender of the person claimed, be handed over to any person, who appears to the Attorney-General to be duly authorised by the requesting country to receive it, as soon as may be after the issue of the said warrant and the said property shall be so handed over notwithstanding that the extradition in question cannot be carried out by reason of the death or escape of the person claimed.

(3) Any property seized under subsection (1) may, if any criminal proceedings to which the property relates are pending in the Republic, be retained in the Republic in accordance with the law until the conclusion of the said proceedings or may, if the Attorney-General so directs, be handed over on condition that the requesting country shall return the property.

(4) Nothing in this section shall prejudice or derogate from any rights that may lawfully have been acquired by the Republic or by any person in the Republic in any property to be handed over under this section and, where any such rights exist, the property shall not be handed over except upon condition that the requesting country shall return it as soon as may be after the trial of the person surrendered and without charge to the Republic or the person having such rights.

30. (1) Whenever the Attorney-General is of opinion, in relation to a person who is for the time being on remand or awaiting his surrender to a requesting country, that extradition is prohibited under any relevant provision of this Act, the Attorney-General may at any time refuse extradition.

General power of Attorney-General to release

(2) In any such case, or in case it appears to the Attorney-General that the request for extradition is not being proceeded with, the Attorney-General may order that the said person, if in custody, shall be released, or if admitted to bail that the recognizances under which he was so admitted to bail be discharged.

31. (1) If the Attorney-General-

Political offences

(a) believes, for any reason, that the offence for which extradition is sought is a political offence or an offence connected with a political offence; or

(b) receives from a magistrate a request pursuant to subsection (2); he shall refer the request for extradition together with the accompanying documents and such other documents as he may deem to be relevant and also a statement of any other relevant information he may have in that regard to the President for a ruling on that issue.

(2) A person claimed under Part II or III may, at any time during the course of any extradition proceedings under this Act, apply to the magistrate to submit to the Attorney-General a request for a determination of the question whether the offence for which such person's extradition is sought is or is not a political offence or an offence connected with a political offence, and the magistrate shall within two days after the making of the said application submit such request in writing to the Attorney-General.

(3) The proceedings during which an application is made pursuant to subsection (2) shall not be suspended by reason of the making of such application.

(4) Within seven days after the receipt of a reference to him pursuant to

subsection (1), the President shall certify in writing to the Attorney-General his ruling upon such reference.

(5) Upon receipt by the Attorney-General of the certificate of the ruling of the President on any reference made pursuant to paragraph (b) of subsection (1), the Attorney-General shall forthwith notify the requesting magistrate thereof.

(6) If, upon any reference made to the President pursuant to paragraph (a) of subsection (1), the President certifies to the Attorney-General his ruling that the offence for which extradition is requested-

(a) is not a political offence or an offence connected with a political offence, the Attorney-General may grant or refuse extradition as provided by this Act but not upon the grounds of its being a political offence or an offence connected with a political offence;

(b) is a political offence or an offence connected with a political offence, the Attorney-General shall thereupon refuse extradition of the person claimed.

(7) Where a provisional warrant for the arrest of the person claimed has been issued pursuant to section *nine* or to paragraph (b) of subsection (1) of section *twenty-one*, and the President certifies to the Attorney-General his ruling that the offence for which extradition is requested is a political offence, the Attorney-General shall, pursuant to paragraph (b) of subsection (6), refuse extradition and further shall, by order in writing, direct that the said warrant be cancelled, and if the person claimed has been arrested under such warrant which has been cancelled and-

(a) is held in custody, the person holding him shall, upon receipt of the order, cause him to be released; or

(b) has been admitted to bail, the recognizances upon which he was admitted to bail shall be, by force of this subsection, discharged.

(8) If there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purposes of prosecuting or punishing the person claimed on account of his political opinions, or that that person may be prejudiced for that

reason, the said request may, for the purposes of this section, be deemed to be a request for extradition for a political offence or an offence connected with a political offence.

(9) An offence against the law of the requesting country may be regarded as being a political offence or an offence connected with a political offence notwithstanding that there are no competing political parties in that country.

32. Extradition shall not be granted if there are substantial grounds for believing that a request for extradition has been made for the purpose of prosecuting or punishing the person claimed on account of his race, religion or nationality or that the position of the person claimed may be prejudiced for any of these reasons. Race, religion or nationality

33. Extradition shall not be granted for offences under military law which are not offences under ordinary criminal law. Military offences

34. Extradition shall not be granted where a person claimed is a citizen of the Republic, unless the relevant extradition provisions otherwise provide. Zambian citizens

35. Extradition shall not be granted where the offence for which it is requested is regarded under the law of the Republic as having been committed in the Republic. Place of commission

36. Extradition shall not be granted where a prosecution is pending in the Republic against the person claimed for the offence for which extradition is requested. Pending proceedings for the same offence

37. (1) Subject to the provisions of sections *thirty* and *thirty-eight* and of subsection (2), where a person claimed who, pursuant to Part II or III, has been committed to prison or otherwise ordered to be held in custody, is in custody and is not surrendered or conveyed out of the Republic within two months after-

Discharge of person claimed if not conveyed out of the Republic

(a) the date of committal or order; or

(b) the date of the final conclusion of any *habeas corpus* proceedings brought by him or on his behalf; or

(c) the date of the determination by the President of a request made pursuant to an application under subsection (2) of section *thirty-one*; whichever is the later, the High Court, upon application made to it by or on behalf of the person claimed and upon proof that reasonable notice of the intention to make the application has been given to the Attorney-General, shall, unless reasonable cause is shown for the delay, order the person claimed to be discharged.

(2) Where, on application to the High Court under subsection (1), the Court is satisfied-

(a) that the state of health of the person claimed or other circumstances beyond the control of the Republic or the requesting country have prevented the person claimed from being conveyed out of the Republic; and

(b) that it is likely that within a reasonable time such circumstances will no longer prevent his removal;

the Court may fix a period within which he may be surrendered and he shall be discharged if not conveyed out of the Republic within that period.

(3) Pending the final determination of any application to the High Court under subsection (1), the person claimed shall not be surrendered or conveyed out of the Republic.

38. Where the person claimed is held in custody or has been admitted to bail in the Republic in respect of an offence that is alleged to have been committed in the Republic, or where such person is undergoing a sentence of imprisonment for a conviction in the Republic, the surrender of such person may be postponed by the Attorney-General until the said person has been discharged from custody, or the recognizances upon which he was admitted to bail have been discharged, as the case may be, whether as the result of an acquittal or on the expiration of his sentence or otherwise. Postponement of surrender

39. (1) Extradition shall not be granted in respect of an offence if final *Non bis in idem*

judgment has been passed by a competent court or authority in the Republic or in a third country upon the person claimed or he has undergone the punishment provided by the law of, or of a part of, the Republic or any third country in respect of that offence or of another offence constituted by the same act as that offence.

(2) Extradition may be refused by the Attorney-General for an offence which is also an offence under the law of the Republic if the Director of Public Prosecutions has decided either not to institute or to terminate proceedings against the person claimed in respect of the offence.

40. Extradition shall not be granted when the person claimed has, according to the law of either the requesting country or the Republic, become immune by reason of lapse of time from prosecution or punishment. Lapse of time

41. Extradition shall not be granted for an offence which is punishable by death under the law of the requesting country but is of a category for which the death penalty is not provided for by the law of the Republic or is not generally carried out, unless the requesting country gives such assurances as the Attorney-General considers sufficient that the death penalty will not be carried out. Capital punishment

42. (1) Extradition shall not be granted unless provision is made by the law of the requesting country or by the extradition agreement- Rule of speciality

(a) that the person claimed shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or otherwise restricted in his personal freedom, for any offence committed prior to his surrender other than that for which his extradition is requested or any other offence of which he could be convicted upon proof of the facts upon which the request for his surrender is based, except in the following cases:

- (i) with the consent of the Attorney-General; or
- (ii) where that person, having had an opportunity to leave the territory of that country, has not done so within forty-five days of his final discharge in respect of the offence for which he was extradited or has returned to the territory of that country after leaving it; and

(b) that where the description of the offence charged in the requesting country is altered in the course of proceedings, he shall only

be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence for which under this Act he would be liable to be surrendered to the requesting country.

(2) Notwithstanding anything in subsection (1), the fact that the law of the requesting country permits the taking of any measures necessary to remove the person from its territory or any measures necessary under its law, including proceedings by default, to prevent any legal effects of lapse of time shall not of itself prevent his extradition.

(3) The consent of the Attorney-General referred to in sub-paragraph (i) of paragraph (a) of subsection (1) shall not be given in the case of a person claimed under Part II unless a request for consent is submitted by the requesting country, accompanied by the documents mentioned in section *seven* and a legal record of any statement made by the person claimed in respect of the offence concerned.

(4) The consent of the Attorney-General referred to in sub-paragraph (i) of paragraph (a) of subsection (1) shall not be given in the case of a person claimed under Part III unless a request for consent is submitted by the requesting country, accompanied by the document mentioned in subsection (2) of section *eighteen* and a legal record of any statement made by the person claimed in respect of the offence concerned.

(5) The consent of the Attorney-General referred to in subparagraph paragraph (i) of paragraph (a) of subsection (1) shall be given if the offence for which it is requested is itself one for which there is an obligation to grant extradition.

43. (1) Extradition shall not be granted unless provision is made by the law of the requesting country or by the extradition agreement that that country shall not surrender to another country a person surrendered to the requesting country and sought by the other country for an offence committed before his surrender to the requesting country, except in the following cases:

Re-extradition
to a third
country

(a) with the consent of the Attorney-General; or

(b) where that person, having had an opportunity to leave the

territory of that country, has not done so within forty-five days of his final discharge in respect of the offence for which he was extradited or has returned to the territory of that country after leaving it.

(2) Before acceding to a request for consent to the extradition of a person claimed under Part II to whom subsection (1) applies, the Attorney-General may request the production of the documents mentioned in section *seven*.

(3) Before acceding to a request for consent to the extradition of a person claimed under Part III to whom subsection (1) applies, the Attorney-General may request the production of the document mentioned in subsection (2) of section *eighteen*.

(4) A person who has been surrendered to the Republic by a requested country shall not be surrendered to a third country for an offence committed before his surrender, except in the following cases:

(a) with the consent of the requested country signified under the seal of a Minister of State of that country, which seal shall be judicially noticed; or

(b) where that person, having had an opportunity to leave the Republic, has not done so within forty-five days of his final discharge in respect of the offence for which he was surrendered to the Republic or has returned to the Republic after leaving it.

44. If extradition is requested concurrently by more than one country, either for the same offence or for different offences, the Attorney-General shall decide which, if any, of the requests is to be proceeded with, having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the citizenship or nationality, and the ordinary place of residence of the person claimed and the possibility of subsequent surrender to another country.

Conflicting requests

PART V

RECIPROCAL BACKING OF WARRANTS

45. (1) Where the President is satisfied that reciprocal provision has been or will be made by or under the law of any country for the backing of warrants issued in the Republic and their execution in that country and that it is appropriate to do so, he may, by statutory order, declare that this Part shall apply in the case of that country (hereinafter called the "prescribed country") subject to such conditions, exceptions and qualifications as may be specified in the order and this Part shall apply accordingly.

Application of
Part V

(2) The President may, by statutory order, revoke or amend any order made under this section.

(3) Every order made under this section shall be laid before the National Assembly as soon as may be after the making thereof.

46. (1) Where an external warrant has been issued in a prescribed country for the arrest of a person accused or convicted of an offence against the law of that country and he is, or is suspected of being, in or on his way to the Republic, a magistrate may, if satisfied that the warrant is duly authenticated, make an endorsement on the warrant in accordance with Form 1 in the Third Schedule authorising the execution of the warrant in the Republic.

Backing of
warrant issued
in another
country

(2) An endorsement of an external warrant shall be signed by the magistrate and shall authorise any police officer to execute the warrant by arresting the person named in it and bringing him before a magistrate.

(3) A warrant endorsed under the provisions of this section shall be sufficient authority to any police officer to execute the warrant in any part of the Republic in accordance with this Part, and it shall not be necessary to have it endorsed by a magistrate exercising jurisdiction in the place where it is to be executed.

(4) This Part shall apply whatever the date of the external warrant sought to be endorsed pursuant to subsection (1) and whether the offence to which it relates is alleged to have been committed before or after the commencement of this Act.

47. Notwithstanding that an external warrant issued in a prescribed country for the arrest of any person may not yet have been endorsed in pursuance of this Part, a magistrate may issue a provisional warrant in accordance with Form 2 in the Third Schedule for the arrest of such person on such information and under such circumstances as would, in his opinion, justify the issue of a warrant if the offence of which that person is accused were an offence punishable by the law of the Republic and had been committed within his jurisdiction; and such provisional warrant may be executed according to its tenor.

Provisional
warrant

48. Where an external warrant for the arrest of a person accused of an offence has been endorsed in pursuance of this Part, the magistrate shall have the same power of issuing a warrant to search for any property alleged to be stolen or otherwise unlawfully taken or obtained by such person, or otherwise to be the subject of such offence, as that magistrate would have if the property had been stolen or otherwise unlawfully taken or obtained, or the offence had been committed, wholly within the jurisdiction of such magistrate.

Search warrant

49. (1) A person who is arrested under an external warrant endorsed pursuant to section *forty-six*, or under a provisional warrant issued pursuant to section *forty-seven*, shall be informed, in a language that he understands, of the reasons for his arrest and detention and shall be brought as soon as practicable before a magistrate.

Proceedings
after arrest

(2) A magistrate may remand a person brought before him under this section, either in custody or on bail, for a period or periods not exceeding seven days at any one time, and where a magistrate remands a person for such a period, the person may, at the expiration of the period, be brought before that magistrate or before any other magistrate.

(3) In the application of the succeeding subsections in relation to a person who has been arrested under an external warrant endorsed pursuant to section *forty-six* or under a provisional warrant issued pursuant to section *forty-seven*, "the magistrate" means the magistrate before whom the person is brought after arrest or at the expiration of a period for which he had been remanded under subsection (2), as the case may be.

(4) Where the person is arrested under a provisional warrant pursuant to

section *forty-seven* and the external warrant referred to in section *forty-six* authorising the arrest of the person has not been endorsed, the magistrate may, and shall if a reasonable time has elapsed for the endorsement of the external warrant-

(a) if the person arrested is held in custody, order his release; or

(b) if he has been admitted to bail, make an order discharging the recognizances upon which he was admitted to bail.

(5) Where the person is arrested-

(a) under an external warrant endorsed pursuant to section *forty-six*;
or

(b) under a provisional warrant issued pursuant to section *forty-seven* and the external warrant referred to in section *forty-six*, authorising the arrest of the person, has been endorsed;

the magistrate shall, subject to the provisions of section *fifty* and subsections (6) and (7), by warrant in accordance with Form 3 in the Third Schedule, order the person to be surrendered to the prescribed country in which the external warrant was issued and, for that purpose, to be brought to some convenient point of departure from the Republic and there delivered into the custody of the person specified (whether by name or rank) in the said endorsed external warrant to receive him.

(6) The magistrate shall, in every case, suspend the execution of the warrant issued pursuant to subsection (5), for a period of fifteen days from the date thereof, and may order that the said person be remanded in custody or admitted to bail during that period, and that the said person be surrendered under the said warrant at the expiration of the said period of fifteen days or upon the determination against the said person of any application made pursuant to section *fifty-one* or *fifty-two* or of any proceedings for *habeas corpus*, whichever is the later.

(7) Where the magistrate is of opinion that it would be dangerous to the life or prejudicial to the health of the person to surrender him to the prescribed country referred to in subsection (5), he may, in lieu of ordering that he be surrendered to that country, by warrant order that he be held in custody at the place where he is for the time being, or at any other place to which the magistrate considers that he can be removed

without danger to his life or prejudice to his health, until such time as he can without such danger or prejudice be surrendered to that country and, in such case, the warrant shall be in accordance with Form 3 in the Third Schedule with such variations as are necessary to meet the circumstances of the case.

(8) In proceedings under this section, the magistrate shall receive any evidence which may be tendered to show that the offence for which the surrender of the person arrested is requested under the said endorsed warrant or provisional warrant, as the case may be, is regarded under the law of the Republic as having been committed in the Republic or that a prosecution is pending in the Republic for the offence for which such person has been so arrested, and if the magistrate is satisfied that such is the case he shall refuse to order the surrender of the person to the prescribed country.

(9) A warrant issued pursuant to subsection (5) or (7) may be executed according to its tenor.

(10) Where the magistrate has ordered the surrender of a person pursuant to subsection (5), any property which was found in the possession of such person at the time of his arrest and which may be material as evidence in proving the offence for which he is being surrendered shall, if the magistrate so directs, be delivered up with the person on his surrender.

50. If a magistrate before whom a person is brought under this Part is satisfied that, by reason of-

- (a) the trivial nature of the offence the person is alleged to have committed or has committed; or
- (b) the accusation against the person not having been made in good faith or in the interests of justice; or
- (c) the passage of time since the offence is alleged to have been committed or was committed;

and, having regard to the circumstances under which the offence is alleged to have been committed or was committed, it would be unjust, oppressive or too severe a punishment to surrender the person to a prescribed country, or to surrender him before the expiration of a particular period, the magistrate may-

- (i) order that the person be discharged; or

Power of
magistrate to
order discharge
or to postpone
surrender of
person

- (ii) order that the person be surrendered after the expiration of a period specified in the order and order his release on bail until the expiration of that period; or
- (iii) make such other order as he deems just.

51. (1) Where-

Review of order
of magistrate

(a) a person, who is arrested under this Part, is dissatisfied with an order made by a magistrate under subsection (5) or (7) of section *forty-nine* or under section *fifty*; or

(b) a magistrate has made, under subsection (7) of section *forty-nine* or under section *fifty*, an order for the discharge of such arrested person, or an order for the surrender or admittance to bail of such person under the terms of which the person is not or may not be required to be surrendered to a requesting prescribed country within three months after the date of the order;

the arrested person, or the representative of the requesting prescribed country, or the person bringing the warrant, as the case requires, may apply to the High Court for a review of the order, and the said Court may review the order.

(2) The Court to which an application is made for the review of an order may-

(a) order the release on bail of the arrested person on such terms and conditions as the Court deems fit; or

(b) direct that the arrested person be kept in such custody as the Court directs until the order has been reviewed.

(3) The review of an order shall be by way of rehearing, and evidence in addition to, or in substitution for, the evidence given on the making of the order may be given on or in connection with the review.

(4) For the purpose of a review under this section, a copy of a public document or of a document filed in a department or office of the Republic, certified to be a true copy of the document by the person

purporting by the certificate to have charge of the document, shall be admissible as evidence of the facts stated in the document.

(5) Upon the review of an order, the Court may confirm or vary the order, or quash the order and substitute a new order in its stead.

(6) The order as confirmed or varied, or the substituted order, shall be transmitted by the Court to the court of the magistrate who made the original order, and the magistrate shall cause the confirmed, varied or substituted order, as the case may be, to be executed according to its tenor.

52. (1) A person who is ordered to be surrendered pursuant to section *forty-nine* may, at the time the order is made or within five days thereafter, apply to the magistrate to submit to the Attorney-General a request for a determination of the question whether the offence to which the warrant relates is a political offence or an offence connected with a political offence, and the Attorney-General shall refer such request to the President for his ruling thereon.

Restrictions on
return of person

(2) Within seven days after the receipt of a reference to him pursuant to subsection (1), the President shall certify in writing his ruling upon such reference and the Attorney-General shall forthwith notify the magistrate, in writing, thereof.

(3) The ruling of the President on any reference pursuant to subsection (1) shall be binding upon the magistrate and shall be final.

(4) A person shall not be surrendered under this Part pending the ruling of the President on any reference pursuant to subsection (1).

(5) Any application made pursuant to subsection (1) shall be without prejudice to the right of the applicant, under section *fifty-one*, to apply for a review of the order of the magistrate by the High Court.

53. (1) Whenever a prisoner whose surrender is authorised in pursuance of this Part is not conveyed out of the Republic within one month after the date when his surrender could have been effected under this Part, a magistrate may-

Discharge of
prisoner

- (a) upon application by or on behalf of the prisoner; and
- (b) upon proof that reasonable notice of the intention to make the application has been given to the person holding the warrant and to the Commissioner of Police or the officer in charge of the police of the district, city, town or area where the prisoner is in custody; and
- (c) unless sufficient cause is shown to the contrary;
order the prisoner to be discharged out of custody.

(2) Without prejudice to any application for an order of *habeas corpus* in respect of anything purporting to be done under this Part, any order or refusal to make an order of discharge under subsection (1) may be the subject of an appeal to the High Court.

PART VI

MISCELLANEOUS PROVISIONS RELATING TO SURRENDER AND RETURN

A. Evidence and Authenticated Documents

54. (1) Any deposition or statement on oath or affirmation taken in the foreign requesting country, declared Commonwealth country or prescribed country, as the case may be, and any copy of any such original deposition or statement, and any document that purports to have been received in evidence in such country or to be a copy of a document that has been so received in evidence, and any document that purports to be an external warrant, and any official certificate of or judicial document stating the fact of conviction may, if authenticated, be accepted for the purpose of any request or application pursuant to this Act, or may be received in evidence in any proceedings under this Act.

Evidence and authenticated documents

(2) In addition to any other means by which the same may be proved in proceedings under this Act, a magistrate or the High Court-

- (a) shall take judicial notice of any law of a foreign requesting

country or declared Commonwealth country which makes provision for any such matter as is referred to in paragraph (a) of subsection (1) of section *forty-two*, if an official copy of such law is produced and certified by the Minister responsible for the foreign affairs, or a diplomatic representative or consular officer, of that country to be in force;

(b) may receive as *prima facie* evidence of the existence and effect of any such agreement as is referred to in subsection (1) of section *forty-two* a certificate to that effect by such Minister or diplomatic representative or consular officer aforesaid.

(3) A document is authenticated for the purpose of any request or application made by a foreign, Commonwealth or prescribed country for the purpose of being admitted in evidence in proceedings under this Act if-

(a) in the case of a document that purports to be a deposition or statement on oath or affirmation given, declared or affirmed by a person in proceedings in the country concerned, the document purports to be certified by a Judge, magistrate or officer in or of that country to be the original document recording that testimony or a true copy of that original document;

(b) in the case of a document that purports to have been received in evidence, or to be a copy of a document that has been received in evidence, in proceedings in the country concerned, the document purports to be certified by a Judge, magistrate or officer in or of that country to have been, or to be a true copy of, a document that has been, so received in evidence;

(c) in the case of a document that certifies or states as a fact that a person has been convicted of an offence in the country concerned, the document purports to be certified by a Judge, magistrate or officer in or of that country;

(d) in the case of a document that purports to be an external warrant, the document purports to be signed by a Judge, magistrate or officer in or of the country in which the document was issued;

and the document purports to be authenticated by the oath of a witness or to be sealed with the official seal of a Minister of State in or of that country.

(4) Nothing in this section shall prevent the proof of any matter, or the admission in evidence of any document, in accordance with any other provision of this Act or any other law of the Republic.

B Miscellaneous

55. If a person, who is under arrest, escapes, by breach of prison or otherwise, out of the custody of a person acting under a warrant issued or endorsed in pursuance of this Act or out of the custody of a person to whose custody he had been committed in accordance with this Act, he may be retaken in the same manner as a person accused of a crime against the law of the Republic may be retaken upon an escape.

Escape

56. The laws with respect to-

Conditions of imprisonment

- (a) the conditions of imprisonment of persons imprisoned to await trial for offences against the law of the Republic;
- (b) the treatment of such persons during imprisonment; and
- (c) the transfer of such persons from prison to prison; apply, so far as they are capable of application, in relation to persons who have been committed to prison in the Republic pursuant to Part II, III or V.

57. Where a person accused or convicted of an extraditable crime is surrendered to the Republic under an extradition agreement, or under reciprocal extradition facilities by a foreign country or a declared Commonwealth country, pursuant to Part II or III, as the case may be, the person shall not, unless he has been returned, or has had an opportunity of returning, to that country-

Rule of speciality re a person surrendered to the Republic

(a) be proceeded against, sentenced or detained in the Republic for any offence that is alleged to have been committed, or was committed, prior to his surrender other than-

- (i) the offence to which the request for his surrender relates or any other offence of which he could be convicted upon proof of the facts on which that request was based; or
 - (ii) any other extraditable crime in respect of which that country consents to his being so detained or tried, as the case may be; or
- (b) be detained in the Republic for the purpose of his being surrendered to another country for trial or punishment for any offence

that is alleged to have been committed, or was committed, before his surrender to the Republic other than-

- (i) an offence of which he could be convicted upon proof of the facts on which the request referred to in paragraph (a) was based; or
- (ii) any offence in respect of which the country by which he was surrendered to the Republic consents to his being so detained.

58. (1) Transit through the Republic of a person being conveyed in custody from one country to another on his surrender pursuant to an agreement in the nature of an extradition agreement may be granted by the Attorney-General following a request to that effect made by the country to which he is being conveyed.

Transit

(2) Any person who is in custody during such transit shall be in lawful custody.

(3) Any person who, pursuant to this Act, has been delivered into the custody of another person for the purpose of being conveyed to the country to which his surrender has been ordered, shall, while in transit in such custody through any part of the Republic, be in lawful custody.

PART VII

OFFENCES COMMITTED ABROAD BY ZAMBIAN CITIZENS

59. (1) Where any citizen of the Republic does any act outside the Republic which constitutes an offence for which he would be liable to extradition but for the fact that he is a citizen of the Republic, he shall be guilty of the like offence and be liable on conviction to the like punishment as if the act were done within Zambia.

Offences
committed
abroad by
Zambian
citizens

(2) No prosecution for an offence under subsection (1) shall be commenced without the sanction of the Director of Public Prosecutions given after the Attorney-General has certified to him in writing that a request for extradition of the person claimed has been made pursuant to

section *six* or to subsection (2) of section *eighteen*, as the case may be, and that such request has been refused by reason of the provisions of section *thirty-four*.

(3) This section shall apply only to acts committed after the commencement of this Act.

(4) For the purpose of the exercise of jurisdiction, in relation to an offence to which subsection (1) applies, by any court of competent jurisdiction, the act constituting the offence shall be deemed to have been committed within the Lusaka District.

(5) For the purposes of this section-

(a) "the like offence" means such offence (by whatever name called) as would be punishable under the laws of Zambia if the act constituting the offence for which extradition is requested had been done in Zambia;

(b) "the like punishment" means punishment of the same form as, or of a less stringent form than, the punishment prescribed for such offence by the law of the requesting country.

PART VIII FORMS, REGULATIONS, RULES

60. (1) Strict compliance with any form in the Second and Third Schedules, or with any form prescribed under subsection (2), is not required, and any deviation therefrom which does not affect the substance of any such form or which is not calculated to mislead shall be sufficient.

Prescribed
forms

(2) The Attorney-General may, from time to time, by regulations made by statutory instrument, prescribe forms to be used for the purposes of this Act, and may, in like manner, amend, vary, cancel or alter any such prescribed form or any form in the Second and Third Schedules contained, or may prescribe additional forms for the purposes of the said Schedules.

61. The Attorney-General may, from time to time, by regulations made

Regulations

by statutory instrument, prescribe anything which he deems necessary for the better carrying out of this Act, and in like manner may prescribe such matters as may, by the provisions of this Act, be prescribed, and in respect of which no other prescribing authority is specified.

62. The Chief Justice may, by statutory instrument, make rules providing for the practice and procedure in relation to the performance by magistrates of functions under this Act, including the remanding of persons either in custody or on bail, the summoning of witnesses, the production of documents, the taking of evidence on oath or affirmation, the administering of oaths or affirmations, the payment of expenses of witnesses and the protection and immunity of magistrates, of legal practitioners appearing before magistrates, and of witnesses.

Rules of court

63. The Attorney-General shall have an embossed official seal for the purpose of authentication of documents in respect of extradition to or from the Republic under Part II or III, respectively.

Official seal

PART IX INTERIM PROVISIONS

64. (1) Pending the coming into operation of Part II, the Minister responsible for foreign affairs may, on behalf of the Republic, at any time, negotiate and conclude international agreements or conventions with foreign countries for the purposes of the said Part II, as if that Part already had the force of law.

Power to
implement Part
II pending
commencement

(2) Any international agreement or convention entered into with any foreign country, pursuant to subsection (1), shall not be implemented by the Republic until such time as Part II is applied in relation to that country by virtue of an order made pursuant to subsection (1) of section *three*.

65. (1) Pending the coming into operation of Part III, the President may, at any time, make and publish orders pursuant to subsection (1) of section *sixteen* applying Part III in relation to Commonwealth countries, as if Part III already had the force of law.

Power to
implement Part
III pending
commencement

(2) Any order made by the President pursuant to subsection (1) shall be deemed to come into force simultaneously with the coming into

operation of Part III by virtue of an order made by the Attorney-General pursuant to subsection (2) of section *one*.

66. Pending the coming into operation of Part X, nothing in section *sixty-four* or *sixty-five* shall be deemed to have the effect of repealing or disapplying, in whole or in part, the Acts intended to be repealed or disappplied by section *sixty-seven*. Provisions relating to sections 64 and 65

PART X REPEALS

67. (1) The Extradition and Fugitive Offenders Act and the Fugitive Offenders (Interim Provision) Act are hereby repealed. Repeals and savings. Cap. 162.

(2) The Fugitive Offenders Act, 1881, of the United Kingdom, shall cease to apply to the Republic as part of the law thereof and subsection (3) of section *fourteen* of the Interpretation and General Provisions Act shall apply in relation to this subsection as if that Act had been repealed. Cap. 163 of the old edition Cap. 2

(3) The Extradition Act, 1870, the Extradition Act, 1873, and the Extradition Act, 1906, of the United Kingdom, shall cease to apply to the Republic as part of the law thereof and subsection (3) of section *fourteen* of the Interpretation and General Provisions Act shall apply in relation to this subsection as if those Acts had been repealed. Cap. 2

(4) Notwithstanding the repeal or disapplication of the laws set out in subsections (1), (2) and (3), when, before the date of commencement, any request has been made or proceedings have been commenced for the surrender of a fugitive criminal or the return of a prisoner under any of the said laws to a country to which the relevant Part of this Act applies, the same may be continued under corresponding provisions of this Act, and in such case any steps taken before the date of commencement under any of the said laws shall be deemed to have been taken under and for the purposes of this Act.

FIRST SCHEDULE

(Sections 17 and 25)

OFFENCES-PART III

1. Wilful murder; murder.
2. Manslaughter.
3. An offence against the law relating to abortion.
4. Maliciously or wilfully wounding or inflicting grievous bodily harm.
5. Assault occasioning actual bodily harm.
6. Rape.
7. Unlawful sexual intercourse with a female.
8. Indecent assault.
9. Procuring, or trafficking in, women or young persons for immoral purposes.
10. Bigamy.
11. Kidnapping; abduction; false imprisonment; dealing in slaves.
12. Stealing, abandoning, exposing or unlawfully detaining a child.
13. Bribery.
14. Perjury; subornation of perjury; conspiring to defeat the course of justice.
15. Arson.
16. An offence concerning counterfeit currency.
17. An offence against the law relating to forgery.
18. Stealing; embezzlement; fraudulent conversion; fraudulent false accounting; obtaining property or credit by false pretences; receiving stolen property; any other offence in respect of property involving fraud.
19. Burglary; housebreaking; any similar offence.
20. Robbery.
21. Blackmail or extortion by means of threats or by abuse of authority.
22. An offence against the law relating to bankruptcy or insolvency.
23. An offence against the law relating to companies.
24. Maliciously or wilfully damaging property.
25. An act done with the intention of endangering a vehicle, vessel or aircraft.
26. An offence against the law relating to dangerous drugs or narcotics.
27. Piracy.

28. Revolt against the authority of a master of a ship or the commander of an aircraft.
29. Contravention of a prohibition on the importation or exportation of precious stones, gold or other precious metals.
30. Aiding, abetting, counselling or procuring the commission of, being an accessory before or after the fact to, or attempting or conspiring to commit an offence described in a preceding paragraph of this Schedule.

SECOND SCHEDULE

FORMS UNDER PART III

FORM 1
(Section 20 (1) (a))

REPUBLIC OF ZAMBIA

THE EXTRADITION ACT

NOTICE BY THE ATTORNEY-GENERAL

To:.....a Senior/Resident Magistrate at .

WHEREAS a request has been made to me, the Attorney-General, by
 , a declared Commonwealth country for the purposes
of the Extradition Act, for the surrender of.....(in this Notice referred
to as "the said person claimed"), who is accused (*or* has been convicted) of the offence
of.....alleged to have been committed (*or* committed) in (*or* within
the jurisdiction of)..... and is, or is suspected of being, in or on his way to the
Republic:

NOW THEREFORE I, the Attorney-General, inform you that the said request has been
made and authorise you to issue a warrant for the arrest of the said person claimed provided
that the provisions of the Extradition Act relating to the issue of such warrant have, in your
opinion, been complied with.

Given under my hand at Lusaka this.....day of.....,
19.....

Attorney-General

FORM 2
(Section 20 (1) (b))

REPUBLIC OF ZAMBIA

THE EXTRADITION ACT

NOTICE BY THE ATTORNEY-GENERAL

To:....., a Senior/Resident Magistrate at

I, the Attorney-General, hereby inform you that a request has been made to me by....., a declared Commonwealth country for the purposes of the Extradition Act, for the surrender of..... who is accused (*or* has been convicted) of the offence of..... alleged to have been committed (*or* committed) in (*or* within the jurisdiction of).....

Given under my hand at Lusaka this.....day of, 19.....

Attorney-General

FORM 3

(Section 21 (1) (a))

REPUBLIC OF ZAMBIA

THE EXTRADITION ACT

In the Subordinate Court (First Class).

WARRANT OF ARREST

To: Each and all Police Officers of Zambia:

WHEREAS the Attorney-General has notified me, a Senior/Resident Magistrate at....., that a request has been made to him for the surrender of.....(in this warrant referred to as "the said person claimed"), who is accused (*or* has been convicted) of the offence of.....alleged to have been committed (*or* committed) in (*or* within the jurisdiction of).....and is, or is suspected of being, in or on his way to the Republic:

THIS IS THEREFORE to authorise and command you forthwith to find the said person claimed and, having found him, to arrest him and to bring him before any Senior Resident Magistrate or Resident Magistrate to show cause why he should not be surrendered to..... pursuant to the Extradition Act.

Issued at.....the.....day of.....,
19.....

Senior/Resident Magistrate

FORM 4

(Section 21 (1) (b))

REPUBLIC OF ZAMBIA

THE EXTRADITION ACT

In the Subordinate Court (First Class).

PROVISIONAL WARRANT OF ARREST

To: Each and all Police Officers of Zambia:

WHEREAS it has been shown to me, a Senior/Resident Magistrate at, that (in this warrant referred to as "the person claimed") is accused (*or* has been convicted) of the offence of alleged to have been committed (*or* committed) in (*or* within the jurisdiction of) and the said person claimed is, or is suspected of being, in or on his way to the Republic:

THIS IS THEREFORE to authorise and command you forthwith to find the said person claimed and, having found him, to arrest him and to bring him before any Senior Resident Magistrate or Resident Magistrate to be further dealt with according to law.

Issued at this day of,
19.....

Senior/Resident Magistrate

FORM 5

(Section (6), (7))

REPUBLIC OF ZAMBIA

THE EXTRADITION ACT

In the Subordinate Court (First Class).

WARRANT OF COMMITMENT

To: Each and all Police Officers of Zambia and to the Superintendent/Officer in Charge of the Government Prison at and to any Prison Officer into whose hands this warrant shall come:

WHEREAS on this day of, 19 (in this warrant referred to as "the said person claimed") has been brought before me a Senior/Resident Magistrate of District to show cause why he should not be surrendered pursuant to the Extradition Act, on the ground of his being accused (*or* having been convicted) of the offence of alleged to have been committed (*or* committed) in (*or* within the jurisdiction of)

AND WHEREAS no sufficient cause has been shown to me why the said person claimed should not be surrendered pursuant to the Extradition Act:

THIS IS THEREFORE to authorise and command-

(a) you, the said police officers, to convey the said person claimed to the Government prison at and deliver him there to the Superintendent/Officer in Charge of the said prison together with this warrant; and

(b) you, the said Superintendent/Officer in Charge, to receive the said person claimed into your custody in the said prison and there safely to keep him until he is delivered therefrom in accordance with law.

Issued at this day of, 19.....

Senior/Resident Magistrate

FORM 6
(Section 24 (3))

REPUBLIC OF ZAMBIA

THE EXTRADITION ACT

WARRANT FOR SURRENDER OF PERSON CLAIMED

To: Each and all Police Officers of Zambia; and to the Superintendent/Officer in Charge of the Government Prison at and to any Prison Officer into whose hands this warrant shall come; and to

WHEREAS (in this warrant referred to as "the said person claimed") who is accused (*or* has been convicted) of the offence of alleged to have been committed (*or* committed) in (*or* within the jurisdiction of) was delivered into the custody of you the said Superintendent/Officer in Charge by warrant dated the day of, 19....., pursuant to the Extradition Act:

NOW THEREFORE I, the Attorney-General, in pursuance of the Extradition Act, order-

- (a) you, the said Superintendent/Officer in Charge, to deliver the said person claimed into the custody of the police officer bearing this warrant; and
- (b) you, the said police officer bearing this warrant, to receive the said person claimed into your custody and to convey him together with this warrant to a convenient point of departure from the Republic and there to surrender him to the said; and
- (c) you, the said, to receive the said person claimed into your custody and to convey him to a place in or within the jurisdiction of and there surrender him to some person appointed to receive him.

Given under my hand at Lusaka this day of, 19.....

Attorney-General

THIRD SCHEDULE

FORMS UNDER PART V

FORM 1
(Section 46 (1))

REPUBLIC OF ZAMBIA

THE EXTRADITION ACT

ENDORSEMENT ON WARRANT

Subordinate Court (First Class)

District of..... }
Republic of Zambia

WHEREAS I, a Senior/Resident Magistrate, am satisfied that the within warrant is authenticated for the purpose of the Extradition Act:

THIS IS THEREFORE to authorise and command each and all police officers of Zambia to find the said in the Republic and, having found him, to arrest him and to bring him before any Senior Resident Magistrate or Resident Magistrate to be further dealt with according to law.

Issued at on the day of, 19.....

Senior/Resident Magistrate

REPUBLIC OF ZAMBIA

THE EXTRADITION ACT

In the Subordinate Court (First Class).

PROVISIONAL WARRANT OF ARREST

To: Each and all Police Officers of Zambia:

WHEREAS (here specify the information and circumstances that justify the issue of the warrant):

THIS IS THEREFORE to authorise and command you forthwith to find in the Republic and, having found him, to arrest him and to bring him before any Senior/Resident Magistrate to be further dealt with according to law.

Issued at this day of, 19.....

Senior/Resident Magistrate

FORM 3

(Section 49 (5), (7))

REPUBLIC OF ZAMBIA

THE EXTRADITION ACT

In the Subordinate Court (First Class).

WARRANT FOR SURRENDER OF PERSON

To: Each and all Police Officers of Zambia; and

To: The Superintendent/Officer in Charge of the Government Prison
at; and

To: Any Prison Officer;
into whose hands this warrant shall come:

WHEREAS has been arrested under an external warrant endorsed pursuant to section 46 of the Extradition Act, for an offence alleged to have been committed (*or* committed) against the law of

OR

WHEREAS has been arrested under a provisional warrant issued pursuant to section 47 of the Extradition Act, and an external warrant for his arrest for an offence against the law of has been endorsed pursuant to section 46 of the said Extradition Act:

AND WHEREAS the said was delivered into the custody of you, the said Superintendent/Officer in Charge by order dated the day of, 19..... pursuant to subsection (5)/(7) of section 49 of the Extradition Act:

NOW THEREFORE I, a Senior/Resident Magistrate of District, order that the said be surrendered to and for that purpose order-

- (a) you, the said Superintendent/Officer in Charge to deliver the said into the custody of the police officer bearing this warrant; and
- (b) you, the said police officer bearing this warrant, to receive the said person into your custody and to convey him together with this warrant and the external warrant for his arrest endorsed pursuant to section 46 of the Extradition Act to a convenient point of departure from the Republic and there to surrender the said together with the said endorsed warrant to the person specified (whether by name or rank) in the said endorsed warrant to receive him.

Issued at this day
of, 19.....

Senior/Resident Magistrate

SUBSIDIARY LEGISLATION

THE EXTRADITION ACT

THE EXTRADITION (DECLARED COMMONWEALTH COUNTRIES) ORDER.

Order by the President.

- | | |
|---|---------------------------------------|
| 1. This Order may be cited as the Extradition (Declared Commonwealth Countries) Order. | Title |
| 2. Every country other than the Republic which is at the relevant time a member of the Commonwealth is hereby declared to be a Commonwealth country in relation to which Part III of the Act applies. | Declaration of Commonwealth countries |

CHAPTER 95

THE DANGEROUS DRUGS ACT

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title
2. Interpretation

PART II

RAW OPIUM, COCA LEAVES, POPPY-STRAW, CANNABIS, ETC.

3. Drugs to which Part II applies
4. Restriction of importation of drugs to which Part II applies

5. Restriction of exportation of drugs to which Part II applies
6. Power to control production, sale, etc., of drugs to which Part II applies
7. Penalisation of permitting premises to be used for smoking cannabis, etc.
8. Penalisation of intentional cultivation of cannabis plant

PART III

PREPARED OPIUM

9. Prohibition of importation and exportation of prepared opium
10. Penalisation of manufacture, sale, use, etc., of prepared opium
11. Meaning of "prepared opium"

PART IV

OTHER DRUGS AND INTERMEDIATE PRODUCTS OF SYTHESIS THEREOF

12. Restriction of importation and exportation of substances specified in Part I, but falling within Part II, of Schedule
13. Power to control manufacture, sale, etc., of substances specified in Part I of Schedule
14. Power of Minister to amend Schedule

PART V

GENERAL

Section

15. Miscellaneous offences
16. Appointment of inspectors
17. Powers of entry and inspection
18. Power of arrest
19. Penalties and forfeiture
- 19A. Penalty for trafficking
20. Attempts, etc., to commit offences

- 21. Offences by companies
- 22. Licences and authorities

SCHEDULE-Substances dealings in which are subject to control under Part IV

CHAPTER 95

DANGEROUS DRUGS

42 of 1967

19 of 1985

An Act to control the importation, exportation, production, possession, sale, distribution and use of dangerous drugs; and to provide for matters incidental thereto.

2 of 1989

13 of 1994

[26th August, 1967]

PART I

PRELIMINARY

1. This Act may be cited as the Dangerous Drugs Act.

Short title

2. (1) In this Act, unless the context otherwise requires-

Interpretation

"cannabis" (except where used in the expression "cannabis resin") means the flowering or fruiting tops of any plant of the genus cannabis from which the resin has not been extracted, by whatever name they may be designated;

"cannabis resin" means the separated resin, whether crude or purified, obtained from any plant of the genus cannabis;

"coca leaves" means the leaves of any plant of the genus of the erythroxylaceae from which cocaine can be extracted, either directly or by chemical transformation;

"the Commission" means the Commission on Narcotic Drugs of the Economic and Social Council of the United Nations;

"corresponding law" means a law stated in a certificate purporting to be issued by or on behalf of the government of a country outside Zambia to be a law providing for the control and regulation in that country of the manufacture, sale, use, export and import of drugs and other substances

in accordance with the provisions of the Single Convention, or a law providing for the control and regulation in that country of the manufacture, sale, use, export and import of drugs in accordance with the provisions of the Hague Convention, the Geneva Convention (No. 1) and the Geneva Convention (No. 2) as respectively amended by the Protocol;

"the Geneva Convention (No. 1)" means the international Opium Convention signed at Geneva on the 19th February, 1925;

"the Geneva Convention (No. 2)" means the Convention signed at Geneva on the 13th July, 1931, being the Convention for the purpose of supplementing the Geneva Convention (No. 1) and the Hague Convention;

"the Hague Convention" means the International Opium Convention signed at the Hague on the 23rd January, 1912;

"inspector" means a person appointed as an inspector under section *sixteen*;

"medicinal opium" means raw opium which has undergone the processes necessary to adapt it for medicinal use, whether it is in the form of powder or is granulated or is in any other form, and whether it is or is not mixed with neutral substances;

"opium poppy" means the plant of the species *Papaver somniferum L*;

"the Organisation" means the World Health Organisation;

"poppy-straw" means all parts except the seeds of the opium poppy, after mowing;

"the Protocol" means the Protocol on Narcotic Drugs signed at Lake Success, New York, on the 11th December, 1946;

"raw opium" includes powdered or granulated opium, but does not include medicinal opium;

"the Single Convention" means the Single Convention on Narcotic Drugs signed at New York on the 30th March, 1961.

(2) In any certificate referred to in the definition of "corresponding law" in subsection (1), a statement as to the effect of the law mentioned in such certificate or a statement in any such certificate that any facts constitute an offence against that law shall be conclusive.

(3) The specification in paragraph 1 of the Schedule of a substance shall, if the existence of isomers of that substance is possible within the specific chemical designation thereof, be taken to comprehend the specification of any isomer of that substance whose existence is possible

as aforesaid; and references in paragraphs 2, 3, 8, 13 and 14 of the Schedule to a substance for the time being specified in the said paragraph 1 shall be construed accordingly.

(4) For the purposes of this Act, an article shall be deemed to be imported under licence or exported under licence if the importer or exporter, as the case may be, is the holder of a licence issued under this Act authorising the importation or exportation, as the case may be, of the article and complies with the conditions, if any, of the licence, but not otherwise.

PART II

RAW OPIUM, COCA LEAVES, POPPY-STRAW, CANNABIS, ETC.

3. The drugs to which this Part applies are raw opium, coca leaves, poppy-straw, cannabis, cannabis resin and all preparations of which cannabis resin forms the base. Drugs to which Part II applies

4. It shall not be lawful for a person to import into Zambia a drug to which this Part applies except under a licence granted by the Minister. Restriction of importation of drugs to which Part II applies

5. (1) It shall not be lawful for a person to export from Zambia a drug to which this Part applies except under a licence granted by the Minister. Restriction of exportation of drugs to which Part II applies

(2) If at any time the importation into a foreign country of a drug to which this Part applies is prohibited or restricted by the laws of that country, there shall, while that prohibition or restriction is in force, be attached to every licence which is issued by the Minister under this Act authorising the export of that drug from Zambia such conditions as appear to him necessary for preventing or restricting, as the case may be, the exportation of that drug from Zambia to that country during such time as the importation of that drug into that country is so prohibited or restricted, and any such licence issued before the prohibition or restriction came into force shall, if the Minister by order so directs, be deemed to be subject to the like conditions.

6. The Minister may by regulations-

(a) provide for controlling or restricting the production, possession, sale and distribution of drugs to which this Part applies;

(b) provide for prohibiting the production, possession, sale or distribution of any drug to which this Part applies except by persons licensed or otherwise authorised in that behalf by the Minister, and the cultivation of plants from which such drugs are derived;

(c) prescribe measures to be taken for the eradication of plants, to which regulations made under paragraph (b) apply, found to be growing wild.

Power to control production, sale, etc., of drugs to which Part II applies

7. If a person-

(a) being the occupier of any premises, permits those premises to be used for the purpose of smoking cannabis or cannabis resin or of dealing in cannabis resin (whether by sale or otherwise); or

(b) is concerned in the management of any premises used for any such purpose as aforesaid;

he shall be guilty of an offence against this Act.

Penalisation of permitting premises to be used for smoking cannabis, etc.

8. A person who, except under a licence granted by the Minister, knowingly cultivates any plant of the genus cannabis shall be guilty of an offence against this Act.

Penalisation of intentional cultivation of cannabis plant

PART III

PREPARED OPIUM

9. It shall not be lawful for a person to import into, or to export from, Zambia, any prepared opium.

Prohibition of importation and exportation of prepared opium

10. If a person-

(a) manufactures, sells or otherwise deals in prepared opium; or

(b) has in his possession any prepared opium; or

Penalisation of manufacture, sale, use, etc., of prepared

(c) being the occupier of any premises, permits those premises to be used for the purpose of the preparation of opium for smoking or the sale or smoking of prepared opium; or

opium

(d) is concerned in the management of any premises used for any such purpose as aforesaid; or

(e) has in his possession any pipes or other utensils for use in connection with the smoking of opium or any utensils used in connection with the preparation of opium for smoking; or

(f) smokes or otherwise uses prepared opium or frequents a place used for the purpose of opium smoking;

he shall be guilty of an offence against this Act.

11. In this Part, "prepared opium" means opium prepared for smoking, and includes dross and any other residues remaining after opium has been smoked.

Meaning of "prepared opium"

PART IV

OTHER DRUGS AND INTERMEDIATE PRODUCTS OF SYNTHESIS THEREOF

12. It shall not, except under a licence granted by the Minister, be lawful for a person to import into, or to export from, Zambia a substance for the time being specified in Part I of the Schedule other than a preparation or other substance for the time being falling within Part II of the Schedule.

Restriction of importation and exportation of substances specified in Part I, but falling within Part II, of Schedule

13. (1) For the purpose of preventing the improper use of the substances for the time being specified in Part I of the Schedule, the Minister may by regulations provide for controlling the manufacture, sale, possession and distribution of those substances, and in particular, but without prejudice to the generality of the foregoing power, for-

Power to control manufacture, sale, etc., of substances specified in Part I of Schedule

(a) prohibiting the manufacture of a substance for the time being so specified except on premises licensed for the purpose by the Minister

and subject to any conditions specified in the licence;

(b) prohibiting the manufacture, sale or distribution of a substance for the time being so specified except by persons licensed or otherwise authorised under the regulations by the Minister and subject to any conditions specified in the licence or authority;

(c) regulating the issue by any medical practitioner, dental surgeon or veterinary surgeon of prescriptions containing a substance for the time being so specified and the dispensing of any such prescriptions; and

(d) requiring persons engaged in the manufacture, sale or distribution of a substance for the time being so specified to keep such books and furnish such information either in writing or otherwise as may be prescribed by the regulations.

(2) The regulations under this section shall provide for authorising a person lawfully carrying on business in accordance with the provisions of the Pharmacy and Poisons Act as an authorised seller of poisons- Cap. 299

(a) in the ordinary course of his retail business to manufacture, at any premises duly registered under Part II of the Pharmacy and Poisons Act, any preparation, admixture, or extract of a substance for the time being specified in Part I of the Schedule; or Cap. 299

(b) to carry on at any such premises as aforesaid the business of retailing, dispensing or compounding any such substance;

subject to the power of the Minister to withdraw the authorisation in the case of a person who has been convicted of an offence against this Act and who cannot, in the opinion of the Minister, properly be allowed to carry on the business of manufacturing or selling or distributing, as the case may be, any such substance as aforesaid.

(3) Nothing in any regulations made under this section shall be taken to authorise the sale by retail of poisons by a person who is not qualified in that behalf under, or otherwise than in accordance with, the provisions of the Pharmacy and Poisons Act or to be in derogation of the provisions of the said Act for prohibiting, restricting or regulating the sale of poisons. Cap. 299

14. If-

Power of
Minister to
amend
Schedule

(a) it appears to the Minister that a decision of the Commission or Organisation to alter any of the Schedules to the Single Convention or to apply to a substance measures of control applicable under that Convention to substances specified in the First Schedule thereto, requires the addition of a substance to, or the removal of a substance from, Part I or Part II of the Schedule to this Act or both the removal of a substance from Part I of that Schedule and the removal of a substance from Part II thereof; or

(b) it appears to the Minister probable that there will be taken such a decision as aforesaid of the Commission or of the Organisation as will require the addition of a substance to Part I of the Schedule to this Act and that, in the circumstances of the case, it is expedient to anticipate the decision;

the Minister may, by statutory order, make the requisite modifications in the said Schedule.

PART V

GENERAL

15. A person-

Miscellaneous
offences

(a) who acts in contravention of, or fails to comply with, a regulation made under this Act; or

(b) who acts in contravention of, or fails to comply with the conditions of a licence issued or authority granted under, or in pursuance of, this Act; or

(c) who for the purpose of obtaining, whether for himself or for any other person, the issue, grant or renewal of any such licence or authority as aforesaid, makes a declaration or statement which is false in any particular, or knowingly utters, produces or makes use of any such declaration or statement or a document containing the same; or

(d) who in Zambia aids, abets, counsels or procures the commission in a place outside Zambia of an offence punishable under the provisions of a corresponding law in force in that place, or does an act preparatory to, or in furtherance of, an act which if committed in Zambia would constitute an offence against this Act;

shall be guilty of an offence against this Act.

16. (1) Subject to the provisions of subsection (2), the Minister may appoint inspectors for the purposes of this Act. Appointment of inspectors

(2) No person shall be appointed as an inspector unless he is a person authorised to compound or dispense poisons or drugs under the Pharmacy and Poisons Act. Cap. 299

17. (1) An inspector shall, for the purpose of the execution of Parts II, III and IV, have power to enter the premises of a person carrying on the business of a producer, manufacturer, seller or distributor of any drugs to which Part II or III applies or any substances for the time being specified in Part I of the Schedule and to demand the production of, and to inspect, any books or documents relating to dealings in any such drugs or substances and to inspect any stocks of any such drugs or substances. Powers of entry and inspection

(2) If a magistrate is satisfied by information on oath that there is reasonable ground for suspecting-

(a) that any drugs to which Part II or III applies or any substances for the time being specified in Part I of the Schedule are, in contravention of the provisions of this Act or any regulations made thereunder, in the possession or under the control of a person in any premises, place, receptacle, aircraft, boat, train or other vehicle of whatever description; or

(b) that a document directly or indirectly relating to, or connected with, a transaction or dealing which was, or an intended transaction or dealing which would if carried out be, an offence against this Act, or in the case of a transaction or dealing carried out or intended to be carried out in a place outside Zambia, an offence against the provisions of a corresponding law in force in that place, is in the possession or under the control of a person in any premises, place, receptacle, aircraft, boat, train or other vehicle of whatever description:

he may grant a search warrant authorising any inspector, customs officer or police officer named in the warrant, at any time or times within one month from the date of the warrant, to enter, if need be by force, such premises, place, receptacle, aircraft, boat, train or other vehicle, as the case may be, and to search the same and any persons found therein and, if there is reasonable ground for suspecting that an offence against this Act has been committed in relation to any such drugs or substances as

aforesaid which may be found in such premises, place, receptacle, aircraft, boat, train or other vehicle or in the possession of any such persons, or that a document which may be so found is such a document as is mentioned in paragraph (b), to seize and detain those drugs or substances or that document, as the case may be.

(3) If a person wilfully delays or obstructs a person in the exercise of his powers under this section or fails to produce, or, conceals or attempts to conceal, any such books, stocks, drugs, substances or documents as aforesaid, he shall be guilty of an offence against this Act.

18. A police officer may arrest without warrant a person who has committed or attempted to commit, or is reasonably suspected by the police officer of having committed or attempted to commit an offence against this Act, if he has reasonable ground for believing that that person will abscond unless arrested, or if the name and address of that person are unknown to, and cannot be ascertained by, him.

Power of arrest

19. (1) Every person guilty of an offence against this Act shall, in respect of each offence, be liable (subject to subsection (2)) on conviction to a fine not exceeding five thousand penalty units or to imprisonment for a period not exceeding three years, or to both.

Penalties and forfeiture

(2) No person shall, on conviction for an offence against this Act consisting in a contravention of, or failure to comply with, a regulation under this Act relating to the keeping of books or the issuing or dispensing of prescriptions containing drugs to which Part II or III applies or substances for the time being specified in Part I of the Schedule, be sentenced to imprisonment without the option of a fine or to pay a fine exceeding three thousand two hundred penalty units, if the court is satisfied that the offence was committed through inadvertence, and was not preparatory to, or committed in the course of, or in connection with, the commission or intended commission of any other offence against this Act.

(3) A person convicted of an offence against this Act shall forfeit to the Republic all articles in respect of which the offence was committed, and the court before which he is convicted may order those articles to be destroyed or otherwise disposed of as the court thinks fit.

(As amended by Acts No. 19 of 1985, No. 2 of 1989 and No. 13 of 1994)

19A. Notwithstanding the penalties provided for in section *nineteen*, where a person is convicted of an offence under this Act, and the court is satisfied that the offence relates to trafficking in any drug to which Part II, III or IV of the Act applies, the offender shall be liable to an unlimited fine of not less than five hundred penalty units or to imprisonment for a period not exceeding fifteen years or to both, such fine and imprisonment.

Penalty for trafficking

(As amended by Acts No.19 of 1985 and No. 13 of 1994)

20. If a person attempts to commit an offence against this Act, or solicits or incites another person to commit such an offence, he shall, without prejudice to any other liability, be liable on conviction to the same punishment and forfeiture as if he had committed an offence against this Act.

Attempts, etc., to commit offences

21. Where a person convicted of an offence against this Act is a company, the chairman and every director and every officer concerned in the management of the company shall be guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

Offences by companies

22. A licence or authority issued or granted for the purposes of this Act by the Minister may be issued or granted on such terms and subject to such conditions (including, in the case of a licence, the payment of a fee) as the Minister thinks proper.

Licences and authorities

SCHEDULE

(Sections 12, 13 and 14)

SUBSTANCES DEALINGS IN WHICH ARE SUBJECT TO CONTROL UNDER PART IV

PART I

SUBSTANCES DEALINGS IN WHICH ARE SUBJECT TO CONTROL EXCEPT, IN THE CASE OF ANY SPECIFIED IN PART II, AS REGARDS IMPORTATION AND EXPORTATION

1. Acetorphine (M 183)
 - Acetyldihydrocodeine
 - Allylprodine
 - Alphacetylmethadol
 - Alphameprodine
 - Alphamethadol
 - Alphaprodine
 - Amphetamine
 - Anileridine
 - Benzethidine
 - Benzylmorphine (3-benzylmorphine)
 - Betacetylmethadol
 - Betameprodine
 - Betamethadol
 - Betaprodine
 - Clonitszene
 - Cocaine
 - Codeine
 - Desomorphine
 - Dexamphetamine
 - Dextromoramide
 - Diamorphine
 - Diampromide (n-(2-(N-methylphenethylamino)propyl)propionanilide
 - Diethylthiambutene
 - Dihydrocodeine
 - Dihydromorphine
 - Dimenoxadole
 - Dimepheptanol
 - Dimethylthiambutene
 - Dioxaphetyl butyrate

Diphenoxylate
Dipipanone
Eegonine
Ethylmethylthiambutene
Ethylmorphine (3-ethylmorphine)
Eticyclidine
Etonitazene
Etorphine (M99)
Etoxeridine
Fentanyl
Furethidine
Hydrocodone (dihydrocodsinone)
Hydromorphanol
Hydromorphone
Hydroxypethidine
Hydroxy-7,8,9,10-tetrahydro 6,6,9-trimethyl-dibenzo (b,d) pyran
Isomethadone
Ketobemidone
Levomethorphan
Levomoramide
Levophenacymorphan
Levorphanol
Mecloqualone
*Metaqualone
Metazocine
Methadone
Methadyl acetate
Methamphetamine
Methyldesorphine
Methyldihydromorphine (6-methyldihydromorphine)
Methypheridase
Metapon
Morpheridine
Morphine
Morphine methobromide, morphine-N-oxide and other pentavalent nitrogen morphine derivatives
Myrophine
Nicocodine
Nicodicodine
Nicomorphine (3,6-dinicotinoylmorphine)
Noracymethadol
Norcodeine
Norlevorphanol
Normethadone
Normorphine
Norpipanone

Oxycodone
 Oxymorphone
 Pethidine
 Phenadoxone
 Phenampromide
 Phenazocine
 Phencyclidine
 Phenmentrazine
 Phenomorphan
 Phenoperidine
 Pholcodine
 Piminidono
 Piritramide
 Proheptazine
 Properidine (1-methyl-4-phenylpiperidine-4-carboxylic acid isopropyl ester)
 Psilocybine
 Racemethorphan
 Racemoramide
 Racemorphan
 Rolicyclidine
 Tenocyclidine
 Thebacon
 Thebaine
 Trimeperidine
 4-Cyano-2-dimethylamine-4, 4-diphenylbutane
 1-(3-cyano-3,3-diphenylpropyl) 4(1-piperidine) piperidine-4-carboxylic acid amide
 and its salts, and any preparation, admixture, extract or other substance containing
 any proportion of 1-(3-cyano-3, 3-diphenylpropyl-4-(1-piperidine)
 piperidine,4-carboxylic acid amide
 4-Cyano-1-methyl-4-phenylpiperidine
 3-(1,2-dimethylheptyl-1)
 1-Methyl-4-phenylpiperidine-4-carboxylic acid
 2-Methyl-3-morpholine-1,1-diphenylpropane-carboxylic acid
 4 Phenylpiperidine-4-carboxylic acid ethyl ester
 (+)-Lysergide
 N,N-diethyltryptamine
 N,N-dimethyltryptamine

2. Any ester (other than one expressly mentioned in paragraph 1) or other (other than one so mentioned) of a substance for the time being specified in that paragraph.
3. Any salt of a substance for the time being specified in paragraph 1 or 2.
4. Any derivative of cegonine which is convertible to cegonine or to, cocaine.
5. Concentrate of poppy-straw (that is to say, the material arising when poppy-straw has entered into a process for the concentration of its alkaloride).

6. Medicinal opium.
7. Any extract or tincture of cannabis.
8. Any preparation, admixture, extract or other substance containing any proportion of a substance for the time being specified in paragraph 1 or in any of paragraphs 2 to 7.

(As amended by S.I. 144 of 1985)

PART II

PREPARATIONS AND OTHER SUBSTANCES FALLING WITHIN PART I WHOSE IMPORTATION AND EXPORTATION IS EXCEPTED FROM CONTROL

9. (1) A preparation of not more than one of the substances to which this paragraph applies, when compounded with one or more other ingredients and containing not more than 100 milligrammes of the substance per dosage unit and with a concentration of not more than 2.5 per centum in undivided preparations.

(2) The substances to which this paragraph applies are acetyldihydro-eoedine, codeine, dihydrocodeine, ethylmorphine (3-ethylmorphine), norcodeine, pholeodine and their respective salts.

10. A preparation of cocaine containing not more than 0.1 per centum of cocaine calculated as cocaine base, being a preparation compounded with one or more other ingredients in such a way that the cocaine cannot be recovered by readily applicable means or in a yield which would constitute a risk to health.

11. A preparation of medicinal opium or morphine containing (in either case) not more than 0.2 per centum of morphine calculated as anhydrous morphine base, being a preparation compounded with one or more other ingredients in such a way that the opium or, as the case may be, the morphine, cannot be recovered by readily applicable means or in a yield which would constitute a risk to health.

12. Preparations of diphenoxylate containing, per dosage unit, not more than 2.5 milligrammes of diphenoxylate calculated as base and not less than 25 microgrammes of atropine sulphate.

13. Pulvis Ipecacuanhae et Opii Compositus:

10 per centum opium, in powder,

10 per centum ipecacuanha root, in powder, well mixed with

80 per centum of any other powdered ingredient containing neither a drug to which Part II or III of this Act applies nor a substance for the time being specified in paragraph 1 of this Schedule or in any of paragraphs 2 to 8 thereof.

14. Mixtures containing not more than one of the preparations specified in paragraphs 9 to 13, being mixtures whereof none of the other ingredients is either a drug to which Part II or III of this Act applies or a substance for the time being specified in paragraph 1 of this Schedule or in any of paragraphs 2 to 8 thereof.

SUBSIDIARY LEGISLATION

THE DANGEROUS DRUGS REGULATIONS

[ARRANGEMENT OF REGULATIONS]

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DANGEROUS DRUGS

**SECTION 6-DANGEROUS DRUGS REGULATIONS
Regulations by the Minister**

Statutory
Instrument
128 of 1971
50 of 1976
65 of 1993
Act No.
13 of 1994

PART I

PRELIMINARY

1. These Regulations may be cited as the Dangerous Drugs Regulations.

Title

2. In these Regulations, unless the context otherwise requires-

Interpretation

"authorised as a member of a group" means authorised by virtue of being a member of a class in respect of which the Permanent Secretary has granted an authority under and for the purpose of regulation 4, 5, 12 or 13 which is in force;

"group authority" means such an authority so granted, and "his group authority", in relation to a person who is a member of such a class, means the authority so granted to that class;

"authorised seller of poisons" means an authorised seller of poisons within the meaning of the Pharmacy and Poisons Ordinance; Cap. 299

"dental surgeon" means a person registered as a dental surgeon under the Medical and Allied Professions Act, 1965; Cap. 297

"generally authorised" in relation to any person, means authorised by, as the case may be, regulation 6, 11, 14, 16, 17 or 18 by virtue of being a member of a class specified in that regulation, or of being a person of a description so specified, and "general authority" means the authority possessed by a person as aforesaid;

"licensed" means duly licensed by a licence issued by the Permanent Secretary to the person named therein, or, as the case may be, in respect of premises named therein, under and for the purposes of regulation 4, 5, 7, 11, 12, 13, 15 or 30, and "licence" and "licensed premises" shall be construed accordingly;

"medical practitioner" means a person registered as a medical practitioner under the Medical and Allied Professions Act, 1965; Cap. 297

"midwife" means a person registered as a midwife under the Medical and Allied Professions Act 1965, or any written law amending or replacing that Act, which provides for registration of midwives; Cap. 297

"nurse" means a person registered as a nurse under the Medical and Allied Professions Act, 1965, or any written law amending or replacing that Act, which provides for registration of nurses; Cap. 297

"Permanent Secretary" means the Permanent Secretary responsible for the Department of the Government for the time being administering the Dangerous Drugs Act, 1967; Cap. 95

"pharmacist" means a person registered as a pharmacist under the Medical and Allied Professions Act, 1965; Cap. 297

"Pharmacy Act book" means either of the books required to be kept by subsection (2) of section *twenty-one* and subsection (3) of section *twenty-four* of the Pharmacy and Poisons Act. Cap. 299

"prescription" means a prescription for a single individual given by a medical practitioner for the purposes of medical treatment, by a dental surgeon for the purposes of dental treatment, or by a veterinary surgeon for the purposes of animal treatment;

"register" means a bound book and does not include any form of loose leaf register or card index;

"registered premises" means premises registered in terms of the Pharmacy and Poisons Act;

Cap. 299

"retail business" means the business of retailing, dispensing, or compounding drugs carried on at a shop;

"retail dealer" means a person who carries on a retail business;

"veterinary surgeon" means a person registered as a veterinary surgeon under the Veterinary Surgeons Act;

Cap. 243

"wholesale dealer" means any person who carries on the business of selling drugs to persons who buy to sell again.

PART II

CONTROL OF RAW OPIUM, ETC.

3. This Part of these Regulations shall apply to any drug, resin or preparation, other than poppy straw and extract or tincture of cannabis, to which Part I of the Act applies, and hereafter in this Part the expression "drug" means any such drug, resin or preparation as aforesaid.

Application

4. (1) A person shall not supply, procure, offer to supply or procure, to or for any person, including himself, whether in Zambia or elsewhere, or advertise for sale a drug unless he is generally authorised, or, under this regulation, licensed or authorised as a member of a group so to do, nor otherwise than in accordance with the provisions of these Regulations,

Supply,
procuring, and
advertising, of
drugs

and, in the case of a person licensed or authorised as a member of a group, with the terms and conditions of his licence or group authority.

(2) A person shall not supply, procure, or offer to supply or procure a drug to, or for, any person in Zambia unless that person is generally authorised, or, under regulation 5, licensed or authorised as a member of a group to be in possession of the drug and the drug is to be supplied or procured in accordance with the provisions of these Regulations, and, in the case of a person licensed or authorised as a member of a group, with the terms and conditions of his licence or group authority.

5. A person shall not be in possession of a drug unless he is generally so authorised or, under this regulation, so licensed or authorised as a member of a group, nor otherwise than in accordance with the provisions of these Regulations and, in the case of a person licensed or authorised as a member of a group with the terms and conditions of his licence or group authority.

Possession of drugs

6. (1) Subject to the provisions of these Regulations, a person who is a member of any of the following classes, that is to say-

General authority for certain classes of persons to possess and supply drugs

(a) medical practitioners;

(b) veterinary surgeons;

(c) authorised sellers of poisons;

(d) registered pharmacists employed or engaged at a hospital, clinic, dispensary, like institution administered by the Government, or by a local authority, in any other hospital, clinic, dispensary or like institution approved by the Minister, or in any Government medical store;

(e) a person in charge of a laboratory used for the purpose of research or instruction and attached to-

(i) the University of Zambia or other educational institution approved by the Minister;

(ii) any hospital referred to in paragraph (d);

(f) a Government analyst;

(g) persons duly appointed inspectors under the Act

shall be authorised so far as may be necessary for the practice or exercise of his profession, function, or employment, and in his capacity as a member of his said class, to be in possession of, and to supply, drugs.

(2) Every drug in the actual custody of a person authorised by virtue of this regulation to be in possession thereof, shall, except when the necessities of the practice of the profession, function, or employment, by virtue of which that person is authorised as aforesaid, otherwise require, be kept in a locked receptacle which can be opened only by him or some other person authorised by virtue of this regulation to be in possession of the drug.

7. (1) No person who is not a person licensed under this regulation shall cultivate any plant from which a drug is derived. Cultivation of plants

(2) No person licensed under this regulation shall cultivate any plant from which a drug is derived otherwise than in accordance with the terms and conditions of his licence.

8. (1) Every owner or occupier of land shall clear or cause to be cleared from his land any plant from which a drug is derived, which is found to be growing wild or which is being cultivated in contravention of the provisions of these Regulations. Clearing of plants from land by owner or occupier

(2) The owner or occupier of land who has cleared or caused to be cleared from his land any plants from which a drug is derived shall destroy the plants so cleared by fire.

9. Every person generally authorised, licensed, or authorised as a member of a group, to supply any drugs shall comply with the following provisions, that is to say- Keeping of register

(a) he shall, in accordance with the provisions of this regulation and

regulation 32, keep a register and enter therein, in chronological sequence in the form specified in the Second Schedule to these Regulations, true particulars with respect to every quantity of any drug obtained by him, and with respect to every quantity of any drug supplied by him whether to persons within or to persons outside Zambia;

(b) he shall use a separate register or separate part of the register with respect to each of the following classes of drugs, that is to say-

(i) raw opium;

(ii) coca leaves;

(iii) cannabis and cannabis resin and all preparations (other than extract or tincture of cannabis) of which cannabis resin forms the base.

PART III

CONTROL OF SUBSTANCES SPECIFIED IN PART I OF THE SCHEDULE TO THE ACT

10. (1) This Part of these Regulations shall apply to any substance for the time being specified in Part I of the Schedule to the Act. Application

(2) In the following provisions of this Part the expression "drug" means any substance to which this Part applies other than a preparation as defined for the purpose of this Part in sub-regulation (3).

(3) In this Part the expression "preparation" means any preparation, admixture, extract or other substance, containing any proportion of a substance to which this Part applies.

11. A person shall not manufacture, or carry on any process in the manufacture of, a drug-

Manufacture of
drugs

(a) unless he is generally authorised, or licensed under this regulation, so to do:

Provided that no person shall be licensed under this regulation with respect to diamorphine;

(b) except on premises on which he is permitted by his general

authority so to do, or on premises licensed for the purpose under this regulation;

(c) otherwise than in accordance with the provisions of these Regulations, and, in the case of a person licensed, with the terms and conditions of his licence.

12. (1) A person shall not supply, procure, or offer to supply or procure, to or for any person, including himself, whether in Zambia or elsewhere, or advertise for sale a drug or preparation, unless he is generally authorised, or, under this regulation, licensed or authorised as a member of a group so to do, nor otherwise than in accordance with the provisions of these Regulations, and, in the case of a person licensed or authorised as a member of a group, with the terms and conditions of his licence or group authority.

Supply,
procuring, and
advertising of
drugs and
preparations

(2) A person shall not supply, procure, or offer to supply or procure a drug or preparation to, or for, any person in Zambia, unless that person is generally authorised, or, under regulation 13, licensed or authorised as a member of a group to be in possession of the drug or preparation and the drug or preparation is to be supplied or procured in accordance with the provisions of these Regulations, and, in the case of a person licensed or authorised as a member of a group, with the terms and conditions of his licence or group authority:

Provided that for the purposes of this sub-regulation the administration of a drug or preparation-

(a) by or under the direct supervision, and in the presence, of a medical practitioner;

(b) by or under the direct personal supervision, and in the presence, of a dental surgeon;

(c) by a nurse in charge of a ward, theatre, or outpatients department, in a hospital;

(d) by a midwife under, and, in accordance with regulation 16;

(e) by a person authorised as a member of a group to supply that drug or preparation acting under or in accordance with the terms and conditions of his group authority;

shall not be deemed to be the supplying of the drug or preparation.

13. (1) A person shall not be in possession of a drug or preparation, unless he is generally so authorised or, under this regulation, so licensed or authorised as a member of a group, nor otherwise than in accordance with the provisions of these Regulations and, in the case of a person licensed or authorised as a member of a group, with the terms and conditions of his licence or group authority.

Possession of
drugs and
preparations

(2) For the purposes of these Regulations-

(a) a person to whom a drug or preparation is lawfully supplied by a medical practitioner or veterinary surgeon;

(b) a person to whom a drug or preparation is lawfully supplied on a prescription given by a medical practitioner, a dental surgeon, or veterinary surgeon;

(c) a person to whom a drug or preparation is lawfully supplied by an authorised seller of poisons;

shall be deemed to be a person generally authorised to be in possession of the drug or preparation so supplied:

Provided that a person supplied with a drug or preparation by, or on a prescription given by, a medical practitioner shall be deemed not to be a person generally authorised to be in possession of the drug or preparation if-

(i) he was then being supplied with a drug or preparation by, or on a prescription given by, another medical practitioner in the course of treatment, and did not disclose the fact to the first mentioned medical practitioner before obtaining the supply from that practitioner or on the said practitioner's prescription; or

(ii) he or any other person on his behalf made a declaration or statement for the purpose of obtaining the supply or prescription, and the declaration or statement was false in any particular.

14. (1) Subject to the provisions of these Regulations, a person who is a General

member of any of the following classes, that is to say-

authority for
certain classes
of persons to
possess and
supply drugs
and
preparations

(a) medical practitioners;

(b) dental surgeons;

(c) veterinary surgeons;

(d) pharmacists who are employed or engaged at a hospital, clinic, dispensary, or like institution, administered by the Government or by a local authority or in any other hospital, clinic, dispensary, or like institution approved by the Minister, or in any Government medical store;

(e) a nurse in charge of a ward, theatre, or outpatients department, in a hospital;

(f) a person in charge of a laboratory used for the purposes of research or instruction and attached to-

(i) the University of Zambia or other educational institution, or such a hospital as aforesaid approved for the purposes of this regulation by the Minister; or

(ii) any hospital referred to in paragraph (d);

(g) Government analyst; or

(h) persons appointed as inspectors under the Act;

shall be authorised, so far as may be necessary for the practice or exercise of his said profession, function, or employment, and in his capacity as a member of his said class, to be in possession of, and to supply, drugs and preparations:

Provided that nothing in this sub-regulation shall-

(i) authorise a dental surgeon to supply drugs or preparations unless the drugs or preparations are administered by him, or under his direct supervision and in his presence, to persons receiving treatment by him; or

(ii) authorise a nurse in charge of a ward, theatre, or outpatients department, in a hospital-

A. to procure a drug or preparation, except from a person employed or engaged in dispensing medicines at the hospital or infirmary, and except upon a written order therefor signed by her; or

B. to supply a drug or preparation, except in accordance with the directions of a medical practitioner in charge of any patients in the ward, theatre or outpatients department, as the case may be.

(2) A written order, signed by a nurse to which paragraph A of proviso (ii) to sub-regulation (1) relates, shall be marked in such a way as to show that it has been fulfilled, by the person employed or engaged in dispensing medicines who fulfils that order, and be kept in the dispensary, and a copy of the order shall be kept by the nurse in charge of that hospital department, for which the drug or preparation to which the order relates was procured.

(3) The matron of any hospital referred to in paragraph (d) of sub-regulation (1), in which no pharmacist is employed or engaged in dispensing medicines, is authorised in her capacity as a matron and so far as is necessary for the purposes of that hospital and the exercise of her duties, to procure drugs and preparations on the order, in writing, of a medical practitioner employed or engaged in that hospital, and to be in possession of, and to supply, drugs and preparations so procured.

(4) Every drug or preparation in the actual custody of a person authorised by virtue of this regulation, or procure, administer, possess, or supply the said drug or preparation, shall, except when the necessities of the practice of the profession, function, or employment, by virtue of which that person is authorised as aforesaid, otherwise require, be kept in a locked receptacle which can be opened only by him or by some other person authorised by virtue of this regulation, to be in possession of that drug or preparation.

15. (1) The Permanent Secretary may at his discretion licence-

Special
provisions in

respect of
certain public
officers, etc.

(a) any Government officer in charge of a station at which no Government medical officer is stationed, or from which a Government medical officer is for the time being absent;

(b) any Government officer who undertakes a journey on duty during which he will be more than twenty-four hours' distance from any Government station;

(c) any person in charge of a mission station of a missionary society;

(d) a police officer in charge of a police station; or

(e) a first-aid worker in the employ of any mining company;

to procure, possess, and administer, drugs and preparations, subject to the provisions of sub-regulation (2) and such terms and conditions as the Permanent Secretary may fix.

(2) The following provisions shall apply to the supply to, and the possession, and administration by, a person licensed in terms of sub-regulation (1), that is to say-

(a) on each occasion that he procures a drug or preparation, he shall, in addition to a signed order referred to in regulation 24, produce his licence to the supplier;

(b) on each occasion that he procures a drug or preparation he shall enter in a drugs register to be kept by him and used solely for the purpose of this sub-regulation, the name and the amount of the drug or preparation, the form in which it is procured, the date, and the name and address of the supplier;

(c) he shall, when he administers a drug or preparation, as soon as practicable thereafter, enter in his drugs register the name of the drug or preparation administered, the name and address of the person to whom it was administered, the amount administered, and the form in which it was administered.

(d) he shall, except when a drug or preparation, is to be administered, kept every drug or preparation in his custody, in a locked receptacle which can be opened only by him or another licensed person; and

(e) he shall not administer a drug or preparation procured in terms of this regulation otherwise than for strictly medical purposes.

16. (1) In this regulation, the expression "midwives' supply order" means an order in the form prescribed in the first Schedule to these Regulations, specifying the name of the midwife obtaining a supply of the drug or preparation, stating the fact that she is a midwife and giving the following particulars in regard to the drug or preparation to be procured, that is to say, its name, the purpose for which it is required and the total quantity to be procured, or, when the drug or preparation is packed in ampoules, either the said total quantity or the total quantity intended to be administered or injected.

Special provisions in respect of midwives

(2) A midwife is hereby authorised, so far as is necessary for the practice of her profession or employment as a midwife, to be in possession of tincture of opium and pethidine, which she has procured upon furnishing to the supplier thereof a midwives' supply order, and to administer those drugs or preparations.

(3) An application for a midwives' supply order shall be made in writing to the Permanent Secretary.

(4) A midwives' supply order will be valid until the thirty-first day of December in the year it is issued.

(5) The following provisions shall apply to the supply to a midwife, and the possession and administration by a midwife, of drugs or preparations, that is to say-

(a) on each occasion a midwife procures a drug or preparation she shall, in addition to a signed order referred to in regulation 24, produce her midwives' supply order;

(b) the supplier shall note on the midwives' supply order the date on

which the drugs or preparations are supplied, the name and quantity of the drugs or preparations supplied, and his name and address;

(c) on each occasion a midwife procures a drug or preparation she shall enter in a drugs register, to be kept by her and used solely for the purpose of this regulation, the name and amount of the drug or preparation, the form in which it is procured, the date, and the name and address of the supplier;

(d) a midwife shall, when she administers a drug or preparation or as soon as practicable thereafter, enter in the drugs register the name of the drug or preparation administered, the amount administered, and the form in which it is administered;

(e) a midwife shall not in any one year procure a quantity of a drug or preparation greater than the total amount of that drug or preparation specified in her midwives' supply order; and

(f) a midwife shall, except when the necessities of the practice of her profession or employment as a midwife otherwise require, keep every drug in her possession in a locked receptacle which can be opened only by her.

17. (1) In this regulation-

"aircraft" means any aircraft in which passengers are carried for hire or reward;

"Air Navigation Regulations" means the Air Navigation Regulations made under the Aviation Act or any Act amending or replacing the same;

"Director of Civil Aviation" has the meaning assigned to it in the Air Navigation Regulations;

"operator" means any person who is the owner or operator of any aircraft;

"passengers carried for hire or reward" has the meaning assigned to it in the Air Navigation Regulations.

Special provisions in respect of operators of aircraft
Cap. 444

(2) Subject to the provisions of sub-regulation (8) all operator is authorised to procure and possess drugs and preparations, for the purposes of regulation 34 of the Air Navigation Regulations (which relates to first-aid equipment).

(3) The following provisions shall apply to the supply to, and the possession by, an operator, of drugs and preparations, that is to say-

(a) an order referred to in regulation 24, for the supply of drugs and preparations, shall be made in duplicate on the official note paper of the operator, and shall be signed and dated by the operator or his authorised representative;

(b) it shall be stated in the order whether the order is for the initial supply or for replacement of any drugs or preparations previously supplied in terms of this regulation and, if for replacement, the reason therefor;

(c) the order shall be countersigned by the Director of Civil Aviation, who shall send the duplicate to the Permanent Secretary;

(d) drugs and preparations shall be in single dose ampoule-syringe form or in the form of an ampoule with a sterile disposable syringe needle and an ampoule file, and shall be kept in a sealed container adequately labelled to indicate the method of use and the quantity and nature of the contents and kept in the first-aid kit of the aircraft;

(e) the quantity of drugs and preparations carried in any aircraft shall not amount to more than the equivalent of 15 mg of morphine for each person who may lawfully be on board that aircraft at any one-time;

(f) a responsible official appointed by the operator shall-

(i) satisfy himself at intervals not exceeding one month, that the drugs and preparations carried in each aircraft have not been removed from the first-aid kit for any unauthorised purpose;

(ii) inspect and check at intervals not exceeding six months, the drugs and preparations carried in each aircraft;

(g) the operator shall keep a permanent record, at his principal place of business in Zambia, of the receipt, distribution, and disposal, of all drugs and preparations obtained in terms of this regulation;

(h) drugs and preparations procured by an operator in terms of this regulation shall not be transferred, on the change of ownership of any of his aircraft, to another person without the permission of the Permanent

Secretary.

(4) Any person who ceases to be an operator shall-

(a) notify the Permanent Secretary of the fact; and

(b) dispose of the drugs and preparations in his possession in accordance with the directions of the Permanent Secretary.

(As amended by S.I. No. 50 of 1976)

18. (1) An authorised seller of poisons shall be authorised-

General
authority for
authorised
sellers of
poisons to
manufacture
preparations
and to retail
drugs and
preparations.

(a) in the ordinary course of his retail business, to manufacture at any premises registered under section *fifteen* of the Pharmacy and Poisons Act-

Cap. 299

(i) any extract or tincture of cannabis; and

(ii) any preparation;

(b) subject to the provisions of these Regulations, to carry on at any such premises the business of retailing, dispensing, and compounding, drugs and preparations; and

(c) to supply drugs and preparations otherwise than by way of wholesale dealing:

Provided that nothing in this regulation shall be construed as authorising any such person to be in possession of any drug or preparation except on premises registered under the said section *fifteen*.

(2) Every drug or preparation, other than a preparation for the time

being specified in Part I of the Schedule to the Act, in the actual custody of a person authorised by virtue of this regulation to be in possession thereof, shall be kept in a locked receptacle which can be opened only by him or by some assistant of his who is a registered pharmacist and is not a person whose authority has been withdrawn under regulation 29.

19. (1) In this regulation the expression "recognised preparation" means a preparation contained in the British Pharmacopoeia, the British Pharmaceutical Codex, or the British National Formulary a publication issued jointly by the British Medical Association and the Pharmaceutical Society of Great Britain and used, for the purposes of those Regulations, to serve the usual requirements of persons prescribing preparations whether in hospitals or in general practice. Form of prescription

(2) The following provisions shall apply to prescriptions prescribing a drug or preparation, that is to say-

(a) a prescription shall be in writing and shall be signed by the person giving it, with his usual signature, and dated by him;

(b) a prescription shall be written in ink or otherwise so as to be indelible;

(c) a prescription shall specify the name and address of the person for whose treatment it is given or, if it is given by a veterinary surgeon, the name and address of the person to whom the drug or preparation prescribed is to be delivered;

(d) a prescription shall have written thereon, if given by a dental surgeon, the words "for local dental treatment only" and, if given by a registered veterinary surgeon, the words "for animal treatment only";

(e) if the preparation prescribed is a recognised preparation, or if all the preparations contained therein are recognised preparations, specify the total amount of the preparation or, as the case may be, of each preparation or, when the preparation is packed in ampoules, either specify as aforesaid or specify the total amount of the preparation or, as the case may be, of each preparation intended to be administered or injected;

(f) if the preparation prescribed is not a recognised preparation, specify the total amount of the drug to be supplied or, when the

preparation is packed in ampoules, either the said total amount or the total amount intended to be administered or injected; and

(g) in the case of a cancellation, obliteration, or alteration in a prescription, each cancellation, obliteration, or alteration shall be signed by the person giving it with his usual signature.

(2) In the case of a prescription given for the treatment of a patient in a hospital, sub-regulation (1) shall be deemed to have been complied with if the prescription is written on a patient's bed-card or case-sheet, and in such a case the initials of the person giving the prescription shall be deemed to be a sufficient signature for the purposes of this regulation.

20. (1) A person shall not supply a drug or preparation on a prescription-

Provisions as to
supply on
prescription

(a) unless the Prescription complies with the provisions of these Regulations relating to prescriptions;

(b) unless, he either is acquainted with the signature of the person by whom it purports to be given and has no reason to suppose that it is not genuine, or has taken reasonably sufficient steps to satisfy himself that it is genuine;

(c) before the date specified in the prescription.

(2) If a prescription prescribing a drug or preparation expressly states that it may, subject to the lapse of an interval or intervals specified by the prescriber in the prescription, be dispensed a second or third time, the drug or preparation thereby prescribed may, as the case may be, be supplied a second or third time after the specified interval or intervals but not more; but, subject as aforesaid, a prescription shall not for the purposes of these Regulations be taken as enabling the drug or preparation prescribed to be supplied more than once.

(3) A person dispensing a prescription prescribing a drug or preparation shall, at the time of dispensing it, mark thereon the date on which it is dispensed and, in the case of a prescription which may be dispensed a second or third time, the date of each occasion on which it is dispensed, and shall retain and keep it on the premises where it is dispensed and so

as to be at all times available for inspection.

(4) No person shall make or supply a copy of any prescription prescribing a drug or preparation, other than a copy of a prescription for submission to the Government or a medical aid society for the purpose of receiving payment for such a drug or preparation supplied thereon, unless he is requested to do so by the Permanent Secretary, an inspector, a police officer of the rank of Sub-Inspector or above, or any other police officer authorised in writing by a magistrate or by a police officer of the rank of Sub-Inspector or above, and such copy of a prescription shall be clearly and indelibly marked "Copy only. Not to be dispensed".

(5) Notwithstanding anything contained in these Regulations, where an authorised seller of poisons is reasonably satisfied that a person ordering any drug or preparation is a medical practitioner who is by reason of some emergency unable to furnish a prescription immediately, he may, notwithstanding that no prescription has been given, if the said person undertakes to furnish him, within seven days next following, with a prescription, deliver the drug or preparation ordered in accordance with the directions of the said person, so however, that notwithstanding anything in the said directions, the supply shall not be repeated unless a prescription has been given.

(6) If any person by whom an undertaking, referred to in sub-regulation (5) has been given, fails to deliver to the seller a prescription in accordance with the undertaking, or if any person, for the purpose of obtaining delivery of any drug or preparation under the provisions of this regulation, makes a statement which is to his knowledge false, he shall be deemed to have contravened the provisions of sub-regulation (5).

21. Any medical practitioner who considers it necessary, for the purpose of the treatment by him of any patient, to prescribe a drug or preparation for a period exceeding four months, shall report the case to the Permanent Secretary. Report of cases to Permanent Secretary

22. (1) Save as otherwise provided in this regulation no medical practitioner shall supply or administer to, or prescribe for, any person, a drug or preparation merely for the purpose of addiction. Treatment of drug addicts

(2) A medical practitioner who considers it necessary, for the purpose of the treatment or care of a patient who is a drug addict, that he should receive rational supplies of a drug or preparation, shall report the case to the Permanent Secretary.

(3) When a case is reported in terms of sub-regulation (2), the Permanent Secretary may at his discretion permit, in writing, a medical practitioner to supply, and additionally or alternatively administer, and additionally or alternatively prescribe, such quantities of the drug or preparation to which the patient is addicted as the Permanent Secretary may in the circumstances consider necessary.

(4) No medical practitioner shall supply or prescribe, for the treatment of a drug addict, a drug or preparation in excess of the quantity permitted by the Permanent Secretary.

(5) No person generally authorised, licensed, or authorised as a member of a group to have in his possession a drug or preparation, shall use that drug or preparation by way of self-administration, otherwise than in accordance with these Regulations.

23. (1) Subject to the provisions of this regulation, no person shall-

Markings of
packages and
bottles

(a) supply a drug unless the package or bottle in which it is contained is plainly marked with the amount of the drug contained therein; or

(b) supply a preparation unless the package or bottle in which it is contained is plainly marked-

(i) in the case of a powder, solution, or ointment, with the total amount thereof in the package or bottle, and the percentage of the drug contained in the powder, solution, or ointment; or

(ii) in the case of cachets, single dose injections, lozenges, suppositories, pills, tablets, or other similar articles, with the amount of the drug in each article, and the number of articles in the package or bottle.

(2) Nothing in this regulation shall apply in a case where a drug or preparation is lawfully supplied in accordance with this Part, by, or on a prescription lawfully given by, a medical practitioner.

24. A person generally authorised, licensed, or authorised as a member of a group, shall not procure a drug or preparation unless he produces to the supplier an order in writing signed and dated by him, in which it is stated-

Production of order in writing to supplier

(a) the name and address of the person by whom the drug or preparation is required, or the institution for which it is ordered;

(b) the name and quantity of the drug or preparation required; and

(c) the name and address and profession or qualification of the person signing the order.

25. (1) Every person generally authorised, licensed or authorised as a member of a group, to supply drugs or preparations, other than a preparation for the time being specified in Part I of the Schedule to the Act, except a nurse who is generally so authorised by virtue of regulation 14 (1) (e), shall comply with the following provisions, that is to say-

Keeping of register

(a) he shall, in accordance with the provisions of this regulation and of regulation 32, keep a register and enter therein, in chronological sequence in the form specified in the Second Schedule to these Regulations, true particulars with respect to every quantity of any drug or preparation obtained by him, and with respect to every quantity of any drug or preparation supplied by him, whether to persons within or outside Zambia;

(b) he shall use a separate register or separate part of the register for entries made with respect to each of the substances for the time being specified in paragraph 1 of the Schedule to the Act, or in paragraphs 2, 3, 4, 5, 6, or 7 thereof; and for this purpose each substance shall be deemed to comprise its salts and any preparation, admixture, extract, or other substance containing any proportion of it or its salts, and any isomer of a substance the existence of which is possible within its specific chemical designation, shall be deemed to be identical with that substance.

(2) Notwithstanding the provisions of sub-regulation (1)-

(a) a separate section within a register, or a separate part of a register, may be used with respect to different drugs, preparations, or strengths of preparations, comprised within the class of drugs or preparations to which that register or separate part of a register relates;

(b) so much of sub-regulation (1) as requires a person to enter in the register required to be kept under that sub-regulation, particulars with respect to drugs or preparations supplied by him, shall not apply to a medical practitioner if he enters in a book in which he records patients' case histories, hereinafter called "the day book", true particulars of every drug or preparation supplied by him to any person, together with the name and address of that person, and the date of the supply, and enters in a separate book kept for the purposes of this regulation, a proper reference to each entry in the day book which relates to the supply of any drug or preparation, and if paragraphs (c) and (d) of this sub-regulation are complied with;

(c) references in the said separate book shall be made in chronological sequence, and the book shall be kept in separate parts relating respectively to the several classes of drugs and preparations specified in, and under, paragraph (b) of sub-regulation (1), and shall not be used for any purpose other than the purposes of this sub-regulation;

(d) the entries in the day book, and in the separate book, shall be made on the day on which, but for this sub-regulation, an entry would under regulation 32 have been required to be made in the said register, and paragraph (c) of regulation 32 shall apply as respects any such entry as aforesaid as if it were an entry in the register;

(e) in this sub-regulation, the expression "a proper reference" means a reference which is entered in the said separate book under the same date as that on which the entry in the said day book or in the Pharmacy Act book was made, and is otherwise such as to enable that entry to be easily identified.

(3) Where a medical practitioner, dental surgeon or veterinary surgeon obtains, or supplies, any drug or preparation packed in ampoules he shall be deemed to have complied with the requirements-

(a) of sub-regulation (1), in regard to entry in the register required to be kept under the said sub-regulation, of true particulars with respect to every quantity of every drug or preparation obtained or supplied; or

(b) in the case of a medical practitioner supplying drugs or preparations to any person, of sub-regulation (2), in regard to entry in the day book referred to in sub-regulation (2), of particulars of any drug or preparation supplied by him;

if he enters the amount which he has obtained or supplied, as the case may be, or true particulars as to either the total quantity of the drug or preparation, or the total quantity thereof intended to be administered or injected.

(4) Every separate book kept under sub-regulation (2), every day book in which any entry is made under sub-regulation (2), and every Pharmacy Act book containing an entry which is referred to in such a separate book as aforesaid, shall be kept on the premises to which the register or book relates and, in the case of a book referring to a prescription, shall be kept on the premises on which the prescription was dispensed so as to be at all times available for inspection.

(5) For the purposes of the preceding sub-regulations, a drug or preparation administered by, or under the direct supervision and in the presence of, a medical practitioner, or dental surgeon shall be deemed not to have been supplied by him.

(6) A manufacturer of any preparation for the time being specified in Part I of the Schedule to the Act, and a wholesale dealer in any such preparation, shall keep every invoice or other like record issued in respect of each quantity of any such preparation obtained by him, and in respect of each quantity of any such preparation supplied by him.

(7) A retail dealer in any preparation, for the time being specified in Part I of the Schedule to the Act, shall keep every invoice or other like record issued in respect of each quantity of any such preparation obtained by him.

(8) Notwithstanding the provisions of paragraph (a) of sub-regulation (1), an authorised seller of poisons may use drugs or preparations for the dispensing of medicines containing such amount of drugs and preparations as is sufficient to make the medicine a drug to which Part III of the Act applies, but only if the transaction and the date of the transaction are recorded in his register.

PART IV

GENERAL

26. In this Part of these Regulations, the expression "drug" means a drug to which Part II of these Regulations or a substance to which Part III of these Regulations applies.

Definition of "drug"

27. For the purposes of these Regulations, a person shall be deemed to be in possession of a drug, if it is in his actual custody, or is held, by some other person subject to his control, for him or on his behalf.

Definition of "possession"

28. (1) Where a drug other than a substance specified in Part I of the Schedule to the Act, is to be lawfully supplied to any person (hereinafter in this regulation referred to as "the recipient"), otherwise than by, or on a prescription given by, a medical practitioner, the person supplying the drug (hereinafter in this regulation referred to as "the supplier") shall not deliver it to the person who purports to be sent by, or on behalf of the recipient, unless that person either-

Supply otherwise than on prescription

(a) is generally authorised, licensed, or authorised as a member of a group, to be in possession of that drug; or

(b) produces to the supplier a statement in writing signed by the recipient to the effect that he is empowered by the recipient to receive the drug in question on behalf of the recipient, and the supplier is reasonably satisfied that the document is a genuine document.

(2) A person to whom a drug is lawfully delivered in the circumstances mentioned in sub-regulation (1), shall be deemed to be a person authorised to be in possession thereof, but for such period only, as in the circumstances of the case, is reasonably sufficient to enable delivery to the recipient to be effected.

29. (1) Where any person generally authorised

Withdrawal of authority

(a) is or has been convicted of an offence against the Act, or these

Regulations, or of attempting to commit any such offence or of soliciting, inciting, aiding or abetting, any other person to commit any such offence;

(b) is adjudged, certified, or otherwise lawfully proved to be mentally disordered or defective under any law relating to mental disorders;

(c) is undergoing treatment as a temporary or voluntary patient in terms of any law referred to in paragraph (b) above; or

(d) is proved, to the satisfaction of the Minister, to have become a drug addict;

the Minister may, if he is of the opinion that that person cannot properly be allowed to remain a person generally authorised, by notice in the *Gazette*, withdraw the authority of that person.

(2) Where the general authority of any person has been withdrawn under these Regulations, the Minister may at any time restore it, or may suspend the withdrawal and, while the withdrawal is so suspended, the person shall be a person generally authorised in the same manner as if the authority had never been withdrawn, so however, that the Minister may at any time cancel the suspension.

30. (1) If any drugs permitted under the law of any country outside Zambia to be exported therefrom to any destination outside Zambia, are brought into Zambia, no person shall cause or procure those drugs to be diverted to any other destination, unless he is licensed under this regulation by the Permanent Secretary and otherwise than in accordance with the terms and conditions of his licence.

Consignment
between places
outside Zambia

(2) For the purposes of this regulation the destination to which any drugs are permitted to be exported shall be taken to be the destination stated in the permission for the export thereof from the country of export.

31. The Minister may revoke or amend, at any time, a licence or group authority given under these Regulations.

Revocation or
amendment of
licence of group
authority

32. The following requirements shall be complied with by any person required to keep a register under, as the case may be, regulation 9 or 25, that is to say- Requirements as to registers

- (a) the class of drugs to which the entries on any page of any such register as aforesaid, relate, shall be specified at the head of that page;
- (b) every entry required to be made, under the said regulations 9 and 25, in the register shall be made on the day on which the drug is received or, as the case may be, on which the transaction with respect to the supplying of the drug by the person required to make the entry takes place; but if that is not reasonably practicable, on the day next following the said day;
- (c) no cancellation, obliteration, or alteration of any entry shall be made, and every correction of an entry shall be made only by way of a marginal note or footnote which shall specify the date on which the correction is made;
- (d) every entry required to be made as aforesaid in every register, and every correction of an entry, shall be made in ink or otherwise so as to be indelible;
- (e) a register shall not be used for any purpose other than the purposes of these Regulations;
- (f) the person required, as aforesaid, to keep a register shall, on demand made by the Permanent Secretary or by any person empowered in writing by the Permanent Secretary in that behalf-
 - (i) furnish such particulars as may be required with respect to the obtaining or supplying by him of any drug, or with respect to any stock of drugs in his possession;
 - (ii) for the purpose of confirming any such particulars as aforesaid, produce any stock of drugs in his possession; and
 - (iii) produce the register and such other books or documents in his possession, relating to any dealings in drugs as may be required;
- (g) a separate register shall be kept in respect of each set of premises at which the person required to keep the register carries on business; but save as aforesaid not more than one register shall be kept at one time, in respect of each class of drug for which he is required to keep a separate register or part of a register, so however, that a separate register may, with the approval of the Permanent Secretary, be kept in respect of each department of the business carried on by him;

(h) every such register shall be kept at the premises to which it relates, so as to be at all times available for inspection.

33. (1) All registers, records, books, prescriptions, orders in writing, and other documents which are kept, issued, or made in pursuance of the requirements, or for the purposes of these Regulations, shall be preserved, in the case of a register, book, or other like record for a period of two years from the date on which the last entry therein is made, and in the case of any other document, for a period of two years from the date on which it is issued or made. Preservation of documents

(2) In the case of any document kept in pursuance of sub-regulations (6) and (7) of regulation 25, the keeping of a copy thereof made at any time during the said period of two years, shall be treated for the purposes of sub-regulation (1) as if it were the keeping of the original document.

34. Nothing in these Regulations as respects the possession of a drug shall apply to- Exception of police officers and carriers

(a) a police officer acting in the course of his duty as such; or

(b) a person carrying on the business of a carrier, or to any servant of such a person, acting in the course of that business.

35. For the purposes of these Regulations, a person shall not be treated as procuring or offering to procure a drug for any person by reason only that he, in the course of his business as agent for another, offers for transfer, or acts in the transfer of, a business and stock-in-trade therewith which comprises a drug. Exemption of certain classes of agents

36. (1) Any person lawfully in possession of drugs shall, before ceasing to practice or exercise his profession, function, or employment, at any place- Requirements in respect of cessation of practice, etc.

(a) where he is being succeeded by a person generally authorised, authorised as a member of a group, or a licensed person-

(i) physically check with, and hand over to his successor all drugs in his possession;

(ii) submit to the Permanent Secretary a statement signed by himself and by his successor, certifying that the said drugs have been physically

checked and handed over in accordance with sub-paragraph (i);

(iii) after handing over the drugs, rule off each page of the register on which an entry has been made, and both he and his successor shall, when satisfied that it is a true record of the drugs on hand, sign each page; and

(iv) if either person is not satisfied that any entry referred to in sub-paragraph (iii) is a true record, he shall refuse to sign the page and shall immediately inform the Permanent Secretary of the reason for his refusal;

(b) where he is not being succeeded by a person generally authorised, authorised as a member of a group, or a licensed person-

(i) inform the Permanent Secretary of the arrangements he has made for the disposal of the drugs in his possession; and

(ii) immediately after disposing of the drugs in accordance with those arrangements or an Order made under sub-regulation (2), as the case may be, he shall notify the Permanent Secretary that he has done so and shall, at the same time, forward the register and the supporting prescriptions and written orders to the Permanent Secretary who shall retain them for a period of two years from the latest date of entry.

(2) Where the arrangements referred to in paragraph (b) of sub-regulation (1) have not been made or are not to the satisfaction of the Permanent Secretary, the drugs shall be disposed of in such manner as the Permanent Secretary shall order.

37. For the purposes of these Regulations, but subject in each case to the express terms of the regulation by which he is generally authorised or, as the case may be, to any limitation attached to his licence, or group authority-

Construction of
licence or
authority

(a) a person generally authorised or licensed to manufacture a drug shall be deemed to be generally authorised or, as the case may be, licensed to supply that drug;

(b) a person generally authorised, licensed, or authorised as a member of a group, to supply a drug, shall be deemed to be generally authorised or, as the case may be, licensed or authorised as a member of a group to be in possession of, to procure, to offer to supply or procure, and to advertise for sale, that drug.

38. (1) No person shall in the course of supplying a drug to a person in Zambia consign that drug, by road or rail, by a route which entails the

Movement
licence

carriage of that drug beyond the borders of Zambia, unless he is in possession of a movement licence issued by the Permanent Secretary for the purposes of this regulation.

(2) The holder of a movement licence shall-

(a) in the case of a drug which is to be supplied in one package, place the duplicate of his movement licence inside the outer wrapper of that package; or

(b) in the case of a drug which is to be supplied in more than one package-

(i) place the duplicate of his movement licence inside the outer wrapper of one package;

(ii) consecutively number on the outer wrapper all the packages in which the drug is contained; and

(iii) indicate on each package the number of the package in which the duplicate of his movement licence is to be found.

39. Application for a licence under the Act or for a licence or permit under these Regulations shall be-

Form of application for licence

(a) made in such form as the Permanent Secretary may determine;

(b) accompanied, if the application is for a licence to export any drug from Zambia, by the original copy of the certificate of the country of importation officially approving the import of that drug; and

(c) accompanied by the appropriate fee, if any, prescribed in the Third Schedule.

40. (1) The Dangerous Drugs Regulations, 1956, are hereby revoked.

Revocation of F.G.N. No. 59 of 1956 and savings

(2) Nothing in sub-regulation (1) shall render invalid any licence, authority, certificate or order, issued, granted or given, or other -thing done, under the Dangerous Drugs Act, 1955, or the Regulations revoked by these Regulations, and any such licence, authority, certificate, order, or other thing which could have been issued, granted or given or other thing done, under any provision in these Regulations, and which is in

Cap. A.L. 28

force at the date when these Regulations come into operation, shall be deemed to have been issued, granted or given, or done, under that provision.

(3) Any register, record, book, prescription, or other document, which is required to be kept under any regulation revoked by these Regulations, shall be kept in the same manner and for the same period, and every person shall be subject to the same requirements in regard thereto, as if these Regulations had not been made.

FIRST SCHEDULE

THE DANGEROUS DRUGS REGULATIONS, 1971

(Regulation 16)

MIDWIVES' SUPPLY ORDER

I hereby certify that
of
is a practising midwife and is authorised in pursuance of sub-regulation (2) of regulation 16 of the Dangerous Drugs Regulations, to procure during the period of validity of this supply order and for the purpose of her profession, tincture of opium, and pethidine preparations not exceeding the quantities stated below.

This supply order shall remain valid until the 31st December of the year in which it is issued, and shall be returned to me immediately on becoming invalid.

Place Signed
Permanent Secretary

Date of Issue

MIDWIVES' SUPPLY ORDER

(To be printed on the reverse)

- (1) This supply order shall be produced to the person from whom the drugs are procured.
- (2) The supplier shall at the time the transaction takes place, note under the appropriate heading in this order the date on which the drugs are supplied, the name and quantity of the drugs supplied, and his name and registered address.

PETHIDINE PREPARATIONS

Date Supplied	Details of Preparation (Strength of Tablets, Ampoules, etc.)	Quality Supplied	Total Supplied to Date	A

TINCTURE OF OPIUM

Date Supplied	Quantity Supplied	Total Supplied to Date	Name

SECOND SCHEDULE

THE DANGEROUS DRUGS REGULATIONS, 1971

(Regulations 9, 25 and 32)

FORM OF REGISTER

Name of Drug or Preparation				
Margin for Notes	Date on which Acquired, Supplied or Used	Name and Address of Person from whom Acquired or to whom Supplied	Reference	
		Carried forward from page		

Continued on page

THIRD SCHEDULE

THE DANGEROUS DRUGS REGULATIONS, 1971

(Regulation 39)

PRESCRIBED FEES

	<i>Fee units</i>
Licence to import	5
Licence to export	3

(As amended by Act No. 13 of 1994)

NOTICES MADE UNDER THE DANGEROUS DRUGS ACT-CHAPTER A.L. 28 OF THE 1965 EDITION OF THE APPLIED LAWS

(Section 15 of the Interpretation and General Provisions Act)

Federal
Government
Notices
57 of 1956
226 of 1956
4 of 1959
96 of 1960
144 of 1961
222 of 1961
249 of 1963
251 of 1963
Government
Notices
360 of 1963
497 of 1964
507 of 1964
Statutory
Instruments
220 of 1966
221 of 1966

THE DANGEROUS DRUGS (PART III) (APPLICATION) NOTICE

1. This Notice may be cited as the Dangerous Drugs (Part III) (Application) Notice.

Title

2. In pursuance of subsection (2) of section *ten* of the Act, Part III of

Application in

the Act is hereby applied to the drugs and products specified in the First Schedule in the same manner as it applies to drugs specified in the Schedule to the Act. pursuance of section 10 (2) of Act

3. In pursuance of section *fourteen* of the Act, Part III of the Act is hereby applied to the drugs and products specified in the Second Schedule without any modification. Application in pursuance of section 14 of Act

4. In pursuance of subsection (3) of section *ten* and section *fourteen* of the Act, Part III of the Act is hereby applied to the drugs and products and their preparations specified in the Third Schedule, with the modifications that- Application in pursuance of section 10 (3) and 14 of Act

(a) those drugs and products and their preparations shall not be treated as drugs to which Part III of the Act applies for the purposes of Part III of the Dangerous Drugs Regulations;

(b) the provisions of section *eleven* of the Act shall not apply to the import into or the export from Zambia of Syrup of Codeine Phosphate B.P.C. 1954 or to any preparation containing not more than 2.5 per centum of methylmorphine, ethylmorphine or morpholinyl-ethylmorphine calculated as a pure drug, associated with other medicinal substances.

(As amended by G.N. No. 360 of 1963)

FIRST SCHEDULE

(Paragraph 2)

1. The following substances and their salts, and any preparation, admixture, extract or other substance containing any proportion of any of the substance or salts;

Allylprodine (3-allyl-1-methyl-4 phenyl-4-propionyloxypiperidine);

Alphameprodine;

Anileridine

(1-[2-(p-aminophenyl)-ethyl]-4-phenylpiperidine-4-carboxylic acid ethyl ester);

Benzethidine

(ethyl)-1(2-benzyloxyethyl)-4-phenylpiperidine-4-carboxylate);

Clonitazene

(2-p-chlorobenzyl-1-1-(2-diethylaminoethyl)-5-nitrobenzimidazole);

Dextromoramide, levomoramide and racemoramide

1-(3-methyl-4-morpholine-2: 2-diphenylbutryl)-pyrrolidine;

Dimenoxadole (2-dimethylaminoethyl)-2-ethoxy-2:2-diphenylacetate);
Diphenoxylate (ethyl
1-(3-cyano-3:3-diphenylpropyl)-4-phenylpiperidine-4-carboxylate);
Etonitazene
(1-(2-diethylaminoethyl)-2-p-ethoxybenzyl-5-pitrobenzimidazole);
Etoxeridine
(1-[2-(2-hydroxyethoxy)-ethyl]-4-phenylpiperidine-4-carboxylic acid
ethyl ester);
Fenanyl;
Furethidine
(ethyl)-1(2-tetrahydrofurfuryloxyethyl)-4-phenylpiperidine-4-
carboxylate);
Hydromorphanol (14-hydroxydihydromorphine);
Levophenacymorphan ((-)-3-hydroxy-N-phenacymorphinan);
Metazocine (2-hydroxy-2:5:9-trimethyl-6:7-benzomorphan);
1-Methyl-4-phenylpiperidine-4-carboxylic acid;
Morpheridine (1-(2-morpholinoethyl)-4-phenylpiperidine-4-carboxylic
acid ethyl ester);
Myreophine (myristyl ester of benzylmorphine);
Noracymethadol (ce-dl-3 acetoxyl-6
methylamino-4:4-diphonylheptane);
N-[2-(N-methylphenethylamino) propyl] propionanilide;
Norcodeine;
Norlevorphanol ((-)-3-hydroxymorphinan);
Normorphine;
Norpipanone;
Oxymorphone (dihydro-14-hydroxymorphinone);
Phenamipromide (N-(1-methyl-2-piperidinoethyl) propionanilide);
Phenazocine
(21-hydroxy-5:9-dimethyl-2-(2-phenylethyl)-6:7-benzomorphan);
Phenoperidine (ethyl
1(3-hydroxy-3-phenylpropyl)-4-phenylpiperidine-4-carboxylate);
Piminodine (ethyl
1-(3-anilinopropyl)-4-phenylpiperidine-4-carboxylate);
Trimeperidine (1:2:5-trimethyl-4-phenyl-4-propionyloxy-piperidine).

2. The esters of 1-methyl-4-phenylpiperidine-4-carboxylic acid (other than pethidine) and their salts, and any preparation, admixture, extract or other substance containing any proportion of the esters of 1-methyl-4-phenylpiperidine-4-carboxylic acid (other than pethidine) or their salts.

3. 4,4-Diphenyl-6-dimethylamino-3-hexanone and its salts, and any preparation, admixture, extract or other substance containing any proportion of 4,4-diphenyl-6-dimethylamino-3-hexanone or its salts.

4. 4,4-Diphenyl-8-piperidino-3-heptanone and its salts, and any

admixture, extract or other substance containing any proportion of 4,4-diphenyl-8-piperidine-3-heptanone or its salts.

5. beta-Methadol and its salts, and any preparation, admixture, extract or other substance containing any proportion of beta-methadol and its salts.

6. 3-Diethylamino-1, 1-di-(2'-thienyl)-1-butane (diethylthiambutene) and its salts, and any preparation, admixture, extract or other substance containing any proportion of 3-diethylamino-1,1-di-(2'-thienyl)-1-butene or its salts.

7. 1,3-Dimethyl-4-phenyl-4-propionyloxyhexamethyleneimine, its salts and any preparation, admixture, extract or other substance containing any proportion of 1,3-dimethyl-4-phenyl-4-propionyloxyhexamethyleneimine.

8. 3-Hydroxy-N-phenethylmorphinan, its salts and any preparation, admixture, extract or other substance containing any proportion of 3-hydroxy-N-phenethylmorphinan.

9. 4-Morpholino-2:2-diphenyl ethyl butyrate, its salts and any preparation, admixture, extract or other substance containing any proportion of 1-morpholino-2:2-diphenyl ethyl butyrate.

10. 1-(3-cyano-3, 3-diphenyl)propyl)-4-(1-piperidino) piperidine-4-carboxylic acid amide and its salts, and any preparation, admixture, extract or other substance containing any proportion of 1-(3-cyano-3, 3-diphenylpropyl)-4-(1-piperidino) piperidine-4-carboxylic acid amide.

(As amended by F.G.N. No. 226 of 1956, F.G.N. No. 4 of 1959, F.G.N. No. 96 of 1960, F.G.N. Nos. 144 and 222 of 1961, F.G.N. No. 219 of 1963, G.N. No. 507 of 1964 and S.I. No. 220 of 1966)

SECOND SCHEDULE

(Paragraph 3)

1. Methyldesomorphine (6-methyl-Delta 6-desoxymorphine) and its salts, and any preparation, admixture, extract or other substance containing any proportion of methyldesomorphine or its salts.

2. Dihydrodesoxymorphine and its salts, and any preparation, admixture, extract or other substance containing any proportion of dihydrodesoxymorphine or its salts.

3. 6-Methyldihydromorphine and its salts, and any preparation,

admixture, extract or other substance containing any proportion of 6-methyl-dihydromorphine or its salts.

4. Methyldihydromorphinone and its salts, and any preparation, admixture, extract or other substance containing any proportion of methyl-dihydromorphinone or its salts.

***THIRD SCHEDULE**

***The drugs and products specified in the Third Schedule are the drugs and products defined as "partially controlled drugs" for the purposes of the Dangerous Drugs Regulations.**

(Paragraph 4)

1. Acetyldihydrocodeine;
 2. Dihydrocodeine;
 3. Ethylmorphine;
 4. Methylmorphine (commonly known as codeine);
 5. Merpholinylethylmorphine;
 6. Nicoeodine;
- and their salts.

(As amended by F.G.N. No. 144 of 1961, F.G.N. No. 251 of 1963 and S.I. No. 221 of 1966)

*The drugs and products specified in the Third Schedule are the drugs and products defined as "partially controlled drugs" for the purposes of the Dangerous Drugs Regulations.

THE DANGEROUS DRUGS (SECTION 10) (EXEMPTION) NOTICE

Federal
Government
Notices
58 of 1956
223 of 1961
Statutory
Instrument

- | | |
|---|--------------------------|
| <p>1. This Notice may be cited as the Dangerous Drugs (Section 10) (Exemption) Notice.
(As amended by F.G.N. No. 223 of 1961)</p> | Title |
| <p>2. The provisions of Part III of the Act shall not apply to the preparations specified in the First Schedule.</p> | Application |
| <p>3. The provisions of Part III of the Act shall, as from the 30th June, 1961, cease to apply to the preparations specified in the Second Schedule.</p> | Cessation of application |
| <p>4. The provisions of Part III of the Act shall, as from the 4th June, 1966, cease to apply to the preparations specified in the Third Schedule.</p> | Cessation of application |

FIRST SCHEDULE

(Paragraph 2)

A.-MORFINE PREPARATIONS:

<i>Substance</i>	<i>Formula</i>			
1. Cercoli iodoformi et morphinae gramme	Iodoform	..	..	0.320
	Morphine hydrochloride			0.016 gramme
	Oil of theobroma, sufficient to fill a 1-gramme mould,			
2. Emplastrum opii	.. Elemi	..	..	20 grammes
	<i>Terebinthina</i>..	..	30 grammes	
	<i>Cera flora</i>	..	..	15 grammes
	<i>Olibanum pulvis</i>	..	..	18 grammes
	<i>Benzoes pulvis</i>..	..	10 grammes	
	<i>Opii pulvis</i>	..	..	5 grammes
	<i>Balsamum peruvianum</i>	..	..	2 grammes
3. Emplastrum opii	.. Extract of opium	..	..	25 grammes
	Refined clemi..	..	25 grammes	
	Diachylon plaster with gum			50 grammes
4. Emplastrum opii	.. Elemi	..	..	8 grammes
	<i>Terebinthinae communis</i>			15 grammes
	<i>Ceroe florum</i>..	..	5 grammes	

		<i>Olibani pulvertae</i>	..	8 grammes
		<i>Benzoës pulvertae</i>	..	4 grammes
		<i>Opii pulverati.</i>	.. ..	2 grammes
		<i>Balsami peruviani</i>	..	1 grammes
5.	Emplastrum opii	..	..Opium, in very fine powder	10 grammes
			Resin plaster. . . .	90 grammes
6.	Eplastrum opii (see formula under 5) mixed with other plasters contained in the British Pharmacopoeia or British Pharmaceutical Codex.			
7.	Linimentum opii	..	..Tincture of opium	.. 500 millilitres
			Liniment of soap	.. 500 millilitres
8.	Linimentum opii (see formula under 7) mixed with any other liniment of the British Pharmacopoeia or of the British Pharmaceutical Codex.			
9.	Linimentum opii ammoniatum	Ammoniated liniment of camphor		
		Tincture of opium	.. ..	30
		Liniment of belladonna	..	5
		Strong solution of ammonia	..	5
		Liniment of soap to..	..	100
	<i>Substance</i>		<i>Formula</i>	
10.	Linimentum opii ammoniatum (<i>see</i> formula under 9) mixed with any other British Pharmacopoeia or British Pharmaceutical Codex liniment.			
11.	Caustic "Nerve Pastes"Preparations containing, in addition to morphine salts, or morphine and cocaine salts, at least 25 per centum of arsenious acid, and made up with the requisite proportion of creosote or phenol to produce the consistency of a paste.			
12.	Diarrhoea pills	..	..Camphor	.. .. 0.0648 gramme
			Lead acetate	.. .. 0.013 gramme
			Bismuth subnitrate	.. 0.162 gramme
			Tannic acid	.. .. 0.0648 gramme
			Opium powder	.. .. 0.026 gramme
13.	Pilulac digitalis et Opii compositae	Digitalis leaves, in powder		
		Opium, in powder	..	0.19 gramme
		Ipecacuanha root, in powder	0.13	gramme
		Quinine sulphate	..	0.78 gramme
		Syrup of glucose, a sufficient quantity to make 12 pills.		
14.	Pilulae hydrargyri cum Opii	..	Mercury pill	.. .. 3.89 gramme
			Opium, in powder	.. 0.19 gramme
		To make 12 pills.		
15.	Pilulac hydrargyri cum Creta et Opii	Mercury with chalk	..	0.78 gramme

	Compound powder of *ipecacnanha*	0.78 gramme
*The formula of this powder is given under 21.		
	Milk sugar, a sufficient quantity	
	Syrup of glucose, a sufficient quantity to make 12 pills.	
16. Pilulae ipecnucuanhae cum	. .Compound powder of *ipecacuanha*	30 grammes
*The formula of this powder is given under 21.		
	Squill, in powder	10 grammes
	Ammoniacum, in powder	10 grammes
	Syrup of glucose, a sufficient quantity.	
17. Pilulae hydrargyri bichlorati cum extracto centigrammes	Opii Bichloride of mercury trituated	10
centigrammes	Extract of opium	20
centigrammes	Extract of couchgrass	20
	Liquorice root in powder, <i>q.s.</i> for 10 pills.	
18. Pilulae hydrargyri iodati cum Opin pulvere centigrammes	<i>Hydrargyrum iodatum</i> freshly prepared	50
centigrammes	Opium powder	20
centigrammes	Powdered liquorice	30
	White honey, <i>q.s.</i> for 10 pills.	
19. Pilula plumbi cum Opio	. .Lead acetate, in powder	80 grammes
	Opium, in powder	12 grammes
	Syrup of glucose (or a sufficient quantity).	8 grammes
20. Pilulae terebinthinae compositae grammes	Opium	0.50
	<i>Chinina sulfas</i>	2 grammes
	<i>Styrax liquidus</i>	2 grammes
	<i>Terebenthina laricina</i>	8 grammes
	<i>Mamesii subcarbonas</i> , a sufficient quantity to make 100 pills.	
21. Pulvis Ipecacuanhae et Opii (Dover's Powder)	Powdered ipecacuanha	100 grammes
	Powdered opium	100 grammes
	Potassium sulphate in powder	800 grammes
22. Mixtures of Dover's Powder (<i>see</i> formula under 21) with mercury and chalk, aspirin, phenacetin, quinine and its salts, and sodium bicarbonate.		

23. Pulvis kine compositus	..Kino, in powder ..	75 grammes
	Opium, in powder ..	5 grammes
	Cinnamon bark, in powder	20 grammes

* The formula of this powder is given under 21.

<i>Substance</i>	<i>Formula</i>	
24. Suppositoria plumbi composita	Lead acetate, in powder ..	2.4 grammes
Syn.: Suppositoria plumbi cum Opio	Opium, in powder ..	0.8 grammes
	Oil of theobroma, a sufficient quantity for 12 suppositories, each weighing about 1 gramme.	
25. Coryna Tablets, No. 2	..Powdered opium ..	0.0043 gramme
	Quinine sulph.. . .0.022	gramme
	Ammon. chlor. ..	0.022 gramme
	Camphor ..	0.022 gramme
	Ext. belladonna leaves ..	0.0043 gramme
	Ext. aconite root ..	0.0043 gramme
26. Dierrhoea Tablets, No. 2	..Powdered opium ..	0.016 gramme
	Camphor ..	0.016 gramme
	Powdered ipecacuanha ..	0.008 gramme
	Lead acetate .. . .0.011	gramme
27. Dysentery Tablets ..	..Powdered opium ..	0.013 gramme
	Powdered ipecacuanha ..	0.0648 gramme
	Powdered calomel ..	0.0324 gramme
	Lead acetate .. . .0.0324	gramme
	Bismuth betanaphthol ..	0.1944 gramme
28. Tabella hydrargyri cum Opio	Mercurous chloride powder	0.065 gramme
	Antimony oxide powder	0.065 gramme
	Ipecacuanha-root powder	0.065 gramme
	Powdered opium ..	0.065 gramme
	Milk sugar ..	0.065 gramme
	Gelatine solution, a sufficient quantity to make one tablet.	
29. Tabella plumbi cum Opio	..Sugar of lead ..	0.195 gramme
	Powdered opium ..	0.065 gramme
	Gelatine solution, a sufficient quantity to make one tablet.	
30. Tablettae plumbi cum Opio	..Lead acetate, in fine	

- | | | |
|--|------------------------------------|---------------|
| | powder | 19.44 grammes |
| | Opium, in powder | 3.24 grammes |
| | Refined sugar, in powder | 6.48 grammes |
| | Ethereal solution of | |
| | thoobroma | 3.60 mils. |
| | Alcohol | 0.90 mil.s |
31. Ungentum gallae compositum Galls, in very fine powder 20
 Extract of opium 4
 Distilled water 16
 Wool fat 10
 Soft paraffin, yellow 50
32. Ungentum gallae composition (*see* formula under 31) mixed with other ointments and plasters contained in the British Pharmacopoeia or British Pharmaceutical Codex.
33. Unguentum gallae cum Opio Gall ointment 92.5 grammes
 Opium in powder 7.5 grammes
34. Unguentum gallae cum Opio (*see* formula under 33) mixed with other ointments and plasters contained in the British Pharmacopoeia or British Pharmaceutical Codex.
35. Yatren-105 (Iodooxyquinoline-sulphonic acid) with 5 per centum opium admixture.

B.-COCAINE PREPARATIONS:

- | <i>Substance</i> | <i>Formula</i> |
|-------------------------------------|--|
| 1. Bernatzik's Injections | (a) <i>Hydrargyrum bicayanatum</i> 0.03 gramme
<i>Cocainum</i> 0.02 gramme
(b) <i>Hydrargyrum succinatum</i> 0.03 gramme
<i>Cocainum</i> 0.01 gramme |
| 2. Stila's injections | (a) <i>Hydrargyrum succinatum</i> 0.03 gramme
<i>Cocainum muriaticum</i> 0.01 gramme
(b) <i>Hydrargyrum succinatum</i> 0.05 gramme
<i>Cocainum muriaticum</i> 0.03 gramme |

- | <i>Substance</i> | <i>Formula</i> |
|---|--|
| 3. Natrium biboracicum compositum cum Cocaine | In tablets, compressed tablets, lozenges, pastilles and the like, difficult to break up, and containing not more than 0.2 per centum of cocaine salts in conjunction with not less than 20 per centum borax and not less than 20 per centum antipyrine, or some similar analgesic, and not more than 40 per centum of flavoring matter. Maximum weight of each tablet, etc., 1 gramme. |
| 4. Caustic "Nerve Pastes" | Preparations containing, in addition to cocaine salts |

or cocaine and morphine salts, at least 25 per centum of arsenious acid, and made up with the requisite proportion of creosote or phenol to produce the consistency of a paste.

5. Cocaine and Atropine Tablets, with a	<i>Atropium sulphuricum</i>	0.0003
gramme		
content of not more than 0.0003 gramme	<i>Cocainum hydrochloricum</i>	0.0003
gramme		
of cocaine salts and not less than	Mannite	.. ..
0.0003 gramme of atropine salts to		.. 0.003 gramme
each tablet	Weight of one tablet	.. <u>0.0036</u>
gramme		

Cocaine content, 8.3 per centum.

C.-DICODIDE PREPARATIONS:

1. Cardiazol-Dicodide Solutions .. Solutions containing not less than 10 per centum of cardiazol and not more than 0.5 per centum of dicodide salts.

D.-EUCODAL PREPARATIONS:

1. Anti-Opium Tablets	.. .. Encodal	.. ..	1
gramme			
	<i>Pulvis gentianae</i>	..	35 grammes
	<i>Pulvis ipecacuanhae.</i>	.. 20	grammes
	Quinine sulphate	..	20 grammes
	Caffeine	.. ..	5 grammes
	Sugar of milk.	.. ..	25 grammes
	Mix up and make up 5-grain tablets.		
2. Tablets B.B. Compound	<i>Berberis vulgaris</i> powder		0.0324
gramme			
	<i>Nux vomica</i>	.. ..	0.013 gramme
	Eucodal	.. ..	0.0032 gramme
	Ipecacuanha	.. ..	0.0648 gramme
	Rhubarb	.. ..	0.013 gramme
	<i>Pulvis cinnamoni compo-</i>		
	<i>situs</i>	.. ..	0.0324 gramme
	Aromatic chalk	.. ..	0.0032
gramme			

SECOND SCHEDULE

(Paragraph 3)

1. Tablets each weighing 0.8 grammes and containing 2.5

milligrammes of diphenoxylate hydrochloride and 0.025 milligrammes of atropine sulphate.

2. Preparations containing 2.5 milligrammes of diphenoxylate hydrochloride, 0.025 milligrammes of atropine sulphate, 85 milligrammes of lactose, 7 milligrammes of sugar, 21.6 milligrammes of starch, 3 milligrammes of talc, 1 milligramme of magnesium stearate and 0.7 milligrammes of tartrazine.

(F.G.N. No. 223 of 1961)

THIRD SCHEDULE

(Paragraph 4)

4-Dimethylamino-1; 2-diphenyl-3-methyl-2-propionyloxybutane, its salts and any preparation, admixture, extract or other substance containing any proportion of 4-dimethylamino-1; 2-diphenyl-3-methyl-2-propionyloxybutane.

(S.I. No. 221 of 1966)

THE DANGEROUS DRUGS (SECTION 13) (EXEMPTION) NOTICE

Federal
Government
Notices
3 of 1959
97 of 1960
224 of 1961
252 of 1963

1. This Notice may be cited as the Dangerous Drugs (Section 13) (Exemption) Notice.

Title

2. The provisions of section *thirteen* of the Act shall cease to apply to the products specified in the Schedule, being products obtained from morphine, one of the phenanthrene alkaloids of opium.

Cessation of
application

SCHEDULE

(Paragraph 2)

EXEMPTED PRODUCTS

1. Methyldesomorphine.

2. Dihydrodesoxymorphine.
3. 6-Methyldihydromorphine.
4. Methyldihydromorphinone.
5. Nallylnormorphine.
6. Diacetyl-N-allylnormorphine.
7. Myrophine (myristyl ester of benzylmorphine).
8. Oxymorphone (dihydro-14-hydroxymorphinone).
9. Hydromorphinol (14-hydroxydihydromorphine).
10. Nicocodine.
11. Norcodeine.
12. Normorphine.

(As amended by F.G.N. No. 97 of 1960, F.G.N. No. 224 of 1961 and F.G.N. No. 252 of 1963)

**SECTION 14-THE DANGEROUS DRUGS
(MODIFICATION OF SCHEDULE) ORDER.**

Statutory
Instruments
144 of 1985

Order by the Minister

1. This Order may be cited as the Dangerous Drugs (Modification of Schedule) Order, and shall be read as one with the Schedule to the Act, hereinafter referred to as the principal Schedule. Title
Cap. 95 p. 12

2. The principal Schedule is amended in Part I by the insertion in the appropriate places in paragraph 1 of the following new substances: Amendment of
Schedule

3-(1, 2-dimethylheptyl-1)-

hydroxy-7, 8, 9, 10-tetrahydro-

6, 6, 9-trimethyl-6H-dibenzo

(b, d) pyran

Amphetamine

Dexamphetamine

Eticyclidine

(+)-Lysorgide

Mecloqualone

Methamphetamine

Methaqualone

Methylphenidate

N, N-diethyltryptamine

N, N-dimethyltryptamine

Phencyclidine

Phenmetrazine

Psilocybine

Rolicyclidine

Tenocyclidine

(As amended by S.I. No. 144 of 1985)

CHAPTER 96

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT

ARRANGEMENT OF SECTIONS

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2. Interpretation
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12. Conspiracy to commit drug offences, etc.
13. Unlawful manufacture of narcotic drugs or psychotropic substances
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15. Unlawful possession of instruments or utensils for administering narcotic drugs or psychotropic substances
16. Permitting premises to be used for unlawful use of narcotic drugs or psychotropic substances

17. Unlawful supply, etc., of narcotic drugs or psychotropic substances
18. Double doctoring
19. Impersonation of Commission's officers
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FIRST SCHEDULE-Drug Enforcement Commission

SECOND SCHEDULE-Narcotic Drugs and Psychotropic Substances

CHAPTER 96

Act No.
37 of 1993
13 of 1994

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

An Act to continue the Drug Enforcement Commission; revise and consolidate the law relating to narcotic drugs and psychotropic substances; incorporate into Zambian law certain international Conventions governing illicit drugs and psychotropic substances; control the importation, exportation, production, possession, sale, distribution and use of narcotic drugs and psychotropic substances; provide for the seizure and forfeiture of property relating to, or connected with, unlawful activities involving narcotic drugs and psychotropic substances; repeal the Dangerous Drugs (Forfeiture of Property) Act, 1989; and provide for matters connected with or incidental to the foregoing.

[8th September, 1993

PART I

PRELIMINARY

1. This Act may be cited as the Narcotic Drugs and Psychotropic Substances Act.

Short title

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

Interpretation

"bank" has the meaning assigned thereto in any written law governing the licensing of banks and includes a bank established by or under a written law;

"banker's books" includes ledgers, day books, cash books, accounts books and all other books and documents used in the ordinary course of the business of a bank;

"Commission" means the Drug Enforcement Commission continued under section *four*;

"Commissioner" means the person appointed Commissioner under paragraph 1 of the First Schedule;

"conviction" includes a conviction by a court outside Zambia and any conviction where a conditional or unconditional discharge is ordered;

"corresponding foreign law" means the provision of any law which is similar in whole, or in part, or in substance, to Zambian law;

"Deputy Commissioner" means the person appointed Deputy Commissioner under paragraph 2 of the First Schedule;

"illegal property" means any property, whether within or outside Zambia which-

(a) is wholly or substantially derived or obtained from, or by means of, any prohibited activity carried out by any person;

(b) is the income, earnings or assets wholly or substantially derived or obtained from or by means of any property referred to in paragraph

(a);

(c) is wholly or substantially derived or obtained from or by means of any property referred to in paragraph (a) or (b);

(d) is wholly or substantially traceable or attributable to any property referred to in paragraph (a), (b) or (c) or to any income, earnings or assets of any such property;

(e) is or was used to assist or facilitate any prohibited activity;

(f) is the subject-matter of an offence under this Act;

(g) due to any circumstances such as, but not limited to, its nature, value, location or place of discovery, or the time, manner or place of its acquisition, or the person from whom it was acquired, or its proximity to other property referred to in the foregoing paragraphs, can be reasonably believed to be property falling within the scope of any of the foregoing paragraphs;

"manufacture" in relation to narcotic drugs or psychotropic substances includes all processes by which such drugs or substances may be obtained, refined, transformed or prepared;

"narcotic drug" means any substance in Part II of the Second Schedule;

"officer" means a person appointed under section *eight* of this Act;

"property" means any movable or immovable property and legal documents evidencing title to, or interest in, such property;

"psychotropic substance" means any substance in Part II of the Second Schedule;

"public analyst" means a person appointed a public analyst under section *two* of the Food and Drugs Act;

Cap. 303

"securities" means-

(a) shares, debentures, stocks or bonds issued or proposed to be issued by a Government;

(b) shares, debentures, stocks, bonds or notes issued or proposed to be issued by a body corporate;

(c) any right or option in respect of any such shares, debentures, stocks, bonds or notes; or

(d) any instruments recognised as securities under any written law;

"trafficking" means-

(a) being involved directly or indirectly in the unlawful buying or selling of narcotic drugs or psychotropic substances and includes the commission of an offence under this Act in circumstances suggesting that the offence was being committed in connection with buying or selling; or

(b) being found in possession of narcotic drugs or psychotropic substances in such amounts or quantities as the President may, by statutory instrument, declare to be trafficking for the purposes of this Act.

3. Except as otherwise provided in this Act, this Act shall apply notwithstanding any other written law to the contrary.

Application

PART II

DRUG ENFORCEMENT COMMISSION

4. (1) The Drug Enforcement Commission established under the Dangerous Drugs (Forfeiture of Property) (Special Organisations) (Drug Enforcement Commission) Regulations, 1989, is hereby continued as if established under this Act.

Continuation of
Commission
S.I. No.
87 of 1989

(2) The Commission shall be a department in the Ministry responsible for Home Affairs and shall be under the control and supervision of the Minister responsible for Home Affairs.

(3) The provisions of the First Schedule shall apply to the Commission.

5. The functions of the Commission shall be to-

Functions of
Commission

(a) collect, collate and disseminate information on narcotic drugs and psychotropic substances;

(b) receive and investigate any complaint of alleged or suspected breach of this Act and, subject to the directives of the Director of Public Prosecutions, prosecute for offences under this Act;

(c) address and advise Government Ministries and departments, public bodies, companies, institutions, statutory bodies and corporations on ways and means of preventing prohibited activities relating to narcotic drugs and psychotropic substances and suggest measures, procedures or methods of work compatible with the proper performance of their duties which, in the opinion of the Commission, would reduce prohibited activities relating to narcotic drugs and psychotropic substances;

(d) disseminate information intended to educate the public on the evils and dangerous effects of abusing drugs or psychotropic substances and the effect of dealing in property acquired from drug trafficking; and

(e) enlist and foster public support against the abuse of drugs or psychotropic substances and, in this connection, liaise with similar authorities outside Zambia.

PART III

OFFENCES AND PENALTIES

6. Any person who traffics in a narcotic drug or psychotropic substance shall be guilty of an offence and shall be liable upon conviction to imprisonment for a term not exceeding twenty-five years.

Trafficking in
narcotic drugs or
psychotropic
substances
prohibited

7. Any person who, without lawful authority, imports or exports any narcotic drug or psychotropic substance listed in the Second Schedule shall be guilty of an offence and shall be liable upon conviction to imprisonment for a term not exceeding twenty years.

Prohibition on
importing or
exporting narcotic
drugs or
psychotropic
substances

8. Any person who, without lawful authority, has in his possession or under his control any narcotic drug or psychotropic substance shall be guilty of an offence and shall be liable upon conviction to imprisonment for a term not exceeding fifteen years.

Prohibition on
possession of
narcotic drugs and
psychotropic
substances

9. Any person who, without lawful authority, cultivates any plant which can be used or consumed as a narcotic drug or psychotropic substance, or from which a narcotic drug or psychotropic substance can be extracted, shall be guilty of an offence and shall be liable upon conviction to a fine of not less than five hundred penalty units or to imprisonment not exceeding ten years or to both.

Cultivation of plants for narcotic or psychotropic purposes

Provided that no person shall be guilty of the offence under this section if the plant is cultivated for purposes of medicine or is not on a substantial and commercial scale.

(As amended by Act No. 13 of 1994)

10. Any person who, without lawful authority, takes a narcotic drug or psychotropic substance by smoking, injecting into his body, sniffing, chewing, drinking or otherwise administering such drug or substance shall be guilty of an offence and shall be liable upon conviction to imprisonment for a term not exceeding ten years.

Use of narcotic drugs and psychotropic substances prohibited

11. Any person who attempts, abets, solicits, incites, and compounds or does any act preparatory to, or in furtherance of, the commission of any offence under this Act shall be guilty of an offence and shall be liable upon conviction to imprisonment for a term of not less than five years.

Attempts, abetting, soliciting, etc., contravention of this Act

12. Where two or more persons act together to commit an offence under this Act, they shall be guilty of an offence and liable upon conviction to a term not exceeding five years.

Conspiracy to commit drug offences, etc.

13. (1) Any person who, without lawful authority, manufactures or carries on any process in the manufacture of a narcotic drug or psychotropic substance shall be guilty of an offence and shall be liable upon conviction to imprisonment for a term not exceeding fifteen years.

Unlawful manufacture of narcotic drugs or psychotropic substances

14. Any person who, by force, deceit or any other means, induces any other person to take any narcotic drug or psychotropic substance shall be guilty of an offence and shall be liable upon conviction to imprisonment for a term not exceeding ten years.

Inducing another to take narcotic drugs or psychotropic substances

15. Any person who, without lawful authority, has in his possession instruments or utensils used in administering narcotic drugs or psychotropic substances shall be guilty of an offence and shall be liable upon conviction to imprisonment for a term not exceeding ten years.

Unlawful possession of instruments or utensils for administering narcotic drugs or

- | | |
|---|---|
| | psychotropic substances |
| 16. A person who occupies or controls premises, who permits those premises to be used for administering narcotic drugs or psychotropic substances shall be guilty of an offence and shall be liable upon conviction to imprisonment for a term not exceeding five years. | Permitting premises to be used for unlawful use of narcotic drugs or psychotropic substances prohibited |
| 17. Any person who, without lawful authority, supplies to, or procures for, any person a narcotic drug or psychotropic substance or advertises for sale any such drug or substance shall be found guilty of an offence and shall be liable upon conviction to imprisonment for a term not exceeding five years. | Unlawful supply, etc. of narcotic drugs or psychotropic substances |
| 18. Any person who, with intent to deceive obtains a narcotic drug or psychotropic substance or a prescription for a narcotic drug or psychotropic substances from a medical practitioner without disclosing to that practitioner particulars of every narcotic drug or psychotropic substance or prescription for such drug or substance issued to him by a different practitioner within the preceding thirty days shall be guilty of an offence and shall be liable upon conviction to a fine of not less than ten thousand penalty units or imprisonment for a term not exceeding twelve months or to both.
<i>(As amended by Act No. 13 of 1994)</i> | Double doctoring |
| 19. Any person who impersonates a drug enforcement officer or police officer shall be guilty of an offence and shall be liable upon conviction to imprisonment for a term not exceeding five years. | Impersonation of Commission's officers |
| 20. Any person who directly or indirectly deals in or uses any property within or outside Zambia for the purpose of doing anything that constitutes an offence under this Act shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding ten years. | Prohibition of unlawful use of property for narcotic drugs or psychotropic substances |
| 21. (1) Any person who has in his possession property which to his actual or constructive knowledge constitutes, in whole or in part, the proceeds of any property which was directly or indirectly acquired as a result of- | Possession of property obtained through trafficking |
| (a) a crime committed under this Act; or | |

(b) an act which, if it had been committed in Zambia, would have constituted an offence under this Act;

shall be guilty of an offence and shall be liable upon conviction to imprisonment for a term not exceeding ten years.

22. Any person who does any act or omits to do any act with an actual or constructive intention to conceal the fact that part or the whole of any property was directly or indirectly acquired as a result of-

Money laundering

(a) a crime committed under this Act; or

(b) an act which, if it had been committed in Zambia, would have constituted a crime under this Act;

shall be guilty of an offence and shall be liable upon conviction to imprisonment for a term not exceeding ten years.

PART IV

INVESTIGATION, ARREST AND SEIZURE

23. (1) Every drug trafficking and drug manufacturing offence shall be a cognisable offence for the purposes of the Criminal Procedure Code.

Power of arrest and
detention
Cap. 88

(2) Where a person arrested under this Act is serving a sentence of imprisonment, or is in lawful custody, he shall, upon an order in writing by a drug enforcement officer or police officer, be produced before that officer or before any other drug enforcement officer or police officer at such place as may be specified in the order for the purpose of investigations into the matter in respect of which he is liable to be arrested under this Act.

24. (1) Whenever the Commissioner has reason to believe that there is reasonable cause to suspect that in or on any premises there is concealed or deposited any property liable to forfeiture under this Act, or as to which an offence under this Act is reasonably suspected to have been committed, or any book or document directly or indirectly relating to or connected with any dealing or intended dealing, whether within or outside Zambia, in respect of any property liable to seizure or forfeiture under this Act, or which would, if carried out, be an offence under this Act, he may, by order in writing, authorise a drug enforcement officer or police officer to-

Power of entry,
search and seizure

(a) enter the premises and search for, seize and detain any such property, book or document;

(b) search any person who is in or on the premises, and detain that person and remove him to any place in order to facilitate the search;

(c) arrest any person who is in or on the premises in whose possession any property liable to seizure or forfeiture under this Act is found, or whom the officer reasonably believes to have concealed or deposited the property;

(d) break open, examine and search any article, container or receptacle; and

(e) stop, search and detain any conveyance.

(2) The officer referred to in subsection (1) may, if it is necessary to do so-

(a) break open any outer or inner door or window of any premises;

(b) forcibly enter the premises or every part of it;

(c) remove by force any obstruction to entry, search, seizure and removal; or

(d) detain every person found in or on the premises until those premises have been searched.

(3) The provisions of subsections (1) and (2) shall not apply in relation to banker's books except in accordance with the Evidence (Banker's Books) Act. Cap. 44

25. (1) A drug enforcement officer or police officer may search, or cause to be searched, any person whom he has reason to believe has on his person any property liable to seizure or forfeiture under this Act, or any article necessary for the purpose of any investigation under this Act.

Search of person

(2) A search of a person under this Act may extend to a medical

examination of his body, both externally and internally, by a medical practitioner.

26. (1) Any drug enforcement officer or police officer of or above the rank of Sergeant may take or cause to be taken in his presence for the purpose of record and identification, the measurements, photographs, fingerprints, handprints and footprints of any person in lawful custody.

Power to take photographs, measurements, fingerprints, handprints and footprints

(2) A drug enforcement officer or police officer acting in accordance with subsection (1) shall certify that the fingerprints have been taken by him or that he has caused them to be taken in his presence and that the particulars on the certificate are, to the best of his knowledge and belief, accurate and true.

27. (1) Notwithstanding the provisions of any other written law, a Judge may, if he considers that any communication or postal article is likely to contain any information or substance which is likely to be relevant for the purpose of any investigation into an offence under this Act, or any corresponding foreign law, or for the purpose of any proceedings under Part V, or for any other purposes under this Act, on the application of a drug enforcement officer or police officer, authorise any such officer-

Power to intercept communication

(a) to intercept, detain and open any postal article in the course of transmission by post; or

(b) to intercept any message transmitted or received by any telecommunication.

(2) When any person is charged with an offence under Part VI, any information obtained by a drug enforcement officer or police officer under subsection (1), whether before or after that person is charged, or before or after those proceedings are commenced, shall be admissible in evidence at his trial or in those proceedings, as the case may be.

(3) A certificate issued by a Judge under subsection (1) that the action taken by a drug enforcement officer or police officer in pursuance of subsection (1) had been authorised by him shall be conclusive evidence that it had been so authorised and the certificate shall be admissible in evidence without proof of signature.

(4) No person shall be under any duty, obligation or liability or be in any manner compelled to disclose in any proceedings the procedure, method, manner, means or any related matter with regard to anything done under subsection (1).

(5) For the purpose of this section-

"postal article" has the meaning assigned to it in the written law dealing with postal services; and

"telecommunication" has the meaning assigned to it in the written law dealing with telecommunications.

28. (1) Any drug enforcement officer or police officer may, subject to subsections (2) and (3), use a firearm issued to him against-

Power to use
firearms

(a) any person in lawful custody charged with or convicted of an offence relating to narcotic drugs or psychotropic substances when such person is escaping or attempting to escape;

(b) any person who by force rescues or attempts to rescue any other person from lawful custody;

(c) any person who by force prevents or attempts to prevent the lawful arrest of himself or of any other person:

Provided that a drug enforcement officer or police officer shall not use a firearm unless the use of the firearm and the degree to which it is used is reasonable in the circumstances.

(2) A drug enforcement officer or police officer shall not, in the presence of his superior officer, use a firearm against any person except under the orders of that superior officer.

(3) The use of a firearm under this section shall as far as possible be to disable and not to kill.

PART V

SEIZURE AND FORFEITURE OF PROPERTY

29. Any person who wilfully fails or refuses to disclose any information or produce any accounts, documents or article to a drug enforcement officer or police officer on any investigation into any offence under this Act shall be guilty of an offence and shall be liable upon conviction to imprisonment for a term not exceeding ten years.

Failure or refusal to disclose information or produce anything

30. Any person who-

Obstruction of inspection or search

(a) prevents any drug enforcement officer or police officer authorised to enter, search or have access to any premises from so entering, searching or having access;

(b) assaults, obstructs, hinders or delays such officer;

(c) fails to comply with any lawful demand of a drug enforcement officer or police officer;

(d) refuses or neglects to give any information which may reasonably be required of him and which he has power to give;

(e) fails to produce, conceals or attempts to conceal any property, document or book in relation to which there is reasonable ground to suspect that an offence has been or is being committed under this Act, or which is liable to seizure under this Act;

(f) retrieves or endeavours to retrieve or causes to be retrieved anything which has been duly seized;

(g) furnishes to any officer as true, information which he knows or has reason to believe to be false; or

(h) before or after any seizure destroys anything to prevent the seizure or securing of that thing;

shall be guilty of an offence and liable upon conviction to a fine of not less than ten thousand penalty units or to imprisonment for a term not exceeding twelve months or to both.

(As amended by Act No. 13 of 1994)

31. Any property which a drug enforcement officer or police officer reasonably suspects to be the subject-matter of an offence under this Act, or which has been used for the commission of that offence or is illegal property shall be liable to seizure.

Seizure of property

32. (1) Where property has been seized under this Act, the Commissioner, or a drug enforcement officer or police officer who effected the seizure may, at any time before it is forfeited under this Act, order the release of the property to such person if he is satisfied that the property is not liable to forfeiture under this Act and is not otherwise required for the purpose of any investigation or proceedings under this Act or for the purpose of any prosecution under any other written law.

Release of property
seized

(2) Where a release has been effected under subsection (1), neither the Commissioner, the officer effecting the seizure, nor the Government, nor any person acting on behalf of the Government, shall be liable to any civil proceedings by any person if the seizure and the release had been effected in good faith.

(3) Whenever property is released under subsection (1), a record in writing shall be made by the officer effecting the release, specifying in detail the circumstances of, and the reasons for, the release, and he shall send a copy of the record to the Director of Public Prosecutions and to the Commissioner within seven days after the release.

33. (1) Where any property has been seized under this Act and-

Forfeiture of
property where no
proceedings or
claim

(a) no prosecution for any offence under any written law is instituted with regard to the property;

(b) no claim in writing is made by any person that he is lawfully entitled to the property or that it is not liable to forfeiture under this Act;

(c) no proceedings are commenced by the Commission, within six months from seizure, for the forfeiture of the property, property shall become forfeited immediately upon the expiration of the period of six months.

(2) Where within six months from the date of the seizure of any property under this Act a claim in writing is made by any person in terms of paragraph (b) of subsection (1)-

(a) the Commissioner may order the release of the property to the claimant if he is satisfied that there is no dispute as to the ownership of the property and that it is not liable to forfeiture; or

(b) if the Commissioner is satisfied that there is a dispute as to the ownership of the property or is doubtful as to the person who owns it, or whether it is liable to forfeiture, he shall, within fourteen days after the expiry of the period of six months, refer the claim to the High Court for its decision.

(3) This section shall be without prejudice to the power of a drug enforcement officer or police officer to release from seizure any property under section *thirty-two*.

34. (1) A court which convicts for an offence under this Act shall, in addition to any penalty, order the narcotic drug or psychotropic substance, and any movable or immovable property used to commit the offence to be forfeited to the State.

Forfeiture of property on conviction

(2) Section *one hundred and eighty* of the National Parks and Wildlife Act shall, with necessary modifications, apply to a forfeiture under this section.

Cap 201

(3) Where the property of a person referred to in subsection (1) is deceased and his property has passed on to his personal representative or a person with a beneficial interest in the estate, that property shall be forfeited.

35. (1) The Director of Public Prosecutions may apply to the High Court for an order of forfeiture of any property he believes to be illegal property.

Application to High Court

(2) An application made under subsection (1) shall contain all relevant information, including but not limited to-

(a) the name of the convicted person and his address, if known;

(b) the grounds for the application; and

(c) an identification of the property, its estimated value and location.

(3) The Director of Public Prosecutions may make a fresh application-

(a) relating to any property which was not the subject-matter of an earlier application against the accused; or

(b) against any person whom an earlier application under this section had not been made.

36. (1) Upon receiving the application referred to in section *thirty-five*, the High Court shall issue a notice to the person specified in the application as holding or owning the property, commanding that person to attend before the Court on a date specified in the notice, which date shall not be less than thirty days from the date of the notice. Forfeiture notice

(2) The person referred to in subsection (1) shall show cause why any property identified in the application should not be forfeited.

(3) The notice referred to in subsection (1) shall be served on the convicted person, if possible, and published, as soon as practicable, in a newspaper circulating in Zambia.

37. (1) Where the person against whom the notice referred to in section *thirty-six* is issued does not appear before the High Court because he cannot be traced, he has absconded or is outside Zambia and cannot be compelled to attend before the Court, or fails to attend the proceedings after publication of the notice, the proceedings shall be continued in his absence. Forfeiture of property where owner untraceable

(2) Where the High Court finds that any property specified in the application made by the Director of Public Prosecutions is illegal property but that the person accused does not hold that property, the Court shall order that the property be forfeited unless another person claims to be lawfully entitled to it as a purchaser in good faith for valuable consideration.

(3) Where another person claims under subsection (2) to be lawfully entitled to the illegal property, the High Court shall proceed to consider the claim and if, after giving an opportunity to the Director of Public Prosecutions to rebut that claim, the Court is satisfied that such person is not a purchaser in good faith for valuable consideration, it shall order that the property be forfeited.

38. (1) Where the High Court is satisfied that any property forfeited- Forfeiture of untraceable property, etc.

(a) cannot be located or traced;

(b) has been sold to a purchaser in good faith for valuable consideration;

(c) is outside Zambia;

(d) has been mingled with other property which cannot be separated or divided without difficulty; or

(e) has been diminished in value;

the High Court shall order that any other property of a similar value be forfeited.

(2) Where the owner of property forfeited under subsection (1) fails to make substitute property available within a period not exceeding thirty days from the date of the order, he shall be guilty of an offence and shall be liable upon conviction to imprisonment for a term not exceeding seven years.

(3) Where the person whose property has been forfeited dies before or after the order is made, the order shall have effect against the estate of the deceased.

(4) For the purposes of this section, the value of any property shall be its market value at the date on which an order of forfeiture is made.

39. Where any property is forfeited under this Act, the property shall vest in the State. Property to be forfeited to State

40. Where any person dies before the conclusion of any proceedings under this Part but after the issue of the notice against him under section *thirty-six*, the proceedings shall be continued against the personal representative of that person. Proceedings against deceased's estate

PART VI

GENERAL

41. Any person who, at any Drug Enforcement Commission premises, conducts himself in a riotous, indecent, disorderly or insulting manner shall be guilty of an offence and shall be liable upon conviction to a fine of not less than ten thousand units or to imprisonment for a term not exceeding twelve months or to both. Disorderly conduct at Drug Enforcement Commission premises

(As amended by Act No. 13 of 1994)

42. Any person who assaults, resists or wilfully obstructs any drug enforcement officer or police officer in the due execution of his duty under this Act shall be guilty of an offence and shall be liable upon conviction to a term not exceeding five years. Assaulting drug enforcement officers and police officers

43. Whenever any person is arrested or detained upon reasonable suspicion of his having committed a cognisable offence under this Act, no bail shall be granted when he appears or is brought before any Court. Bail

44. Any person convicted on a second or subsequent offence for trafficking shall be liable to imprisonment for a term of not less than ten years. Sentence for previous offenders

45. Whenever a drug enforcement officer or police officer is convicted of an offence under this Act or any regulations made hereunder, he shall be liable to double the prescribed penalty. Sentence for officers

46. An offence under this Act shall be deemed to be an extraditable Extradition

offence under the provisions of the Extradition Act.

Cap. 94

47. The Mutual Legal Assistance in Criminal Matters Act, 1993, applies to offences under this Act except where this Act is inconsistent with that Act.

International
legal assistance
Cap. 98

48. The Minister may, by statutory instrument, make regulations for the better carrying out of the purposes of this Act and, without prejudice to the generality of the foregoing, may make regulations for the establishment and management of drug rehabilitation centres.

Regulations

49. The Dangerous Drugs (Forfeiture of Property) Act, 1989 is hereby repealed

Repeal of Act
No. 7 of 1989

FIRST SCHEDULE

(Section 4)

DRUG ENFORCEMENT COMMISSION

1. (1) There shall be a Commissioner of the Commission, whose office shall be a public office, and who shall be appointed by the President on such terms and conditions as the President may determine. Commissioner

(2) The Commissioner shall not, while he holds the office of Commissioner, hold or discharge the duties of any other office of emolument in the Republic.

(3) The Commissioner may resign upon giving three months' notice, in writing, to the President or may resign with immediate effect upon paying to the Government three months' basic salary in lieu of notice and the President may, subject to the same conditions, terminate the services of the Commissioner.

(4) The Commissioner may resign upon giving three months' written notice to the President or paying one month's salary in lieu of notice.

2. (1) There shall be a Deputy Commissioner of the Commission, whose office shall be a public office and who shall be appointed by the President on such terms and conditions as the President may determine. Deputy Commissioner

(2) Subject only to the powers of the Commissioner, paragraph 1 of this Schedule shall apply, with necessary modifications, to the Deputy Commissioner.

3. (1) If the office of Commissioner falls vacant or the Commissioner is absent from duty or is unable for any reason to perform the functions of his office, the Deputy Commissioner shall act as Commissioner. Acting Commissioner

(2) If both the Commissioner and the Deputy Commissioner are absent from duty or are unable for any reason to perform the functions of their offices, the President may appoint any other senior officer of the Commission to act as Commissioner or Deputy Commissioner:

Provided that, where it is in the public interest, the President may appoint any person who is not an officer of the Commission to act as Commissioner or Deputy Commissioner.

4. (1) The Commissioner may appoint such number of officers as may be necessary for the performance of the functions of the Commission. Officers of commission

(2) An officer appointed under subsection (1) shall be a public officer.

(3) Officers appointed under sub-paragraph (2) shall have all the powers of a police officer unless the Commissioner declares them to be support staff.

5. The conditions of service applicable to the Civil Service shall apply to the Commission. Conditions of service

6. (1) The Commissioner shall issue to an officer an identity card which shall, unless the contrary is proved, be evidence of the officer's appointment as such. Identity card

(2) An officer shall, whenever it is necessary for the performance of his functions, produce the identity card referred to in sub-section (1).

7. (1) The Commissioner may, subject to the general directions of the President, make Staff Rules providing for- Staff Rules

- (a) the control, direction and administration of the Commission;
- (b) the discipline, training, classification and promotion of officers of the Commission;
- (c) the duties of officers of the Commission;
- (d) the financial management of the Commission; and
- (e) such other matters as may, in his opinion, be necessary or expedient for preventing the abuse or neglect of duty by an officer and for upholding the efficiency and integrity of the Commission.

8. (1) The funds of the Commission shall consist of such moneys as may- Funds of Commission

- (a) be appropriated by Parliament for the purposes of the Commission; and
- (b) be paid to the Commission by way of grants or donations; and
- (c) vest in or accrue to the Commission.

(2) The Commission may-

- (a) accept money by way of grants or donations;
- (b) raise by way of loans or otherwise from any source in Zambia and, subject to the approval of the Minister, from any source outside Zambia, such money as it may require for the discharge of its functions; and
- (c) charge and collect fees in respect of programmes, publications, seminars, consultancy and other services provided by the Commission.

(3) There shall be paid from the funds of the Commission-

- (a) the salaries, allowances, loans, gratuities and pensions of the staff of the Commission and other payments for the recruitment and retention of staff;

(b) such reasonable travelling and subsistence allowances for staff of the Commission when engaged on the business of the Commission and at such rates as the Commission may determine; and

(c) any other expenses incurred by the Commission in the performance of its functions.

(4) The Commission may invest in such manner as it thinks fit such of its funds as it does not immediately require for the discharge of its functions.

9. The financial year of the Commission shall be period of twelve months ending on 31st December in each year. Financial year

10. (1) The Commission shall cause to be kept proper books of account and other records relating to its accounts. Accounts

(2) The accounts of the Commission shall be audited annually by independent auditors appointed by the Commission.

(3) The auditors' fees shall be paid by the Commission.

11. (1) As soon as practicable but not later than six months after the expiry of the financial year, the Commission shall submit to the Minister a report concerning its activities during the financial year. Annual reports

(2) The report referred to in subsection (1) shall include information on the financial affairs of the Commission and there shall be appended to the report-

(a) an audited balance sheet;

(b) an audited statement of income and expenditure; and

(c) such other information as the Minister may require.

(3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subsection (1), lay it before the National Assembly.

SECOND SCHEDULE

(Section 2)

PART I

NARCOTIC DRUGS

Acetorphine-(3-0-acetyltetrahydro - 7a- (1-hydroxy-1-methylbutyl) -6, 14 endoetheno-oripavine).

Acetylmethadol-(3-acetoxy-6-dimethylamono-4, 4-diphenylheptane).

Allylprodine-(3-allyl-1-methyl-4-phenyl-4-propionoxy- piperidine).

Alphacetylmethadol-(alpha-3-acetoxy-6-dimethylamino-4, 4-dipheylheptane).

Alphameprodine-(alpha-3-ethyl-1-methyl-1-4-phenyl-4 propionoxyperidine).

Alphamethadol-(alpha-6-dimethylamino-4, -4 diphenyl-3-heptanol).

Alphaprodine-(alpha-1, 3-dimethyl-4-phenyl-4 propionoxy piperidine).

Anileridine-(1-para-aminophenethyl-4-phenylpiperidine-4- carboxylic acid ethyl ester).

Benzethidine-(1-(2-benzyloxyethyl)-4-phenypiperidine-4- carboxylic acid ethyl ester).

Benzylmorphine-(3-benzylmorphine).

Betacetylmethadol-(beta-3-acetoxy-6-dimethylamino-4, 4-diphenylheptane).

Etosexidine-(1-[2-(2-hydroxyethoxy)-ethyl] -4-phenylpiperidine 4-carboxylic acid ester).

Fentanyl-(1-phenethyl-4-N-propionylanilinopiperidine).

Furethidine-(1-(2-tetrahydrofurfuryloxyethyl) -4-phenylpiperidine-4-carboxylic acid ethyl ester).

Heroin-(diacetylmorphine).

Hydrocodone-(dihydrocodeinone).

Hydromorphanol-(14-hydroxydihydromorphine).

Hydroxypethidine-(4-meta-hydroxyphenyl-1-methylpiperidine-4- carboxylic acid ethyl ester)

Isomethadone-(6-dimethylamino-5-methyl-4,4-diphenyl-3-hexanone)

Ketobemidone-(4-meta-hydroxyphenyl-1-methyl-4- propionylpiperidine).

Levomethorphan-(-)-3-methoxy-N-methylmorphinan).

Levomoramide-(-)-4-[2-methyl-4-oxo-3, 3-dipheny-4-(1- pyrrolidinyl) butyl] morpholine).

Levophenacymorphan-(-)-3-hydroxy-N-phenacymorphinan).

Levorphanol-(-)-3-hydroxy-N-methylmorphinan).

Metazocine-2'-hydroxy-2, 5, 9-trimethyl-6, 7-benzomorphan)

Methadone-(6-dimethylamino-4, 4-diphenyl-3-heptanone).

Methadone Intermediate-(4-cyano-2-dimethylamino-4, 4-diphenylbutane).

Methyldesorphine-(6-methyl-delta-6-deoxymorphine).

Methyldihydromorphine-(6-methyldihydromorphine).

Metopon-(5-methyldihydromorphine).

Moramide Intermediate-(2-methyl-3-morpholino-1, 1- diphenylpropane carboxylic acid)

Morphine

Morphine Methobromide and other pentavalent nitrogen morphine derivatives.

Morphine-N-Oxide

Myrophine-(myristylbenzylmorphine).

Nicomorphine-(3, 6-dinicotinylmorphine).

Noracymethadol-((+)-alpha-3-acetoxy-6-methylamino-4, 4-diphenylheptane).

Norlevorphanol-((-)-3 -hydroxymorphinan).

Normethadone-(6-dimethylamino-4, 4-diphenyl-3-hexanone).

Normorphine-(demethylmorphine).

Norpipanone-(4, 4-diphenyl-6-piperidino-3-hexanone).

Opium

Oxycodone-(14-hydroxydihydrocodeinone).

Oxymorphone-(14-hydroxydihydromorphinone).

Pethidine-(1-methyl-4-phenylpiperidine-4-carboxylic acid ethyl ester).

Pethidine Intermediate A-(4-cyano-1-methyl-4-phenyl-piperidine)

Pethidine Intermediate B-(4-phenylpiperidine-4-carboxylic acid ethyl ester).

Pethidine Intermediate C-(1-methyl-4-phenylpiperidine-4- carboxylic acid).

Phenadoxone-(6-morpholino-4-, 4-diphenyl-3-heptanone).

Phenampramide-(N-(1-methyl-2-piperidinoethyl) propionanilide).

Phenazocine-(2'-hydroxy-5, 9-dimethyl-2-phenethyl-6, 7-benzomorphan).

Phenomorphin-(3-hydroxy-N-phenethylmorphinan).

Phenoperidine-(1-(3-hydroxy-3-phenylpropyl)-4-phenylpiperidine -4-carboxylic acid ethyl ester).

Piminodine-(4-phenyl-1-(3-phenylaminopropyl) piperidine-4-carboxylic acid ethyl ester

Piritramide-(1-3-cyano-3, 3-diphenylpropyl) -4-(1-piperidino)-piperidine-4- carboxylic acid amide).

Phoheptazine-(1,3-dimethyl-4-phenyl-4- propionoxyazacycloheptane).

Properidine-(1-methyl-4-phenylpiperidine-4-carboxylic acid isopropyl ester).

Racemethorphan-((+)-3-methoxy-N-methylmorphinan).

Racemoramide-((+)-4- [2-methyl-4-oxo-3, 3-diphenyl-4-(1- pyrrolidinyl) butyl] morpholine.

Racemorphan-((+)-3-hydroxy-N-methylmorphinan).

Thebacon-(acetyldihydrocodeinone).

Thebaine

Trimeperidine-(1,2,5-trimethyl-4-propionoxypiperidine); and

The isomers, unless specifically excepted, of the drugs in this Schedule whenever the existence of such isomers is possible within the specific chemical designation;

The esters and ethers, unless appearing in another Schedule, of the drugs in this Schedule whenever the existence of such esters or ethers is possible.

The salts of the drugs listed in this Schedule, including the salts of esters, ethers and isomers as provided above whenever the existence of such salt is possible.

Acetyldihydrocodeine

Codeine-(3-methylmorphine).

Hydrocodeine

Ethylmorphine-(3-ethylmorphine).

Nicodine-(6-nicotinylcodeine).

Nicodicodine-(6-nicotinylidihydrocodeine).

Norcodeine-(N-demethylcodeine).

Pholcodine-(morpholinylethylmorphine).

Propiram-(N-(1-methyl-2 piperidinoethyl) -N-2-pyridylpropionamide)

Coca leaf

Crude cocaine/cocaine paste

Cocaine

Free base cocaine/(crack)

Other coca products quantity

Benzlaconine, methylecgonine,

Cinnamoylcocaine, Benzococaine,

Lidocaine, Benzocaine,

Lidocaine, Tetracaine, Procaine hydrochloride.

PART II

PSYCHOTROPIC SUBSTANCES

In other non-proprietary or trivial names Chemical name or trivial names

1. DET N,N-diethyltryptamine
2. DMPH 3-(1,2-dimethylheptyl)-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo [b,d] pyran
3. DMT N,N-dimethyltryptamine
4. (+)-LYSERGIDE LSD, LSD-25(+) N,N-diethyllysergamide (d-lysergic acid diethylamide)
5. Mescaline 3,4,5-trimethoxyphenethylamine
6. Parahexyl 3-hexyl-1-hydroxy-7,8,9,10-tetrahydro-6H-dibenzo [b,d] pyran
7. Psilocine 3-(2-dimethylaminoethyl)-4-hydroxyindole
8. Psilocybine 3-(2-dimethylaminoethyl)-indol-4-yl dihydrogen phosphate
9. STP, DOM 2-amino-1-(2, 5-dimethoxy-4-methyl) phenylpropane
10. tetrahydrocannabinols, all isomers -1-hydroxy-3-pentyl-6a,7,10,10a-tetrahydro 6,6, 9-trimethyl-6-H disbenzo [a,d] pyran.
11. Amphetamine (-) 2 amino-1-phenylpropane
12. Dexamphetamine (+)-2-amino-1-phenylpropane
13. Methamphetamine (+)-2-methylamino-1-phenylpropane
14. Methamphetamine 2-phenyl-2-(2-piperidyl)acetic acid, methyl ester
15. Phencyclidine 1-(1-phenylcyclohexyl) piperidine
16. Phenmetrazine 3-methyl-2-phenylmorpholine
17. Amobarbital 5-ethyl-5-(isopentyl) barbituric acid
18. Cyclobarbital 5-(1-cyclohexen-1-yl)-5 ethylbarbituric acid
19. Glutethimide 2-ethyl-2-phenylglutarimide
20. Pentobarbital 5-ethyl-5-(1-methylbutyl) barbituric

	acid
21. Secobarbital	5-allyl-5-(1-methylbutyl) barbituric acid
22. Amfepramone	2-(diethylamino) propiophenone 5,5 -diethylbarbituric acid
23. Barbital	
24. Ethchlorvynol	1-chloro-3-ethyl-1-penten-4-yn-3-ol
25. Ethinamate	1-ethynylcyclohexanol-carbamate
26. Meprobamate	2-methyl-2-propyl-1,3 propanediol dicarbamate
27. Methaqualone	2-methyl-3-0-tolyl-4 (3H)-quinazolinone
28. Methylphenobarbital	5-ethyl-1-methyl-5-phenyl barbituric acid
29. Methyprylon	3, 3-diethyl-5-methyl-2, 4 piperidine-dione
30. Phenobarbital	5-ethyl-5-phenylburbituric acid
31. Pipradrol	1, 1-diphenyl-2-piperidine methanol
32. Lifetamine SPA	(-)-1-dimethylamino-1, 2-diphenylethane
33. Products of Cannabis Sativa	
	(i) Herbal products known as Marijuana
	(ii) Cannabis resin or hashish cake
	(iii) Cannabis oil or hashish oil
	(iv) Any other cannabis products containing the active ingredient Delta-9-Tetrahydrocannabinol, (THC)
34. Diphenhydramine	
35. Mecloqualone	
36. Methadone	
37. Allobarbital	
38. Butalbital	
39. Butobarbital	
40. Pentobarbital	
41. Vinylbital	
42. Diazepam	

43. Bromazepam
44. Chlorazepate
45. Flunitrazepam
46. Flurazepam
47. Lorazepam
48. Madazepam
49. Nitrazepam
50. Oxazepam
51. Tetrazepam
52. Brolamphetamine/DOB
53. Tenamphetamine/MDA
54. Cathine
55. Fencamphamine
56. Pemoline
57. Fenetylline
58. Fenproporex
59. Phendimetrazine
60. Pyrovalerone

The precursors, unless specifically accepted of the drugs in this Schedule wherever existence of such precursors is possible within the specific chemical designation. In this case precursors include, but not limited to, the following listed substances:

N-acetylanthranilic acid, Benzyl-methyl-ketone/Phenylacetone (P-2-P) Ergotamine, Ergometrine, Lyseric acid, Ephedrine/Norephedrine, ortho-toluidine. Piperidine.

SUBSIDIARY LEGISLATION

SECTION 2-THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (TRAFFICKING) REGULATIONS

Regulations by the President

Statutory
Instrument
84 of 1994.
119 of 1995

1. These Regulations may be cited as the Narcotic Drugs and Psychotropic Substances (Trafficking) Regulations.

Title

2. Any person found in possession of Narcotic Drugs or Psychotropic Substances in quantities set out in the Schedule to these Regulations shall be guilty of the offence of drug trafficking and shall be liable upon conviction to a term of imprisonment prescribed in the Act.

Declaration of
Trafficking in
Narcotic Drugs
and
Psychotropic
Substances

SCHEDULE

(Regulation 2)

Narcotic drug or psychotropic substance

Minimum amount

Tablets and powders

0.5 gm

Liquids

2.5 gm or ml

For products of Cannabis sativa

Cannabis oil or hashish oil

2.50 ml

Any other cannabis product containing detectable quantities of Delta - 9 - Tetrahydrocannabinol (T.H.C.)

Solids

0.50 gm

Liquids

2.50 ml

(As amended by S.I. No. 119 of 1995)

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES [ARRANGEMENT OF REGULATIONS]

Regulation

1. Title
2. Interpretation
3. Application
4. Establishment of Staff Board
5. Functions of the Board
6. Special consideration
7. Appointment of special agents
8. Impersonation and procurement of special agent
9. Duties of a special agent
10. Controlled delivery investigation
11. Disclosure of commission secrets
12. Offences against discipline
13. Effect of criminal offences by commission officers
14. Punishment for disciplinary offences
15. Command structure
16. Operational departments and units
17. Appeals
18. Application of General Orders, etc.

SECTION 7(1)-THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (DRUG ENFORCEMENT COMMISSION) (STAFF) RULES

Statutory
Instrument
51 of 1994

Rules by the Commissioner

1. These Rules may be cited as the Narcotic Drugs and Psychotropic Substances (Drug Enforcement Commission) (Staff) Rules.

Title

2. In these Rules, unless the context otherwise requires- Interpretation

"command structure" means the command structure set out in rule 15;

"disciplinary authority" means the Commissioner;

"officer" means support staff and a person appointed under subsection (1) of section *four* of the First Schedule to the Act.

"responsible officer" means the Commissioner;

"board" means the Staff Board established by rule 4.

3. These Rules apply to all officers except the Commissioner and the Deputy Commissioner. Application

PART II

STAFF BOARD

4. (1) There is hereby established for the Commission a Staff Board, which shall consist of a Chairman, a Secretary and four other members as the Commissioner may appoint. Establishment of Staff Board

(2) The members of the Board shall be appointed by the Commissioner and shall hold the office of member for a period of one year.

5. (1) The functions of the Board shall be to- Functions of the Board

(a) advise the Commissioner on matters relating to recruitment, appointment and termination of appointment, promotion, resignation, transfer, discipline and welfare of an officer in the Commission.

(b) advise the Commissioner on the proper usage of transport and other resources in the Commission;

(c) examine the security of the officers of the Commission and recommend appropriate security measures for consideration and implementation by the command; and

(d) consider any such matter as may be referred to it by the Commissioner.

(2) Where the Commissioner is advised by the Board in accordance with paragraphs (a) and (b) of sub-rule (1), he is not under a duty to act, and give reasons for not acting, in accordance with that advice.

(3) The Commissioner may vary a decision, an advice or a recommendation of the Board in the interest of the well being of the Commission.

6. (1) In exercising its functions under paragraph (a) of sub-rule (1) of Rule 5 the Board shall have regard to the maintenance of highest standard of discipline and efficiency required in the Commission and shall- Special consideration

(a) in matters relating to recruitment, appointment and termination of appointment and promotion of an officer give due consideration to the length of service of an officer in the Commission, the qualifications and experience of an officer, and merit.

(b) in matters relating to discipline of an officer, give due consideration to the seniority of an officer.

(2) Where the Commissioner is satisfied that no officer with the necessary requisite qualifications is available within the Commission to fill a vacant post which requires special qualifications, the Commissioner may recruit or appoint such person from outside the Commission as the Commissioner considers fit.

PART III

SPECIAL AGENTS

7. (1) The Commissioner may appoint such number of persons as may be necessary for the performance of the functions of the Commission to be special agents. Appointment of special agents

(2) The Commissioner shall issue an identity card to a person appointed under sub-regulation (1) and that identity card shall, unless the contrary is proved, be *prima facie* evidence of that person's appointment as a special agent.

(3) A special agent may, whenever it is necessary for the performance of functions of a special agent under these Rules produce the identity card referred to in sub-regulation (2) to the person the special agent is dealing with.

(4) A special agent appointed under sub-rule (1) shall have the same powers of arrest as those held by a citizen or resident of Zambia and while acting in an under-cover capacity, the special agent's testimony shall be admissible in evidence in any court proceedings under the Act.

(5) A special agent shall on appointment, but before assuming the duties of his office, take the oath of secrecy before the responsible officer.

(6) A special agent may receive such reward as the Commissioner may deem appropriate as appreciation for services rendered, and such reward shall be out of the investigation fund held by the Commission.

8. A person shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding K50,000,00 or imprisonment for a period not exceeding five years or, to both, if he causes another person to believe that- Impersonation and procurement of special agent

(a) he is a special agent or has any of the powers of a special agent under these Rules or under any authorisation or warrant issued under the Act; or

(b) he is able to procure a special agent to do, or refrain from doing anything in connection with his duties under the Act or these Rules.

9. (1) The duties of a special agent are- Duties of a special agent

- (a) to report to the Commissioner any suspected violations of the Act;
- (b) to assist the Commission in the arrest and prosecution of offenders under the Act; and
- (c) to perform such other duties relating to the proper carrying out of the provisions of the Act as the Commissioner may assign to the special agent.

(2) A special agent shall not be regarded as an accomplice in any court proceedings while the special agent is carrying out duties in an under-cover capacity.

10. The Commissioner may authorise a special agent to carry out controlled delivery investigations within or outside Zambia for the sole purpose of discovering the authors of an offence under the Act. Controlled delivery investigation

PART IV

CONDUCT AND DISCIPLINE

11. (1) No officer of the Commission, special agent or any other person shall publish or disclose to any unauthorised person, otherwise than in the exercise of his official functions or duties, the contents of any document, report, communication, or information whatsoever which has come to his notice in the course of his duties in the Commission. Disclosure of commission secrets

(2) The provisions of General Orders 69 (a) to 76 of the 1990 edition shall apply to officers of the Commission, including special agents recruited or appointed under these Rules.

(3) Any officer of the Commission who contravenes sub-rule (1) or (2) shall be deemed to have committed an offence under the State Security Act, and accordingly, shall be guilty of gross or discreditable conduct for which that officer may be dismissed or prosecuted before a court of law.

12. (1) An officer, or a special agent commits an offence against discipline, if he indulges himself in any of the following:

Offences
against
discipline

(a) disobedience to orders, that is to say, disobeying, or without good and sufficient cause, omitting or neglecting to carry out, a lawful order written or otherwise;

(b) insubordination in word, act, or demeanour, that is to say, insulting or using abusive language to an officer senior in rank;

(c) neglect of duty;

(d) discreditable conduct, that is to say, conduct that tends to tarnish the image and integrity of the Commission;

(e) falsehood, that is to say, if the officer-

(i) knowingly makes or signs a false report to mislead Command or the Government; or

(ii) without good and sufficient cause destroys or mutilates any official document, record or report.

(f) breach of confidence, that is to say, if the officer-

(i) divulges information or any matter which it is his duty to keep secret;

(ii) gives notice directly or indirectly to any person under investigation that he is about to be searched, arrested or interviewed;

(iii) without authority communicates to the press or any unauthorised person any matter concerning the Commission;

(iv) makes or joins in making any anonymous communication to Government, Command or against the Commission on any matter without following the right channels of communication;

(g) drunkenness, that is to say, if the officer while on, or off, duty is unfit for duty as a result of consumption of liquor or abuse of drugs;

(h) engaging, without authority, in any employment or office other than his duties with the Commission;

(i) absence from duty without leave or permission, for a period of ten days or more;

(j) signing or circulating any petition or statement on any matter relating to the Commission;

(k) damaging Commission property whether through carelessness, accident, waste or through neglect of duty;

(l) losing exhibits;

(m) misusing operational funds or transport;

(n) conniving at, or knowingly being an accessory to, an offence against discipline under these Rules.

(2) A disciplinary offence which has not been specifically stated in these Rules, shall be covered by General Orders applicable to the Civil Service.

13. (1) The Commissioner shall terminate the appointment of an officer, or special agent who has been convicted of a criminal offence or any offence under the Act.

Effect of
criminal
offences by
commission
officers

(2) Where the Commissioner terminates an officer's appointment as a result of conviction, but the officer is acquitted on appeal, the Commissioner shall reinstate that officer and surrender him to the Establishment Division for re-deployment in the Civil Service.

14. (1) The Commission may impose any of the following punishments on an officer or a special agent who commits a disciplinary offence under these Rules:

Punishment for
disciplinary
offences

(a) dismissal or retirement in the public interest;

(b) termination of appointment or discharge;

- (c) reduction in rank;
- (d) severe reprimand;
- (e) reprimand; or
- (f) admonishment.

(2) Where the Commissioner has acted in accordance with sub-rule (1) or has acted in accordance with sub-rule (1) of Rule 14, the Commissioner shall inform the Permanent Secretary, Establishment Division for his record.

PART V

GENERAL

- | | |
|--|--|
| <p>15. The command structure of the Commission shall consist of the-</p> <ul style="list-style-type: none"> (a) Commissioner; (b) Deputy Commissioner; (c) Senior Assistant Commissioner; and (d) Head, National Education Campaign Division. | <p>Command structure</p> |
| <p>16. The Commissioner may establish such number of operational departments and units as may be necessary for the efficient performance of the functions of the Commission.</p> | <p>Operational departments and units</p> |
| <p>17. (1) An officer who is aggrieved with a decision made by the Commissioner under Rule 14 may appeal to the Permanent Secretary, Establishment Division within fourteen days of the Commissioner's decision.</p> | <p>Appeals</p> |
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CHAPTER 97

PRISONS

An Act to provide for the establishment of prisons, for a prison service, for the discipline of prison officers, for the management and control of prisons and prisoners lodged therein; to provide for youth corrective training centres and extra-mural penal employment; to provide for compulsory after care orders; and to provide for matters incidental to or

56 of 1965

13 of 1994

*Statutory
instrument 48 of
1974*

14 of 2000

connected with the foregoing.

[31st October, 1966]

PART I

PRELIMINARY

1. This Act may be cited as the Prisons (Amendment) Act, 2000, and shall be read as one with the Prisons Act, in this Act referred to as the principal Act. Short title
Cap.97

(As amended by Act 14 of 2000)

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

"appellant prisoner" means any convicted criminal prisoner who is detained in prison as a result of a conviction which is the subject-matter of an appeal, notice of which has been accepted but the decision in regard to which has not been given;

"approved school" has the meaning assigned to it in the Juveniles Act; Cap. 53

"Assistant Commissioner" means an assistant Commissioner of Prisons;

"civil prisoner" means a prisoner other than a criminal prisoner;

"Commissioner" means the Commissioner of Prisons;

"Convicted criminal prisoner" means any criminal prisoner under sentence of a court or court-martial;

"court" means any court or authority entitled to pass a sentence in a criminal case or to order a person to be detained in custody in any case;

"criminal prisoner" means any person duly committed into custody under writ, warrant or order of any court exercising criminal jurisdiction or by order of a court-martial;

"Deputy Commissioner" means the Deputy Commissioner of Prisons;

"district messenger" has the meaning assigned to it in section *two* of the District Messengers Act; Cap. 288

"junior officer" means a prison officer of one of the ranks of junior officers set out in the Schedule;

"juvenile" means a person under the apparent age of nineteen years;

"major prison offence" means an offence declared to be a major prison offence under section *ninety-one*;

"mechanical restraint" means restraint by the use of handcuffs, leg irons, straight jacket, or any other form of restraint approved by the Minister;

"medical officer" means a person appointed or nominated or engaged as medical officer of a prison under section *sixteen*;

"minor prison offence" means an offence declared to be a minor prison offence under section *ninety*;

"officer in charge" means the person appointed to be in charge of a prison in pursuance of the provisions of section *five*;

"official visitor" means a person appointed as such under section *one hundred and twenty-eight*;

"penal diet" means such penal diet as may be prescribed in rules made under section *one hundred and forty-six*;

"prison" means any building, enclosure or place or part thereof, declared to be a prison under section *three*, or deemed to have been so established as provided in section *one hundred and forty-seven* and includes a temporary prison established under section *four* and a youth corrective centre deemed to be a prison under section *one hundred and thirty-three*;

"prison offence" means a minor prison offence or a major prison offence;

"prison officer" means any member of the Service and includes any public officer seconded to the Service;

"prisoner" means any person, whether convicted or not, under detention in any prison;

"probation officer" means a probation officer appointed under the Probation of Offenders Act; Cap. 93

"prohibited article" means any article which is not issued to any prisoner by authority of the officer in charge, with the approval of the Commissioner, or an article the introduction or removal of which into or out of a prison is prohibited by this Act or by any rule made thereunder;

"receiving centre" has the meaning assigned to it in the Juveniles Act; Cap. 53

"reduced diet" means such punishment diet as may be prescribed in rules made under section *one hundred and forty-six*;

"reformatory" has the meaning assigned to it in the Juveniles Act; Cap. 53

"senior officer" means a prison officer of one of the ranks of senior officers set out in the Schedule;

"the Service" means the Zambia Prison Service established under section *eight*;

"subordinate officer" means a prison officer of one of the ranks of subordinate officers set out in the Schedule and includes any person into whose custody prisoners are given under subsection (5) of section *seventy-one*;

"unconvicted prisoner" means any person, not being a convicted prisoner, duly committed to custody under a writ, warrant, or order of any court or any order of detention issued by any person authorised thereto by any law, or by order of a court-martial;

"visiting justice" means a visiting justice specified in section *one hundred and twenty-four* or *one hundred and twenty-five*;

"weapon" means any firearm, baton, tear smoke, or such other instrument as may be prescribed;

"young prisoner" means a prisoner under the apparent age of twenty years;

"youth corrective centre" means any building, enclosure or place, or any part thereof declared to be a youth corrective centre under section *one hundred and thirty-three*.

PART II

ESTABLISHMENT AND CONTROL OF PRISONS

3. (1) The Minister may, by Gazette notice, declare any building, enclosure or place, or any part thereof, to be a prison, and may, in a like manner, declare that any prison shall cease to be a prison. Declaration of prisons

(2) Every prison shall include the grounds and buildings within the prison enclosure and also any other grounds or buildings belonging or attached thereto and used by prisoners or the staff of the prison.

(3) In any writ, warrant or other legal instrument in which it may be necessary to describe a particular prison, any description designating a prison by reference to the name of the place or town where it is situated, or other definite description, shall be valid and sufficient for all purposes.

4. (1) Whenever-

Temporary prisons

(a) it appears to the Commissioner that the number of prisoners in any prison is greater than can be conveniently kept therein and that it is not convenient to transfer the excess number to some other prison; or

(b) owing to the outbreak of epidemic disease within a prison or for any other reason, it is desirable to provide for the temporary shelter or safe custody of any prisoners; the Commissioner may establish a temporary prison in any building, enclosure or place, or part thereof.

(2) Such provision shall be made as the Commissioner, with the approval of the Minister, may direct for the shelter and safe custody in

temporary prisons of so many of the prisoners as cannot be conveniently or safely kept in the prison.

(3) The Commissioner may cancel the establishment of a temporary prison.

5. (1) Subject to the provisions of section *thirteen*, in every prison there shall be an officer in charge of the prison who shall be designated "the officer in charge" and who shall be appointed by the Commissioner. Officer in charge

(2) Every officer in charge shall supervise and control all matters in connection with the prison to which he is appointed, and shall keep or cause to be kept such records as the Commissioner may from time to time direct and shall be responsible to the Commissioner for the conduct and treatment of prison officers and prisoners under his control, and for the due observance by such officers and prisoners of the provisions of this Act and of all rules, directions and orders made or given thereunder.

(3) Every officer in charge shall be responsible for the safe custody of arms, accoutrements, ammunition, clothing and all other public stores and foodstuffs issued and delivered for the use of the prison, the prison officers and the prisoners under his control, and all public money for which he may be held accountable, and also, subject to the provisions of this Act and of any rules made thereunder, for all valuables, money, articles of clothing and other property entrusted to his keeping as being the property of prisoners, and shall account for the same in the event of their being lost or damaged otherwise than by unavoidable accident, theft, robbery or lawful use.

6. (1) Where in any prison the number of prison officers detailed for duty therein is insufficient to secure the good management and government thereof, it shall be lawful for the officer in charge of such prison, with the consent of the Commissioner of Police, to employ temporarily such number of police officers as he may consider necessary to secure the good management and government of the prison. Police officers may act as prison officers

(2) A police officer temporarily employed in pursuance of the provisions of subsection (1) shall exercise and perform in the prison concerned the functions of a prison officer of the rank specified by the officer in charge and shall, for the purposes of this Act, be deemed to be

a prison officer of that rank:

Provided that no such police officer shall by reason of this section be a member of the Service.

(3) A police officer to whom a prisoner is delivered under any provision of this Act shall, while the prisoner is in his charge or custody have the same powers and be subject to the same responsibilities, discipline and penalties and to the same authorities as a prison officer would have and be subject to in like circumstances.

7. In every prison in which women prisoners are imprisoned there shall be women prison officers who shall have the care and the superintendence of the women prisoners, and who shall be responsible for their discipline.

Women prison officers and women prisoners

PART III

CONSTITUTION AND ADMINISTRATION

8. There is hereby established a police force to be known as the Zambia Prison Service for the management and control of prisons and prisoners lodged therein.

Zambia Prison Service

9. (1) The Service shall consist of persons appointed to or deemed under this Act to have been appointed to any of the ranks set out in the Schedule.

Membership of Service

(2) The Minister may, by statutory instrument, amend the Schedule.

10. (1) There shall be a Commissioner of Prisons who shall be a public officer.

Commissioner of Prisons

(2) The administration of the Service and the control and supervision of all prisoners shall be vested in the Commissioner, subject to the direction of the Minister.

11. The Commissioner may, subject to the provisions of this Act, make standing orders and give administrative directions for observance by all prison officers.

Commissioner empowered to make standing orders

12. (1) The person holding the office of Deputy Commissioner of Prisons may, subject to any orders or directions of the Commissioner, exercise and perform all or any of the functions of the Commissioner.

Functions of Deputy Commissioner and delegation to Assistant Commissioner

(2) The Commissioner may, unless a contrary intention appears in this Act or any other written law, delegate any of his functions to any person holding the office of an Assistant Commissioner.

13. (1) Where an officer in charge has not been appointed for a prison, the prison shall, until a prison officer is appointed to be officer in charge thereof, be in the charge of such public officer as the Minister may designate and the person so designated shall, in matters relating to the prison and prisoners, be subject to the orders and directions of the Commissioner and shall be deemed to be the officer in charge of the prison and shall for that purpose have all the functions conferred and imposed by this Act upon an officer in charge, subject to any express limitations of those functions imposed by the Commissioner.

Charge of prison in which no officer in charge appointed

(2) The Commissioner may authorise the employment of district messengers in any such prison as is mentioned in subsection (1) as prison officers for the purpose of this Act and, when employed in such capacity, such district messengers shall be deemed, in matters relating to the prison and prisoners, to be prison officers of such rank as the Commissioner may specify for the purpose of this Act and shall for that purpose have all the functions conferred and imposed by this Act upon a prison officer of that rank:

Provided that no such district messenger shall by reason of this section be a member of the Service.

14. A sum due to a prison officer or other person employed in prisons or to his estate by way of salary, refund of pension contributions, pension or any other benefit whatsoever may be set off against a sum

Payments due to prison officers and other persons employed in

payable to the Government by the prison officer or other person employed in prisons on or at the time of his retirement, resignation, loss of office, death, discharge or other termination of service, as the case may be.

prisons leaving the prison service may be set off

15. (1) The Minister may, whenever he deems it necessary or desirable, appoint a committee of two or more persons of whom-

Minister may appoint committee of inquiry

(a) one shall be the Commissioner or the Deputy Commissioner or an Assistant Commissioner;

(b) the other or others shall be an officer or officers of the public service;

to inquire into and report to him on the conduct, management or administration of any prison or any matter connected therewith or incidental thereto.

(2) For the purposes of any such inquiry as aforesaid, a committee appointed under subsection (1) shall have the powers, rights and privileges conferred upon commissioners by the Inquiries Act, and the provisions of that Act shall *mutatis mutandis* apply to any inquiry by a committee under this section and to any person summoned to give evidence or giving evidence before it.

Cap. 41

PART IV

APPOINTMENT AND DUTIES OF MEDICAL OFFICERS

16. (1) The Minister may appoint as medical officer of a prison any medical practitioner.

Medical officers

(2) In default of any appointment under subsection (1), a Government medical officer in the district in which a prison is situated and nominated for duty as medical officer of the prison by the Director of Medical Services shall be the medical officer of the prison.

(3) During any period the medical officer appointed or nominated as medical officer of a prison is absent or is not available for duty, the

officer in charge of the prison may engage temporarily any medical practitioner as medical officer and the medical practitioner so engaged shall exercise and perform in the prison the functions of a medical officer and shall, for the purposes of this Act, be deemed to be the medical officer.

17. (1) Subject to the provisions of this Act, the medical officer shall have the general care of the health of prisoners and shall visit the prison daily where practicable or when called upon by the officer in charge.

Duties of medical officers

(2) The medical officer shall report to the officer in charge any circumstances connected with the prison or the treatment of prisoners which appear to him to require consideration on medical or health grounds.

18. (1) The medical officer shall, where practicable, ensure that every prisoner is medically examined on admission to and before discharge from a prison, and shall perform such other duties as may be prescribed, and shall ensure that a record is kept of the state of health of every prisoner.

Medical inspection

(2) Until he has been examined by the medical officer, every prisoner on admission shall, so far as practicable, be kept apart from other prisoners.

19. The medical officer shall observe the mental condition of all prisoners under sentence of death or charged with a capital offence and, for this purpose, shall personally examine those prisoners on every day on which he visits the prison, and shall furnish reports on those prisoners to the officer in charge in such form and at such times as may be prescribed.

Observation of prisoners charged with capital offence

20. The medical officer shall ensure that every prisoner under sentence of death, or charged with a capital offence, or in separate confinement, or in hospital in prison, is medically examined every day on which the medical officer visits the prison.

Examination of prisoners in separate confinement or in hospital

21. An officer in charge may order a prisoner to submit himself to medical examination and treatment as often as such officer thinks

Powers of officer in charge to order prisoners to be

necessary.

examined

22. The medical officer shall, on the death of any prisoner, otherwise than by lawful execution, record in a register to be kept for such purpose the following particulars, so far as they can be ascertained:

Death of prisoner

- (a) the day on which the deceased was sentenced;
- (b) the day on which he was admitted to prison;
- (c) the day on which he first complained of illness, or was observed to be ill, and the labour, if any, on which he was engaged on that day and the scale of his diet on that day;
- (d) whether, and if so the day on which, he was admitted to hospital;
- (e) the day on which the medical officer or his subordinate was first informed of the illness;
- (f) the nature of the disease;
- (g) when the deceased was last seen before death by the medical officer or his subordinate;
- (h) when the prisoner died and, in cases where a postmortem examination is made, an account of the appearance after death, together with any special remarks that may appear to the medical officer to be required; and
- (i) his opinion as to the cause of death.

23. Upon the death of a prisoner, the officer in charge shall at once notify a magistrate or coroner, and the medical officer of the prison and shall arrange for compliance with the appropriate provisions of the Inquests Act.

Notification of death of prisoner
Cap. 36

PART V

POWERS, DUTIES AND PRIVILEGES OF PRISON OFFICERS

24. Every prison officer shall exercise and perform such functions as are by law conferred or imposed on prison officers of his rank and shall obey all lawful directions in respect of the execution of the duties of his office which he may from time to time receive from officers senior in rank to him.

General powers and duties of prison officers

- 25.** Subject to the provisions of this Act, every prison officer while acting as such shall have all the powers, authority, protection and privileges of a police officer
- Prison officer to have powers of police officer
- 26.** (1) Every prison officer shall be deemed to be available for duty at all times and may at any time be detailed for duty in any part of Zambia.
- Duties of prison officers
- (2) No prison officer shall be concerned in any employment other than the duties assigned to him in accordance with the provisions of this Act.
- 27.** (1) A prison officer may examine anything within, or being brought into or taken out of, a prison, and may stop and search or cause to be stopped and searched any vehicle or person within a prison, or going into or out of a prison, or, whether within or without a prison, any person who, or any vehicle which, is without authority close to a prisoner or prisoners if he has reason to suspect that such person or vehicle is carrying a prohibited article or any property belonging to the Government in use in a prison.
- Power to examine persons or vehicles
- (2) The senior officer on duty in a prison may refuse admission to the prison to any person who is not willing to be searched.
- (3) The senior officer on duty in a prison may order any person within a prison who refuses to be searched to leave the prison and, if such person refuses to leave, may cause him to be removed from the prison and for that purpose may use such force as may be necessary.
- (4) If, on the stopping and searching of any vehicle or person under the provisions of subsection (1), a prison officer finds any prohibited article or any property belonging to the Government in use in a prison, he may arrest that person or the person on the vehicle who appears to have charge of the article or property and shall as soon as practicable cause any such person to be made over to a police officer, or, in the absence of a police officer, to be taken to the nearest police station.
- (5) Any search of a woman under this section shall be made by another woman officer and with due regard to decency.

28. No subordinate officer shall punish a prisoner unless lawfully ordered so to do by the Commissioner or by an officer in charge.

Punishment by subordinate officers

29. (1) Subject to the provisions of this section, a prison officer may use a weapon against-

Use of weapons by prison officers

(a) a prisoner who is-

(i) escaping or attempting to escape; or

(ii) engaged in a combined outbreak or in an attempt to force, break open or scale the outside door, gate, fence or enclosure wall of the prison; or

(iii) using violence to him or another prison officer or another prisoner or other person; and

(b) a person who-

(i) whilst assisting a prisoner to escape, is using violence to the prison officer or another prison officer or other person; or

(ii) is engaged in a combined break-in or in an attempt to force, break open or scale the outside door, gate, fence or enclosure wall of the prison or an inside door, gate, fence or wall of the prison; or

(iii) whilst engaged in any activity mentioned in sub-paragraph (ii), is using violence to the prison officer or another prison officer or other person.

(2) Resort shall not be had to the use of a weapon-

(a) as in sub-paragraph (i) of paragraph (a) of subsection (1) is authorised, unless-

(i) the prison officer has reasonable grounds to believe that he cannot otherwise prevent the escape; and

(ii) the prison officer gives warning to the prisoner that he is about to use the weapon against him; and

(iii) the warning given by the prison officer is unheeded;

(b) as in sub-paragraph (iii) of paragraph (a) and subparagraphs (i) and (ii) of paragraph (b) of subsection (1) is authorised, unless the prison officer has reasonable grounds to believe that he or the other

prison officer or other person, as the case may be, is in danger of suffering grievous bodily harm.

(3) No prison officer shall in the presence of a prison officer senior to himself make use of a weapon as in subsection (1) is authorised, except on the orders of the senior prison officer.

(4) In every case when force is used a prison officer shall use the minimum force necessary in the circumstances and the use of weapons, in pursuance of the provisions of this section, shall be as far as possible to disable and not to kill.

30. For the purpose of apprehending any person who may have escaped from lawful custody, a prison officer shall have power to arrest such person and to convey him to a prison and in the case of a juvenile to a receiving centre.

Prison officer's power to arrest

31. An officer in charge may cause photographs, measurements, footprints and casts thereof, palm prints and fingerprints to be taken of any prisoner by any prison officer or other person authorised by the Commissioner in that behalf, and where any prisoner refuses to permit his photographs, measurements, footprints or casts thereof, palm prints or fingerprints to be taken, the officer in charge may use or may cause to be used such force as may be necessary to secure them:

Power to take photographs, fingerprints, etc., of a prisoner

Provided that the photographs, measurements, footprints and casts thereof, palm prints and fingerprints of an unconvicted prisoner who is not subsequently convicted shall be destroyed upon the prisoner's release by the court.

32. (1) Where the defence to any suit instituted against a prison officer is that the act complained of was done in obedience to a warrant purporting to be issued by a Judge, magistrate or other competent authority, the court shall, upon production of the warrant containing the signature of the Judge or magistrate and upon proof that the act complained of was done in obedience to such warrant, enter judgment in favour of the prison officer.

Non-liability for act done under authority of warrant

(2) No proof of the signature of such Judge or magistrate as aforesaid

shall be required unless the court has reason to doubt the genuineness thereof and, where it is proved that the signature is not genuine, any act done by the prison officer under or in pursuance of the warrant shall nevertheless be lawful and judgment shall be given in favour of the prison officer if it is proved that, at the time when the act complained of was committed, he believed on reasonable grounds that the signature was genuine.

PART VI

OFFENCES BY AND IN RELATION TO PRISON OFFICERS

33. Any prison officer who mutinies and any prison officer or other person who, directly or indirectly, instigates, commands, counsels, or solicits any mutiny or sedition amongst any prison officers or prisoners or disobedience to any lawful command given by any prison officer, or who attempts to seduce any prison officer from his allegiance or duty, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding three thousand penalty units or to imprisonment for a period not exceeding two years, or both, and in addition to any such punishment shall be liable to a sentence of corporal punishment of such number, not exceeding twelve strokes with a cane, as the court specifies.

Mutiny or sedition

(As amended by Act No. 13 of 1994)

34. (1) No prison officer shall withdraw himself from duty unless expressly permitted to do so by the Commissioner or by some other prison officer authorised to grant permission.

Absence from duty
and desertion by
prison officers

(2) Any prison officer who withdraws himself from duty contrary to subsection (1) or deserts shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand and five hundred penalty units or to imprisonment for a period not exceeding six months, or to both.

(3) Any prison officer who absents himself from duty without reasonable cause for a period of twenty-one days shall be deemed to be a deserter.

(4) Any prison officer or police officer may without warrant apprehend any prison officer whom he has reason to believe is a deserter from the Service and shall take him forthwith to a police station and lay a charge against him.

(As amended by Act No. 13 of 1994)

35. Any person who by any means, directly or indirectly, procures or persuades, or attempts to procure or persuade, any prison officer to desert, or who aids, abets, or is accessory to the desertion of any prison officer or who harbours such deserter, or aids him in concealing himself or assists in his rescue, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding one thousand and five hundred penalty units or to imprisonment for a period not exceeding six months, or to both.

Inciting prison officer to desert

(As amended by Act No. 13 of 1994)

36. Any prison officer who shall assault, threaten or insult any officer senior to him in the Service, when such senior officer is on duty or when such assault, threat or insult shall relate or be consequent upon the discharge of duty by the officer assaulted, threatened or insulted, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding three thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

Assault on officer senior in rank

(As amended by Act No. 13 of 1994)

37. Every prison officer who without lawful authority-

Miscellaneous offences by prison officers

(a) knowingly suffers any intoxicating liquor, tobacco, dagga or hemp, drug, opiate, money, clothing, provisions, letter, document or other article to be sold or received from or used by or on behalf of any prisoner; or

(b) lends or gives to any prisoner any intoxicating liquor, tobacco, dagga or hemp, opiate, money, clothing, provisions, letter, document or other article; or

(c) knowingly suffers any letter, document or other article to be brought out of any prison, or to be conveyed from any prisoner; or

(d) without the permission of the Commissioner, informs the press or any other person of any matter concerning a prison or a prisoner or any matter derived from official sources connected with or related to the Service;

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding three thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

(As amended by Act No. 13 of 1994)

38. (1) No prison officer or any person with any duty with prisoners shall sell or supply, or receive directly or indirectly any benefit or advantage from the sale or supply of, any article to or for the use of any prisoner or for the use of any prison nor shall any such officer or person, directly or indirectly, have any interest in any contract or agreement for the sale or supply of any such article.

Other offences

(2) No prison officer or any person with any duty with prisoners shall, directly or indirectly, have any pecuniary interest in the purchase of any prison supplies or receive any discount, gift or other consideration from any contractor for or seller of such supplies, or have any pecuniary dealing with any prisoner or with any friend of any prisoner with regard to him, or on behalf of any prisoner hold any unauthorised communication with any person.

(3) Any prison officer or person who contravenes the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand and five hundred penalty units or to imprisonment for a period not exceeding six months, or to both.

(As amended by Act No. 13 of 1994)

39. (1) It shall not be lawful for any prison officer to be or to become a member of-

Prison officers not to be members of trade unions

(a) any trade union or any body or association affiliated to a trade union;

(b) any body or association the objects or one of the objects of which is to control or influence conditions of employment in any trade or profession; or

(c) any body or association the object or one of the objects of which is to control or influence the pay, pensions, or conditions of service of the Service.

(2) Nothing in subsection (1) shall be deemed to prohibit prison officers becoming members of any prison officers staff association established or constituted pursuant to rules made under this Act.

(3) Any prison officer who contravenes the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding seven hundred and fifty penalty units or to imprisonment for a period not exceeding three months, or to both.

(4) A prison officer convicted of an offence under this section shall be liable to be dismissed from the Service.

(5) If any question arises as to whether any body is a trade union or a body or association affiliated to a trade union within the meaning of this section, the question shall be decided by the Minister whose decision thereon shall be final and conclusive and shall not be questioned in any proceedings.

(6) For the purposes of this section, "trade union" has the same meaning as it has in the Industrial and Labour Relations Act. Cap. 269

(As amended by Act No. 13 of 1994)

40. (1) No prison officer shall accept any fee, gratuity or reward from, or knowingly have any business dealings with prisoners or discharged persons or with friends of visitors or with visitors to the prison. Prison officers not to engage in dealings with prisoners

(2) No prison officer shall correspond with or hold any dealings with friends of any prisoner, unless expressly authorised to do so by the officer in charge.

(3) No prison officer shall, save in accordance with orders or directions issued by the Commissioner, communicate with or convey any communication or article to or from any prisoner.

(4) A prison officer who contravenes a provision of sub-section (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a

fine not exceeding one thousand and five hundred penalty units or to imprisonment for a period not exceeding six months, or to both.

(As amended by Act No. 13 of 1994)

PART VII

DISCIPLINE OF PRISON OFFICERS

41. (1) Disciplinary control over prison officers of or above the rank of Superintendent shall be exercised as is provided in the Constitution.

Methods of dealing with disciplinary matters.
Cap. 1

(2) Disciplinary control over prison officers below the rank of Superintendent shall be exercised as is provided in this Part.

42. (1) The Commissioner may reduce in rank or may dismiss any prison officer below the rank of Superintendent who has been sentenced to imprisonment, whether with or without the option of a fine and whether or not the sentence has been suspended by any court in respect of any offence whether under this Act or otherwise, unless such sentence is quashed on appeal and no other sentence of imprisonment is substituted therefor.

Dismissal and reduction in rank of prison officer sentenced to imprisonment

(2) A prison officer who is reduced in rank or dismissed under this section may appeal against the reduction in rank or dismissal in the manner provided in section *forty-eight* to the President and that section shall, subject to the provisions of this section, apply accordingly.

(3) Upon the consideration of an appeal under this section, the Board shall advise the President either to allow the appeal or to dismiss the appeal if the Board considers that there is not sufficient ground for interfering with the decision of the Commissioner.

43. Any junior or subordinate officer commits an offence against discipline if he is guilty of-

Offences against discipline by junior or subordinate officers

(a) disobedience to orders, that is to say, if he disobeys, or without good and sufficient cause omits or neglects to carry out any lawful order, written or otherwise;

(b) insubordinate or oppressive conduct, that is to say, if he-

(i) is disrespectful in word, act or demeanour to a prison officer superior to him in rank;

(ii) is oppressive or tyrannical in conduct towards a prison officer inferior to him in rank;

(iii) uses obscene, abusive or insulting language to any other prison officer or to any prisoner;

(iv) assaults any other prison officer;

(v) offers or uses unwarranted personal violence on any person in his custody;

(vi) wilfully or negligently makes any false complaint against any other prison officer, or prisoner, or wilfully suppresses any material facts, or makes or joins in making any anonymous complaints;

(vii) talks or is inattentive or otherwise misbehaves himself on parade;

(viii) being under arrest or confinement, leaves or escapes from his arrest or confinement before he is set at liberty by proper authority;

(ix) resists an escort whose duty it is to apprehend him or to have him in charge;

(c) neglect of duty, that is to say, if he-

(i) neglects, or without good and sufficient cause omits, promptly and diligently to attend to or carry out anything which it is his duty to attend to or carry out;

(ii) idles or gossips or sits or lies down without reasonable cause when on duty;

(iii) sleeps when on duty;

- (iv) leaves his post before being lawfully relieved, except in fresh pursuit of any offender whom it is his duty to apprehend;
- (v) by his neglect or default allows, or contributes to, the escape of any prisoner;
- (vi) fails to make or send a report or return which it is his duty to make or send;
- (vii) assists or connives with any prisoner in having or obtaining any prohibited article;
- (viii) neglects or refuses to assist in the apprehension of any prison officer whom he has been ordered to arrest;
- (ix) without reasonable cause omits to make any necessary entry in any official document, book or paper;
- (d) discreditable conduct, that is to say, if he-
 - (i) acts in a disorderly manner, or in any manner prejudicial to discipline or likely to bring discredit on the reputation of the Service;
 - (ii) lends money to any prison officer superior in rank to him or borrows money from or accepts any present from any prison officer inferior in rank to him;
 - (iii) incurs debt in or out of the Service without any reasonable prospect, or intention, of paying the same, or, having incurred any debt, makes no reasonable effort to pay the same;
 - (iv) if called upon by the Commissioner to furnish a full and true statement of his financial position, fails to do so;
- (e) absence without leave or being late for duty, that is to say, if he-
 - (i) without reasonable cause or excuse is absent without leave from or is late for parade, or for any other duty;
 - (ii) leaves without right or permission or lawful reason any prison quarters or place to which he has been assigned;
- (f) falsehood or prevarication, that is to say, if he-

- (i) knowingly makes any false statement in any official book or document;
- (ii) wilfully or negligently makes any false, misleading or inaccurate statement;
- (iii) without good and sufficient cause destroys or mutilates any official document or record, or alters or erases any entry therein;
- (iv) prevaricates before any committee of inquiry or at any proceedings where inquiry is being made into a disciplinary charge against any prison officer or prisoner;
- (g) breach of confidence, that is to say, if he-
 - (i) divulges any matter which it is his duty to keep secret;
 - (ii) without proper authority communicates to the public, press, or to any unauthorised person any matter concerning the Service;
 - (iii) without proper authority shows to any person outside the Service any book or written or printed document the property of the Service;
 - (iv) makes any frivolous or vexatious complaint or makes a complaint in an irregular manner;
 - (v) signs or circulates any petition or statement with regard to any matter concerning the Service, except through the proper channels of correspondence to the Commissioner;
 - (vi) calls or attends any unauthorised meeting to discuss any matter concerning the Service;
- (h) unlawful or unnecessary exercise of authority, that is to say, if he uses any unnecessary violence to any prisoner or other person with whom he may be brought into contact in the execution of his duty;
 - (i) malingering, that is to say, if he-
 - (i) feigns or exaggerates any sickness or injury with a view to evading duty;

(ii) while absent from duty on account of sickness neglects, or without good and sufficient cause omits, to carry out any instruction of a medical officer or of a member of the hospital staff, or acts or conducts himself in a manner calculated to retard his return to duty;

(j) uncleanliness, that is to say, if he while on duty, or while off duty in uniform in a public place, is without reasonable cause improperly dressed or dirty or untidy in his clothing or accoutrements;

(k) damage to property, that is to say, if he-

(i) wilfully or by carelessness causes any waste, loss or damage to any article of clothing, or accoutrements, or to any book, document or other property of the Service, served out to him or entrusted to his care;

(ii) fails to report any such damage or loss as aforesaid, however caused;

(l) drunkenness, that is to say, if he-

(i) while on duty or off duty, is unfit for duty through the consumption of intoxicating liquor or drugs;

(ii) habitually uses to excess intoxicating beverages or habit forming drugs;

(m) entering licensed premises, that is to say, if he enters any public bar licensed for the sale of intoxicating liquor when on duty except when his presence is required in the execution of his duty;

(n) engaging in any employment or office other than his prison duties;

(o) uses any weapon without orders or just cause;

(p) neglecting or failing to report the fact that he is suffering from venereal or other contagious disease;

(q) shows cowardice in the course of his duty;

(r) any other act, conduct, disorder, or neglect to the prejudice of good order and discipline not herein specified;

(s) conniving at or knowingly being an accessory to any offence against discipline under this Act.

44. (1) Any prison officer may arrest without warrant any junior or subordinate officer, not being an officer of his own or of senior rank, whom he suspects on reasonable grounds of having committed an

Arrest and
confinement of
junior or

offence against discipline.

subordinate
officers for
disciplinary
offence

(2) A prison officer effecting an arrest under this section shall forthwith bring the officer arrested before the officer in charge, who shall cause the case to be heard without undue delay and may order the remand of the officer arrested in custody for so long as may reasonably be necessary.

(3) Until such time as his case is heard in accordance with the provisions of this Act, any junior or subordinate officer arrested under such provisions may be confined in any prison quarters allocated for prison or guardroom purposes, or, if no other suitable quarters are available, in any prison quarters set apart for the detention of prisoners awaiting trial.

45. (1) The Commissioner, or a senior officer authorised by the Commissioner, may inquire into any alleged offence against discipline by a junior officer who shall be present at such inquiry and thereupon, if satisfied that such offence has been committed, may impose any of the following punishments:

Power to try junior
officers

- (a) admonition;
- (b) reprimand;
- (c) fine not exceeding one month's pay;
- (d) severe reprimand;
- (e) stoppage of pay where there has been loss by neglect of or injury to public property;
- (f) stoppage, deferment or withholding of any increment of salary for which the junior officer may be eligible;
- (g) reduction in rank;
- (h) termination of service;

- (i) the punishment set out in paragraph (a) or (b) and the punishment set out in paragraph (e);
- (j) any two or more of the punishments set out in paragraphs (c) to (f);
- (k) any one or more of the punishments set out in paragraphs (c) to (f) and the punishment set out in paragraph (g);
- (l) any two or more of the punishments set out in paragraphs (c), (e) and (h).

(2) Where the Commissioner or a senior officer imposes any punishment on a junior officer in respect of an offence against discipline, he may order that such punishment be suspended for a period not exceeding six months and if during such period of suspension the offender commits no further offence against discipline such punishment shall not be carried into execution.

(3) Where any punishment has been suspended under the provisions of subsection (2) and the offender is found guilty of any further offence against discipline committed during the period of suspension, the suspended punishment shall forthwith be carried into effect.

(4) Every punishment imposed by a senior officer other than the Commissioner under the provisions of this section shall be subject to confirmation by the Commissioner, and any such punishment shall remain in abeyance until the Commissioner has signified his decision thereon.

46. (1) The Commissioner, a senior officer or officer in charge may inquire into any alleged offence against discipline by a subordinate officer who shall be present at such inquiry and thereupon, if satisfied that such offence has been committed, may impose any of the following punishments:

Power to try subordinate officers

- (a) admonition;
- (b) extra drill or extra duty for a period not exceeding seven days;

- (c) reprimand;
- (d) fine not exceeding one-half of one month's pay;
- (e) severe reprimand;
- (f) forfeiture of one or more efficiency badges;
- (g) stoppage, deferment or withholding of any increment of salary for which the subordinate officer may be eligible;
- (h) stoppage of pay where there has been loss by neglect of or injury to public property;
- (i) reduction in rank;
- (j) termination of service;
- (k) the punishment set out in paragraph (a) or (c) and the punishment set out in paragraph (g);
- (l) any two or more of the punishments set out in paragraphs (d) to (i);
- (m) any two or more of the punishments set out in paragraphs (d), (h) and (j).

(2) Where the Commissioner or a senior officer or an officer in charge imposes any punishment on a subordinate officer in respect of an offence against discipline, he may order that such punishment be suspended for a period not exceeding six months and if during such period of suspension the offender commits no further offence against discipline such punishment shall not be carried into execution.

(3) Where any punishment has been suspended under the provisions of subsection (2) and the offender is found guilty of any further offence against discipline committed during the period of suspension, the suspended punishment shall forthwith be carried into effect.

(4) Any punishment of a fine exceeding thirty penalty units, reduction in rank, stoppage, deferment or withholding increments of salary, forfeiture of efficiency badges or termination of service imposed by an officer in charge or a senior officer other than the Commissioner and any stoppage of pay imposed by an officer in charge where the stoppage exceeds one-half of one month's pay of the offender under the provisions of this section shall be subject to confirmation by the Commissioner, and any such punishment shall remain in abeyance until the Commissioner has signified his decision thereon.

(As amended by Act No. 13 of 1994)

47. (1) The Commissioner may confirm or enhance, vary or remit any punishment referred to him for confirmation under the provisions of section *forty-five* or *forty-six*.

Procedure after
imposition of
punishment

(2) Any prison officer upon whom a punishment of a fine exceeding five days' pay or stoppage of pay exceeding five days' pay or stoppage, deferment or withholding of increment of salary or reduction in rank or termination of service has been imposed under section *forty-five* or *forty-six* shall be entitled to appeal to the President in the manner provided by section *forty-eight* against either the conviction or the punishment or both.

(3) No punishment shall be enhanced under the provisions of subsection (1) unless the offender has been given an opportunity of being heard.

48. (1) There is hereby established a Prisons Advisory Board (in this Act referred to as the Board) consisting of a chairman and such other persons not exceeding four in number as may be appointed by the President.

Prisons Advisory
Board

(2) It shall be the duty of the Board to consider and advise the President on all appeals submitted to it under this Act.

(3) Every appeal under section *forty-two* or subsection (2) of section *forty-seven* shall be submitted by the appellant to the Board within twenty-one days of the notification to the appellant of the decision of the Commissioner, senior officer or officer in charge, as the case may be.

(4) The Board shall consider all appeals summarily unless it sees fit to direct that the appellant be heard either personally, or, with the permission of the Board, either by a friend who shall be an officer in the public service, or by a barrister or solicitor.

(5) Upon the consideration of an appeal, the Board may, in its discretion, hear any evidence not given before the prison officer or the visiting justice who conducted the inquiry.

(6) Upon the consideration of an appeal, the Board shall advise the President either-

(a) to dismiss the appeal if the Board considers that there is not sufficient ground for interfering with the decision from which the appeal is brought; or

(b) on an appeal against conviction-

(i) to reverse the finding and sentence and acquit or discharge the appellant or order him to be re-tried by a prison officer of competent jurisdiction; or

(ii) to alter the finding, maintaining the sentence, or, with or without altering the finding, to reduce or increase the sentence; or

(iii) with or without such reduction or increase, and with or without altering the finding, to alter the nature of the sentence; or

(c) on an appeal against sentence, to quash the sentence and pass such other sentence (whether more or less severe) which the prison officer who inquired into the offence might lawfully have passed.

(7) The President, having considered the advice given by the Board, may exercise any of the powers set out in subsection (6).

(8) The powers conferred by subsection (6) shall be exercised by the Board to the prejudice of the appellant only if he has had an opportunity of being heard either personally or by a friend or by a barrister or solicitor in accordance with the provisions of subsection (4).

(9) Section *fifty* shall apply *mutatis mutandis* to the consideration of an appeal by the Board as it applies to an inquiry by a prison officer into a disciplinary offence.

49. (1) A fine imposed on a prison officer by way of punishment for an offence against discipline under this Act may be recovered by stoppage of the offender's pay due at the time of committing the offence and thereafter accruing due.

Recovery of fines
and stoppage of
pay

(2) The amount of pay which may be stopped in any one month whether by way of recovery of a fine or by way of satisfaction of a punishment imposed under this Act or for any other cause authorised by this Act or by rules made thereunder shall be in the discretion of the prison officer or officer in charge by whom the punishment was imposed or, in any other case, of the officer in charge of the prison where the prison officer concerned is stationed, but shall not exceed one-half of the monthly pay of the offender and wherever more than one order of stoppage of pay is in force against a prison officer so much only of his monthly pay may be stopped as shall leave him a residue of at least one-half of his pay.

(3) Where more than one order of stoppage of pay is made against a prison officer, the enforcement of the orders later in date shall be postponed, if necessary, until the earlier orders are discharged.

50. (1) A prison officer inquiring, under powers conferred on him by this Part, into a disciplinary offence alleged to have been committed by any other prison officer shall have power to summon and examine witnesses on oath or affirmation, to require the production of all documents relevant to such inquiry and to adjourn the inquiry from time to time, and for the purposes of the inquiry may administer oaths.

Powers of officers
holding
disciplinary
inquiries

(2) Any person summoned as a witness under subsection (1) who fails to attend an inquiry at the time and place mentioned in the summons or on any adjournment thereof, or refuses to answer any questions lawfully put to him at the inquiry, shall be guilty of an offence and shall be liable to a fine not exceeding one hundred and fifty penalty units or to imprisonment for a period not exceeding one month:

Provided that no witness shall be asked or be obliged to answer any question which may tend to incriminate him or render him liable to any forfeiture or penalty.

(As amended by Act No. 13 of 1994)

51. (1) In any case where it appears to the Commissioner, the senior officer or the officer in charge who is inquiring into an alleged offence against discipline that the offence alleged to have been committed would not, by reason of its gravity or by reason of previous offences or for any other reason, be adequately punished by any of the punishments provided in section *forty-five* or *forty-six*, the Commissioner or senior officer or officer in charge, as the case may be, shall, without recording a finding, stay the proceedings and, in the case of an inquiry being held by a senior officer or an officer in charge, that officer shall transmit the proceedings to the Commissioner.

Offence against discipline may be tried by subordinate court

(2) Where under subsection (1) any proceedings have been stayed by the Commissioner or by a senior officer or an officer in charge, the Commissioner may order the accused to be taken before a subordinate court.

(3) Where under subsection (1) proceedings have been stayed and transmitted to the Commissioner, the Commissioner may, instead of ordering the accused to be dealt with by a subordinate court, himself hear and determine the case, or direct the case to be dealt with by the senior officer or the officer in charge who transmitted it or by any other prison officer.

(4) Where an accused person is taken before a subordinate court under subsection (2), he shall be liable on conviction for an offence against discipline to a fine not exceeding three months' pay or to imprisonment for a period not exceeding six months, or to both.

52. (1) A prison officer may at any time while within a prison be searched on the orders of a prison officer senior in rank to him.

Search of prison officer and his quarters

(2) The officer in charge may at any time order the living quarters occupied by another prison officer under his control to be searched by a prison officer senior in rank to that other prison officer.

53. (1) When any prison officer below the rank of Superintendent is accused of any offence against any law or under this Act, the

Interdiction of prison officer below rank of

Commissioner may interdict that officer from the exercise of the powers, functions and duties vested in him as a prison officer pending the result of the proceedings taken against that officer.

Superintendent

(2) A prison officer who has been interdicted shall be allowed to receive such allowance equal to not less than one-half of the officer's pay as the Commissioner shall think fit.

(3) If the proceedings against a prison officer who has been interdicted do not result in his dismissal, such officer shall be entitled, subject to the provisions of this Act, to the full amount of the pay which he would have received if he had not been interdicted.

(4) A prison officer shall not by reason of being interdicted cease to be a prison officer and accordingly he shall continue to be subject to the same responsibilities, discipline and penalties, and to the same authorities, as if he had not been interdicted.

(5) The Commissioner may delegate all or any of the powers vested in him by this section to any other senior officer either by rank or name.

54. No pay shall accrue to any prison officer below the rank of Superintendent in respect of any period during which he is absent from duty without leave, or is undergoing any sentence of imprisonment:

Pay not to accrue during absence without leave or imprisonment

Provided that-

(i) in any case, the Commissioner or any other prison officer not below the rank of Assistant Commissioner may in his discretion authorise the payment of such allowances, equal to not more than one-half of the officer's pay, as he may think fit;

(ii) where a prison officer below the rank of Superintendent receives a free pardon or his conviction is quashed on appeal, pay shall accrue for any period when he was undergoing any sentence of imprisonment.

PART VIII

ADMISSION AND CONTROL OF PRISONERS

55. (1) No person shall be admitted into a prison unless under the authority of and accompanied by-

Admission of
prisoners

(a) a remand warrant, order of detention, warrant of conviction or of committal under the hand of any person authorised to sign or countersign any such warrant or order under the provisions of any law;

(b) an order of a court-martial;

(c) a warrant of an immigration officer issued under the provisions of the Immigration and Deportation Act; or

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(d) an order in writing signed by a police officer of or above the rank of Sergeant.

(2) An order under paragraph (d) of subsection (1) shall be valid only for such period as is necessary to obtain a warrant or order referred to in paragraph (a) of that subsection and for no longer.

(3) The officer in charge shall satisfy himself before the admission of a prisoner that the prisoner is the person named in the warrant or order of detention or order accompanying him, and that the warrant or order bears the signature of the proper authority lawfully authorised to issue it, and that it is in all other respects in order.

(4) The officer in charge shall not refuse to accept any prisoner merely on the ground that there is an error on the face of any warrant or order of detention or order accompanying such prisoner, but shall take steps as soon as practicable to have the error corrected.

56. Subject to such conditions as may be specified by the Commissioner, the infant child of a woman prisoner may be received into the prison with its mother and may be supplied with clothing and necessaries at the public expense:

Admission of
infant child with
woman prisoner

Provided that, when the child has attained the age of four years, the officer in charge, on being satisfied that there are relatives or friends of the child able and willing to support it, shall cause the child to be handed over to the relatives or friends, or, if he is not satisfied, shall, subject to

any other written law, hand the child over to the care of such welfare authority as may be approved for the purpose by the Commissioner.

57. Upon the admission to prison of any person, the officer in charge shall cause to be recorded such particulars regarding that person as may be prescribed.

Particulars of prisoner to be recorded

58. Every prisoner shall be searched on admission, and at such time subsequently as may be prescribed, by a prison officer of his or her own sex, but not in the presence of a person of the opposite sex, and all prohibited articles shall be taken from him or her.

Search of prisoners

59. (1) All money, clothes or other effects brought into a prison by any prisoner, or sent to a prison for his use, which he is not permitted to retain shall be placed in the custody of the officer in charge, who shall keep an inventory of the same, and all such money, clothes or other effects shall be returned to the prisoner when he is released or discharged.

Custody and disposal of money and other effects of prisoners

(2) Where any clothes of a prisoner are so old, worn out or dirty as to be unsuitable for further use, the officer in charge may order the same to be destroyed, and in that case, on the release or discharge of the prisoner, the officer in charge may, at the public expense, provide him with suitable clothing.

(3) The officer in charge may refuse to take into prison any property of a prisoner which by reason of its bulk, nature or excessive quantity cannot be conveniently stored in the prison.

(4) The Commissioner shall cause to be recorded the name or names of the person or persons to whom in the event of the death in prison of a prisoner without having made a valid will any money or movable property of the prisoner within the prison should be paid or delivered.

(5) If, within six months after the release or discharge of a prisoner from prison or the death in prison of a prisoner, any money or movable property has not for any reason been paid or returned or delivered to the prisoner or to his personal representatives or to the person or persons whose name or names are recorded in his personal record pursuant to

subsection (4), the officer in charge shall furnish an inventory or description of such money or property to a subordinate court.

(6) Where an inventory or description of money or property is furnished to a subordinate court under the provisions of subsection (5), the court shall detain or give orders for the detention of the money or property and shall cause a notice to be posted in a conspicuous place at the court and at such other places as it deems fit specifying the money or property and calling on any person who may have any claim thereto to appear before the court and establish his claim within fourteen days of the date of the notice.

(7) If no person shall, within fourteen days of the date of the notice mentioned in subsection (6), claim the money or property specified in the notice, the court shall order that such of the property as does not consist of money may be sold or destroyed and that notice of any sale shall be displayed prominently at the court for a period of not less than fourteen days before the date fixed for the sale.

(8) The proceeds of the sale of property sold under subsection (7) and any money specified in the notice mentioned in subsection (6) which is not paid to a claimant shall be paid into the general revenues of the Republic.

PART IX

CLASSIFICATION, CUSTODY AND REMOVAL OF PRISONERS

60. (1) Male and female prisoners shall be kept apart and confined in separate prisons or in separate parts of the same prison in such manner as to prevent, as far as is practicable, their seeing or communicating with each other.

Separation of
prisoners

(2) Subject to the provisions of subsection (1), convicted and unconvicted prisoners of each sex shall be divided into the following classes:

(a) young prisoners;

- (b) adults;
 - (c) first offenders;
 - (d) prisoners with previous convictions;
 - (e) prisoners suspected or certified as being of unsound mind;
 - (f) such other classes as the Commissioner may determine;
- and, as far as the prison accommodation renders it practicable, each such class shall be kept apart from the other classes.

61. (1) Every prisoner shall be in the lawful custody of the officer in charge and, subject to the provisions of this Act, shall remain in such lawful custody and be subject to prison discipline and to the provisions of this Act during the whole period of his imprisonment, whether he is or is not within the precincts of a prison.

Prisoners in custody of officer in charge

(2) Every officer in charge shall keep and detain all persons duly committed to his custody by any court or other competent authority according to the provisions of the warrant or order by which such person has been committed, or until such person is discharged by due process of law.

(3) A prisoner who is being removed or transferred from a prison to another prison or to any other place shall, while outside the prison, be kept in the custody of the prison officer or police officer or probation officer authorised under this Act or any other written law to remove or convey him and shall, subject to the provisions of this Act or any other written law, be deemed to be in the lawful custody of the officer in charge of the prison from which such prisoner is being removed or transferred.

62. A probation officer may be authorised by a court to remove from prison any prisoner on remand in the prison, for the purpose of making inquiries at the direction of the court, and it shall be lawful for a prison officer to hand over custody of any such remand prisoner to a probation officer so authorised to remove him.

Probation officer may have custody of prisoner

63. (1) Subject to subsection (2), the Minister may, by order, direct the removal from prison to a reformatory of any juvenile who is serving a sentence of imprisonment and in that event the remainder of his sentence of imprisonment shall be deemed to be cancelled.

Removal of
juvenile to
reformatory

(2) A juvenile shall not be removed under this section to a reformatory if the unexpired period of the term of his imprisonment is less than nine months.

(3) Where a juvenile is removed under this section to a reformatory, he shall thereafter be treated as if he had been ordered to be detained in a reformatory and sections *ninety-eight to one hundred and seven* of the Juveniles Act shall apply accordingly in relation to the juvenile except that his liability to be detained under section *one hundred and two* of that Act shall continue until the expiration of his term of imprisonment and shall then determine.

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(4) An order made by the Minister under subsection (1) shall be sufficient authority for the reception and detention of the juvenile named therein in a reformatory and shall, for the purposes of the aforesaid sections of the Juveniles Act, be deemed to be a reformatory order made under that Act.

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64. (1) Where the attendance before a court of a person who is a prisoner is necessary for the purpose of giving evidence in any civil proceedings, the court may issue an order directed to the officer in charge of the prison where the prisoner is serving a sentence, requiring him to produce the prisoner at the time and place specified in the order, and the officer in charge shall arrange for compliance with such order.

Production of
prisoners in court

(2) The court before which any person is produced in accordance with an order issued in terms of subsection (1) may give such directions as to the costs of compliance with the order as the court may deem fit.

65. (1) Prisoners on remand or committed for trial, who are required to attend any court, may be taken for that purpose into police custody at the prison to which they have been committed and shall remain under police supervision and guard until returned to the prison or discharged by the

Prisoners under
police escort

court.

(2) Where on the removal of any prisoner from any prison the number of prison officers is insufficient to provide escort for such prisoner, the officer in charge of the prison from which the prisoner is to be removed may, with the general or special permission of the Commissioner of Police, deliver the prisoner to any police officer detailed for such duty.

(3) While a prisoner is in the custody of a police officer in accordance with the provisions of this Act, he shall be deemed to be in lawful custody, and escape from the custody of the police officer shall be deemed to be escape from lawful custody for the purposes of any law.

66. (1) Subject to the provisions of subsection (2), a police officer, with the approval of the officer in charge of a prison and on production of an order in writing from a police officer in charge of a police station or other police officer of or above the rank of Sub-Inspector, may, in the sight and hearing of a prison officer, interview within a prison any prisoner for purposes connected with the investigation of any offence whatsoever.

Statements to
police officers

(2) If the officer in charge of a prison is satisfied that a prisoner is willing to be interviewed by police officers out of the sight and hearing of a prison officer, then the officer in charge may permit that prisoner to be interviewed by not less than two police officers within the prison and out of the sight and hearing of a prison officer.

67. An officer in charge may deliver a prisoner into police custody in the interests of justice or in connection with the investigation of a crime on the production of an order in writing which shall, in the case of an unconvicted prisoner, be signed by a police officer in charge of a police station or a police officer of or above the rank of Sub-Inspector, and, in the case of a convicted prisoner, by a police officer of or above the rank of Chief Inspector.

Release of
prisoners for
investigations, etc.

68. The Commissioner may, by any general or special order, direct that any prisoner shall be removed to any prison other than that in which he is confined or to which he had been committed.

Removal of
prisoners from one
prison to another

69. Whenever an officer in charge considers it necessary for the safe custody of a prisoner that he should be confined by means of mechanical restraint, he may cause him to be so confined in accordance with rules made under this Act.

Certain prisoners may be restrained

70. (1) Any convicted prisoner adjudged according to law to be a mentally disordered or defective person shall remain in the place named in the order providing for his detention as such until the prisoner has been discharged from that place according to law, whereupon, if the prisoner has not completed the sentence in respect of which he was committed, the Minister shall order that he be delivered into the custody of the officer in charge of a prison for the completion of such sentence or, if the prisoner has completed the sentence in respect of which he was committed, he shall forthwith be released.

Mentally disordered or defective prisoners

(2) If any prisoner mentioned in subsection (1) was sentenced to death before being adjudged to be a mentally disordered or defective person and the sentence of death has not, at the time when he is certified to be of sound mind, been commuted to a term of imprisonment then the Commissioner shall report the matter to the Minister who shall inform the President.

71. (1) In the case of the serious illness of a prisoner, an officer in charge, on the advice of the medical officer, may make an order for the removal of the prisoner to hospital:

Removal of sick prisoners to hospital

Provided that in cases of emergency, or in the absence of the medical officer, the removal of the prisoner may be ordered by the officer in charge without being so advised by the medical officer.

(2) The medical authority in charge of a hospital shall, on the admission thereto of a sick prisoner, transmit to the officer in charge of the prison whence the prisoner was removed a certificate signed by him, stating his opinion as to the necessity for the prisoner to remain in hospital and, when possible, stating the period for which the prisoner should so remain.

(3) When, in the opinion of the medical authority in charge of a hospital, it is no longer necessary that a prisoner should remain therein,

he shall notify the officer in charge of the prison whence the prisoner was removed, and thereupon, if the prisoner has not completed the sentence in respect of which he was committed, the officer in charge shall forthwith cause him to be returned to the prison or, if the prisoner has completed the sentence in respect of which he was committed, he shall forthwith be released.

(4) Every reasonable precaution shall be taken by the medical and other officers of a hospital to prevent the escape of a prisoner at any time under treatment therein, and it shall be lawful for those officers to take such measures for preventing the escape of a prisoner as are reasonably necessary:

Provided that the medical authority in charge of a hospital may refuse to take or permit any action authorised under this section if, in his opinion, such action would be prejudicial to the health of the prisoner or impracticable for any good and sufficient reason.

(5) Where, on account of the gravity of the offence for which a prisoner is in custody, or for any other reason, an officer in charge considers it to be desirable to take special measures for the security of that prisoner while he is undergoing treatment in hospital, it shall be lawful for him to give that prisoner into the custody of fit and proper persons, being not less than two in number, one of whom at least shall always be with such prisoner by day and night, and those persons are hereby vested with authority to do all things reasonably necessary to prevent that prisoner from escaping and shall be answerable for his safe custody until such time as he is handed over to an officer in charge on his discharge from hospital, or until such time as his sentence expires, whichever may first occur.

72. (1) Where a medical officer reports to the Commissioner that a prisoner is suffering from leprosy, the Commissioner may, by order in writing, direct the removal of that prisoner to a leprosarium, there to be kept and treated until cured of his leprosy or until such time as he ceases to be liable to confinement in prison, whichever may first occur.

Removal of
prisoner to
leprosarium

(2) So long as a prisoner who has been removed to a leprosarium under the provisions of this section remains therein and remains liable to confinement in prison, the person in charge of the leprosarium shall from time to time transmit to the officer in charge of the prison whence

the prisoner was removed, a certificate signed by him that it is in his opinion necessary that the prisoner should remain in the leprosarium.

(3) As soon as, in the opinion of the person in charge of a leprosarium, it is no longer necessary that a prisoner should remain therein, he shall notify the officer in charge of the prison whence the prisoner was removed that the necessity has ceased, and thereupon, if the prisoner has not completed the sentence in respect of which he was committed, the officer in charge shall forthwith cause him to be returned to the prison or, if the prisoner has completed the sentence in respect of which he was committed, he shall forthwith be released.

(4) Every reasonable precaution shall be taken by the person in charge of a leprosarium and the other persons employed therein to prevent the escape of a prisoner who is under treatment therein, and it shall be lawful for those persons to take such measures as may be necessary for preventing the escape of the prisoner:

Provided that nothing shall be done under the authority of this section which, in the opinion of the person in charge of the leprosarium, is likely to be prejudicial to the health of a prisoner.

73. (1) While any prisoner is in a hospital, mental hospital or leprosarium under the provisions of this Act, he shall be deemed to be in lawful custody for the purposes of any law.

Liability for escape from hospital or leprosarium

(2) If a prisoner shall escape during such time as he is in a hospital, mental hospital or leprosarium, no prison officer shall be held answerable therefor unless the prisoner was at the time of the escape in the personal custody of that officer, and no medical officer, person in charge of a leprosarium or other person shall be held answerable therefor unless it is shown that he helped such prisoner to escape.

74. The period during which a prisoner is detained in any hospital, leprosarium or institution under section *seventy*, *seventy-one* or *seventy-two* shall be reckoned as part of his period of imprisonment.

Serving sentence while in hospital, etc.

PART X

EMPLOYMENT OF PRISONERS

75. (1) Every criminal prisoner shall be engaged in such work within or without the precincts of any prison, as may be directed by the officer in charge, and as far as is practicable such work shall take place in association or outside cells with other criminal prisoners:

General requirement to work

Provided that the medical officer may excuse a prisoner from work or order that he perform light work, on medical grounds.

(2) Women prisoners shall not be employed outside a prison except on the recommendation of the medical officer on medical grounds and then only on such work as may be prescribed.

(3) A civil prisoner and an unconvicted prisoner may elect to work and, if he so elects, shall receive payment at such rates as may be prescribed.

76. (1) Civil prisoners and unconvicted prisoners shall be required to keep their cells, the precincts thereof and the furniture, clothing and utensils therein, clean.

Employment of unconvicted criminal prisoners

(2) Appellant prisoners shall be required to keep their cells, the precincts thereof and the furniture, clothing and utensils therein, clean and to perform such labour as the officer in charge, with the approval of the Commissioner, may direct.

PART XI

ESCAPES, PROHIBITED ARTICLES AND AREAS

77. Any person who, save as is provided in this Act-

- (a) removes from or introduces into or throws from or into or attempts by any means whatsoever to remove from or introduce into a prison or takes from or gives to any prisoner any article whatsoever; or
- (b) communicates with any prisoner;

shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding one thousand five hundred penalty units or to imprisonment for a period not exceeding six months, or to both.

(As amended by Act No. 13 of 1994)

Penalty for introduction or removal of prohibited articles into and from prison and for unauthorised communication with prisoners

78. A prison officer may arrest without a warrant any person who- Power of arrest

(a) commits or attempts to commit any offence against the provisions of section *seventy-seven*;

(b) when suspected by him of committing any offence against the provisions of section *seventy-seven*, refuses on demand made by such prison officer to give his name and address; or

(c) on demand made by himself or any other prison officer, gives a name or an address which such prison officer knows or has reason to believe to be false or which subsequently proves to be false;

and shall deliver the arrested person into the custody of a police officer, and thereupon the police officer shall proceed as if the offence has been committed in his presence.

79. (1) Every letter or document, except as may be prescribed, written in a prison by or on behalf of a prisoner shall be delivered to the officer in charge who shall, before the letter or document is removed from the prison, clearly endorse or cause to be endorsed thereon- Unauthorised communications

(a) the name of the prison;

(b) a statement to the effect that its removal from the prison is authorised; and

(c) the signature or initials of the prison officer making the endorsement.

(2) Every person who comes into possession of a letter or document which he has reasonable cause to believe was written in a prison by or on behalf of a prisoner and which is not endorsed in accordance with the provisions of subsection (1) shall report that fact as soon as possible to the Commissioner or the officer in charge of the nearest prison and shall deliver the letter or document or cause it to be delivered to the Commissioner or such officer in charge.

(3) No person shall, without the authority of the Minister, publish or cause to be published or transmit to any person for publication or otherwise the whole or any part of a letter or document which he has reasonable cause to believe was written in a prison by or on behalf of a

prisoner and which is not endorsed in accordance with the provisions of subsection (1).

(4) Any person who contravenes or fails to comply with the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding seven hundred and fifty penalty units or to imprisonment for a period not exceeding six months, or to both.

(As amended by Act No. 13 of 1994)

80. Any person who-

(a) is found loitering within ninety one metres of any prison, or other place where prisoners may be, for the purpose of imprisonment or work, and who fails to depart therefrom upon being requested to do so by any prison officer or by a police officer; or

(b) in any manner wilfully interferes with any prisoner or gang of prisoners;

shall be guilty of an offence and be liable on conviction to a fine not exceeding one thousand and five hundred penalty units or to imprisonment for a period not exceeding six months, or to both.

(As amended by Act No. 13 of 1994)

Offences in respect of prisons and prisoners

81. Any person who is found committing an offence against the provisions of section *eighty* may be removed from the place where he is committing the offence by a prison officer or a police officer and, if the offence is repeated by that person after he has once been removed in accordance with this section, that person may be arrested without warrant by a prison officer, who, if he makes such an arrest, shall hand the offender over to a police officer.

Removal of certain offenders

82. Any person, other than a prison officer, who is found in possession of any article which has been supplied to any prison officer for the purposes of his duty, or of any other prison property, and who fails to account satisfactorily for his possession thereof, or who, without lawful authority, purchases or receives any such article or property from any prison officer, or who aids or abets any prison officer in selling or disposing of any such article or property, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand and five hundred penalty units or to imprisonment for a period not exceeding six months, or to both.

Unlawful possession of articles supplied to prison officers

(As amended by Act No. 13 of 1994)

83. Subject to the provisions of this Act, any person, other than a prisoner, who-

Assisting prisoner to escape

(a) aids a prisoner in escaping or attempting to escape, conspires with a person to procure the escape of a prisoner or incites a prisoner to escape from the prison in which he is detained or from a conveyance, hospital, leprosarium or other place whatsoever where or in which he may be or whilst in course of removal in custody from one place to another or from any other lawful custody; or

(b) with intent to facilitate the escape of a prisoner-

(i) conveys anything to a prisoner, or into a conveyance, prison, hospital, leprosarium or other place whatsoever where or in which a prisoner may be; or

(ii) places anything outside a conveyance, prison, hospital or other place whatsoever where or in which a prisoner may be so that it may come into the possession or use of a prisoner;

shall be guilty of an offence and shall be liable on conviction to imprisonment for a period not exceeding seven years.

84. Any person harbouring or employing a prisoner whom he knows to be unlawfully at large shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand and five hundred penalty units or to imprisonment for a period not exceeding six months, or to both.

Harbouring prisoners

(As amended by Act No. 13 of 1994)

85. (1) Any person who wears or uses without due authority any uniform or decoration supplied to or authorised for use by any member of the Service or any uniform or decoration so nearly resembling the same as to be calculated to deceive shall be guilty of an offence.

Offences in connection with uniforms and decorations

(2) Any person who falsely represents himself by act or words to be a person who is or has been entitled to use or wear any uniform or decoration referred to in subsection (1) shall be guilty of an offence.

(3) Any person convicted of an offence under this section shall be liable

on conviction to a fine not exceeding one thousand and five hundred penalty units or to imprisonment for a period not exceeding six months, or to both.

(As amended by Act No. 13 of 1994)

86. The officer in charge shall cause to be affixed in a conspicuous place outside the prison a notice setting forth the acts prohibited under sections *seventy-seven*, *eighty* and *eighty-two* and the penalties which may be incurred by their commission.

Notice to be displayed stating offences in respect of prisons and prisoners

PART XII

CIVIL AND UNCONVICTED PRISONERS

87. A civil prisoner or an unconvicted prisoner may be permitted to maintain himself and to arrange for the purchase of, or receive from private sources at proper hours, such food, clothing, or other necessaries as the Commissioner may from time to time determine.

Maintenance of unconvicted prisoners from private sources

88. No food, clothing, or other necessaries permitted under the provisions of section *eighty-seven* shall be given, hired, or sold to any other prisoner, and any prisoner who contravenes any provision of this section shall be liable to lose all privileges permitted under the provisions of that section for such time as the officer in charge may determine.

Food, etc., not to be transferred to other prisoners

89. If a civil prisoner or an unconvicted prisoner does not provide himself with food and clothing, he shall receive the normal prison food, clothing and other necessaries.

Food, clothing and equipment for unconvicted prisoners

PART XIII

DISCIPLINE OF PRISONERS

90. The following acts and omissions shall be minor prison offences when committed by a prisoner:

Minor prison offences

(i) disobeying any order of the officer in charge or of any other prison officer or any rule or order made under this Act;

- (ii) treating with disrespect any prison officer or person authorised to visit the prison;
- (iii) being idle, careless or negligent at work or refusing to work;
- (iv) using any abusive, threatening, insolent or other improper language;
- (v) being indecent in language, act or gesture;
- (vi) committing any assault or act of violence;
- (vii) communicating with another prisoner, or any other person without authority;
- (viii) leaving his cell or ward or place of work or other appointed place, without permission;
- (ix) disfiguring, damaging or interfering with any part or fitting of the prison or any property which is not his own;
- (x) committing any nuisance in any part of the prison;
- (xi) receiving or having in his possession any prohibited article or attempting to obtain such article;
- (xii) making repeated and groundless complaints or malingering;
- (xiii) quarrelling with other prisoners;
- (xiv) wilfully bringing a false accusation against any prison officer or other prisoner;
- (xv) doing any act calculated to create unnecessary alarm among prison officers or prisoners;
- (xvi) committing any act of insubordination;

(xvii) refusing to wear the clothing issued to him or exchanging, losing, discarding, damaging, altering or defacing any part of it;

(xviii) offending in any way against good order and discipline;

(xix) attempting to commit any of the foregoing minor prison offences;

(xx) aiding or abetting the commission of any of the foregoing minor prison offences.

91. The following acts and omissions shall be major prison offences when committed by a prisoner: Major prison offences

(i) mutiny or incitement to mutiny;

(ii) committing or taking part in an aggravated or repeated assault on another prisoner;

(iii) committing or taking part in an assault or attack on a prison officer;

(iv) committing a minor prison offence after having twice previously been found guilty of the same minor prison offence;

(v) escaping, conspiring with a person to procure the escape of a prisoner or assisting another prisoner to escape from the prison in which he is detained or from a conveyance, hospital or other place whatsoever where or in which he may be or whilst in course of removal in custody from one place to another or from any other lawful custody;

(vi) possessing any instrument or other thing with intent to procure his own escape or that of another prisoner;

(vii) omitting or refusing to help any prison officer to prevent an escape, an attempted escape or an attack upon that officer or upon another prisoner;

(viii) committing any act of gross misconduct or insubordination;

(ix) attempting to commit any of the foregoing major prison offences;

(x) aiding or abetting the commission of any of the foregoing major prison offences.

92. (1) An officer in charge may order a prisoner charged with a prison offence to be kept apart from other prisoners pending the hearing and determination of the charge.

Separation of
prisoner charged
with offence

(2) Whenever it appears to the officer in charge that it is desirable for the good order and discipline of the prison for a prisoner to be segregated and not to work nor to be associated with other prisoners, it shall be lawful for the officer in charge to order the segregation of that prisoner for such period as may be considered necessary.

93. (1) A charge against a prisoner in respect of a prison offence may, subject to the provisions of this section, be heard and determined-

Hearing of prison
offences

(a) before a subordinate court where the Commissioner, owing to the gravity of the prison offence or other sufficient cause, so decides; or

(b) within a prison, by the Commissioner or, at the request of the Commissioner, a senior officer or the officer in charge, by a visiting justice who is a magistrate.

(2) A prisoner charged with a prison offence which is heard and determined under the provisions of paragraph (b) of subsection (1) shall be informed of the nature of the charge and shall be given an opportunity of hearing the facts alleged against him and of being heard in his defence.

(3) The Commissioner may delegate his power of hearing and determining a charge under the provisions of paragraph (b) of subsection (1) to a senior officer or an officer in charge and, in so doing, may limit the officer's power to impose punishments conferred by section *ninety-seven* to punishments less stringent than those specified in that section:

Provided that the Commissioner shall not delegate to an officer in charge who is not a senior officer the power of hearing and determining a charge in respect of a major prison offence.

(4) Section *fifty* shall apply *mutatis mutandis* to the hearing within a prison of a charge against a prisoner by the Commissioner, a senior officer, officer in charge or a visiting justice as it applies to an inquiry by a prison officer into a disciplinary offence.

94. (1) A prisoner found guilty of a minor prison offence by a subordinate court shall be liable to-

Punishments that may be imposed by subordinate court

(a) imprisonment for a period not exceeding six months;

(b) additionally or alternatively any one or more of the punishments specified in section *ninety-seven*.

(2) A prisoner found guilty of a major prison offence by a subordinate court shall, subject to the provisions of subsection (3), be liable to -

(a) imprisonment for a period not exceeding two years;

(b) additionally or alternatively any one or more of the punishments specified in section *ninety-eight*.

(3) Where a sentence of corporal punishment is imposed by a subordinate court-

(a) section *ninety-nine* shall not apply in relation to that sentence;

(b) if the sentence is not carried out for medical reasons, the subordinate court which imposed the sentence on receipt of a medical certificate that the prisoner is not physically fit to undergo the sentence may substitute for that sentence any other punishment which may be imposed in respect of a major prison offence.

(4) A sentence of imprisonment imposed for a prison offence on a

prisoner-

(a) who is a convicted criminal prisoner shall commence on the date of expiry of the sentence of imprisonment being served by him at the time of the offence;

(b) who is not a convicted criminal prisoner shall commence on the date the sentence of imprisonment is imposed.

95. Where an officer in charge, who is a junior officer or subordinate officer, finds a prisoner guilty of a minor prison offence, he may impose one or more of the following punishments:

Punishment or minor prison offences by junior or subordinate officers

(a) confinement in a separate cell for a period not exceeding three days;

(b) confinement in a separate cell with penal diet for a period not exceeding three days;

(c) reduced diet with or without confinement in a separate cell for a period not exceeding seven days;

(d) forfeiture of remission of sentence not exceeding three days of the total remission earned;

(e) extra work for a period not exceeding three days.

96. Whenever a prisoner is charged before an officer in charge who is not a senior officer with a minor prison offence which owing to the circumstances of the case the officer in charge considers the powers of punishment he possesses are inadequate to deal with, he shall stay the proceedings and transfer the case with a report thereon to a senior officer or to a visiting justice who is a magistrate.

Transfer of case

97. (1) Where an officer in charge, who is a senior officer, or a visiting justice, finds a prisoner guilty of a minor prison offence, he may impose one or more of the following punishments:

Punishment of minor prison offence by senior officer or visiting justice

(a) confinement in a separate cell for a period not exceeding fourteen days;

(b) confinement in a separate cell with penal diet for a period not exceeding seven days;

- (c) reduced diet, with or without confinement in a separate cell, for a period not exceeding fourteen days;
- (d) forfeiture of remission of sentence not exceeding thirty days of the total remission earned;
- (e) extra work for a period not exceeding seven days;
- (f) reduction in stage, or postponement of promotion in stage, or forfeiture of privileges;
- (g) forfeiture of earnings not exceeding one-half of the amount earned; or removal from any prescribed earnings scheme for a period not exceeding three months or reduction in earnings grade until such time as the prisoner is considered fit for restoration to his original grade by virtue of his good conduct and skill at his trade or effort at his work:

Provided that no prisoner shall be reduced from the highest grade in any prescribed earnings scheme without the approval of the Commissioner.

(2) In this section and in section *ninety-eight*, "reduction in stage" and "postponement of promotion in stage" mean the removal of a prisoner to a lower stage and the postponement of promotion to a higher stage, respectively, in the prescribed progressive stage system.

98. Where the Commissioner, a senior officer, or a visiting justice finds a prisoner guilty of a major prison offence, he may impose one or more of the following punishments:

Punishment of major prison offence by senior officer or visiting justice

- (a) confinement in a separate cell for a period not exceeding twenty-five days;
- (b) confinement in a separate cell with penal diet for a period not exceeding fifteen days;
- (c) reduced diet, with or without confinement in a separate cell, for a period not exceeding twenty-five days;
- (d) forfeiture of remission of sentence not exceeding sixty days of the total remission earned;
- (e) extra work for a period not exceeding ten days;
- (f) reduction in stage or postponement of promotion in stage or

forfeiture of privileges;

(g) forfeiture of earnings not exceeding three-quarters of the amount earned; or removal from any prescribed earnings scheme for a period not exceeding six months or reduction in earnings grade until such time as the prisoner is considered fit for restoration to his original grade by virtue of his good conduct and skill at his trade or effort at his work:

Provided that no prisoner shall be reduced from the highest grade in any prescribed earnings scheme without the approval of the Commissioner;

(h) subject to the provisions of section *ninety-nine*, corporal punishment in accordance with the provisions of sections *one hundred to one hundred and two*.

99. The following provisions shall apply in relation to the imposition of a sentence of corporal punishment under paragraph (h) of section *ninety-eight*:

Confirmation of
sentence of
corporal
punishment

(a) the Commissioner, senior officer or visiting justice, as the case may be, shall, when he proposes to impose a sentence of corporal punishment, adjourn the hearing without announcing the sentence and submit the proposed sentence-

(i) where the charge is heard by the Commissioner, to the Minister for confirmation; or

(ii) where the charge is heard by a visiting justice or senior officer, to the Commissioner for his approval;

(b) if the Commissioner approves a proposed sentence of corporal punishment submitted to him under subparagraph (ii) of paragraph (a), he shall submit the case to the Minister for confirmation;

(c) if a proposed sentence of corporal punishment is confirmed by the Minister, the Commissioner, visiting justice or senior officer, as the case may be, shall announce the sentence;

(d) if a sentence of corporal punishment is not carried out for medical reasons or a proposed sentence of corporal punishment is not approved or confirmed, as the case may be, the Commissioner, visiting justice or senior officer, as the case may be, may substitute for the sentence or proposed sentence any other punishment which he is authorised to impose under section *ninety-eight*.

100. No sentence of corporal punishment for a prison offence shall be imposed under the provisions of section *ninety-eight* unless the prison offence is one specified in paragraph (i), (ii) or (iii) of section *ninety-one*.

Prison offences for which corporal punishment may be awarded

101. No sentence of corporal punishment for a prison offence shall be imposed under the provisions of section *ninety-eight* on a prisoner who is-

Certain prisoners not liable to corporal punishment

- (a) a woman;
- (b) under sentence of death; or
- (c) a male over the apparent age of forty-five years.

102. (1) Whenever a sentence of corporal punishment for a major prison offence is imposed under the provisions of section *ninety-eight*, the number of strokes with a cane shall be specified.

Restrictions in respect of corporal punishment

(2) A sentence of corporal punishment shall not exceed-

(a) twelve strokes with a cane in the case of an adult male who is over the apparent age of sixteen years and under the apparent age of forty-five years;

(b) six strokes with a cane in the case of a male under the apparent age of sixteen years.

(3) Where a number of punishments for a number of offences is imposed on a prisoner on one occasion, not more than one of such punishments shall be of corporal punishment.

(4) Corporal punishment shall not be inflicted by instalments.

(5) Corporal punishment shall be inflicted with a cane of a type and in a manner approved by the Minister.

103. Where any written law provides for confirmation of any sentence of corporal punishment imposed by a court, no such sentence shall be

Execution of sentence of corporal

carried out until it has been confirmed in accordance with that written law. punishment

104. (1) A sentence of corporal punishment shall not be carried out unless- Medical practitioner and officer in charge to be present while corporal punishment is being inflicted

(a) a medical officer has, after examination, certified in writing that in his opinion the prisoner is physically fit to undergo the sentence of corporal punishment about to be inflicted on him; and

(b) a medical practitioner and the officer in charge are present while the corporal punishment is being inflicted on the prisoner.

(2) If a medical officer is of the opinion, after examination, that a prisoner is not physically fit to undergo the sentence of corporal punishment about to be inflicted on him, he shall certify that fact in writing and transmit the certificate to the subordinate court or the person who imposed the sentence.

105. The medical practitioner or officer in charge mentioned in section *one hundred and four* may at any time during the carrying out of the sentence of corporal punishment intervene and prohibit the remainder of the sentence from being carried out if he considers that the prisoner is not in a fit state of health to undergo the remainder of the sentence. Sentence of corporal punishment may be stayed

106. (1) A prisoner undergoing a punishment of confinement in a separate cell with penal diet shall receive full diet every fourth day. Special provisions relating to punishments of separate confinement with penal diet and of reduced diet

(2) No prisoner undergoing a punishment of confinement in a separate cell with penal diet shall be put to any form of manual labour until the sentence is completed.

(3) A prisoner undergoing a punishment of reduced diet with or without confinement in a separate cell shall receive full diet on every ninth day.

107. (1) No prisoner shall be sentenced to be confined in a separate cell for an aggregate of more than ninety days in one year.

Confinement in separate cell

(2) In any case where a prisoner is sentenced to two periods of confinement in a separate cell, the two sentences shall be separated by a period not less than the longer of the two periods.

108. Any punishments lawfully imposed, other than corporal punishment, may be carried out partly in one prison and partly in another.

Punishment in different prisons

PART XIV

REMISSION OF SENTENCE

109. (1) Convicted criminal prisoners sentenced to imprisonment, whether by one sentence or consecutive sentences, for a period exceeding one month, may by industry and good conduct earn a remission of one-third of their sentence or sentences:

Remission of part of sentence of prisoners

Provided that in no case shall-

(i) any remission granted, result in the release of a prisoner until he has served one calendar month;

(ii) any remission be granted to a prisoner sentenced to imprisonment for life or to be detained during the President's pleasure.

(2) Upon the recommendation of the Commissioner, a convicted criminal prisoner may by reason of meritorious conduct or of his mental or physical state of health be granted remission of the whole or part of his sentence.

(3) For the purpose of giving effect to the provisions of subsection (1), each prisoner, on admission, shall be credited with the full amount of remission to which he would be entitled at the end of his sentence if he

lost no remission of sentence.

(4) A prisoner may lose remission of sentence as a result of its forfeiture as a punishment for a prison offence, and shall not earn any remission in respect of any period-

- (a) spent in hospital through his own fault or while malingering; or
- (b) while undergoing confinement in a separate cell as punishment.

110. (1) Any convicted criminal prisoner other than-

Remission of part
of sentence of
certain prisoners

- (a) a prisoner sentenced to imprisonment for life; or
- (b) a prisoner referred to in subsection (2); or
- (c) the holder of a licence to be at large granted under the Prisons Act, 1955;

who, immediately before the commencement of this Act, was serving a sentence of imprisonment may earn by satisfactory industry and good conduct remission of one-third of his sentence.

(2) Any convicted prisoner who, immediately before the commencement of this Act, was being detained in prison in consequence of the cancellation of a licence to be at large, granted to him under the Prisons Act, 1955, may earn by satisfactory industry and good conduct remission of one-third of the sentence of imprisonment which was imposed on him and which had not expired at the date his detention commenced following the cancellation of his licence, and any remission credited to such prisoner on the said date shall be disregarded.

(3) For the purpose of giving effect to the provisions of subsection (1) and (2), every prisoner referred to in those subsections shall-

- (a) in the case of a prisoner entitled to remission under subsection (1), on his admission to prison;

(b) in the case of a prisoner referred to in subsection (2), on the commencement of this Act;

be credited with the full amount of remission he can earn, from which shall be deducted any loss of remission imposed on him as punishment for a prison offence under the provisions of section *ninety-four*, *ninety-five*, *ninety-seven* or *ninety-eight*.

(4) The commissioner may restore in whole or in part any remission forfeited or lost under the provisions of this Act including any remission forfeited or lost before the commencement of this Act.

PART XV

DISCHARGE AND PAROLE

111. (1) Subject to the provisions of this section, every officer in charge shall be responsible for the due discharge from prison of all prisoners under his control immediately upon their becoming entitled thereto.

Officer in charge to be responsible for discharge of prisoners

(2) No prisoner under treatment by the medical officer shall be discharged from prison except at his own request, made in writing, until, in the opinion of the medical officer, his discharge can be effected without danger to the health of the prisoner.

(3) Where by or under any law a prisoner becomes entitled to discharge from a prison otherwise than by the expiration of his sentence, the officer in charge shall not discharge him otherwise than in accordance with the terms of an order, warrant or instruction issued in writing under the hand of a person authorised to do so under the provisions of such law or in due course of law.

112. All criminal prisoners shall be discharged by noon on the day on which they are entitled to be discharged, but, should that day fall on a Sunday or public holiday, they shall be discharged by noon on the next preceding day not being a Sunday or public holiday.

Day of discharge of prisoners

113. A prisoner on discharge from prison shall be entitled to travelling expenses to such place as the Commissioner may determine.

Travelling expenses of prisoner on

discharge

114. (1) A prisoner serving a sentence of imprisonment for a period of four years or more may, within three months of the date he is due for release for reasons approved by the Commissioner, be permitted by the Commissioner, on such conditions as he may specify, to be temporarily absent on parole for a period of time, which shall not exceed fourteen days, specified by the Commissioner.

Release on parole

(2) The Commissioner or an officer in charge may at any time recall a prisoner released on parole in accordance with the provisions of subsection (1).

(3) Any prisoner when released on parole who contravenes or fails to comply with the conditions imposed upon him under this section shall be guilty of an offence and shall be liable upon conviction to imprisonment for a period not exceeding six months.

115. (1) The Minister may, on the recommendation of the Commissioner, permit any young prisoner to be temporarily absent from prison for such period and on such conditions as to supervision or otherwise as he may determine.

Minister may permit absence of young prisoners from prison

(2) If any prisoner fails to perform and observe any condition imposed under the provisions of this section, he may be arrested and recommitted to any prison by warrant under the hand of a magistrate and shall be detained in a prison as if he had not been so absent from prison for a period equal to the portion of the sentence which was unexpired at the date of his release.

(3) If a prisoner does not contravene during the period of his absence from prison under the provisions of this section any condition attached to his absence, he shall no longer be liable for any punishment in respect of the conviction upon which he was sentenced.

116. (1) The President may at any time release on licence a prisoner serving a term of imprisonment for life subject to such conditions as may be specified in the licence and may at any time vary, modify or cancel any such condition.

Release on licence of prisoners serving life imprisonment

(2) The President may at any time by order recall to prison a prisoner released on licence under this section but without prejudice to the power of the President to release him on licence again and when any prisoner is so recalled his licence shall cease to have effect and he shall, if at large, be deemed to be unlawfully at large.

(3) An order made under subsection (2) shall be sufficient authority for the arrest of the prisoner to whom it relates as if it were a warrant of arrest issued by a magistrate.

PART XVI

COMPULSORY AFTER CARE ORDERS

117. (1) The Commissioner-

Compulsory after
care orders

(a) shall, in the case of a prisoner who, having been sentenced to imprisonment on not less than two previous occasions, is serving a sentence of imprisonment for a period of or exceeding three years; and

(b) may, in the case of any other prisoner where he considers it necessary or desirable in the interests of the rehabilitation of that prisoner so to do;

make an order, to be known as a "Compulsory After Care Order", providing for the compulsory care of the prisoner for a period not exceeding one year after his discharge from prison.

(2) Every compulsory after care order shall be made on or prior to the discharge of the prisoner in respect of whom it is made and shall be in such form and subject to such terms and conditions as may be prescribed.

118. (1) If any person in respect of whom a compulsory after care order is in force-

Failure to comply
with compulsory
after care order and
commission of
further offence
during currency of
order

(a) is convicted of an offence; or

(b) contravenes or fails to comply with any term or condition of the order;

he shall be guilty of an offence and shall on conviction be sentenced to imprisonment for a period of three months or for the period of remission of sentence earned by that person while he was a prisoner under section *one hundred and nine* immediately prior to the making of the order, whichever is the greater.

(2) A sentence of imprisonment imposed on a person under subsection (1) shall commence on the expiration of any other sentence of imprisonment which that person is liable to serve.

(3) A certificate issued by the Commissioner stating the amount of remission of sentence earned by a person while he was a prisoner under section *one hundred and nine* immediately prior to the making of the compulsory after care order made in respect of him shall be conclusive evidence of its contents.

(4) Upon the conviction of a person of an offence against subsection (1), the compulsory after care order made in respect of him shall cease to have effect.

(5) Notwithstanding the provisions of subsection (1) of section *one hundred and seventeen*, the Commissioner may at any time make a further compulsory after care order in respect of a prisoner where a prior compulsory after care order made in respect of that prisoner has ceased to have effect under subsection (4).

PART XVII

REPORT ON LONG TERM PRISONERS

119. (1) The Commissioner shall forward, in accordance with this section, a report on every prisoner who has during the previous month-

Report on long
term prisoners

(a) in the case of prisoners sentenced to be detained during the President's pleasure and those sentenced to imprisonment for life,

completed two years' imprisonment from the date of admission, and thereafter at intervals of one year from the date of sentence;

(b) in the case of all other prisoners sentenced to imprisonment for a period of or exceeding seven years, completed four years' imprisonment from the date of sentence and at intervals of two years thereafter;

(c) completed seven or more years of his sentence and has attained, or is believed to have attained, the age of sixty years.

(2) Each report shall include-

(a) a statement by the officer in charge on the work and conduct of each prisoner; and

(b) a statement by the medical officer on the mental and bodily condition of each prisoner, with particular reference to the effect of imprisonment on his health.

(3) A report in respect of a prisoner detained during the President's pleasure shall be forwarded to the President through the Minister.

(4) A report in respect of any prisoner other than a prisoner detained during the President's pleasure shall be forwarded to the Minister.

PART XVIII

PRISONERS UNDER SENTENCE OF DEATH

120. Every prisoner sentenced to death shall be confined in some safe place within a prison, and, if possible, shall be kept apart from other prisoners and shall be placed under constant observation both by day and by night.

Confinement of
condemned
prisoners

121. No person other than a prison officer, medical officer, a visiting justice, a minister of religion, or person authorised by the Commissioner shall have access to a prisoner under sentence of death:

Persons who may
have access to
condemned
prisoner

Provided that such a prisoner may, with the consent of and subject to any reasonable conditions which may be imposed by the Commissioner or the officer in charge, be visited by his legal advisers and such of his relatives and friends as he may express a wish to see.

122. (1) Executions shall be carried out at such prisons as the Commissioner may specify and shall be attended by the officer in charge and such other prison officers as the Commissioner or officer in charge may direct, and may be attended by the Sheriff or Deputy Sheriff, by a minister of religion and such other persons as the Minister may authorise.

Attendance at execution by officials

(2) Executions shall be carried into effect by a public executioner appointed by the Minister and in accordance with instructions issued from time to time by the Commissioner.

(3) The officer in charge and the public executioner shall make themselves familiar with the instructions issued by the Commissioner and shall satisfy themselves that every precaution is taken to ensure efficiency and despatch and that all appliances are maintained in good condition.

(4) As soon as may be after a sentence of death has been executed on a prisoner, the medical officer shall examine the body and shall ascertain the fact of death and shall sign a certificate thereof and deliver such certificate to the officer in charge, who shall also sign such certificate and transmit it to the registrar of the court which imposed the sentence.

PART XIX

VISITING JUSTICES, OFFICIAL VISITORS, MINISTERS OF RELIGION AND PRISONERS' AID SOCIETIES

123. Any Justice of Appeal or Judge may visit and inspect any prison at any time, and, while so doing, may inquire into any complaint or request made by a prisoner.

Judges may visit prisons

124. (1) The Minister and the Deputy Minister shall be visiting justices

Minister and

of all prisons.

Ministers in charge
of Provinces to be
visiting justices

(2) The Minister in charge of a Province shall be a visiting justice of all prisons in his Province.

125. Magistrates shall be visiting justices of the prisons situated in the area in which they normally exercise jurisdiction.

Magistrates to be
visiting justices in
own areas

126. Any visiting justice may at any time visit a prison in respect of which he is a visiting justice, and may-

Powers of visiting
justices

- (a) call for all books, papers and records relating to the management and discipline of the prison;
- (b) visit every part of the prison and see every prisoner in confinement;
- (c) inspect and test the quality and quantity of prisoners' food;
- (d) ascertain, so far as possible, that the standing orders and rules are observed;
- (e) inquire into any complaint or request made by a prisoner; and
- (f) perform such other functions as may be prescribed.

127. On completion of each visit, a visiting justice shall enter in a book to be kept for such purpose such remarks, suggestions or recommendations for the information of the Commissioner as he may deem fit.

Visiting justice to
record visit in
prescribed book

128. The Minister may appoint official visitors to any prison.

Appointment of
official visitors

129. An official visitor shall-

Duties of official
visitors

- (a) at least once in every two months visit the prison to which he is appointed between such hours as may be prescribed;
- (b) visit all parts of the prison and see every prisoner in confinement, save that women official visitors may visit only those parts of each prison set aside for the detention of women prisoners;
- (c) inspect and test the quality and quantity of prisoners' food;

- (d) ascertain, so far as possible, that the standing orders and rules are observed;
- (e) inquire into any complaint or request made by a prisoner; and
- (f) perform such other functions as may be prescribed.

130. On completion of each visit, an official visitor shall enter in a book to be kept for the purpose such remarks, suggestions or recommendations for the information of the Commissioner as he may deem fit.

Official visitors to record visit in prescribed book

131. Ministers of religion, or other accredited representatives of any religious body recognised by the Minister whose visits are approved by the Commissioner may at such hours and in such place as may be prescribed or as the officer in charge may permit-

Ministers of religion may visit prison

- (a) be admitted to the prison to visit prisoners who may be desirous of their services; and
- (b) be permitted to hold religious services.

132. A probation officer or a representative of a prisoners' aid society who has obtained the written permission of the Commissioner may be admitted to any prison at times to be arranged by the officer in charge.

Visits of probation officers and representatives of prisoners' aid societies

PART XX

YOUTH CORRECTIVE CENTRES

133. (1) The Minister may, by Gazette notice, declare any building, enclosure or place, or any part thereof, to be a youth corrective centre for the purposes of this Act, and may, in like manner, declare that any youth corrective centre shall cease to be a youth corrective centre for the purposes of this Act.

Establishment of youth corrective centres

(2) No prisoner other than a person sentenced to corrective training in a youth corrective centre under section *one hundred and thirty-four* shall be detained in such centre.

(3) Subject to the provisions of subsection (2), every youth corrective

centre shall be deemed to be a prison for the purposes of this Act.

134. (1) Notwithstanding the provisions of any other written law, where a person who has attained the age of sixteen years but has not attained the apparent age of twenty-one years, is found guilty or convicted of an offence not punishable with death, the court may order or sentence such person to undergo corrective training in a youth corrective centre for a period of six months:

Corrective training may be ordered in certain circumstances

Provided that-

- (i) no person shall be ordered or sentenced to undergo corrective training in a youth corrective centre-
 - (a) if he has previously been detained in prison, an approved school or a reformatory; or
 - (b) if he has previously been sentenced to undergo corrective training at a youth corrective centre;
- (ii) no person shall be ordered or sentenced to undergo corrective training in a youth corrective centre unless the Commissioner has confirmed that accommodation for that person is available in a youth corrective centre.

(2) Every person ordered or sentenced to undergo corrective training in a youth corrective centre shall be deemed to be a prisoner for the purposes of this Act, including remission of sentence.

PART XXI

EXTRA-MURAL PENAL EMPLOYMENT

135. (1) Where in any declared area a male prisoner is committed to imprisonment for non-payment of any fine, compensation, costs or other sum adjudged to be paid under any written law, the court so sentencing or committing that person may, with the prisoners consent, order that the prisoner shall perform public work, in accordance with this Part outside a prison for the duration of such imprisonment.

(2) Upon making an order under subsection (1), the court shall order the person in respect of whom the order is made to report forthwith to an authorised officer of the District in which it is sitting or to any other specified officer under the control of such authorised officer.

(3) Any officer to whom a person reports in pursuance of subsection (2) shall notify that person or cause him to be notified of the hours, place, nature and any other necessary details of the public work to be performed by him.

(4) Any person who, having been ordered to perform public work as aforesaid, is found by a medical officer to be medically unfit to perform the public work shall be removed to prison and shall there undergo the imprisonment to which he is liable, subject nevertheless to a deduction of the number of days, if any, for which he has completed his daily task.

(5) Any person who has been ordered to perform public work as aforesaid may by industry and good conduct earn a remission of one-third of the term of imprisonment to which he had been sentenced or for which he had been committed:

Provided that in no case shall any remission granted result in the release of a prisoner until he has served one calendar month.

(6) If an authorised officer in any District is satisfied that any person in respect of whom an order under this section has been made during the term of imprisonment to which he had been sentenced or for which he had been committed-

(a) has failed without reasonable cause or excuse to present himself for work at the appointed place and hour; or

(b) absents himself without reasonable cause or excuse from his task; or

(c) fails to accomplish without reasonable cause or excuse a day's task; or

(d) is otherwise found to be unsatisfactory in his conduct;

he may cause that person to be removed to prison and that person shall there undergo the imprisonment to which he is liable, subject nevertheless to a deduction of the number of days for which he has completed his daily task.

(7) For the purposes of this section-

"authorised officer" means a person appointed by the Minister for the purposes of this Part;

"declared area" means an area declared by the Minister, by Gazette notice, to be an area to which this Part shall apply;

"public work" means work performed in any department of the Government or any service administered by it, or any local authority.

(8) Any person in respect of whom an order to perform public work is made under subsection (1) and who-

(a) fails without reasonable cause or excuse to report as ordered under subsection (2); or

(b) fails without cause or excuse to present himself for work at the appointed place and hour; or

(c) absents himself without reasonable cause or excuse from his task; or

(d) fails to accomplish without reasonable cause or excuse a day's task; or

(e) is otherwise found by the court to have been unsatisfactory in his conduct;

shall be guilty of an offence and, notwithstanding that he is undergoing the imprisonment to which he is liable in accordance with subsection (6), shall be liable to a fine not exceeding one thousand and five hundred penalty units or to imprisonment for a period not exceeding six months, or to both.

135A (1) Where a court makes an order for community service in accordance with the Penal Code and Criminal Procedure Code, the authorised officer to whom the offender reports shall notify the offender or cause the offender to be notified of the hours, place, nature and any other necessary details of the community service to be performed by the offender.

Insertion of new sections 135A and 135B

Community service

(2) Where an offender, who has been ordered to perform community service, is found by a medical officer to be medically unfit to perform community service the authorised officer shall report to the court which shall-

- (a) vary the order to suit the circumstances of the case;
- (b) impose on the offender a fine not exceeding three hundred penalty units, or
- (c) send the offender to prison for the period the offender is liable, subject nevertheless to a reduction of the number of days, if any, for which community service has already been performed.

Serving prisoner's right to apply for community service

135B (1) Any prisoner serving punishment for imprisonment in respect of a misdemeanor who has been convicted within the last six months before the coming into force of the provisions for community service may apply to court for community service.

Regulations

(2) The Minister shall, by statutory instrument, make regulations for the process of applying to the court for community service.

(As amended by Act No. 13 of 1994 and No. 14 of 2000)

PART XXII

MISCELLANEOUS

136. Every officer in charge within the area for which any session of the High Court is held for the trial of criminal cases shall deliver to the High Court at the commencement of each session a list of the unconvicted prisoners then within his prison, and that list shall specify in the case of each such prisoner the date of admission and the authority for detention, and shall deliver also a list of detained witnesses.

List of prisoners detained to be delivered to High Court

137. (1) The Commissioner may offer rewards to persons who give information leading to the apprehension of prisoners who have escaped from custody and any person giving any such information, whether or not any offer of reward has previously been made, and any person who apprehends, secures, and hands over or causes to be handed over to any officer in charge any prisoner who has escaped may be paid his just and reasonable expenses and in addition, such sum by way of reward as the Commissioner may determine.

Rewards for apprehension of escaped prisoners

(2) No payment of any sum as a reward shall be made under the authority of this section to any prison officer or police officer unless, in the opinion of the Commissioner, such exceptional circumstances exist as to justify such a payment being made.

138. (1) It shall be lawful for the Commissioner, either on his own initiative, or on the recommendation of a Judge or of a magistrate, to grant monetary rewards and gratuities to members of the Service for or in respect of-

Rewards and
gratuities

(a) wounds or injuries suffered on service or otherwise in the course of duty;

(b) special acts of bravery, such as-

(i) saving or attempting to save life;

(ii) saving or attempting to save property from loss by fire, theft, or in other circumstances attended by danger:

(c) valuable intelligence acquired by personal risk, hardship, or unusual skill;

(d) any other special or meritorious service:

Provided that no monetary reward or gratuity exceeding twenty kwacha shall be granted without the sanction of the Minister.

(2) All monetary rewards and gratuities that may from time to time be granted under subsection (1) shall be paid from moneys appropriated by Parliament for the purpose.

(As amended by Act No. 13 of 1994)

139. Where the President pardons any person who has been sentenced to death on condition that he serves a period of imprisonment, that person shall be deemed to have been sentenced to such period by the court before which he was convicted.

Commutation of
death sentence to
sentence of
imprisonment

140. (1) Subject to the provisions of any other written law, a person who has been sentenced by a competent court within any country to which the Minister may declare this section to apply may be sent to, imprisoned, and detained in Zambia until the expiration of such sentence, or during such portion thereof as may be deemed necessary, and shall be treated and be subject to the provisions of this Act as if he were undergoing the sentence of a competent court of Zambia.

Detention of prisoners from other countries

(2) A certificate under the hand of the Minister, setting forth that from documents laid before him it appears that the person named in the certificate has been sentenced as described in subsection (1) to the period of imprisonment specified in the certificate, shall be accepted at all times during the continuance of such period as conclusive evidence that such person is lawfully under detention in accordance with the provisions of this section.

141. (1) Every person who has been or may hereafter be sentenced to imprisonment by any competent court may, by warrant signed by the Minister, be removed to any country in which he was born or where he normally resided before his entry into the Republic in order that such person may be detained in any prison in such country until the expiration of his sentence or release according to law:

Removal of prisoners to other countries

Provided that no person who is a citizen of Zambia shall be removed in accordance with the provisions of this subsection without his consent.

(2) Any person in course of removal within Zambia under a warrant signed in accordance with the provisions of this section shall be deemed to be in lawful custody.

(3) Nothing in this Act contained shall prevent the conviction, judgment, finding, order or sentence recorded or made in respect of any person removed in accordance with this section from being questioned in the same manner as if he had not been removed, and the sentence of that person may be remitted and his discharge ordered in the same manner and by the same authority as if he had not been removed.

142. The Commissioner may grant a prisoner permission in writing to be absent from prison for a specified period for personal, family or other reasons if, in the opinion of the Commissioner, the circumstances of the

Commissioner may grant permission to be absent from

case warrant the granting of permission.

prison

143. The Commissioner shall cause to be kept a personal record of every prison officer, and shall cause to be recorded therein the name or names of the person or persons to whom in the event of the death of such prison officer, without having made a valid will, any money or other personal property should be paid or delivered.

Disposal of
deceased's estate

144. A witness who duly attends at or for the purposes of an inquiry or hearing held under this Act shall be entitled to the same allowances and expenses as a witness who attends criminal proceedings at a subordinate court is entitled under the Criminal Procedure Code:

Witnesses'
expenses
Cap. 88

Provided that this section shall not apply to a prisoner, prison officer or other public officer.

145. Nothing in this Act shall exempt any person from being proceeded against under any other Act or law in respect of any offence made punishable by this Act, or from being liable under any other Act or law to any other or higher penalty or punishment than is provided for such offence by this Act:

Power to prosecute
under other law not
affected

Provided that no person shall be punished twice for the same offence.

PART XXIII

RULES, REPEALS AND SAVINGS

146. (1) The Minister may, by statutory instrument, make rules for the better carrying into effect of the provisions and purposes of this Act and, without prejudice to the generality of the foregoing, may make rules providing for-

Rules

- (i) the powers, duties and responsibilities of prison officers and other persons employed in prisons;
- (ii) the attestation and termination of service of prison officers below the rank of Superintendent;
- (iii) the powers and duties of medical officers; the medical inspection of prisons and prisoners, and the prevention of contagious diseases in prisons;

- (iv) the powers and duties of visiting justices, official visitors, ministers of religion and prisoners' aid societies;
- (v) the construction, description, equipment and supervision of cells for separate confinement and wards;
- (vi) the classification of prisons and prisoners into categories and their separation accordingly;
- (vii) the safe custody, management, organisation, hours, mode and kind of labour and employment, clothing, bedding, maintenance, instruction, discipline, segregation, treatment, restraint, correction and training of prisoners;
- (viii) visits to and communications with prisoners;
- (ix) the introduction of a progressive stage system;
- (x) the payment of prisoners in accordance with earning schemes for work done while in prison;
- (xi) the disposal of the products of prison labour;
- (xii) the establishment of a staff welfare fund and the method of administration of the said fund by the Commissioner;
- (xiii) the appointment of officers responsible for the after care and rehabilitation of prisoners;
- (xiv) the responsibility, accounting and safe-keeping of all stores, equipment, and accountments issued to prisons;
- (xv) accounts and accounting procedure;
- (xvi) prohibiting prison officers or visitors or other persons who have access to prisons from divulging to any un-authorized person any information concerning the administration of prisons or the condition, treatment and affairs of prisoners;
- (xvii) the establishment, constitution, functions and procedure of a prison officers' staff association and for matters incidental thereto;
- (xviii) the custody and maintenance, including charges to be paid by a judgment creditor, of persons who may be committed to a prison under the provisions of any law relating to imprisonment for non-payment of debts;
- (xix) the carrying out of any sentence of confinement in a separate cell, or penal or reduced diet, awarded under the provisions of any law;
- (xx) the establishment of such boards as the Minister deems necessary or expedient for any purpose arising under this Act and the powers, rights, privileges and duties of and the procedure to be followed by such boards;
- (xxi) the medical examination, measuring, photographing and taking

of fingerprint impressions, footprints and casts thereof, palm prints or other records of prisoners detained in any prison or otherwise detained in custody, including detailed personal statistics and histories and for requiring full and truthful answers to all questions put to such persons with the object of obtaining such statistics and histories, and the person, if any, to whom such measurements, photographs, fingerprint impressions, footprints and casts thereof, palm prints or other records are to be sent or supplied;

(xxii) the manner in which the remission of sentences, including any period of public work under Part XXI, shall be calculated;

(xxiii) the manner in which petitions by prisoners shall be submitted;

(xxiv) the provision of suitable diets and dietary scales, including penal and punishment diets for prisoners, and prescribing the conditions under which such diets and scales may be varied;

(xxv) suitable diet and dietary scales or ration allowances for persons employed on public work under Part XXI;

(xxvi) prescribing anything to be prescribed under the provisions of this Act; and

(xxvii) generally for the effective administration of this Act, for the good management and government of prisons and the discipline and safe custody of prisoners.

(2) Rules made under the provisions of subsection (1) may prescribe penalties for a contravention thereof, or failure to comply therewith, not exceeding a fine of three thousand penalty units, or in default of payment, imprisonment for a period not exceeding twelve months, or such imprisonment without the option of a fine.

(3) In exercising the powers conferred upon him by subsection (1), the Minister may restrict the application of any rule to one or more prisons and may apply differing rules in respect of different prisons or classes of prisoners determined by him.

(4) Different rules may be made under the provisions of paragraph (i) of subsection (1) for different classes of prison officers and other persons employed in prisons.

(5) For the avoidance of doubt, it is hereby declared that rules may be made under the provisions of paragraph (i) of subsection (1) in relation to persons who, immediately before the commencement of this Act,

were prison officers or other persons employed in prisons.
(As amended by Act No. 13 of 1994)

147. Has had its effect.

SCHEDULE

(Section 9)

RANKS OF THE SERVICE

Senior Officers

Commissioner of Prisons
Deputy Commissioner of Prisons
Assistant Commissioner of Prisons
Senior Superintendent of Prisons
Senior Technical Officer
Superintendent of Prisons
Quartermaster
Senior Farm Manager
Assistant Superintendent

Junior officers

Chief Officer III
Chief Officer II
Chief Officer I
Cadet Chief Officer
Senior Principal Officer
Matron
Male Nurse
Technical Officer
Junior Technical Officer
Farm Manager
Assistant Farm Manager

Subordinate Officers

Principal Officer
Prison Officer
Recruit Prison Officer

(As amended by S.I. No. 48 of 1974)

SUBSIDIARY LEGISLATION

THE PRISONS RULES [ARRANGEMENT OF SECTIONS]

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PART I
PRELIMINARY

1. These Rules may be cited as the Prisons Rules.

Title

2. In these Rules, unless the context otherwise requires-

Interpretation

"inmate" means any person ordered or sentenced to corrective training

in a youth corrective centre under section *one hundred and thirty-four* of the Act;

"long sentence prisoner" means a prisoner who is serving a sentence or overlapping or consecutive sentences, the total of which is over six months;

"short sentence prisoner" means a prisoner who is serving a sentence or overlapping or consecutive sentences, the total of which is six months or less;

"Standing Orders" means Standing Orders made by the Commissioner under section *eleven* of the Act.

3. (1) Subject to the provisions of the Act, these Rules shall be applied in accordance with the provisions of sub-rule (2). MaFinner of
applying Rules

(2) The following shall be the guiding principles in the application of these Rules:

(a) due regard and allowance shall be made for the differences in character and respect for discipline of various classes of prisoners;

(b) discipline and order shall be maintained with fairness but firmness, and with not more restriction than is required for safe custody of prisoners and to ensure a well ordered community life;

(c) in the control of prisoners, prison officers shall seek to influence them, through their own example and leadership, so as to enlist their willing co-operation; and

(d) at all times the treatment of prisoners shall be such as to encourage their self-respect and a sense of personal responsibility, so as to rebuild their morale, to inculcate in them habits of good citizenship and hard work, to encourage them to lead a good and useful life on discharge and to fit them to do so.

PART II

ADMINISTRATION

The Commissioner

4. The Commissioner shall-

(a) at least once a year thoroughly and systematically inspect or cause to be inspected every prison;

(b) report to the Minister any matter which he considers should be brought to the notice of the Minister;

(c) prepare and submit to the Minister an annual report on the administration of prisons in the Republic.

Commissioner's inspections and reports on prisons

5. The Commissioner shall ensure that the provisions of the Act and of these Rules are strictly carried out and shall take all necessary steps to secure uniformity of administration of prisons in the Republic.

Enforcement of Rules

6. On the occasion of each inspection of any prison in pursuance of rule 4, the Commissioner shall-

(a) see every prisoner therein and shall inquire into all complaints and applications which any prisoner may make to him;

(b) give special attention to the sick and weakly and to those who are in separate confinement; and

(c) inspect and initial all journals, registers, books and other records kept in the prison.

Commissioner's duties on visits

Prison Officers-General

7. A prison officer other than an officer in charge shall immediately report to the officer in charge any contravention of the Act and of these Rules or of the Standing Orders which comes to his notice.

Duty to report irregularities

8. (1) A prison officer who wishes to make representations of a public nature to the Commissioner shall-

Representations to Commissioner and Minister

(a) if he is an officer in charge, submit his representations in writing to the Commissioner;

(b) if he is not an officer in charge, submit his representations in writing to the officer in charge for transmission to the Commissioner.

(2) If a prison officer requests that any representations made by him under sub-rule (1) should be brought to the notice of the Minister, the Commissioner shall forward his representations to the Minister with such comments as he may wish to make.

(3) The Commissioner may, if he considers it necessary in the interests of the Service to interview any prison officer in connection with the representations made under this rule, summon any prison officer before him.

9. Every prison officer shall attend for training at such place or places and for such periods as may be determined by the Commissioner and shall fulfil the conditions relating to that training.

Training of prison officers

Officer in Charge

10. (1) The officer in charge shall, without delay, investigate any contravention of the Act and of these Rules or of the Standing Orders whenever such contravention is reported to him or otherwise comes to his notice.

Investigation of irregularities

(2) The officer in charge shall report to the Commissioner any case of misconduct or neglect of duty by a prison officer.

(3) The officer in charge shall investigate any report alleging an offence against discipline by a prison officer not later than the following day, or if the following day be a Sunday or a public holiday, on the next following working day.

11. The officer in charge shall be responsible for seeing that proper records are kept of all circumstances and of all correspondence connected with such circumstances which affect the interests of prisoners under his control and shall bring such circumstances to the

Maintenance of records concerning prisoners

notice of the Commissioner at such times as may be proper in each case.

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| <p>12. The officer in charge shall be responsible for the safe custody of all prisoners' warrants.</p> | <p>Safe custody of warrants</p> |
| <p>13. The officer in charge shall-</p> <p>(a) inspect all parts of the prison frequently and never less than twice a day and shall see each prisoner once every twenty-four hours, unless the Commissioner directs otherwise;</p> <p>(b) visit all parts of the prison at an uncertain hour of the night at least once in every seven days; and</p> <p>(c) record such inspections and visits in his journal.</p> | <p>Inspection of prison</p> |
| <p>14. The officer in charge shall ensure that every prisoner is given opportunity and reasonable facilities therewith to-</p> <p>(a) note and prosecute an appeal against conviction and, additionally or alternatively, sentence; or</p> <p>(b) submit a written statement as may be required under any written law relating to the review of his case.</p> | <p>Prisoners to have facilities to appeal</p> |
| <p>15. The officer in charge shall ensure that prisoners who have complaints or applications to make are allowed to make them to him personally.</p> | <p>Prisoners' complaints and applications</p> |
| <p>16. The officer in charge shall pay special attention to those prisoners who are in hospital or are undergoing punishment for prison offences.</p> | <p>Special care for certain prisoners</p> |
| <p>17. (1) The officer in charge shall, from time to time, and not less than twice in each week, visit the prisoners at their meals and shall inquire into any complaints that may be made by prisoners regarding the rations and shall take immediate action to remove the cause of any such complaints which are justified.</p> <p>(2) The officer in charge shall ensure that the rations supplied to prisoners are of good quality and that every prisoner receives the rations to which he is entitled in accordance with the First Schedule and, subject to rule 44, no deviation from the authorised scale of rations shall be</p> | <p>Inspection of prisoners' meals</p> |

permitted unless the medical officer or the Commissioner has given his written authority to do so.

18. The officer in charge shall-

Duties to be carried out in proper manner

(a) ensure that all prison officers under him understand their duties and that they perform them properly; and

(b) witness the performance of every duty in the prison so that he may be familiar with everything that is done therein and thus be enabled to make improvements or to suggest to the Commissioner improvements in the administration of the prison or in the control of prisoners.

19. The officer in charge shall interview all prisoners either individually or collectively as soon as is possible after their admission into a prison and shall again interview them before their discharge, release or removal to any other prison or place.

Interview of prisoners on admission and discharge

20. (1) The officer in charge shall search or cause to be searched frequently, and in any case not less than twice in every two weeks, the cells, wards, rooms, bedding and all other parts of the prison and shall, at the same time, inspect or cause to be inspected all locks, bolts and bars in the prison.

Search of prison

(2) Any prohibited article which may be found in the prison during any inspection or search shall be seized by the prison officer who finds it.

21. The officer in charge shall receive reports accounting for all prisoners in his custody at the time of opening the prison in the morning and at the time of closing the prison at night and on each occasion when prisoners return from labour inside or outside the prison.

Muster

22. If a prison officer is injured in the course of his duty or a prisoner is seriously injured at labour or otherwise, the officer in charge shall submit a report in writing to the Commissioner and shall give a full account of the circumstances in which such prison officer or prisoner sustained his injury.

Injury to prison officer or prisoner

23. The officer in charge shall, without delay, notify or cause to be notified, the medical officer of the name of any prisoner who-

Notification of prisoner's illness to

(a) is ill or injured; or

medical officer

(b) complains of illness or injury.

24. (1) The officer in charge of a prison shall maintain therein a properly secured prison hospital, clinic or sick bay and shall ensure that prisoners are in safe custody while they are attending such hospital, clinic or sick bay.

Prison hospital and
medical officer's
recommen-dations

(2) The officer in charge shall, where practicable, put into effect any lawful and reasonable recommendations of the medical officer.

(3) If the officer in charge is of the opinion that it is not practicable to comply with any recommendations made to him by the medical officer or that the recommendations made by the medical officer to him are not lawful or reasonable, he shall refer the matter to the Commissioner for his decision.

25. The officer in charge shall, upon the dangerous illness of a prisoner under his control, give immediate notice thereof to the most accessible known relative of the prisoner.

Notification of
dangerous illness
of prisoner to
relatives

26. (1) The officer in charge shall, upon the death of a prisoner under his control, give immediate notice thereof to the Commissioner and to the deceased's next of kin or his nearest accessible relative.

Notification of
death of prisoner to
Commissioner and
next of kin

(2) Where the interests of public health and the circumstances permit, the officer in charge shall, after complying with the provisions of section *twenty-three* of the Act, cause the body of a prisoner who has died otherwise than by lawful execution to be delivered to his relatives or friends for burial if they make a request for it.

(3) If the relatives or friends of a deceased prisoner do not request his body to be delivered to them for the purpose of burial under sub-rule (2), the officer in charge shall cause the body to be decently interred.

27. The officer in charge shall, without delay, report to the Commissioner and to the medical officer any case of mental disorder or

Report to
Commissioner of
persons mentally

apparent mental disorder in his prison.

unsound

28. (1) The officer in charge shall not allow any person to enter and view a prison unless such person produces written authority of the Minister or of the Commissioner authorising him to do so.

Visitors to view a prison

(2) Every visitor authorised to view a prison under this rule shall give his full name and address to the gatekeeper and shall sign his name in the visitors' book.

(3) The officer in charge shall ensure that no person who is authorised to view the prison makes a sketch or takes a photograph unless such person has written authority of the Minister or of the Commissioner to do so.

(4) Every visitor to a prison shall be accompanied throughout his visit by a prison officer.

(5) A public officer of the Government who is required to visit a prison in the course of his duties may do so with the permission of the officer in charge.

(6) The officer in charge may remove from the prison any visitor whose conduct is considered by him to be improper.

29. The officer in charge shall ensure that all machinery and all buildings connected with his prison are maintained in a proper state of repair and that all the necessary precautions against accidents to prisoners and prison officers are duly taken.

Maintenance of buildings and machinery

30. The officer in charge shall, without prejudice to the provisions of section *fifty-nine* of the Act, take care to see that every precaution is taken to ensure the safe custody of prisoners' property in his custody and to prevent the loss or misappropriation of any such property.

Prisoners' property

31. The officer in charge shall be responsible for checking and approving all demands made on the prison storekeeper for stores and clothing to be used in the prison of which he is in charge

Requisitions on storekeeper

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| <p>32. The officer in charge shall not be absent from his living quarters for a complete night without prior consent of the Senior Superintendent, or the officer who is in charge of the region in which the prison commanded by such officer in charge is situated or the Commissioner.</p> | <p>Absence from prison for a complete night</p> |
| <p>33. The charge of the prison and of the prisoners lodged therein shall, during the temporary absence of the officer in charge of that prison, devolve on the next senior prison officer in that prison and such officer shall be competent to perform and shall perform any duty required to be performed by the officer in charge by any written law.</p> | <p>Charge of prison in case of absence</p> |
| <p>34. Every officer in charge shall report to the Commissioner all serious assaults, outbreaks of disease or any occurrence of an unusual or serious nature in respect of a prison of which he is in charge.</p> | <p>Special reports to Commissioner</p> |
| <p>35. In cases of sudden emergency, the officer in charge shall take such action as may be necessary in such circumstances and shall enter an account of the emergency and the action taken in relation thereto in his journal and shall forward a report of the same to the Commissioner forthwith.</p> | <p>Action to be taken in case of emergency</p> |
| <p>36. The officer in charge shall refer to the Commissioner all questions of discipline or matters relating to the expenditure of funds of the prison with which he is not competent to deal.</p> | <p>Special cases to be referred to Commissioner</p> |
| <p>37. The officer in charge shall prepare annual estimates and statistics for the prison of which he is in charge and shall submit them to the Commissioner at such time or times as the Commissioner may direct.</p> | <p>Annual estimates</p> |
| <p>38. The officer in charge shall keep strict surveillance over the expenditure of such public money as may be allocated to his prison and shall ascertain that all moneys received by him are properly accounted for.</p> | <p>Control of expenditure</p> |
| <p>39. The officer in charge shall furnish to the Commissioner before the 31st January in each year a general report upon the prison under his charge in addition to such special or periodical reports which may be required.</p> | <p>Annual report to Commissioner</p> |

Medical Officers

40. (1) Every medical officer or his subordinate shall-

Medical
examination of
prisoners

(a) where practicable, examine every prisoner before the prisoner is made to do or carry out work;

(b) examine every prisoner ordered to undergo punishment for a prison offence if such punishment involves confinement in a separate cell or a reduction of the prisoner's normal diet and shall certify in writing whether in his opinion such punishment may be inflicted without the probability of serious injury being caused thereby;

(c) visit as often as may be necessary the prisoners who are sick;

(d) where practicable, see every prisoner once a week and at uncertain times inspect the prisoners whilst they are at work; and

(e) direct such modifications of labour and diet of prisoners as in particular cases he may deem necessary.

(2) After every medical examination carried out under section *eighteen* of the Act, the medical officer shall enter in the prisoner's record-

(a) the state of health of the prisoner;

(b) whether or not the prisoner has been vaccinated for, or has had, smallpox;

(c) any other information which he may consider desirable to record.

(3) The medical officer shall, after medical examination of a prisoner, enter in the prisoner's record whether or not the prisoner is fit for normal labour and whether there shall be any restriction or condition regarding the type of labour to which the prisoner may be put.

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| <p>41. The medical officer shall enter or cause to be entered in a case book an account of the name, disease, state and treatment of every sick prisoner and such book shall be accessible to the officer in charge.</p> | <p>Keeping of case book</p> |
| <p>42. The medical officer shall report in writing to the officer in charge any case of a prisoner whose mind has been, or appears to him to be, injuriously affected or who is mentally disordered and shall give such written directions in such case as he may think proper:</p> | <p>Reports on prisoners mentally unsound</p> |
| <p>43. The medical officer shall report in writing to the officer in charge any case of a prisoner (other than a case to which rule 42 applies) which, in his opinion based on medical grounds, should be brought to the notice of the officer in charge and shall make such recommendations as he may think proper to the officer in charge as regards discipline or treatment of such prisoner or the supply of additional or alternative food or articles to such prisoner.</p> | <p>Reports on sick prisoners to officer in charge</p> |
| <p>44. Every prisoner who is admitted to a civil hospital shall receive the normal hospital diet.</p> | <p>Diet in civil hospital</p> |
| <p>45. Whenever the medical officer is of the opinion that-</p> <p>(a) the life of a prisoner is likely to be endangered by his continued imprisonment; or</p> <p>(b) a sick prisoner will not survive his sentence; or</p> <p>(c) a prisoner is totally and permanently unfit for prison discipline;</p> <p>he shall submit his opinion and the grounds thereof in writing to the officer in charge who shall forward the same to the Commissioner.</p> | <p>Prisoners unfit for imprisonment</p> |
| <p>46. (1) For the purposes of section <i>nineteen</i> of the Act, the medical officer shall report in writing to the officer in charge on the mental condition of a prisoner under sentence of death as follows:</p> <p>(a) within one week of the first medical examination of the prisoner;</p> <p>(b) if subsequently there is, in the opinion of the medical officer, a change in the mental condition of the prisoner, immediately on observation of such change;</p> | <p>Reports on prisoners under sentence of death</p> |

(c) immediately after the dismissal of any appeal lodged by the prisoner.

(2) The medical officer shall report in writing to the officer in charge on the physical condition of a prisoner under sentence of death at the same time as he reports on the mental condition of such prisoner under sub-rule (1).

(3) The officer in charge shall immediately submit any report made by the medical officer under this rule to the Commissioner.

47. At least once in every month the medical officer shall-

(a) inspect every part of the prison and during such inspection he shall pay special attention to the sanitary state of the prison, the health of the prisoners, and the adequacy and proper cooking of the diets; and

(b) review the weights of the prisoners.

Inspection of
prisons by medical
officers

48. (1) The medical officer shall visit every person in the prison who is committed for trial on a capital charge and shall make such observations and reports on the prisoner as may be requisite to enable him to give evidence as to the mental condition of such person, if required at the trial.

Visits to prisoners
committed on
capital charge

(2) If a prisoner who is committed for trial on a capital charge is transferred from one prison to another, it shall be the duty of the medical officer of the first prison to furnish to the officer in charge a report on such prisoner and the said officer in charge shall forward the report to the officer in charge of the second prison who shall bring such report to the notice of the medical officer of the second prison.

(3) The medical officer may, if he considers it necessary, request the officer in charge to procure for him a copy of the record of the preliminary inquiry concerning a prisoner on a capital charge.

49. The medical officer shall at least one week before the trial of a prisoner on a capital charge submit a report in writing to the Director of Public Prosecutions on the mental condition of the prisoner and shall state in the report if-

Reports on
prisoners charged
with capital
offence

- (a) any indication of insanity has been exhibited by the prisoner;
- (b) the prisoner is fit to plead;
- (c) there is a distinct history of periodical attacks of insanity, followed by lucid intervals and whether the prisoner has enjoyed lucid intervals whilst under observation in prison.

50. Where a prisoner has been sentenced to death the medical officer of the prison where the prisoner is confined shall, within three weeks of such sentence, forward a report on the prisoner's mental condition to the Solicitor-General through the officer in charge.

Reports on condemned prisoners

51. (1) Where there is an outbreak of infectious or contagious disease in a prison the medical officer shall give directions in writing to the officer in charge for-

Infectious or contagious diseases in prison

- (a) separating prisoners having infectious or contagious diseases;
 - (b) cleansing and disinfecting any room or cell occupied by any prisoner having an infectious or contagious disease; and
 - (c) cleansing, disinfecting, or destroying any infected clothing or bedding, if necessary;
- and the officer in charge shall carry such directions into effect forthwith.

(2) The medical officer shall, in the case of any epidemic or highly infectious or contagious disease, or any other circumstances affecting the health of the prisoners requiring unusual measures, report the same immediately to the officer in charge.

52. The medical officer shall report in writing to the officer in charge any irregularity in the prison hospital, clinic or sick bay which may come to his knowledge and shall report any difficulty or obstruction which he may meet in the performance of his duties.

Medical officer's reports on prison hospital

53. (1) The medical officer shall in writing notify the officer in charge of any woman prisoner who is found by him to be pregnant.

Pregnant prisoners to be reported to officer in charge

(2) Where the officer in charge has received a report under this rule in respect of an unconvicted woman prisoner, the officer in charge shall report the same to the court in which proceedings against her have been, or may be, instituted.

54. (1) The medical officer shall, where practicable, examine every prisoner who is to be transferred to another prison and shall report to the officer in charge on his fitness to be transferred.

Examination of prisoners on transfer

(2) No transfer of a prisoner shall be made otherwise than in accordance with such instructions in regard to his health during transfer as the medical officer may give.

55. The medical officer shall examine, or cause to be examined, every candidate for employment as a warder and shall report, or cause a report to be made, as to whether such candidate possesses the necessary qualifications as to health and strength.

Examination of candidates for the Service

56. Every medical officer shall make himself conversant with the provisions of these Rules and shall conform to them and shall support the officer in charge in the maintenance of discipline and order and the safe custody of prisoners in so far as the medical officer's duties affect these matters.

Medical officer to be conversant with Rules

Chief Officer

57. In a prison where a Senior Superintendent, Superintendent or Assistant Superintendent of Prisons has been appointed as officer in charge, the next senior officer of the rank of Chief Prison Officer or below shall be the chief officer for the purposes of these Rules and, where no such officer has been appointed officer in charge, the officer in charge of the prison shall, at the same time, be the chief officer for the purposes of these Rules.

Chief officer

58. (1) The chief officer shall, subject to the directions of the officer in charge, be the principal discipline officer of the prison and shall ensure that the provisions of the Act and of these Rules and the Standing Orders are strictly observed in the prison to which he is appointed and shall assist the officer in charge in maintaining discipline in the prison.

Duties of chief officer

During the temporary absence of the chief officer, the next senior prison officer shall act as the chief officer.

(2) The chief officer shall carry out any duties that may be specially assigned to him by the Commissioner or the officer in charge.

59. (1) The chief officer shall visit and inspect the whole prison and shall see every prisoner at least twice in every twenty-four hours and, in default of such daily visits and inspections, the chief officer shall record in his journal how far he has omitted them and the cause of such omission.

Inspection of prison by chief officer

(2) The chief officer shall be responsible for seeing that everything in the prison is clean and in good order and that all means of security are effective.

60. The chief officer shall visit every party of prisoners while at work, whether such party of prisoners is working inside or outside the prison, and shall ensure that discipline and order are maintained among them and shall report thereon as may be directed by the officer in charge.

Visits to working parties by chief officer

61. (1) The chief officer shall-

Details of officers' duties

(a) attend and take charge of the parade of prison officers at the unlocking of the prison each morning;

(b) supervise the issue of keys to prison officers;

(c) detail all prison officers under his control for their duties;

(d) satisfy himself that the duties of the prison officers are properly carried out;

(e) read to the parade of prison officers any new orders from the order book of the officer in charge.

(2) The chief officer shall check all keys at the time when the prison is locked up for the night and shall satisfy himself that the prison officers

on night shift are properly posted and that they are conversant with their duties.

- 62.** The chief officer shall inspect every part of the prison at least twice a week between the hours of 11 p.m. and 5 a.m. and shall record in his journal in red ink the time of such visit and the condition of the prison. Night visits to prison by chief officer
- 63.** The chief officer shall-
- (a) ensure that every prisoner having a complaint or application to make is given an opportunity for doing so;
- (b) ensure that every prisoner is able to record a complaint or to make an application in the prisoners' complaint book and shall bring such book to the notice of the officer in charge daily. Prisoners' complaints and applications
- 64.** The chief officer shall inspect and superintend the issuing of prisoners' rations and whenever possible shall weigh the rations supplied to the prisoners. A record shall be made of such weighing of rations in a book to be kept for the purpose. Inspection of issue of rations
- 65.** (1) The chief officer shall be responsible for ensuring that every article of food supplied to the prisoners is sound and of good quality and shall take such measures as may be necessary to have unsatisfactory food exchanged by the supplier. Inspection of raw rations
- (2) The chief officer shall take special care to see that the rations issued to prisoners are issued in strict accordance with the prescribed scales of diets and that every prisoner receives the diet to which he is entitled.
- (3) The chief officer shall take all necessary steps to ensure that the scales, weights and measures used for the weighing of prisoners' rations are in good order and that they are in accurate condition.
- 66.** The chief officer shall see that prisoners' clothing and bedding are in good order and repair and that prisoners keep themselves clean and have their hair cut as may be necessary. Prisoners' clothing, bedding and haircutting
- 67.** The chief officer shall specially attend to the carrying into effect of the orders of the officer in charge as to punishments to be inflicted on Prisoners

prisoners and shall see that prisoners undergoing separate confinement are given opportunities of taking such exercise as they may be required to take.

68. The chief officer shall ensure that every prisoner is searched on admission and that all prohibited articles are taken from the prisoner. The chief officer may, with the written approval of the officer in charge, cause any dangerous or objectionable article found on the prisoner to be taken from him or her.

Search of prisoners on admission

69. The following categories of prisoners and the cells allocated to them shall be searched each morning and evening:

Search of special categories of prisoners

- (a) prisoners undergoing punishment for prison offences;
- (b) prisoners awaiting trial for prison offences;
- (c) prisoners who are mentally disordered or defective;
- (d) prisoners under observation.

70. (1) All working parties of prisoners leaving the prison for labour outside the prison shall be searched in order to ensure that no property is being unlawfully taken out of the prison.

Search of working parties of prisoners

(2) All working parties of prisoners shall be searched on their return to prison from labour.

71. A search of a prisoner shall, if circumstances permit, be carried out by more than two prison officers.

Search of prisoner by more than two officers

72. The chief officer shall-

Mental disorder of prisoner

- (a) report immediately to the officer in charge any case of apparent mental disorder or mental illness of any prisoner; and
- (b) deliver to the medical officer daily-
 - (i) a list of prisoners who are ill or complain of illness; and
 - (ii) a list of prisoners detained in separate confinement.

- 73.** The chief officer shall carry into effect all written directions of the medical officer respecting alterations in the diet or treatment of any prisoner. Application of medical officer's directions
- 74.** The chief officer may temporarily relieve any subordinate officer from duty and may exclude him from the prison in case of misconduct and shall report the matter without delay to the officer in charge. Temporary suspension of subordinate officers
- 75.** (1) The chief officer shall not be absent from his living quarters during the hours when the prison is locked up for the night without permission from the officer in charge. Absence from prison quarters by night
- (2) Every absence from living quarters on the part of the chief officer as mentioned in sub-rule (1) shall be entered in his journal and the chief officer shall, if absent at night due to unavoidable circumstances, report such absence and its circumstances to the officer in charge as soon as possible.
- 76.** The chief officer shall report to the officer in charge- Reports to officer in charge
- (a) every circumstance which may come to his knowledge and which is likely to affect the security, health or discipline of the prisoners, or the efficiency of the prison officers; and
- (b) any other matter which may come to his knowledge which in his opinion may require the attention of the officer in charge.
- Prison Officers**
- 77.** (1) A person shall, on joining the Service as a warder, make and sign a declaration before the officer in charge. Attestation of subordinate officers
- (2) The form of attestation is set out in the Second Schedule.
- 78.** (1) Every prison officer shall reside in such living quarters as the officer in charge may assign to him. A prison officer shall not sleep out of such quarters without prior permission of the officer in charge. Prison quarters

(2) No prison officer shall permit any person, other than a regular member of his household, to remain for the night in his living quarters without prior permission of the officer in charge.

79. Any prison officer who is disabled from the regular performance of his duties by illness shall report or cause to be reported the same to the chief officer or to the officer in charge and shall obey such instructions as may be issued regarding his medical treatment.

Illness of prison officers

80. Every subordinate officer shall, before leaving the prison at any time, deposit his keys, arms and books in the place appointed for the purpose.

Absence from duty

81. A prison officer shall, on the termination of his service, deliver up his arms, ammunition, accoutrements, uniforms and other equipment which may have been issued to him by, and which are the property of, the Government-

Arms, accoutrements, etc., to be delivered up on discharge

(a) if he is an officer in charge, to his relieving officer; or

(b) if he is not an officer in charge, to the officer in charge.

82. (1) No search of a prison officer shall be made in the presence of prisoners or otherwise than-

Search of prison officers and prison quarters

(a) by a prison officer who is of like sex; and

(b) in the presence of another prison officer of like sex.

(2) No search of a prison officer's living quarters shall be made in the presence of a prisoner or prisoners.

83. No subordinate officer shall receive private visitors in the prison.

Visitors to subordinate officers prohibited

84. No prison officer shall give a certificate or testimonial to, or in respect of, any prisoner as regards the prisoner's conduct in prison or elsewhere.

Testimonial to prisoners prohibited

85. No prison officer shall use or smoke tobacco, dagga or hemp, or drink intoxicating liquors within a prison or while he is on duty. Prohibition of tobacco and liquors

86. (1) No subordinate officer shall enter a prisoner's cell at night without being accompanied by another officer except in cases of imperative necessity and, in such circumstances, he shall make an immediate report to the officer who is in charge of the prison at the time. Night visits to cells by subordinate officers

(2) No male prison officer shall enter any part of a prison in which female prisoners are confined unless he is accompanied by a woman prison officer.

87. No prison officer shall- Familiarity with prisoners forbidden

(a) allow any familiarity on the part of any prisoner towards himself or any other prison officer;

(b) on any account speak of his duties, prison arrangements or any matters of discipline within the hearing of a prisoner or prisoners.

88. Every subordinate prison officer shall inform the chief officer without delay of the name of any prisoner who desires to see the chief officer or who desires to make a complaint or application. Prisoners' complaints and applications

89. All subordinate officers shall be responsible for the safe custody of prisoners under their charge and, for the purpose of giving effect to this rule, they shall count the prisoners under their charge at least once every half hour, and shall do so- Safe custody of prisoners

- (a) on receiving charge of a party of prisoners;
- (b) on handing over the charge of the prisoners; and
- (c) on leaving any building or work whilst in charge of prisoners.

90. All prison officers shall make themselves familiar with the provisions of section *twenty-nine* of the Act and shall use firearms strictly in conformity with such provisions. Use of firearms

91. (1) All prison officers shall check all prison keys when handing or Keeping of

taking them over and shall report immediately any defect or loss of such prison keys to the officer in charge.

(2) A prison officer shall under no circumstances allow a prison key to pass into possession of a prisoner or any other unauthorised person.

92. No prison officer who is in charge of prisoners shall under any pretext whatsoever leave such prisoners unless he is properly relieved of his charge by another prison officer.

Prison officers in charge of prisoners

93. (1) The gatekeeper shall not allow any person, other than a prison officer or a prisoner, to enter a prison without the sanction of the chief officer or the officer in charge.

Duties of gatekeeper

(2) The provisions of sub-rule (1) shall not apply to-

(a) any Justice of Appeal or Judge;

(b) the Minister or Parliamentary Secretary to the Minister responsible for home affairs;

(c) any magistrate having jurisdiction in the place where the prison is situated; or

(d) any visiting justice or official visitor to the prison.

(3) The gatekeeper shall keep a record in the gate-book of all persons, other than prison officers on regular shifts, entering or leaving the prison and shall require all such persons to enter their particulars in a book provided for the purpose.

(4) The gatekeeper shall not allow any person, other than a prison officer, to enter the prison unless that person is to be accompanied whilst in the prison by a prison officer.

(5) The gatekeeper shall not allow any prisoner to leave the prison unaccompanied by a prison officer unless he has received orders to the contrary from the officer in charge personally.

(6) The gatekeeper shall carefully examine the passes for the admission of prisoners' visitors to the prison and shall check their names and identification with the name on the pass, and, if he is not satisfied that the pass relates to the person tendering the same, he shall immediately report the matter to the chief officer for his instructions.

(7) The gatekeeper shall ascertain the names of all workmen who may be admitted to work in the prison and shall warn such workmen not to speak or give anything to any prisoner without proper authority, and shall satisfy himself that the number of workmen leaving the prison corresponds to those who entered the prison in the first instance.

(8) The gatekeeper shall take charge of any article, food or letter brought to the prison for a prisoner and deliver such article, food or letter to the chief officer or the officer detailed by the chief officer to receive them.

(9) The gatekeeper shall examine all articles brought into the prison and shall examine every vehicle entering or leaving the prison.

(10) The gatekeeper shall not allow any articles whatever to be taken out of the prison without the permission of the chief officer or the production of a gate-pass duly signed by the chief officer or the officer in charge.

94. Every prison officer shall direct the attention of the officer in charge or the chief officer to any prisoner who appears to him not to be in good health or whose state of mind appears to him to deserve special notice and care.

Duty to report prisoners in ill health

95. Every prison officer shall be liable for discipline duty if required to do so at any time.

Discipline duty

96. In a women's prison, the senior woman prison officer shall perform all the duties of the chief officer as defined in this Part.

Duties of a senior woman prison officer

PART III

ADMISSION AND CONTROL OF PRISONERS

97. No prisoner shall be entitled to exercise any right or claim any privilege which is not a right or privilege conferred on such prisoner by or under the Act or these Rules or any other written law.

Prisoners' privileges

98. No prisoner shall be admitted to a prison between the hours of 7 o'clock in the evening and 7 o'clock in the morning:

Hours of admittance to prisons

Provided that, at the discretion of the Commissioner, an officer in charge may be authorised to admit prisoners to prison between the hours of 7 o'clock in the evening and 7 o'clock in the morning.

99. Upon admission to a prison, and from time to time as may be required, every prisoner may, where practicable, be photographed and his name, age, height, particular marks and general appearance shall be recorded in the prisoner's record.

Photographs and particulars of prisoners

100. The searching of a prisoner shall be conducted with due regard to decency and self-respect and in as seemly a manner as is consistent with the necessity of discovering any concealed article. No prisoner shall be stripped and searched in the presence of another prisoner.

Search of prisoners

101. The release of a prisoner by the court upon appeal or review of his conviction for an offence shall not necessitate the destruction of photographs, fingerprints or other prints or casts taken of the prisoner under section *thirty-one* of the Act in connection with any other offence of which he has been convicted.

Photographs and prints taken under section 31 of the Act

102. (1) All private clothing and all other articles whatever in possession of, or sent in to, a prisoner, not expressly allowed by these Rules or by the Standing Orders shall be taken from such prisoner and shall be inventoried in the prisoners' property book and the officer in

Custody and disposal of prisoners' property

charge and the prisoner shall sign their names in such book.

(2) Any money or movable property in possession of, or sent in to, a prisoner shall be taken from him and shall be inventoried in the prisoners' property book which shall be signed by the prisoner and the officer in charge.

(3) Any money or movable property in the custody of the officer in charge belonging to a prisoner who has escaped and who has been at large for six months shall be treated as if the prisoner had been discharged and subsections (5), (6), (7) and (8) of section *fifty-nine* of the Act shall apply.

103. (1) Every prisoner shall take or be made to take a bath on admission to a prison and at such times subsequently as may be ordered.

Bathing and weighing of prisoners

(2) The officer in charge shall, if circumstances permit, cause every prisoner to be weighed immediately on his admission to a prison and once every month thereafter.

(3) The weight of a prisoner determined at each weighing referred to in sub-rule (2) shall be recorded in the prisoner's record and in such books as the Commissioner may determine.

(4) The officer in charge shall notify the medical officer of any substantial change in the weight of any prisoner.

104. Subject to the provisions of rules 116 and 163, every prisoner shall be dressed in appropriate prison clothing and such clothing shall be in accordance with such classifications as may be laid down in the Standing Orders.

Prisoners to be dressed in prison clothing

105. (1) Unless the medical officer otherwise directs and subject to sub-rule (3), the hair of male prisoners shall be cut short and their beards, if any, shall be shaved as often as may be necessary to preserve clean and decent appearance of such prisoners.

Haircutting of prisoners

(2) The hair of female prisoners shall not be cut unless the medical officer considers it to be necessary for reasons of health or cleanliness or where a female prisoner so desires.

(3) The hair of a prisoner awaiting trial shall be kept, as far as cleanliness permits, in the same state as it was on his admission to prison.

106. A prisoner who is due for discharge from prison and who is suffering from any acute or dangerous illness shall, subject to the provisions of section *one hundred and eleven* of the Act, be transferred to a Government hospital.

Removal to Government hospital on discharge

107. A prisoner may be vaccinated or re-vaccinated at the direction of the medical officer.

Vaccination of prisoners

108. If a prisoner-

(a) is found to be suffering from any infectious or contagious disease; or

(b) is in a verminous condition;

the officer in charge shall take steps to place such prisoner under treatment and to prevent such disease or condition from spreading to other prisoners.

Prisoners with infectious or contagious diseases

109. (1) At every prison there shall be established a board, to be known as "the reception board" consisting of the officer in charge and such other persons as the Commissioner may appoint.

Establishment of reception boards

(2) The reception board shall, as soon as possible after a prisoner's admission to a prison and not later than the day following his admission (unless such day be a Sunday or public holiday), interview the prisoner and shall consider and make arrangements for his training.

(3) The reception board shall, as soon as may be after a prisoner's admission to prison, classify him.

110. (1) Every prisoner shall, on admission to a prison, be provided with full information about so much of these Rules as concern the treatment of prisoners of his class, earnings and privileges, the proper method of submitting petitions and of making complaints, food, clothing, bedding and other necessities and the disciplinary requirements of the prison.

Information to prisoners on admission

(2) A printed abstract of these Rules in the English language (including full diet scales) and approved by the Commissioner with translations in Bemba, Nyanja, Lozi and Tonga, relating to the treatment and conduct of prisoners shall be kept posted in every prison in places accessible to all prisoners and shall be read out to a prisoner within twenty-four hours of his admission to prison.

111. A prisoner who is committed to prison in default of payment of a fine, compensation, debt or costs or for want of surety shall, on admission, be informed of the means whereby he may obtain his release from prison.

Prisoners committed in default of payment

112. (1) The officer in charge shall, at least once a month, check the release dates of all prisoners who are due for discharge in the ensuing month.

Checking of release dates of prisoners

(2) The officer in charge shall, one month before the discharge of any prisoner, notify the police of such discharge as may be required by Standing Orders.

113. The full amount of savings which a prisoner may accumulate under the earnings scheme shall be paid to the prisoner on discharge or release by the officer in charge and both the officer in charge and the prisoner shall sign their names in the prisoners' earnings account book to certify the correctness of the payment and its receipt by the prisoner.

Savings to be paid on discharge

114. (1) There shall be established at every prison a board to be known as "the discharge board" which shall consist of the officer in charge and such other persons as the Commissioner may appoint.

Establishment of discharge boards

(2) The discharge board shall, at least one month before the prisoner's discharge or release, determine the action to be taken as regards the

prisoner's welfare and after care after his discharge or release from prison.

(3) The officer in charge shall enter details of the discharge board's determinations made under this rule in the prisoner's record.

115. All sentences shall be computed as follows:

Computation of sentences

(a) a term of imprisonment shall be deemed to run from the first moment of the day on which the sentence begins;

(b) a prisoner who is sentenced to a term of imprisonment shall not be entitled to a discharge until the end of the last day of his sentence and due provision shall be made for any remission to which the prisoner may be entitled; and

(c) a sentence of imprisonment expressed in terms of one month or so many months, or one year or so many years, shall run to the date in the month or year in which it expires preceding that on which it commenced whatever be the number of days in the month or months or year or years.

116. (1) A prisoner shall not appear in court whilst in prison clothing.

Special clothing for appearance in court

(2) If the private clothing of a prisoner is not suitable or sufficient for the purpose of his appearance in court, he shall be provided with garments which are not of a prison pattern.

PART IV

PROGRESSIVE STAGE SYSTEM

117. (1) There shall be established at every prison a system of progressive stages to be known as "the Progressive Stage System" hereinafter referred to as the "system":

Establishment of progressive stage system

Provided that the provisions of this Part shall not apply to inmates in a youth corrective centre and to unconvicted and civil prisoners.

(2) There shall be five stages of the system, namely: "first stage", "second stage", "third stage", "fourth stage" and "special stage".

(3) Subject to sub-rule (1) of rule 118, promotions from one stage to another shall depend upon good conduct, industry and length of service of a prisoner in each stage of the system.

(4) The whole term of imprisonment which a prisoner is liable to serve under consecutive or overlapping sentences shall be treated as one sentence for the purpose of the system.

118. (1) The first stage of the system shall consist of short sentence prisoners and there shall be no promotion from the first stage to any other stage.

First stage of system

(2) A prisoner in the first stage shall-

(a) wear a white band on the right arm; and

(b) be eligible to participate in the earnings scheme provided that he is of good conduct and is industrious.

119. (1) Upon admission to prison, a long sentence prisoner shall be placed in the second stage and shall remain therein for a period of three months and shall not be promoted to the third stage or any other stage until he has served in that stage for a period of not less than one month without being found guilty of a prison offence.

Second stage of system

(2) A prisoner in the second stage shall-

(a) wear a yellow band on the right arm; and

(b) be eligible to participate in the earnings scheme provided that he is of good conduct and is industrious.

120. (1) A long sentence prisoner shall, after serving for a period of three months in the second stage or such longer period as he may be

Third stage of system

required to serve therein, enter the third stage and shall remain in that stage for a period of twelve months and shall not be promoted to the fourth stage or special stage until he has served in that stage for a period of not less than three months without being found guilty of a prison offence.

(2) A prisoner in the third stage shall-

(a) wear a red band on the right arm; and

(b) be eligible to participate in the earnings scheme provided that he is of good conduct and is industrious.

121. (1) A long sentence prisoner shall, after serving for a period of twelve months in the third stage or such longer period as he may be required to serve therein, enter the fourth stage and shall not become eligible for promotion to the special stage until he has served in that stage for a period of at least six months without being found guilty of a prison offence. Promotion to the special stage shall only be given to specially selected prisoners who merit promotion by reason of their exemplary character and industry.

Fourth stage of system

(2) A prisoner in the fourth stage shall-

(a) wear a blue band on the right arm; and

(b) be eligible to participate in the earnings scheme provided that he is of good character and is industrious.

122. (1) A long sentence prisoner may, after serving for a period of fifteen months in the fourth stage or such longer period as he may be required to serve therein and who is of exemplary character and is industrious, be promoted to the special stage.

Special stage of system

(2) A prisoner in the special stage shall-

(a) wear a special blue suit; and

(b) be eligible to participate in the earnings scheme, and

- (c) be known as an "honour prisoner" and if-
 - (i) his conduct has been excellent continuously from the time he entered the fourth stage; and
 - (ii) he has been in the special stage for a period of at least two years;he may be discharged from prison seven days earlier than his normal date for discharge if the Commissioner so directs.

123. (1) A prisoner who has been found guilty of a prison offence may be reduced to a lower stage by the Commissioner or the officer in charge:

Reduction in stage as punishment

Provided that a long sentence prisoner shall not be reduced to the first stage.

(2) A prisoner who has been reduced to a lower stage shall not be entitled to re-enter his previous stage, and shall not be promoted to any stage, unless-

- (a) in the case of reduction from the third or fourth stage, he has served for a period of three months without being found guilty of a prison offence; or
- (b) in the case of a first reduction from the special stage, he has served for a period of six months without being found guilty of a prison offence; or
- (c) in the case of a second reduction from the special stage, he has served for a period of twelve months without being found guilty of a prison offence.

124. Privileges shall be afforded to prisoners as follows:

Privileges of prisoners

- (a) prisoners in the first and second stages shall-
 - (i) be allowed to have library books and to exchange them as often as may be practicable;
 - (ii) receive such other privileges as the officer in charge may direct:

and

(iii) be entitled to send and receive one letter every four weeks and to receive one visit of twenty minutes' duration every four weeks or to write and receive one letter in lieu;

(b) prisoners in the third stage shall-

(i) be allowed to attend concerts, cinema shows, lectures and handicraft and school classes;

(ii) be allowed to have library books and to exchange them as often as may be practicable; and

(iii) be entitled to write and receive one letter every three weeks and to receive a visit of twenty minutes' duration every four weeks or to write and receive one letter in lieu;

(c) prisoners in the fourth and special stages-

(i) may be allowed to attend concerts, cinema shows, lectures and school and handicraft classes and to partake in other evening activities which may be arranged;

(ii) may have approved means of recreation in their cells;

(iii) may be permitted to leave a prison under escort in order to take part in competitive games approved by the officer in charge;

(iv) shall be allowed to have library books and to exchange them during the hours the library is open; and

(v) in the case of fourth stage prisoners, shall be entitled to write and receive one letter every two weeks and to receive a visit of twenty minutes' duration every three weeks or write and receive a letter in lieu;

(d) prisoners in the special stage, in addition to the privileges hereinbefore mentioned-

(i) shall receive letters without restriction and shall be allowed to write one letter every week and to receive a visit of thirty minutes' duration every two weeks or write a letter in lieu;

(ii) shall be permitted whenever possible to occupy separate dormitory accommodation and, where this is not possible, their cells may be provided with special furniture and extra bedding;

(iii) shall not be locked in their cells or dormitory at midday or until one hour after the normal hour of lock up and similar facilities may be provided at weekends; and

(iv) may be permitted to move about the prison without escort.

125. The officer in charge may permit a special stage prisoner to lead other prisoners in the vicinity of the prison or in small working parties. Special stage prisoners may lead parties

126. The Commissioner may, subject to the provisions of sub-rule (1) of rule 118, authorise the promotion of a prisoner to a higher stage or to the special stage for any act or conduct on the part of the prisoner concerned which is considered particularly deserving of reward. Commissioner may make special promotions

127. (1) The Commissioner may direct that prisoners in any stage shall be eligible to receive additional privileges, including additional visits and letters, but they shall be liable to forfeit such privileges as punishment or part of punishment for a prison offence. Commissioner may grant additional privileges

(2) Prisoners in all stages shall be eligible to receive suitable books or periodicals of an educational nature subject to such directions as the Commissioner may from time to time give.

PART V

LETTERS AND VISITS

128. (1) All prisoners shall be entitled to send and receive letters and to receive visits as provided in these Rules, subject to such restrictions as may be necessary for the maintenance of discipline and order in prisons and the prevention of crime. Authorised communications to prisoners

(2) Except as provided in the Act or these Rules, no visits to a prisoner shall be permitted without a pass issued by the officer in charge.

(3) The sending and receiving of letters and the receiving of visits by any prisoner may, at the discretion of the officer in charge, be deferred at any time in case of misconduct on the part of a prisoner but shall not be subject to forfeiture.

(4) When a prisoner who becomes entitled to a letter or a visit under

these Rules is, at the time of such entitlement, undergoing punishment in separate confinement, such letter or visit shall be deferred at the discretion of the officer in charge.

129. (1) The Commissioner may allow additional letters and visits to any prisoner or prisoners.

Commissioner may impose restrictions

(2) Subject to the provisions of the Act and these Rules, the Commissioner may impose such restrictions upon, and supervision over, letters and visits as he deems necessary for securing discipline and good order, for the prevention of crime and the association of criminals and for the welfare of prisoners.

130. (1) The Commissioner may, subject to any directions which may be issued by the Minister, authorise that the costs or a portion of the costs of a visit to a prisoner made by indigent relatives of the prisoner who has served three years of his sentence without being visited by his relatives shall be paid to the visiting relatives.

Costs of visits by relatives of certain prisoners

(2) The officer in charge shall recommend to the Commissioner any case in which, in his opinion, the costs or a portion of the costs of a visit to a prisoner made by indigent relatives of the prisoner who has served three years of his sentence without being visited by his relatives should be paid to the visiting relatives.

131. (1) The officer in charge may allow a prisoner to send a special letter and to receive a reply or special visit in any of the following circumstances, that is to say:

Special letters, visits and communications

(a) at the death or sudden illness of a near relative of the prisoner;

(b) in order to attend to business or family affairs of an urgent nature; or

(c) in order to make arrangements for obtaining employment or assistance from friends when the prisoner is released.

(2) The officer in charge may at any time communicate to a prisoner, or to his relatives or friends, any matter of importance relating to a prisoner

where a prisoner is not entitled to write or receive a letter or a visit.

132. (1) No prisoner shall be allowed more than three visitors at any one time.

Restriction and supervision of visits

(2) All visits to prisoners shall take place during such hours as the officer in charge may direct and, subject to the provisions of the Act or these Rules, such visits shall be in the sight and hearing of a prison officer.

133. No communication shall be allowed between an ex-prisoner and a prisoner except by authority of the officer in charge.

Communication with ex-prisoners

134. (1) Subject to sub-rule (6), every letter or document written in a prison by or on behalf of a prisoner shall be delivered to the officer in charge and shall be endorsed in accordance with the provisions of subsection (1) of section *seventy-nine* of the Act.

Censoring of letters

(2) The officer in charge or a prison officer to whom he has delegated the duty shall read every letter to and from a prisoner in his custody:

Provided that all letters written or received by a prisoner charged with a capital offence shall be carefully examined by the officer in charge personally.

(3) The officer in charge may stop any letter or document referred to in sub-rules (1) and (2) if, in his opinion, its contents are objectionable or it is of inordinate length.

(4) A prisoner whose letter or document is stopped under sub-rule (3) shall be advised that the letter or document has been so stopped.

(5) A prisoner to whom a letter or document is sent which has been stopped under sub-rule (3) may elect, after he has been advised in accordance with sub-rule (4), to have the letter or document returned to the sender or to have it placed with his property which may be in the custody of the officer in charge and such letter or document shall be

delivered to the prisoner when he is released or discharged.

(6) There shall be exempt from the provisions of subsection (1) of section *seventy-nine* of the Act a letter or document written or prepared by a prisoner or by a legal adviser on his behalf-

(a) for the purpose of, or in connection with, proceedings in any court or tribunal established under the provisions of any written law;

(b) purporting to be a power of attorney, agreement, deed, conveyance, transfer, mortgage, bond assignment, cession, lease, promissory note, bill of exchange, will or other legal document of a like nature;

(c) purporting to be a note, memorandum or instruction authorising a legal adviser acting on behalf of a prisoner to prepare any of the documents referred to in paragraph (b);

(d) purporting to be a notice, application, certificate, return, statutory declaration or other like document prescribed or required in terms of any written law.

(7) The expenses incurred in despatching letters written by or on behalf of prisoners under these Rules shall be defrayed out of moneys provided for the purpose.

135. The officer in charge shall permit a legal adviser of a prisoner who is a party to legal proceedings to interview him in connection with such proceedings in the sight but not in the hearing of a prison officer.

Visits by legal advisers

136. Any public officer with a valid warrant, writ, order or any other legal document to be served on a prisoner shall be admitted to the prison at any reasonable time for the purpose.

Service of writs on prisoners

137. Every civil prisoner shall be subject to the same provisions as regards receiving visits and letters as a convicted criminal prisoner in the first stage of the Progressive Stage System.

Letters and visits to civil prisoners

138. (1) An unconvicted prisoner shall have facilities-

Letters and visits to

unconvicted
prisoners

(a) for seeing his relatives and friends and his legal advisers, and, if he is not a Zambian, his consular representative; and

(b) for sending and receiving letters consistent with the discipline of the prison.

(2) A person who is committed to prison in default of payment of a fine, compensation, debt or costs or in default of finding a surety, shall be allowed to communicate to or to have an interview with, any of his relatives or friends at any reasonable time for the *bona fide* purpose of providing for the payment of such fine, compensation, debt or costs or for the purpose of finding the necessary surety.

139. If a prisoner who is dangerously sick desires to be visited by a near relative or friend, the officer in charge may give permission for such relative or friend to visit the prisoner.

Visitors to
dangerously sick
prisoners

PART VI

PETITIONS AND COMPLAINTS

140. (1) Any prisoner may, through the officer in charge, submit a petition under this rule but, subject to sub-rule (5), no prisoner shall be permitted to submit a petition under this rule regarding his conviction or sentence unless and until the expiration of the period within which such prisoner is legally entitled to appeal against such conviction or sentence.

Petitions by
prisoners

(2) Any prisoner may submit a petition regarding his conviction or sentence to the President as follows:

(a) after serving at least one year of his sentence; and

(b) after serving at least three years of his sentence; and

(c) subsequently at two-yearly intervals or at such times as in the opinion of the officer in charge there are special circumstances which

should be brought to the notice of the President.

(3) A prisoner may submit a petition to the President on any matter other than his conviction or sentence at any time:

Provided that no petition shall be permitted if the reply to a previous petition made by such prisoner on the same subject is still outstanding.

(4) A prisoner may submit a petition to the Commissioner in respect of any matter affecting his imprisonment at any time.

(5) A prisoner under sentence of death may petition the President on any matter while the prisoner is under such sentence.

(6) The officer in charge shall, without delay, submit to the Commissioner any petition submitted by a prisoner under this rule.

141. (1) A prisoner may make any complaint or application to a visiting justice, an official visitor, the Commissioner, the officer in charge or the chief officer, and, in the case of a female prisoner, to the senior woman prison officer, but no complaint shall be made to any subordinate officer except to report sickness.

Prisoners'
complaints and
applications

(2) The officer in charge shall make arrangements to ensure that any request made by a prisoner to see the Commissioner, an official visitor or a visiting justice is recorded by the officer to whom it is made and that such request is conveyed without delay to the officer in charge who shall inform the Commissioner, official visitor or visiting justice when such person next visits the prison of such request.

(3) All complaints and applications made by prisoners shall be heard or attended to by the officer in charge every day except Sundays or public holidays, and the officer in charge shall record in a book kept for the purpose the action taken in each case.

PART VII

EMPLOYMENT OF PRISONERS

142. (1) The Commissioner may authorise the introduction of an earnings scheme for prisoners in any prison or any part of a prison.

Earnings scheme

(2) A prisoner under sentence of death shall not be subject to employment and the provisions of this Part shall not apply to such prisoner.

143. Every prisoner shall, on admission to a prison to which an earnings scheme has been introduced, be eligible to receive such payments as are prescribed in the Third Schedule:

Rates of payment

Provided that no prisoner shall be eligible to be paid for days spent in a hospital or for days spent in separate confinement as a punishment for a prison offence.

144. (1) The Commissioner may, on the recommendation of the officer in charge, vary the rate of payment in respect of any prisoner or class of prisoners.

Commissioner may vary rates of payment

(2) Any variations in the rate of payment made to any prisoner under sub-rule (1) shall be recorded in the prisoner's record.

145. (1) All prisoners who are eligible to participate in the earnings scheme shall be graded as follows:

Grading of prisoners

(a) first stage prisoners and inmates;

(b) Grade C prisoners who shall be all long sentence prisoners other than Grade B and Grade A prisoners;

(c) Grade B prisoners who shall be all long sentence prisoners who, in the opinion of the officer in charge, are of good conduct and are skilled or semi-skilled in their trade, or have an output and effort at work which is above average and are placed in this grade by the officer in charge;

(d) Grade A prisoners who shall be-

(i) all long sentence prisoners who, in the opinion of the Commissioner, are of exemplary conduct and are skilled in their trade and are placed in this grade by the Commissioner; and

(ii) all long sentence prisoners who have, under sub-rule (1) of rule 122, been promoted to the special stage.

(2) Grade C prisoners engaged in collective work may receive payment for work completed in excess of a fixed task in accordance with such instructions as may be issued by the Commissioner:

Provided that such a prisoner shall not receive more than a Grade A prisoner.

146. The Commissioner may, by Standing Orders, or otherwise in writing, prescribe the method of accounting to be adopted in the administration of the earnings scheme.

Method of
accounting

147. (1) A prisoner who is certified as unfit for normal prison labour by the medical officer shall not be put to any form of labour until the medical officer has certified him fit for the particular labour to which it is intended to put him.

Prisoners unfit for
normal labour

(2) A prisoner who has been classified as unfit for any type of labour shall be permitted to exercise for one hour each day if he is fit enough to do so.

148. All prisoners who are not employed in association with one another or who are employed on sedentary work, such as tailoring or mat-making, shall, if circumstances permit, be permitted to exercise in the open air for one hour each day.

Exercise for
special prisoners

149. The officer in charge shall ensure that-

(a) all convicted criminal prisoners are properly and usefully employed;

(b) prisoners are not employed on work which is dangerous;

Type and record of
prisoners' labour

(c) a note of each type of work on which a prisoner is employed is entered in the prisoner's record.

150. The hours of labour for prisoners shall be prescribed by the Commissioner and different hours may be prescribed for different classes of prisoners.

Commissioner to prescribe hours of labour

151. At each prison a record of the daily work of the prisoners shall be kept by the officer in charge in such form as the Commissioner may direct.

Entries in employment book

152. The officer in charge shall personally assign to each criminal prisoner the type of work or labour to which he is best suited, but before doing so the officer in charge shall give consideration to the necessity of affording each prisoner the best training which his sentence, his capacity and the resources of the prison allow and to the recommendations, if any, of the medical officer.

Allocation of labour to prisoners

153. The officer in charge shall decide, with particular regard to security, the proportion of prison officers to prisoners in working parties of more than four prisoners where such working parties are employed outside the precincts of the prison.

Ratio of escorts to working parties

154 (1) Subject to the provisions of this rule, no prisoner shall be hired out to or placed at the disposal of-

Restriction on hire of prisoners

(a) another prisoner;

(b) a prison officer or other person employed in the prison;
or

(c) any private person, company or association

(2) With the concout of the Commissioner, a prisoner may be hired out or placed at the disposal of a parastatal organisation, a public company, a statutory corporation or a public institution:

Provided that such prisoner shall work under the supervision or control

of a prison officer or other public officer.

(3) Where a prisoner is hired out in exercise of the powers contained in this rule, the hirer shall pay to the Government the wages specified in the Eighth Schedule.

(As amended by S.I. No. 123 of 1982)

154A. Revoked by S.I. No. 123 of 1982

155. No prisoner shall be employed in any disciplinary capacity.

Employment of
prisoners in
disciplinary
capacity

156. (1) Subject to sub-rule (3), no prisoner shall be required to do any labour on Sundays or public holidays except such labour as may be necessary for keeping the prison premises clean and for cooking prisoners' rations.

Work on Sundays
and public holidays

(2) The officer in charge shall ensure that on public holidays properly organised recreation and exercise are arranged for the prisoners.

(3) Criminal prisoners of the Jewish faith shall not be compelled to work on Saturdays if they make a claim for such exemption, but any such prisoners who claim this exemption shall be liable to work on Sundays.

(4) Prisoners of the Orthodox Muslim faith shall be allowed to observe the fast of Ramadan and during such fast those who are criminal prisoners shall be required to work at such reduced task as the officer in charge may order.

(5) The Commissioner may issue such other orders as may, in his opinion, be necessary in regard to the days on which prisoners who are members of religious communities not specifically mentioned in sub-rules (3) and (4) shall not be required to engage in labour.

PART VIII

ESCAPES, PROHIBITED

ARTICLES AND AREAS

157. It shall be the duty of all prison officers at all times to prevent the escape of prisoners and, for the purpose of giving effect to this rule, no ladders, planks, ropes, chains or anything fit to facilitate the escape of prisoners shall be left unsecured in a prison.

Duty of officers to prevent escape of prisoners

158. (1) Upon receiving a report of an escape of a prisoner, the officer in charge shall-

Action in event of escape of prisoner

(a) order the prison and its neighbourhood to be searched at once;

(b) circulate notification of the escape and the prisoner's particulars and description to the officer in charge of police of the nearest police station; and

(c) notify the Commissioner.

(2) The officer in charge shall, as soon as may be after receiving a report of an escape of a prisoner, hold an inquiry about such escape and shall submit a full report to the Commissioner.

159. (1) A prisoner who, during a previous detention in lawful custody, has escaped or attempted to escape, shall be considered and treated as a potential security risk unless excluded personally by the officer in charge for any reason.

Potential escapees

(2) A prisoner to whom sub-rule (1) applies shall be required to wear clothing with a distinctive mark.

160. The period during which a prisoner is at large shall not be counted as part of the sentence he was undergoing at the time of his escape.

Period at large not to count as served

161. (1) No prisoner shall, save as is provided in the Act, these Rules or Standing Orders, have in his possession money, food, clothing, liquor, tobacco, cigarettes, letters, papers, books, stupefying drinks, drugs or any other prohibited article. Prohibited articles

(2) If a prison officer has reason to suspect that a prisoner is in possession of a prohibited article, he shall, subject to the provisions of section *fifty-eight* of the Act and rule 71, carry out a special search of-

(a) such prisoner and may remove his clothing out of sight of other prisoners and the prison staff;

(b) the cell occupied by such prisoner if he considers it necessary.

PART IX

CIVIL AND UNCONVICTED PRISONERS

162. (1) No civil prisoner or unconvicted prisoner shall be confined in association with convicted prisoners. Unconvicted prisoners to be segregated

(2) Civil prisoners and unconvicted prisoners may be permitted during their periods of exercise to associate together in an orderly manner and to smoke under such conditions as the Commissioner may prescribe.

163. (1) A civil prisoner or an unconvicted prisoner may be permitted to wear his own clothing and may be permitted to procure for himself or to receive such articles of clothing at such times as the officer in charge may approve: Private clothing

Provided that any such prisoner not having proper clothing of his own shall be provided with prison clothing.

(2) Bedding shall be provided for all civil prisoners and unconvicted

prisoners on the same scale as convicted prisoners in the first stage.

(3) The officer in charge may require any civil prisoner or unconvicted prisoner who attempts to escape to wear prison clothing.

164. The officer in charge or the medical officer may, for the purposes of preventing the introduction or spread of infectious disease in a prison, order that any clothing permitted to be worn by a prisoner under sub-rule (1) of rule 163 be disinfected and during the process of disinfection the prisoner may be required to wear prison clothing.

Disinfection of
prisoner's clothing

165. A prisoner charged with a capital offence shall be kept under special observation at all times.

Persons charged
with capital
offence

166. A prisoner who is on remand or awaiting trial shall, if necessary for the purposes of his defence, be allowed to see a registered medical practitioner of his own choice, at any reasonable time, in the sight but not in the hearing of the officer in charge or any prison officer detailed by the officer in charge for the purpose.

Private medical
advice

167. (1) The officer in charge may modify the routine of the prison in regard to any civil prisoner or unconvicted prisoner so as to dispense with any practice which, in the opinion of the officer in charge, is clearly unnecessary or unsuitable in respect of such particular prisoner.

Modification of
prison routine and
withdrawal of
privileges

(2) Any privilege allowed under this Part may at any time be withdrawn by the officer in charge if he is satisfied that there has been abuse thereof.

168. (1) The amount of money to be paid for the daily maintenance of a judgment debtor shall be prescribed by the Minister and shall be paid weekly in advance.

Maintenance of
judgment debtors

(2) The officer in charge shall not admit to his prison any person as a judgment debtor unless he has received from the judgment creditor payment of one week's maintenance in advance.

(3) For the purpose of payment for maintenance of a judgment debtor under this rule, a period of detention of a judgment debtor shall be treated as commencing at twelve noon on the day of his admission to prison.

(4) If the money for the maintenance of a judgment debtor has not been paid by twelve noon on the day it is due, the officer in charge shall forthwith discharge the judgment debtor.

(5) The officer in charge shall discharge a judgment debtor immediately-

(a) upon payment of the amount of the debt and costs mentioned in the prisoner's warrant of commitment; or

(b) upon the giving up by the judgment creditor of his written consent to the discharge; or

(c) upon an order of the court which committed him to prison.

PART X

DISCIPLINE OF PRISONERS

169. Every offence against prison discipline committed by a prisoner which comes to the notice of a prison officer shall be reported to the officer in charge and the officer in charge shall investigate such report not later than the following day unless that day be a Sunday or a public holiday.

Offences by prisoners to be dealt with promptly

170. (1) Every prisoner sentenced to penal or reduced diet as a punishment for a prison offence shall, before undergoing such punishment, be examined by the medical officer who shall certify the prisoner's fitness to undergo such punishment.

Medical examination of certain prisoners

(2) A prisoner shall not be made to undergo a punishment of penal or reduced diet within a period of twenty-four hours immediately

preceding the day of his discharge or, if circumstances permit, on the day preceding his appearance before a court.

171. (1) A prisoner sentenced to separate confinement shall not be entitled to receive visits other than visits by prison officers on duty, a minister of religion or the medical officer, and such prisoner shall have only such outdoor exercise as the medical officer may certify to be absolutely necessary for his health.

Visits to prisoner in separate confinement

(2) Every prisoner who is in separate confinement or who is subjected to a penal or reduced diet as a punishment for a prison offence shall be visited at least once a day by the officer in charge.

(3) The medical officer shall visit a prisoner who is in separate confinement as often as is practicable.

172. The medical officer shall, at the infliction of every sentence of corporal punishment on a prisoner, give such instructions as may be necessary for preventing injury to the health of the prisoner and the officer in charge shall carry such instructions into effect.

Prevention of injury when corporal punishment is inflicted

173. (1) For the purpose of subsection (5) of section *one hundred and two* of the Act-

Type of cane and corporal punishment

(a) the type of cane with which corporal punishment shall be inflicted shall be-

(i) in the case of a prisoner under the age of nineteen years, a rattan cane, three feet long and not more than three-eighths of an inch in diameter;

(ii) in the case of a prisoner who is nineteen years of age or over, a rattan cane, four feet long and not more than half an inch in diameter;

(b) the manner in which corporal punishment shall be inflicted shall be as follows:

(i) a blanket or similar form of protection shall be placed across the small of the prisoner's back above the buttocks;

(ii) a small square of thin calico shall be dipped in water, wrung out and tied over the prisoner's buttocks;

(iii) strokes shall be administered from one side upon the buttocks of the prisoner and on no account on the back.

(2) No corporal punishment shall be inflicted on a prisoner in the presence of another prisoner or prisoners.

174. The officer in charge shall enter in the corporal punishment book the time at which corporal punishment has been inflicted, the number of strokes inflicted and any order which the medical officer may have given as to the prohibition of corporal punishment. Corporal punishment book

175. A return of all corporal punishments ordered and all such punishments inflicted shall be submitted by the officer in charge to the Commissioner monthly. Returns of punishments to Commissioner

176. The officer in charge shall-

(a) enter in the prisoners' punishment book a record of every prisoner punished under the Act or these Rules, showing the date, nature of the offence and punishment, the name of the prisoner, and the authority dealing with the case;

Entries in prisoners' punishment book

(b) enter in the prisoner's record a record of punishment of the prisoner.

177. (1) When a prisoner is placed in separate confinement as a punishment for a prison offence and when a prisoner is awaiting the hearing of a charge against him for a prison offence, the bedding, accessories and clothing which he is not wearing at the time and all the cell equipment, other than the latrine equipment, may be removed from his cell.

Certain prisoners may be denied privileges

(2) A prisoner in separate confinement may be supplied with a book of a religious nature.

(3) A prisoner in separate confinement shall be exercised for one hour each day and during such period he shall be required to bathe himself.

178. The officer in charge shall ensure that every prisoner placed in Visits to prisoners in separate

separate confinement shall-

confinement

- (a) be visited by the chief officer not less than twice a day;
- (b) be visited by any prison officer other than the chief officer at intervals of not less than thirty minutes.

179. The Commissioner may review any punishment imposed under paragraph (b) of subsection (1) of section *ninety-three* of the Act upon a prisoner found guilty of a prison offence and may vary or remit such punishment.

Commissioner may vary punishment

180. (1) No prisoner shall be placed under mechanical restraint as a punishment.

Use of mechanical restraints

(2) No prisoner shall be placed in fetters except as means of restraint or to prevent escape of a prisoner and only fetters of a pattern which has been approved by the Commissioner may be used.

(3) The officer in charge may order the use of handcuffs for prisoners who are in course of transfer from one prison to another:

Provided that it shall not be permitted under any circumstances to place prisoners in leg irons who are in course of transfer from one prison to another.

(4) The officer in charge may place a prisoner under mechanical restraint if he considers it necessary for the safe custody of the prisoner, and the particulars of every such case shall be recorded in the journal of the officer in charge and of the chief officer and in the restraint book, and notice thereof shall be given immediately to the medical officer and the Commissioner:

Provided that any mechanical restraint applied under this sub-rule shall not be continued for more than twenty-four hours unless the Commissioner has given his consent and the Commissioner's consent shall be confirmed in writing.

(5) Where a prisoner is kept under mechanical restraint beyond the period of twenty-four hours, the officer in charge shall obtain from the

medical officer a certificate as to the fitness of the prisoner to undergo such restraint. The consent referred to in sub-rule (4) and the medical certificate issued under this sub-rule shall be preserved by the officer in charge and shall be regarded as his authority for applying such mechanical restraint beyond twenty-four hours.

PART XI

REMISSION OF SENTENCE

181. (1) Where one term of imprisonment is consecutive to another term, such terms shall be treated as one term for the purpose of remission of sentence.

Calculation of sentences for remission

(2) Where one sentence is partly concurrent with, but overlaps another sentence, the latter sentence shall be added to the period of the former sentence actually served when the latter commenced and remission of sentence shall be calculated on the total period.

(3) Where a court orders a fresh sentence "to commence at the expiration of the sentence the prisoner is now serving" or other words to the like effect, the order of the court shall be interpreted literally.

(4) Where a prisoner is sentenced to two or more terms of imprisonment on different counts, such sentences shall be consecutive unless the court orders otherwise.

(5) Where a prisoner is sentenced to several terms of imprisonment on several warrants at the same time, or is sentenced to a further term or terms of imprisonment before the expiration of his first sentence, his several sentences on all the warrants shall be consecutive unless otherwise ordered by the court and the aggregate term shall run from the date of the first warrant.

(6) Any doubt or difficulty regarding the computation of sentences and remission shall be referred to the Commissioner for a ruling.

182. (1) Any remission of sentence due to a prisoner shall be computed upon the prisoner's admission to prison and thereafter as may be necessary.

Record of remission to be kept

(2) The earliest possible date of discharge and the latest possible date of discharge shall be recorded by the officer in charge-

(a) in the prisoner's record;

(b) in the discharge diary; and

(c) on the warrant slip;

and such dates shall be amended by the officer in charge from time to time as may be necessary.

183. The operation of the remission of sentences shall be explained to every prisoner on admission and when, for any reason, remission due to a prisoner is forfeited the officer in charge shall ensure that the prisoner is made fully aware of such forfeiture.

Operation of remission of sentences to be explained

184. A prisoner who is transferred to a mental hospital or leprosarium shall be entitled to remission of sentence under section *one hundred and nine* of the Act.

Prisoners in mental hospital or leprosarium

185. The period of remission, calculated in days, to which a prisoner shall not be entitled under subsection (4) of section *one hundred and nine* of the Act, shall be one-third of the number of days spent by the prisoner in hospital or separate confinement.

Calculation of forfeited remission

186. A prisoner who is entitled to remission of sentence under the Act or these Rules shall be entitled to be discharged on the day after he has completed earning his remission.

Release on day after earning total remission

187. (1) When a prisoner avails himself of the right to obtain his earlier release by part payment of a fine, he shall be allowed to earn full remission of sentence on the full period of his sentence, less than part for which he has paid, if the balance of the term of imprisonment is more than one calendar month.

Remission in regard to part payment of fines

(2) If part of a fine imposed on a prisoner is paid before the expiration of a period of imprisonment imposed on him in default of payment of such fine, a proportionate reduction in the period of his imprisonment shall be made.

(3) No payment of an amount of fine which may have the effect of reducing a period of imprisonment imposed in default of payment of such fine by part of a day shall be accepted.

(4) The payment of part of a fine shall be made between the hours of 8.00 a.m. and 4.00 p.m. Monday to Friday inclusive and between the hours of 8.00 a.m. and 12.30 p.m. on Saturday. The payment of a fine imposed on a prisoner or part thereof shall be made to the officer in charge of the prison where the prisoner is confined or the clerk of the court which imposed the fine:

Provided that-

- (i) the payment of part of a fine shall not be accepted between the hours of 12.30 p.m. on Saturday and 8.00 a.m. on Monday, nor on a public holiday;
- (ii) the payment of a fine in full shall be accepted at any time.

PART XII

DISCHARGE AND PAROLE

188. Where the Minister permits a young prisoner to be temporarily absent from the prison under the provisions of section *one hundred and fifteen* of the Act, the Minister shall issue to such young prisoner a permit in the form set out in the Fourth Schedule.

Permit to be at large by Minister

189. Where the Commissioner permits a prisoner to be absent from prison under sections *one hundred and fourteen* and *one hundred and forty-two* of the Act, the Commissioner shall issue to the prisoner a permit in the form set out in the Fifth Schedule.

Permit to be at large by Commissioner

190. Upon a temporary release from prison of a prisoner by the Minister or the Commissioner, the officer in charge shall explain to the prisoner the conditions subject to which he is permitted to be absent from prison.

Conditions of temporary release

191. Where the officer in charge considers that a prisoner should be permitted to be absent from prison under the provisions of section *one hundred and fourteen, one hundred and fifteen or one hundred and forty-two* of the Act, he shall send the necessary recommendation to the Commissioner immediately and shall give particulars, of the prisoner with full and detailed reasons for his recommendations.

Recommendations by officer in charge

PART XIII

COMPULSORY AFTER CARE ORDERS

192. In this Part-

Interpretation

"holder" means a person in respect of whom a compulsory after care order has been made;

"order" means a compulsory after care order.

193. The order shall be in the form set out in the Sixth Schedule.

Form of order

194. Upon the discharge of a holder from prison, the officer in charge shall explain to him the conditions contained in the order.

Conditions of release to be explained

195. The person named in the order as being responsible for the after care of the holder shall notify the Commissioner immediately it comes to his knowledge that the holder has failed to comply with any condition of the order.

Contravention of order to be reported to Commissioner

196. In every case where a prisoner is serving a sentence of

Report of prisoners liable to order

imprisonment for a period of three years or more, and where such prisoner has been sentenced to a term of imprisonment on not less than two previous occasions, the officer in charge shall forward particulars of such prisoner to the Commissioner at least two months before the earliest possible date of his release.

PART XIV

PRISONERS UNDER SENTENCE OF DEATH

197. (1) The Commissioner shall cause a prisoner who has been sentenced to death to be transferred immediately under sufficient escort to the prison in the Republic where the sentence of death is to be carried out, unless such prisoner is already in such prison.

Transfer of
condemned
prisoners

(2) The officer in charge shall report to the Commissioner the admission of his prison of a prisoner under sentence of death who has been transferred under sub-rule (1) and shall state the date of the sentence, the court imposing the sentence and the offence.

198. (1) Every prisoner under sentence of death shall be thoroughly searched and all prohibited articles found on him shall be removed from him as soon as may be after his sentence has been delivered.

Search of
condemned
prisoners

(2) The officer in charge shall cause a prisoner under sentence of death to be searched twice daily by a responsible prison officer and shall take every precaution to ensure that he does not obtain any article with which he may do himself harm or injury.

(3) A cell or room which is allocated to a prisoner under sentence of death shall be inspected as follows:

(a) immediately before it is occupied by such prisoner; and

(b) subsequently, on every occasion when such prisoner leaves his cell or room and before he re-occupies such cell or room, and the officer in charge shall satisfy himself as to the fitness and safety of such room

or cell and shall record the fact of inspections in his journal.

(4) The cell or room in which a prisoner under sentence of death is confined shall not be unlocked save in the presence of at least two prison officers and it shall be thoroughly examined and searched daily while occupied by the condemned prisoner.

199. The officer in charge shall-

Appeals by
condemned
prisoners

(a) inform every prisoner under sentence of death of his right of appeal;

(b) report to the Commissioner if-

(i) a prisoner under sentence of death lodges an appeal;

(ii) the period within which a prisoner under sentence of death may lodge an appeal as of right has lapsed.

200. A prisoner under sentence of death shall be asked if he wishes to see a minister of religion and if he so desires arrangements shall be made for a minister of religion to have access to such prisoner.

Visits by ministers
of religion

201. A prisoner under sentence of death shall be provided with the same kind of clothing, food and bedding as convicted prisoners undergoing imprisonment and may be provided with such other articles as may be approved by the officer in charge

Clothing and
bedding

202. All visits made to a prisoner under sentence of death under section *one hundred and twenty-one* of the Act shall take place in the sight and hearing of a prison officer.

Visits to
condemned
prisoners

203. (1) A prisoner under sentence of death who becomes sick shall not be removed from the cell set aside for his detention without the authority of the Commissioner.

Illness of
condemned
prisoners

(2) The medical officer shall not treat any sick prisoner under sentence of death in any place other than the cell set aside for his detention without the authority of the Commissioner.

204. (1) Any prison officer who notices anything in the demeanour or behaviour of a prisoner under sentence of death indicating to him that the prisoner has become mentally disordered shall immediately report in writing to the officer in charge.

Mental disorder of
condemned
prisoners

(2) The officer in charge shall forward any report made to him under sub-rule (1) to the medical officer and the Commissioner.

205. If the officer in charge is satisfied that the relatives or friends of a prisoner under sentence of death have not the means to pay the costs of their transport to the prison where such prisoner is confined, he may recommend to the Commissioner that the whole or part of the costs be paid to the visiting relatives or friends and the Commissioner may thereupon authorise the necessary expenditure:

Expenses of visits
by certain relatives

Provided that the cost of transport authorised under this rule shall be limited to the cost of transport of not more than three relatives or friends of the prisoner.

206. A prisoner under sentence of death may be issued with tobacco, cigarettes, snuff and such other luxuries as the Commissioner may direct.

Issue of special
luxuries

207. (1) Upon receipt of a warrant of execution of a prisoner, the officer in charge shall give the prisoner concerned three days' notice of his impending execution.

Notice of
execution

(2) A prisoner under sentence of death who has been informed of his impending execution-

(a) may be given a special diet and such other privileges as the Commissioner may authorise in writing;

(b) shall be given an opportunity and reasonable facilities therewith to dispose of his property, if any.

208. The body of an executed prisoner shall be disposed of in accordance with the written instructions of the Commissioner.

Disposal of body of
executed prisoner

209. Such allowance as the Minister may approve shall be paid to the executioner, assistant executioner and prison officers attending an execution.

Expenses of executioners

PART XV

VISITING JUSTICES, OFFICIAL VISITORS, MINISTERS OF RELIGION AND PRISONERS' AID SOCIETIES

210. (1) During a visit of inspection by a visiting justice or official visitor, neither the officer in charge nor the next senior prison officer shall accompany him, but the officer in charge or next senior officer shall inform such visiting justice or official visitor of any prisoner who has expressed an intention to see him and shall afford him every assistance in his inspection and shall detail a prison officer to accompany him.

Visits to prison by visiting justices, etc.

(2) No person other than a prison officer or a prison employee shall be permitted to accompany a visiting justice or official visitor during the course of his inspection.

(3) A copy of the visiting justice's remarks, together with any comments by the officer in charge, shall be forwarded to the resident magistrate in whose jurisdiction the prison is situated and to the Commissioner immediately after the inspection has taken place.

(4) A copy of the official visitor's remarks, together with any comments by the officer in charge, shall be forwarded to the Commissioner immediately after the inspection has taken place.

211. (1) Every prisoner shall be required on admission to a prison to state his religious denomination, if any, and every such prisoner shall be treated as a member of such denomination during his whole term of

Religious denominations

imprisonment.

(2) No prisoner shall be allowed to change his religion except in special cases in which the officer in charge is satisfied, after due inquiry, that such change is proposed from conscientious motives and that it is not sought from any idle whim or caprice or from a desire to escape from prison discipline.

212. Religious services in prisons shall be in accordance with the provisions of section *one hundred and thirty-one* of the Act.

Religious services
in prisons

213. There shall, so far as practicable, be available for the use of prisoners such of the Scriptures and books of a religious nature as the Commissioner may direct.

Supply of religious
books

214. Prisoners shall be permitted to retain in their possession articles and publications of a religious nature approved by the minister of the prisoner's religious denomination.

Retention of
religious objects by
prisoners

215. The Minister may authorise payment of travelling and subsistence allowances to official visitors, duly recognised ministers of religion and authorised representatives of a prisoners' aid society in respect of their functions under the Act or these Rules.

Payment of
travelling expenses

PART XVI

STAFF WELFARE FUND

216. (1) The Prison Service Staff Welfare Fund shall continue in force and shall be deemed to be established under these Rules and shall be administered by the Commissioner.

Establishment of
Fund

(2) The income of the Prison Service Staff Welfare Fund, hereinafter referred to as "the Fund", shall be provided from moneys appropriated by Parliament for the purpose.

217. (1) The Commissioner shall administer the Fund and such Fund

Administration of

shall be expended for the following objects:

Fund

- (a) rewards for outstanding acts of initiative and resource on the part of prison officers or for special skill in the performance of any prison duty requiring tact or ability on the part of prison officers;
- (b) rewards for any meritorious act of bravery whereby life has been saved or property has been secured from loss or destruction;
- (c) entertainment for prison officers on Christmas Day or on any special occasion as may be approved by the Commissioner;
- (d) prizes for marksmanship or proficiency in any examination held at the termination of a training course for prison officers;
- (e) providing and furnishing recreation rooms for the use of prison officers; and
- (f) purchase of sports and recreation equipment for prison officers and prison employees.

(2) An account book of the Fund shall be kept in the office of the Commissioner in which there shall be entered all amounts of money received, the source from which such amounts of money are received and all payments made therefrom, and the Commissioner shall, at the end of each quarter, furnish copies of the account to the Auditor-General.

PART XVII

EXTRA-MURAL PENAL EMPLOYMENT

218. (1) Every person appointed as an authorised officer for the purpose of Part XXI of the Act shall maintain a record of offenders ordered to perform public work under his supervision.

Records to be kept

(2) The record mentioned in sub-rule (1) shall contain the following

particulars in respect of every offender so employed:

- (a) his name;
- (b) his place of birth or origin;
- (c) the length of his sentence;
- (d) the date of commencement of his sentence;
- (e) the date he is due for release; and
- (f) the work to which he has been directed.

(3) The warrant of commitment to undergo extra-mural penal employment to be issued by a court to a prisoner in pursuance of an order made under section *one hundred and thirty-five* of the Act shall be in the form set out in the Seventh Schedule.

Form of warrant

(As amended by No. 243 of 1968)

219. Any prisoner who while employed on public work becomes sick shall be medically examined by a medical officer.

Admission to hospital

220. The scale of diet for persons performing work under an order made under section *one hundred and thirty-five* of the Act shall be in accordance with Part IV of the First Schedule.

Diet

PART XVIII

YOUTH CORRECTIVE CENTRES

221. (1) Every inmate shall be detained in one of the following youth corrective centres, hereinafter referred to as "centres", appropriate to his or her age and sex, namely:

Youth corrective centres

- (a) junior centre for males under the age of eighteen years;

- (b) junior centre for females under the age of eighteen years;
- (c) senior centre for males who have attained the age of eighteen years;
- (d) senior centre for females who have attained the age of eighteen years:

Provided that an inmate under the age of eighteen years may be detained in a senior centre and an inmate aged eighteen years or over may be detained in a junior centre if in either case the Commissioner, having regard to the inmate's mental or physical development, so directs.

(2) A senior and a junior centre for inmates of the same sex may be provided in the same building.

(3) An inmate who has escaped from lawful custody and who has been recaptured shall be transferred immediately to a prison other than a youth corrective centre.

222. (1) Upon admission to a centre an inmate shall be placed in Grade I. Grading of inmates

(2) Subject to any general directions by the Commissioner, an inmate may be promoted from Grade I to Grade II-

- (a) after being not less than four weeks in Grade I; and
- (b) if in the opinion of the officer in charge his conduct justifies the promotion.

(3) Inmates promoted to Grade II shall be given such privileges as the Commissioner may from time to time determine.

223. No room or cell shall be used for the separate confinement of an inmate in pursuance of a disciplinary award under Part XIII of the Act, or for the confinement of a refractory or violent inmate, unless it is

Separate
confinement of
inmates

certified by the Commissioner to be suitable for the purpose and to be furnished with the means of enabling the inmate so confined to communicate at any time with a prison officer.

224. An inmate who has been found guilty of a prison offence under Part XIII of the Act may be reduced to Grade I and shall not be promoted to Grade II until he has satisfied the officer in charge as to his conduct.

Punishment of inmates

225. No mechanical restraint shall be used in a junior centre.

Mechanical restraints

226. No inmate in junior centre shall be allowed to smoke or have in his possession any tobacco or cigarettes.

Prohibition of tobacco

227. Arrangements shall be made for the part-time education of inmates either within the normal working hours or outside such hours.

Education

228. At least one hour a day shall be devoted to physical training or to organised games for inmates and such periods shall be deemed to form part of the normal working hours.

Recreation of inmates

229. A library shall be provided in every centre and, subject to such conditions as the Commissioner may determine, every inmate shall be allowed to have library books and to exchange them as often as practicable.

Supply of books

230. (1) Special attention shall be paid to the maintenance of such relations between inmates and their families as are judged by an officer in charge to be desirable in the best interests of the inmates.

Social relations and after care

(2) So far as is practicable and in the opinion of an officer in charge desirable, an inmate shall be encouraged and assisted to maintain and establish relations with persons or agencies outside the centre as may promote his social rehabilitation.

231. (1) Every inmate shall be entitled to send and receive a letter on admission to a centre and thereafter once in four weeks and to receive a visit once in four weeks:

Letters and visits

Provided that the officer in charge may allow an inmate to send a letter and receive a reply in lieu of a visit.

(2) The officer in charge may for special reasons allow an inmate to write or receive additional letters or receive additional visits.

(3) The degree of supervision to be exercised during visits to inmates shall, subject to any express provision of these Rules, be in the discretion of the officer in charge.

232. Except as may be determined by the medical officer or the Commissioner, or as provided under Part VII, no inmates shall be allowed to have any food other than the normal diet provided by prison authorities. Diet

233. All inmates shall wear special clothing as may be determined by the Commissioner. Clothing

PART XIX

MISCELLANEOUS

234. No person who is authorised to visit a prison or work in prison shall, without the authority of the Commissioner, divulge to any person, otherwise than in the course of his duties, any information concerning the administration of prisons and the condition and treatment and affairs of prisoners. Persons not to divulge information without authority

or Cooking oil	...	..	..	..	..	..	..	..	..	14 grams
or Red palm oil	..	..	..	..	..	..	..	..	..	4 grams
Salt (iodised if possible)	..	..	..	..	..	..	..	..	..	7 grams
Unlimited water										

PART IV
(Rule 220)

DIET FOR PERSONS UNDERGOING A SENTENCE OF EXTRA-MURAL PENAL EMPLOYMENT

To be issued on each working day

Fresh meat	..	..	..	..	..	..	..	..	..	113 grams
or Fresh fish	..	..	..	..	..	..	..	..	..	170 grams
or Dried fish	..	..	..	..	..	..	..	..	..	85 grams
Maize meal	..	..	..	..	..	..	..	..	..	454 grams
or Millet meal	..	..	..	..	..	..	..	..	..	454 grams
Fresh vegetables	..	..	..	..	..	..	..	..	..	113 grams
or Potatoes or sweet potatoes	..	..	..	..	..	..	..	..	..	226 grams
Beans or peas or lentils or groundnuts	..	..	..	..	..	..	..	..	..	113 grams
Cooking fat, or cooking oil or margarine	..	..	..	..	..	..	..	..	..	28 grams
Salt (iodised if possible)	..	..	..	..	..	..	..	..	..	7 grams

NOTES

1. Rice or bread may be substituted for maize meal or millet meal on the recommendation of the medical officer or the Prison Reception Board.

2. Where bread is supplied in place of maize meal or millet meal (*see* Note 1), 56 grams of cheese or syrup or jam may be substituted for 56 of the 113 grams of any of the items in Group F.

GENERAL OBSERVATIONS

- (i) All quantities shown in this Schedule are raw weights.
- (ii) Fish should not be issued more than two days per week.
- (iii) In Group C, 113 grams of maize or millet may be substituted for bread (226 g) in rural areas where regular supplies of bread are unobtainable.
- (iv) Soup powder should be added to the water used for cooking vegetables or meat.

- (v) Groundnuts should be issued on at least two days per week.
- (vi) Vegetables include spinach, cabbage, tomatoes, kale, pumpkin, turnip, kohlrabi, lettuce, onions, beetroot, carrots, peas, beans.
- (vii) Fruit includes lemons, limes, pawpaw, bananas, mangoes, guava, grenadillas, mulberries.
- (viii) Tea or coffee may be substituted for cocoa if necessary.
- (ix) Expenditure may be incurred at such rates as the Minister may approve from time to time for the purpose of purchasing additional rations for issue on Christmas Day and on such days as may be approved by the Minister.

(As amended by S.I. No. 79 of 1973)

SECOND SCHEDULE

THE PRISONS RULES

(Rule 77)

ATTESTATION

I, do most solemnly and sincerely declare and affirm that I will be faithful and bear true allegiance to the President of the Republic of Zambia, and will obey all orders of the officers placed over me, and subject myself to all written laws relating to the Prison Service now in force or which may, from time to time, be in force, during my service. And I hereby declare that I have not been convicted of any criminal offence.

Signature or mark of recruit

Declared at this day
of
Before me.

.....
Officer in Charge

THIRD SCHEDULE

The following scales of pay may be earned by Prisoners in accordance with Part VII.

First Stage	K1.00 per day
Grade C Prisoners	K1.00 per day
Grade B Prisoners	K2.00 per day
Grade A Prisoners (other than special stage Prisoners	K3.00 per day
Special Stage Prisoners	K3.00 per day plus per month gratuity

(As amended by S.I. No. 137 of 1990)

FOURTH SCHEDULE

REPUBLIC OF ZAMBIA

THE PRISONS ACT

(Section 115)

THE PRISONS RULES

(Rule 188)

PERMIT FOR TEMPORARY ABSENCE OF A YOUNG PRISONER

Ref
Ministry of
Date

To:
.....

In accordance with subsection (1) of section 115 of the Act and on the recommendations of the Commissioner of Prisons:

You are hereby permitted to be absent from the Prison from until inclusive, on the undermentioned conditions:

(1) You shall proceed to and shall not without my consent remove from that place.

(2) On arrival at you will report to and shall remain under the supervision of until the 19.....

(3) You shall obey any instruction given to you by

(4) You shall abstain from any violation of the law and not associate with persons of bad character.

Minister of

The conditions relating to my temporary absence from Prison have been read to me and I have understood them.

Prisoner

Witness

Officer in charge of Prison

NOTE

Prisons Act, section 115 (2). If any prisoner fails to perform and observe any condition

imposed under the provisions of this section, he may be arrested and recommitted to any prison by warrant under the hand of a magistrate and shall be detained in a prison as if he had not been so absent from prison for a period equal to the portion of the sentence which was unexpired at the date of his release.

(3) If a prisoner does not contravene during the period of his absence from prison under the provisions of this section any condition attached to his absence, he shall no longer be liable for any punishment in respect of the conviction upon which he was sentenced.

One copy of this Order to be retained by the Minister.

One copy to be retained by the Commissioner.

One copy to be retained by the Officer in Charge of the prison from which the prisoner is temporarily released.

Original copy to be handed to the prisoner.

FIFTH SCHEDULE

REPUBLIC OF ZAMBIA

THE PRISONS ACT

(Sections 114 and 142)

THE PRISONS RULES

(Rule 189)

PERMIT FOR TEMPORARY ABSENCE OF A PRISONER

To:
.....

In accordance with *section 114 or section 142 of the Prisons Act:

You are hereby permitted to be absent from
the Prison for a period of days,
with effect from on the undermentioned conditions:

- (1) You shall proceed to and shall not without my consent remove from that place.
- (2) You shall abstain from any violation of the law and will not associate with persons of bad character.
- (3) You shall report back to the officer in charge of Prison by hours, on the
- (4) No extension of absence will be granted.
- (5) You shall carry this permit during the period you are absent from prison and shall produce it whenever you are required to do so by any prison or police officer.
- (6) You shall report to the officer in charge of the Prison at any circumstances in which you may require assistance or advice.

Commissioner of Prisons

Date:

The conditions relating to my temporary absence from Prison have been read and explained to me and I have understood them.

Prisoner

Witness

Officer in charge of Prison

* Delete whichever is inapplicable.

NOTE

Prisons Act, section 114 (3). Any prisoner when released on parole who contravenes or fails to comply with the conditions imposed upon him under this section shall be guilty of an offence and shall be liable on conviction to imprisonment for a period not exceeding six months.

One copy of this Order is to be retained by the Commissioner.

One copy to be retained by the Officer in Charge of the prison from which the prisoner is temporarily released.

Original copy to be handed to the prisoner.

SIXTH SCHEDULE

REPUBLIC OF ZAMBIA

THE PRISONS ACT

(Sections 117 and 118)

THE PRISONS RULES

(Rule 193)

COMPULSORY AFTER CARE ORDER

To:

.....

IN EXERCISE of the powers conferred upon the Commissioner of Prisons by subsection (1) of section 117 of the Prisons Act, I hereby order that you shall undergo compulsory after care for the period commencing until inclusive, on the undermentioned conditions:

- (1)
- (2)
- (3)

Commissioner of Prisons

Date:

The conditions relating to this order have been read to me in my own language and I understand them.

Prisoner

Witness

Officer in charge of Prison

NOTE

Prisons Act, section 118 (1). If a person in respect of whom a compulsory after care order is in force-

(a) is convicted of an offence; or

(b) contravenes or fails to comply with any term or condition of the order;

he shall be guilty of an offence and shall on conviction be sentenced to imprisonment for a period of three months or for the period of remission of sentence earned by that person while he was a prisoner under section 109 immediately prior to the making of the order,

whichever is the greater.

(2) A sentence of imprisonment imposed on a person under subsection (1) shall commence on the expiration of any other sentence of imprisonment which that person is liable to serve.

Original to be handed to the prisoner named in the Order.

Duplicate to be sent to the person named in the Order as being responsible for the after care of the prisoner.

Triplicate to be retained by the Commissioner.

SEVENTH SCHEDULE

REPUBLIC OF ZAMBIA

THE PRISONS ACT

(Section 135)

THE PRISONS RULES

(Rule 218 (3))

IN THE SUBORDINATE COURT OF THE..... CLASS FOR
THE

DISTRICT HOLDEN AT Case
No.

ORDER TO A MALE PRISONER TO PERFORM PUBLIC WORK

To (name of
prisoner):

WHEREAS you, being a male prisoner, were on the day of
at (being a declared area) *sentenced to imprisonment for a term of ...
*committed to imprisonment for a term of for non-payment of

AND WHEREAS you have consented to the making of this Order.

NOW THEREFORE IT IS HEREBY ORDERED that you perform public work, in accordance with Part X
prison for the duration of such imprisonment.

AND IT IS FURTHER ORDERED that you report forthwith
to

Made at the day of, 19.....

Magistrate

*Delete as appropriate.

Insert name of authorised officer or of other specified officer.

(No. 243 of 1968)

EIGHTH SCHEDULE

(Rule 154)

	K	
1. For a skilled prisoner	1.00	
per diem		
2. For a semi-skilled prisoner.	0.60 per diem	
3. For an unskilled prisoner	0.40 per diem	

(No. 123 of 1982)

THE ZAMBIA PRISON OFFICERS' STAFF ASSOCIATION RULES [ARRANGEMENT OF RULES]

Rule

1. Title
2. Interpretation
3. Establishment of Association
4. Objects of Association
5. Membership of Association
6. Resignation from Association
7. Representative Board
8. Elected representatives
9. Election of representatives
10. Standing Committee
11. Meetings of Board
12. Procedure at meetings of Board
13. Meetings by representatives
14. Permission to attend meetings
15. Funds of Association
16. Inspection of books by members

SECTION 146-THE ZAMBIA PRISON OFFICERS' STAFF ASSOCIATION RULES

Statutory
Instrument
389 of 1966

Rules by the Minister

1. These Rules may be cited as the Zambia Prison Officers' Staff Association Rules.

Title

2. In these Rules, unless the context otherwise requires-

Interpretation

"Association" means the Zambia Prison Officers' Staff Association

established under rule 3;

"Board" means the Representative Board constituted in terms of rule 7;

"representative" means a representative elected under rules 8 and 9.

3. There is hereby established a body to be known as the Zambia Prison Officers' Staff Association.

Establishment of Association

4. The objects of the Association shall be to enable members thereof to consider and to bring to the attention of the Commissioner and the Minister matters affecting the welfare and efficiency of the Service, including pay, pensions and conditions of service:

Objects of Association

Provided that discussion of promotion or discipline shall be limited to the general aspects and principles of these matters and in no case shall individual cases be considered.

5. All persons appointed to or deemed under the Act to have been appointed to any of the ranks set out in the First Schedule to the Act shall be members of the Association:

Membership of Association

Provided that this rule shall not apply to the Commissioner, Deputy Commissioner, Assistant Commissioner and persons acting in these posts.

6. A prison officer may resign from the Association within one month of the commencement of these Rules or within one month from the date on which such prison officer became a member of the Association:

Resignation from Association

Provided that a prison officer who has resigned from the Association may at any time rejoin the Association by notifying the secretary of the Board of his intention to do so.

7. (1) The executive body of the Association shall be a Board to be known as the Representative Board.

Representative Board

(2) The Board which shall be responsible for the management of the Association shall consist of the chairman, secretary, treasurer and representatives of the members elected under the provisions of rules 8 and 9.

(3) The Board shall elect annually in July a chairman, secretary and treasurer from among its own members.

8. (1) The number of representatives to the Board shall be as follows: Elected representatives

	<i>Number of Representatives</i>			
(a) Senior superintendents, superintendents, assistant superintendents, senior technical officers	1
(b) Chief prison officers, prison officers, assistant prison officers matrons, male nurses, technical officers	3
(c) Chief warders and principal warders	2
(d) Warders in grades I, II and III	12
(e) Woman prison officers of the rank of warder grade I, II and III	1
(f) Instructors	1

(2) Warders in grades I, II and III of the prisons in the undermentioned regions shall elect representatives according to the following scale:

Central region (excluding Lusaka and Feira) .. .. .	..	..	..	1
Southern region (excluding Livingstone) .. .. .	..	..	..	2
Western region. . . . .	..	..	..	1
Copperbelt and North-Western region .. .. .	..	..	..	2
Northern and Luapula region .. .. .	..	..	..	2
Lusaka (including Feira) .. .. .	..	..	..	1
Eastern region. . . . .	..	..	..	1
Katombora .. .. .	..	..	..	1
Livingstone .. .. .	..	..	..	1

(3) The grade from which the secretary of the Board is elected under sub-rule (3) of rule 7 shall elect an additional representative to the Board.

(4) It shall be the function of the regional representative to bring to the notice of the officer superintending the region any matter affecting the welfare and efficiency of the members he represents.

9. (1) The election of representatives shall take place not later than the second week in May, and in every second year thereafter and the officers so elected shall hold office for two years.

Election of
representatives

(2) If before the 1st February in the second year of his term of office any representative-

(a) ceases to be a member of the Association; or

(b) ceases to be a prison officer; or

(c) is appointed to a grade other than that which he has been elected to represent;

such representative shall forthwith cease to be a member of the Board and a fresh representative shall be elected to hold office during the remainder of the term of office of such representative.

(3) The election of representatives shall be by ballot. In the event of there being an equality of votes between any two or more candidates, the matter shall be decided by lot in the presence of the officer superintending the region concerned and in such manner as he shall determine.

(4) A representative who has ceased to be a member of the Board shall be eligible for re-election.

10. The Board shall elect annually in July a Standing Committee consisting of six of its members and such Standing Committee shall meet in the months of January, April, July and October in each year.

Standing
Committee

11. (1) The Board shall meet twice a year in January and July and may meet at any other time with the approval of the Commissioner.

Meetings of Board

(2) All items for the agenda shall be forwarded to the secretary by the representatives not later than one month before the date of each meeting. If any member of the Association wishes a matter to be discussed by the Board, he shall request his elected representative to forward such matter to the secretary.

(3) At every meeting, the Board shall discuss and consider all matters submitted to it in accordance with these Rules and, at the discretion of the chairman, the Board may also discuss other matters which are not included in the agenda.

(4) The Board may make representations in writing to the Minister, through the Commissioner, and shall forward to the Minister, through the Commissioner, any representations made by the Standing Committee which such Standing Committee requires to be so forwarded, together with comments, if any, of the Board thereon.

(5) The Board or the Standing Committee may make representations in writing to the Commissioner.

12. (1) The quorum at every meeting of the Board shall be eight members of the Board.

Procedure at
meetings of Board

(2) The chairman shall preside at all meetings of the Board at which he shall be present. In the absence of the chairman, the members present shall elect one of their number to act as chairman of the meeting.

(3) At meetings of the Board, a resolution or any question put to the vote on any matter shall be decided by a majority of members present and voting; each member shall have one vote and if the votes are equally divided the chairman or a person acting as such shall have a deliberative

and a second or casting vote.

(4) All resolutions passed by the Board shall be signed by the chairman and secretary and shall be forwarded by the secretary to the Commissioner for consideration.

(5) In the event of the Board being dissatisfied with the result of action taken regarding resolutions passed at the previous meeting of the Board, the Commissioner shall, at the request of the Board, refer the matter in dispute to the Minister for consideration.

(6) The secretary of the Board shall keep minutes of the meetings of the Board and shall forward a copy thereof to the Commissioner within thirty days after the meeting of the Board to which such minutes relate.

(7) The treasurer shall keep proper books of account and shall submit to the Board an annual report on the administration of accounts of the Association.

13. A representative may, under the auspices of the Board, hold a general meeting of the members of the grade he represents at any prison:

Meetings by
representatives

Provided that-

(i) attendance at such meeting shall be confined to members of the grade to which the representative belongs;

(ii) members attending such meetings shall do so at their own expense and in their own time;

(iii) such meetings shall not be open to the public or press;

(iv) such meetings shall have no authority whatsoever to pass resolutions for submission to the officer in charge of a prison, the Commissioner or the Minister, but may pass resolutions for the consideration or guidance of the Standing Committee or the Board which shall in acting upon them follow the procedure prescribed in rule 11 for making representations; and

(v) application to hold such a meeting shall be made to the Commissioner at least fourteen days before the meeting is held and a copy of the agenda to be placed before such meeting shall be forwarded to the Commissioner with such application.

14. Permission shall be given for a representative to attend any meeting of the Board or Standing Committee established under these Rules on which he sits and attendance at the following meetings shall, for the purpose of the payment of allowances and expenses, be deemed to be an occasion of prison duty:

Permission to attend meetings

(a) meetings of the Standing Committee held in the months of January, April, July and October under rule 10;

(b) meetings of the Board held not more than twice annually under sub-rule (1) of rule 11;

(c) any meetings of the Board with the approval of the Commissioner:

Provided that-

(i) allowances and expenses shall not be payable in respect of any period in excess of one day (excluding reasonable time spent in travelling) in the case of meetings of the Standing Committee and any period in excess of two days (excluding reasonable time spent in travelling) in the case of a meeting of the Board;

(ii) allowances and expenses shall not be payable in respect of more than two meetings of the Board in any one year.

15. (1) The Association shall raise funds by subscriptions from among its members and the representatives may collect such subscriptions from the members of the grades they represent and forward them to the treasurer of the Board. No subscriptions or donations shall be accepted from individuals or organisations outside the Service.

Funds of Association

(2) The Board shall fix the amount of subscriptions payable by the members of the Association and shall keep detailed accounts and shall have them audited by an independent auditor. Annual statements of accounts shall be made available to all members of the Association and to the Commissioner.

(3) The funds of the Association shall not be used for contributing directly or indirectly to-

(a) the funds of any trade union;

(b) the funds of any political party;

(c) the election expenses of a candidate at any election to a council, or the National Assembly;

(d) the funds of any body or organisation outside the Service.

(4) The funds of the Association shall not be used-

(a) for any benevolent or charitable purposes outside the Service;

(b) to defray the expenses incurred by or on behalf of any member of the Association in respect of criminal or disciplinary proceedings brought against such member.

(5) The funds of the Association may be used-

(a) to pay the expenses incurred in connection with meetings of the Board, Standing Committee or any meeting of the members of the Association approved by the Commissioner;

(b) to pay for the advice of any medical, legal or other expert, where such consultations have been approved by the Commissioner; and

(c) for such other purposes as the Commissioner may approve.

16. (1) It shall be open to any member of the Association to inspect the books of the Association by giving reasonable notice to the secretary.

Inspection of
books by members

(2) A copy of all circulars affecting prison officers and their conditions of service shall be handed on receipt by the officer in charge of a prison to each representative officer.

CHAPTER 98

THE MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ACT

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title
2. Interpretation
3. Inconsistency of Acts
4. Limitations with respect to application
5. Application
6. Publication of treaties
7. Administrative arrangements
8. Assistance may be provided subject to conditions
9. Requests by Zambia
10. Requests by foreign state
11. Refusal of assistance

PART II

FOREIGN INVESTIGATIONS OR OTHER PROCEEDINGS IN RESPECT OF OFFENDERS

12. Fines
13. Search and seizure
14. Issue and contents of search warrant
15. Execution of search warrant
16. Report on execution of warrant
17. Hearing on execution of warrant

18. Terms and conditions of sending abroad record or thing seized
19. Evidence for use abroad
20. Evidence gathering order
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CHAPTER 98

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

*Act No.
19 of 1993.*

An Act to provide for the implementation of treaties for mutual legal assistance in criminal matters and to provide for matters connected with or incidental to the foregoing.

[30th April, 1993

PART I

PRELIMINARY

1. This Act may be cited as the Mutual Legal Assistance in Criminal Matters Act. Short title

2. In this Act unless the context otherwise requires- Interpretation

"competent authority" means the Attorney General;

"data" means representations, in any form, of information or concepts;

"foreign state" means a state that is a party to a treaty;

"offence" means an offence within the meaning of the relevant treaty;

"record" means any material on which data is recorded or marked and which is capable of being read or understood by a person or a computer system or other device;

"request" means a request for assistance presented under a treaty;

"treaty" means a treaty, convention or other international agreement that is in force and to which Zambia is a party, the primary purpose of which is to provide for mutual legal assistance in criminal matters.

3. In the event of any inconsistency between this Act and any other Act of Parliament, other than the provisions of an Act prohibiting the disclosure of information or prohibiting its disclosure except under certain conditions, this Act shall prevail to the extent of the inconsistency.

Inconsistency of Acts

4. (1) Nothing in this Act or a treaty shall be construed so as to abrogate or derogate from an agreement, arrangement or practice respecting co-operation between a Zambian competent authority and a foreign or international authority, or organisation.

Limitations with respect to application

(2) Nothing in this Act authorises the extradition, or the arrest or detention with a view to extradition, of any person.

5. (1) This Act shall apply to a foreign state specified in an order made by the Minister under this Act.

Application

(2) Where a bilateral treaty comes into force or ceases to be in force, the Minister may, by order, specify the name of the foreign state that is a party to the treaty and the date that the treaty came into force or ceased to be in force, as the case may be.

(3) The Minister may, by order, specify-

(a) the names of the foreign states that are parties to a multilateral treaty to which Zambia accedes and the date of the accession;

(b) the name of a foreign state that accedes to a multilateral treaty to which Zambia is a party and the date of the accession;

(c) the name of a foreign state that ceases to be a party to a multilateral treaty to which Zambia is a party and the relevant date; and

(d) the names of all of the foreign states that are parties to a multilateral treaty to which Zambia has ceased to be a party and the relevant dates.

6. The Minister shall cause every treaty to be published in the *Gazette* within sixty days of its coming into force or after Zambia accedes to the treaty and a treaty once published shall be judicially noticed.

Publication of treaties

7. (1) Where there is no treaty between Zambia and another state, the Minister responsible for Home affairs may, with the agreement of the Minister, enter into an administrative arrangement with that other state providing for legal assistance with respect to an investigation specified therein relating to an act that, if committed in Zambia, would be an indictable offence.

Administrative arrangements

(2) Where a treaty expressly states that legal assistance may be provided with respect to acts that do not constitute an offence within the meaning of the treaty, the Minister responsible for home affairs may, in exceptional circumstances and with the agreement of the Minister, enter into an administrative arrangement with the foreign state concerned, providing for legal assistance with respect to an investigation specified therein relating to an act that, if committed in Zambia, would be a contravention of an Act of Parliament.

(3) An administrative arrangement entered into under subsection (1) or (2) may be implemented by the Minister, under this Act, in the same manner as a treaty.

(4) An administrative arrangement entered into under subsection (1) or (2) shall have force from the period, not exceeding six months, and with respect to the type of legal assistance that is specified therein.

(5) Sections *five* and *six* do not apply in respect of an administrative arrangement entered into under subsection (1) or (2).

(6) In any legal or other proceeding, an administrative arrangement entered into under subsection (1) or (2) and purporting to be signed by the Minister responsible for home affairs or by a person designated by him is admissible in evidence without proof of the signature or official

character of the person appearing to have signed it and proof that it is what it purports to be.

8. Assistance under this Act may be provided to a foreign state subject to such conditions as the Attorney-General may determine. Assistance may be provided subject to conditions

9. A request by Zambia for international assistance in a criminal matter may be made by the Attorney-General. Request by Zambia

10. (1) A request by a foreign state for international assistance in a criminal matter may be made to the Attorney-General or a person authorised by the Attorney-General, in writing, to receive requests by foreign states under this Act. Request by foreign state

(2) A request under subsection (1) shall be accompanied by-

(a) the name of the authority concerned with the criminal matter to which the request relates;

(b) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;

(c) a description of the purpose of the request and the nature of the assistance being sought;

(d) details of the procedure that the foreign state wishes to be followed by Zambia in giving effect to the request, including details of the manner and form in which any information, document or thing is to be supplied to the foreign state pursuant to the request;

(e) statement setting out the wishes of the foreign state concerning the confidentiality of the request and the reasons for those wishes;

(f) details of the period within which the foreign state wishes the request be complied with;

(g) if the request involves a person travelling from Zambia to the foreign state, details of allowances to which the person shall be entitled, and of the arrangements for accommodation for the person, while the

person is in the foreign state pursuant to the request;

(h) any other information required to be included with the request under a treaty or other arrangement between Zambia and the foreign state; and

(j) any other information that may assist in giving effect to the request;

But failure to comply with this subsection shall not be a ground for refusing the request.

(3) Where a request by a foreign state is made to a person authorised under subsection (1), the request shall be taken, for the purpose of this Act, to have been made to the Attorney-General.

(4) Where a request is made to the Attorney-General by a foreign state the Attorney-General shall deal with the request in accordance with the treaty and this Act.

11. (1) A request by a foreign state for assistance under this Act shall be refused if, in the opinion of the Attorney-General-

Refusal of assistance

(a) the request relates to the prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character;

(b) there are substantial grounds for believing that the request has been made with a view to prosecuting or punishing a person for an offence of a political character;

(c) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, sex, religion, nationality or political opinions;

(d) the request relates to the prosecution or punishment of a person in respect of an act or omission that if it had occurred in Zambia would have constituted an offence under the military law of Zambia but not also under circumstances in which it is alleged to have been committed

or was committed, an offence of a political character;

(e) the granting of the request would prejudice the sovereignty, security or the national interest of Zambia;

(f) the request relates to the prosecution of a person for an offence in a case where the person has been acquitted or pardoned by a competent tribunal or authority in the foreign state, or has undergone the punishment provided for by the law of that country, in respect of that offence or of another offence constituted by the same act or omission as that offence; or

(g) the foreign state is not a state to which this Act applies.

(2) A request by a foreign state for assistance under this Act may be refused if, in the opinion of the Attorney-General-

(a) the request relates to the prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Zambia would not have constituted an offence against Zambian law;

(b) the request relates to the prosecution or punishment of a person in respect of an act or omission that occurred, or is alleged to have occurred, outside the foreign state and a similar act or omission occurring outside Zambia in similar circumstances would not have constituted an offence against Zambian law;

(c) the request relates to the prosecution or punishment of a person in respect of an act or omission where, if it had occurred in Zambia at the same time and had constituted an offence against Zambian law, the person responsible could no longer be prosecuted by reason of lapse of time or any other reason;

(d) the provision of the assistance could prejudice an investigation or proceeding in relation to a criminal matter in Zambia;

(e) the provision of the assistance would, or would be likely to, prejudice the safety of any person, whether in or outside Zambia; or

(f) the provision of the assistance would impose an excessive burden on the resources of Zambia.

PART II

FOREIGN INVESTIGATIONS OR OTHER PROCEEDINGS IN RESPECT OF OFFENCES

12. (1) Where the Attorney-General approves a request of a foreign state to enforce the payment of a fine imposed by a court of criminal jurisdiction of the foreign state, the High Court shall have jurisdiction to enforce the payment of the fine. Fines

(2) The fine shall be recoverable in civil proceedings instituted by the foreign state as if the fine had been imposed by the High Court.

(3) No proceedings under subsection (2) shall be more than five years after the fine was imposed.

13. (1) The Criminal Procedure Code shall apply, with the necessary modifications, in respect of a search or a seizure under this Act, except where that Act is inconsistent with this Act. Search and seizure
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(2) Where the Attorney-General approves a request of a foreign state to have a search or a seizure carried out in Zambia regarding an offence with respect to which the foreign state has jurisdiction, the Attorney-General shall authorise a police officer in writing, to apply *ex parte* for a search warrant to a magistrate.

14. (1) A magistrate to whom an application is made under section *thirteen* may issue a search warrant authorising a police officer named therein to execute it, where the magistrate is satisfied by statements under oath that there are reasonable grounds to believe that- Issue and contents
of search warrant

(a) an offence has been committed with respect to which the foreign state has jurisdiction;

(b) evidence of the commission of the offence, or information, that may reveal the whereabouts of a person who is suspected of having committed the offence, will be found in a building, receptacle or place in Zambia; and

(c) it would not, in the circumstances, be appropriate to make an order under section *twenty*.

(2) A magistrate who issues a search warrant under subsection (1) may subject the execution of the warrant to any conditions that the magistrate considers desirable, including conditions relating to the time or manner of its execution.

(3) A magistrate who issues a search warrant under subsection (1) shall fix a time and place for a hearing to consider the execution of the warrant as well as the report of the police officer concerning its execution.

(4) A search warrant issued under subsection (1) may be in a form prescribed under the Criminal Procedure Code, varied to suit the case, and shall-

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(a) set out the time and place for the hearing referred to in subsection (3);

(b) state that, at the hearing to consider its execution, an order shall be sought for the sending to the foreign state of the records or things seized in execution of the warrant; and

(c) state that every person from whom a record or thing is seized in execution of the warrant and any person who claims to have an interest in a record or thing so seized has the right to make representations at the hearing before any order is made concerning the record or thing.

15. (1) A police officer who executes a search warrant issued under section *fourteen* shall, before entering the place or premises to be searched, or as soon as practicable, give a copy of the warrant to any person who is present and appears to be in charge of the place or premises.

Execution of
search warrant

(2) A police officer who, in any unoccupied place or premises, executes a search warrant issued under section *fourteen* shall, on entering the place or premises, or as soon as practicable, cause a copy of the warrant to be affixed in a prominent place within the place or premises.

16. (1) A police officer who executes a warrant issued under section *fourteen* shall, at least five days before the time of the hearing to consider its execution, file with the magistrate who issued the warrant a written report concerning the execution of the warrant and a general description of the records or things seized.

Report on
execution of
warrant

(2) After filing the report, the police officer shall send a copy to the Attorney-General.

17. (1) The magistrate who issued the warrant or any other magistrate may, at the hearing to consider the execution of a warrant issued under section *fourteen*, after having considered any representations by the Attorney-General, the person from whom a record or thing was seized in execution of the warrant and any other person who claims to have an interest in the record or thing so seized-

Hearing on
execution of
warrant

(a) where the magistrate is not satisfied that the warrant was executed according to its terms and conditions or where the magistrate is satisfied that an order should not be made under paragraph (b), order that a record or thing seized in execution of the warrant be returned to-

(i) the person from whom it was seized, if possession of it by that person is lawful; or

(ii) the lawful owner or the person who is lawfully entitled to its possession, if the owner or that person is known and possession of the record or thing by the person from whom it was seized is unlawful; or

(b) in any other case, order that a record or thing seized in execution of the warrant be sent to the foreign state who requested for the search and seizure and may include in the order such terms and conditions as the magistrate considers desirable, including terms and conditions-

(i) necessary to give effect to the request;

(ii) with respect to the preservation and return to Zambia of any record or thing seized; and

(iii) with respect to the protection of the interests of third parties.

(2) At the hearing referred to in subsection (1), the magistrate may require that a record or thing seized in execution of the warrant be brought before him.

18. No record or thing seized that has been ordered under section *seventeen* to be sent to the foreign state which requested for the search and seizure shall be so sent until the Attorney-General is satisfied that the foreign state has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the record or thing.

Terms and conditions of sending abroad record or thing seized

19. Where the Attorney-General approves a request of a foreign state to obtain, by means of an order of a magistrate, evidence regarding an offence with respect to which the foreign state has jurisdiction, the Attorney-General shall apply *ex parte* for an order for the gathering of evidence regarding the offence.

Evidence for use abroad

20. (1) A magistrate to whom an application is made under section *fourteen* may make an order for gathering of evidence, where he is satisfied that there are reasonable grounds to believe that-

Evidence gathering order

(a) an offence has been committed with respect to which the foreign state has jurisdiction; and

(b) evidence of the commission of the offence or information that may reveal the whereabouts of a person who is suspected of having committed the offence will be found in Zambia.

(2) An order made under subsection (1) shall provide for the manner in which the evidence is to be obtained in order to give effect to the request made by the foreign state and the magistrate may-

(a) order the examination, on oath or otherwise, of a person named in the order, order the person to attend at the place fixed by the person designated under paragraph (c) for the examination and to remain in attendance until he is excused by the person so designated, order the person so named, where appropriate, to make a copy of a record or to make a record from data and to bring the copy or record with him and order the person so named to bring with him any record or thing in his possession or control, so as to produce them to the person before whom the examination takes place;

(b) order a person named in the order to make a copy of a record or to make a record from data and to produce the copy or record to the person designated under paragraph (c), order the person to produce any

record or thing in his possession or control to the person so designated and provide, where appropriate, for any affidavit or certificate that, pursuant to the request, is to accompany any copy, record or thing so produced; and

(c) designate a person before whom the examination referred to in paragraph (a) is to take place or to whom the copies, records, things, affidavits and certificates mentioned in paragraph (b) are to be produced.

(3) An order made under subsection (1) may include any terms or conditions that the magistrate considers desirable, including those relating to the protection of the interests of the person named in the order and of third parties.

(4) The magistrate who made the order under subsection (1), or another magistrate of the same court, may vary its terms and conditions.

(5) A person named in an order made under subsection (1) may refuse to answer any question or to produce certain records or things to the person designated under paragraph (c) of subsection (2) if-

(a) the refusal is based on a law in force in Zambia;

(b) to require the person to answer the questions or to produce the records or things would constitute a breach of a privilege recognised by a law in force in the foreign state that presented the request; or

(c) to answer the questions or to produce the records or things would constitute the commission, by the person, of an offence against a law in force in the foreign state that presented the request.

(6) Where a person refuses to answer a question or to produce a record or thing, the person designated under paragraph (c) of subsection (2) shall continue the examination and ask any other question or request the production of any other record or thing mentioned in the order.

(7) A person named in an order made under subsection (1) who, pursuant to subsection (5), refuses to answer any question or to produce certain records or things shall, within seven days, give to the person

designated under paragraph (c) of subsection (2) a detailed statement in writing of all the reasons on which the person bases the refusal, to answer each question or, to produce each record or thing.

(8) A person named in an order made under subsection (1) shall be entitled to be paid the travel and living expenses to which the person would be entitled if the person were required to attend as a witness before the magistrate who made the order.

21. (1) A person designated under paragraph (c) of subsection (2) of section *twenty* shall make a report to the magistrate who made the order or another magistrate of the same court accompanied by-

Report to
magistrate on
evidence gathering
order

(a) a transcript of every examination held under the order;

(b) a general description of every record or thing produced to the person under the order, and if the magistrate so requires, a record or the thing itself; and

(c) a copy of every statement given under subsection (7) of section *twenty* of the reasons for a refusal to answer any question or to produce any record or thing.

(2) The person designated under paragraph (c) of subsection (2) of section *twenty* shall send a copy of the report to the Attorney-General after it is made.

(3) A magistrate to whom a report is made shall-

(a) determine whether the reasons contained in any statement given under subsection (7) of section *twenty* that purport to be based on a law in force in Zambia are well-founded; and

(b) where the magistrate determines that they are, that determination shall be mentioned in an order that the magistrate may make under section *twenty-two*.

(4) Where a magistrate determines that the reasons contained in any statement given under subsection (7) of section *twenty* are not based on

a law in force in Zambia, the magistrate shall order that the person named in the order made under subsection (1) of section *twenty* answer the questions or produce the records or things.

(5) A copy of every statement given under subsection (7) of section *twenty* that contains reasons that purport to be based on a law in force in the foreign state shall be appended to any order that the magistrate may make under section *twenty-two*.

22. (1) A magistrate to whom a report is made under subsection (1) of section *twenty-one* may order that there be sent to the foreign state the report and any record or thing produced, as well as a copy of the order accompanied by a copy of any statement given under subsection (7) of section *twenty* that contains reasons that purport to be based on a law in force in the foreign state as well as any determination of the magistrate made under subsection (4) of section *twenty-one* that the reasons contained in a statement given under subsection (7) of section *twenty* are well founded.

Sending abroad
evidence and order

(2) An order made under subsection (1) may include any terms or conditions that the magistrate considers desirable, after having considered any representations of the Attorney-General, the person who produced any record or thing to the person designated under paragraph (c) of subsection (2) of section *twenty* and any person who claims to have an interest in any record or thing so produced, including terms and conditions-

(a) necessary to give effect to the request;

(b) with respect to the preservation and return to Zambia of any record or thing so produced; and

(c) with respect to the protection of interests of third parties.

(3) The execution of an order made under subsection (1) of section *twenty* that was not completely executed because of a refusal, by reason of a law in force in the foreign state, to answer any questions or to produce certain records or things to the person designated under paragraph (c) of subsection (2) of section *twenty* may be continued where a person designated by the foreign state or a court of the foreign state determines that the reasons are not well-founded and the foreign

state so advises the Attorney-General.

(4) No person named in an order made under subsection (1) of section *twenty* whose reasons for refusing to answer a question or to produce a record or thing are determined, in accordance with subsection (3), not to be well-founded shall during the continued execution of the order, refuse to answer that question or to produce that record or thing to the person designated under paragraph (c) of subsection (2) of section *twenty*, except with the permission of the magistrate who made the order under subsection (1) or another magistrate of the same court.

23. No record or thing that has been ordered under section *twenty-two* to be sent to a foreign state requesting the evidence shall be so sent until the Attorney-General is satisfied that the foreign state has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the record or thing.

Compliance with terms and conditions of order to send abroad

24. A person named in an order made under subsection (1) of section *twenty* shall commit a contempt of court if the person refuses to answer a question or to produce a record or thing to the person designated under paragraph (c) of subsection (2) of section *twenty*-

Contempt of Court

(a) without giving the detailed statement required by subsection (7) of section *twenty*; or

(b) where the person was already asked the same question or requested to produce the same record or thing and all of the reasons on which the person based the earlier refusal were determined not to be well-founded by-

(i) a magistrate, if the reasons were based on a law in force in Zambia; or

(ii) a person designated by the foreign state or by a court of the foreign state, if the reasons were based on a law in force in the foreign state.

25. (1) The magistrate who made the order under subsection (1) of section *twenty* or another magistrate of the same court may issue a warrant for the arrest of the person named in the order where the magistrate is satisfied on an information being made before him in writing and under oath, that-

Arrest warrant for person for non-compliance with evidence gathering

- (a) the person did not attend or remain in attendance as required by the order or is about to abscond;
- (b) the order was personally served on the person; and
- (c) the person is likely to give material evidence.

(2) A police officer who arrests a person in execution of a warrant issued under subsection (1) shall bring the person or cause the person to be brought before the magistrate who issued the warrant or another magistrate of the same court who may, to ensure compliance with the order made under subsection (1) of section *twenty*, order that the person be detained in custody or released on recognizance, with or without sureties.

(3) A person who is arrested in execution of a warrant issued under subsection (1) is entitled to receive, on request, a copy of the information on which the warrant was issued.

26. (1) Where the Attorney-General approves a request of a foreign state to have a detained person who is serving a term of imprisonment in Zambia transferred to the foreign state, the Attorney-General shall apply for a transfer order to a magistrate of the province in which the person is detained.

Transfer of
detained persons

(2) An application made under subsection (1) shall-

- (a) state the name of the detained person;
- (b) state the place of confinement of the detained person;
- (c) designate a person or class of persons into whose custody the detained person is sought to be delivered;
- (d) state the place to which the detained person is sought to be transferred; and
- (e) state the reasons why the detained person is sought to be transferred; and

(f) specify a period of time at or before the expiration of which the detained person is to be returned.

27. (1) Where the magistrate to whom an application is made under subsection (2) of section *twenty-six* is satisfied, having considered, among other things, any documents filed or information given in support of the application, that the detained person consents to the transfer and that the foreign state has requested the transfer for a fixed period, he may make a transfer order.

Making of transfer order

(2) A magistrate to whom an application is made under subsection (2) of section *twenty-six* may order that the detained person be brought before him so that he may be examined with respect to the transfer.

(3) A transfer order made under subsection (1) shall-

(a) set out the name of the detained person and his place of confinement;

(b) order the person who has custody of the detained person to deliver him into the custody of a person who is designated in the order or who is a member of a class of persons so designated;

(c) order the person designated under paragraph (b) to take the detained person to the foreign state and on the return of the detained person to Zambia to return him to the place of confinement where he was when the order was made;

(d) state the reasons for the transfer; and

(e) fix the period of time at or before the expiration of which the detained person shall be returned.

(4) A transfer order made under subsection (1) may include any terms or conditions that the magistrate making it considers desirable, including those relating to the protection of the interests of the detained person.

- 28.** For the purposes of the Prisons Act a detained person who is not in the place of confinement from which he was delivered pursuant to a transfer order shall be deemed to be in that place of confinement and to have applied himself industriously to the program of the place of confinement, as long as he remains in custody pursuant to the transfer order and is of good behaviour. Absence deemed imprisonment
Cap. 97
- 29.** A magistrate who made a transfer order or another magistrate of the same court, may vary its terms and conditions. Variation of transfer order
- 30.** A copy of a transfer order made under subsection (1) of section *twenty-seven* and of an order varying it made under section *twenty-nine* shall be delivered by the Attorney-General to the person in whose custody the detained person was when the transfer order was made. Copy of order to jailer
- 31.** Sections *twenty-six* to *thirty* shall not apply in respect of a person who, at the time the request mentioned in subsection (1) of section *twenty-six* is presented, is a young person within the meaning of the Juveniles Act. Exception for young persons
Cap. 53
- 32.** (1) Where the Attorney-General approves the request of a foreign state to have an exhibit that was admitted in evidence in a proceeding in respect of an offence in a court in Zambia lent to the foreign state, the Attorney-General shall, after having given reasonable notice to the parties to the proceeding, apply for a loan order to the court which has possession of the exhibit. Lending exhibits under a loan order
- (2) An application made under subsection (1) shall-
- (a) contain a description of the exhibit requested to be lent;
- (b) designate a person or class of persons to whom the exhibit is sought to be given;
- (c) state the reasons for the request, as well as contain a description of any tests that are sought to be performed on the exhibit and a statement of the place where the tests will be performed;
- (d) state the place to which the exhibit is sought to be removed; and

(e) specify a period of time at or before the expiration of which the exhibit is to be returned.

33. (1) Where the court to which an application is made under subsection (2) of section *thirty-two* is satisfied that the foreign state has requested the loan for a fixed period and has agreed to comply with the terms and conditions that the court proposes to include in any loan order, the court may, after having considered any representations of the persons to whom notice of the application was given in accordance with subsection (2) of section *thirty-two* make a loan order.

Making of loan order

(2) A loan order made under subsection (1) shall-

(a) contain a description of the exhibit;

(b) order the person who has possession of the exhibit to give it to a person designated in the order or who is a member of a class of persons so designated;

(c) contain a description of any tests thereby authorised to be performed on the exhibit, as well as a statement of the place where the tests shall be performed;

(d) fix the place or places to which the exhibit may be removed; and

(e) fix the period of time at or before the expiration of which the exhibit shall be returned.

(3) A loan order under subsection (1) may include any terms or conditions that the court making it considers desirable, including those relating to the preservation of the exhibit.

34. A court that made a loan order may vary its terms and conditions.

Variation of loan order

35. A copy of a loan order and of an order varying it shall be delivered by the Attorney-General to the person who had possession of the exhibit when the loan order was made.

Copy of loan order to custodian

36. The burden of proving that an exhibit, lent to a foreign state pursuant to a loan order made under subsection (1) of section *thirty-three* and returned to Zambia, is not in the same condition as it was when the loan order was made or that it was tampered with after the loan order was made shall be on the party who makes that allegation and in the absence of that proof, the exhibit shall be deemed to have been continuously in the possession of the court which made the loan order.

Presumption of continuity

37. An appeal shall lie, on a question of law alone, to the High Court or Supreme Court, as the case may be, within the meaning of the Criminal Procedure Code, from any order or decision of a magistrate of the High Court, as the case may be, made under this Act, if an application for leave to appeal is made to a judge of the appropriate court within fifteen days after the order or decision.

Appeal on question of law
Cap. 88

PART III

ADMISSIBILITY IN ZAMBIA OF EVIDENCE OBTAINED ABROAD

38. (1) A record or a copy and any affidavit, certificate or other statement pertaining to the record made by a person who has custody or knowledge of the record sent to the Attorney-General by a foreign state in accordance with a Zambian request, shall not be inadmissible in evidence in a proceeding with respect to which the court has jurisdiction by reason only that a statement contained in the record, copy, affidavit, certificate or other statement is hearsay or a statement of opinion.

Foreign records

(2) For the purpose of determining the probative value of a record or copy admitted in evidence under this Act the trier of fact may examine the record or copy, receive evidence orally or by affidavit, including evidence as to the circumstances in which the information contained in the record or copy was written, recorded, stored or reproduced, and draw any reasonable inference from the form or content of the record or copy.

39. A thing and any affidavit, certificate or other statement pertaining to the thing made by a person in a foreign state as to the identity and possession of the thing from the time it was obtained until its sending to the Attorney-General in Zambia by the foreign state in accordance with a Zambian request, are not inadmissible in evidence in a proceeding

Foreign things

with respect to which the court has jurisdiction by reason only that the affidavit, certificate or other statement contains hearsay or a statement of opinion.

40. An affidavit, certificate or other statement mentioned in section *thirty-eight* or *thirty-nine* shall be, in the absence of evidence to the contrary, proof of the statements contained without proof of the signature or official character of the person appearing to have signed the affidavit certificate or other statement.

Status of certificate

(2) Unless the court decides otherwise, no record or copy thereof, no thing and no affidavit, certificate or other statement mentioned in section *thirty-eight* or *thirty-nine* shall be received in evidence in a proceeding with respect to which the court has jurisdiction unless the party intending to produce it has given to the party against whom it is intended to be produced seven days notice, excluding holidays, of that intention, accompanied by a copy of the record, copy, of the affidavit, certificate or other statement and unless, in the case of a thing, the party intending to produce it has made it available for inspection by the party against whom it is intended to be produced during the five days following a request by that party that it be made so available.

41. The service of a document in a foreign state may be proved by affidavit of the person who served it.

Service abroad

42. Notwithstanding the Immigration and Deportation Act the Minister responsible for home affairs may, in order to give effect to a request of the Attorney-General, authorise a person in a foreign state, who is a member of an inadmissible class of persons under the Immigration and Deportation Act, to come into Zambia at a place designated by the Minister responsible for home affairs and to go to and remain in a place in Zambia so designated for the period of time specified by the Minister responsible for home affairs, and the Minister may subject the authorisation to any terms and conditions that the Minister considers desirable.

Special
authorisation to
come to Zambia
Cap. 123

(2) The Minister responsible for home affairs may vary the terms of an authorisation granted under subsection (1) and; in particular, may extend the period of time during which the person is authorised to remain in a place in Zambia.

(3) A person to whom an authorisation is granted under subsection (1) who is found in a place in Zambia other than the place designated in the authorisation or in any place in Zambia after the expiration of the period of time specified in the authorisation or who fails to comply with some other condition of the authorisation shall, for the purpose of the Immigration and Deportation Act, be deemed to be a person who entered Zambia as a visitor and remains therein after he has ceased to be a visitor. Cap. 123

43. Where the Attorney-General authorises a person who is detained in a foreign state to be transferred to Zambia for a period of time specified by the Attorney-General, a magistrate may make an order for the detention of the person anywhere in Zambia and for the return of the person to the foreign state. Detention of transferred person and paramountcy of order

(2) An order made under subsection (1) shall be paramount to any order made by a Zambian court, a Zambian police officer or any other person who has power in Zambia to compel the appearance of another person in respect of anything that occurred before the person was transferred to Zambia.

(3) A magistrate who made the detention order or another magistrate of the same court may vary its terms and conditions and, in particular, may extend the duration of the detention.

44. (1) Subject to subsection (2) where a person is in Zambia pursuant to a request made by the Attorney-General the person shall not- Immunities

(a) be detained, prosecuted or punished in Zambia for any offence that is alleged to have been committed, or that was committed, before the person's departure from the foreign state pursuant to the request;

(b) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, before the person's departure from the foreign state pursuant to the request; or

(c) be required to give evidence in any proceeding in Zambia other than the proceeding to which the request relates if any.

(2) Subsection (1) shall cease to apply to a person if-

(a) the person has left Zambia; or

(b) the person has had the opportunity of leaving Zambia and has remained in Zambia otherwise than for-

(i) the purpose to which the request relates;

(ii) the purpose of giving evidence in a proceeding in Zambia certified by the Attorney-General, in writing, to be a proceeding in which it is desirable that the person give evidence; or

(iii) the purpose of giving assistance in relation to an investigation in Zambia certified by the Attorney-General, in writing, to be an investigation in relation to which it is desirable that the person give assistance.

(3) A certificate given by the Attorney-General for the purposes of subparagraph (2) (b) (ii) or (iii) has effect from the day specified in the certificate (which may be a day before the day on which the certificate is given).

45. Where a Zambian request is presented to a foreign state and a person in the foreign state refuses to answer any question or to give up certain records or things by reason of a law in force in Zambia, a magistrate may determine the validity of the refusal on application, made on reasonable notice to the person, by the Attorney-General.

Determination of the validity of refusals

46. (1) Subject to subsection (2) of section *forty*, a foreign record sent to the Attorney-General by a foreign state in accordance with a Zambian request shall be privileged and no person shall disclose to anyone the record or its purport or the contents of the record, in compliance with the conditions on which it was so sent, it being made public or disclosed for the purpose of giving evidence.

Privilege for foreign records

(2) No person in possession of a record referred to in subsection (1) shall be required, in connection with any legal proceedings, to give evidence relating to any information that is contained in the record or to produce the record.

47. The Minister may make regulations prescribing matters necessary or convenient for the better carrying out, or giving effect to, this Act. Regulations

SUBSIDIARY LEGISLATION

SECTION 5-THE MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (SPECIFIED STATES) ORDER Statutory Instrument 95 of 1996

1. This order may be cited as the Mutual Legal Assistance in Criminal Matters (Specified States) Order. Title

2. The Mutual Legal Assistance in Criminal Matters Act, 1993, shall apply to the states specified in the Schedule to this Order. Specified States

SCHEDULE

(Paragraph 2)

STATES

1. Antigua and barbuda
2. Australia
3. Bahamas
4. Bangladesh
5. Barbados
6. Belize
7. Bermuda
8. Botswana
9. British Virgin Islands
10. Brunei Darussalam
11. Canada
12. Cayman Islands
13. Cook Islands
14. Cyprus
15. Dominica
16. Fiji
17. Falkland Islands
18. The Gambia
19. Ghana
20. Gibraltar
21. Grenada
22. Guernsey
23. Guyana
24. Hong Kong
25. India
26. Isle of Man
27. Jamaica
28. Jersey
29. Kenya
30. Kirabati
31. Lesotho
32. Malawi
33. Malaysia
34. The Maldives
35. Malta
36. Mautitius
37. Montserrat
38. Mozambique
39. Namibia
40. Nauru
41. New Zealand
42. Nigeria
43. Niue
44. Pakistan
45. Papua New Guinea
46. St. Christopher and Nevis
47. St. Helena
48. St. Lucia
49. St. Vincent and the Grenadines
50. Seychelles
51. Sierra Leone
52. Singapore
53. Solomon Islands
54. South Africa
55. Sri Lanka
56. Swaziland
57. Tanzania
58. Tonga
59. Trinidad and Tobago
60. Turks and Caicos
61. Tuvalu
62. Uganda
63. United Kingdom
64. Vanuatu
65. Western Somoa
66. Zimbabwe

"Commissioner" means a person appointed as Commissioner under section, *seven*;

"corrupt" means the soliciting, accepting, obtaining, giving, promising or offering of a gratification by way of a bribe or other personal temptation or inducement, or the misuse or abuse of a public office for private advantage or benefit, and "corruptly" shall be construed accordingly;

"Deputy Director-General" means a person appointed as Deputy Director-General under section *eighteen*;

"Director-General" means the person appointed under section *sixteen*;

"former Commission" means the Anti-Corruption Commission established under the repealed Act;

Act No.
14 of 1980

"Government" includes any ministry, department, service or undertaking of the Government;

"gratification" means any corrupt payment, whether in cash or in kind, any rebate, bonus, deduction or material gain, benefit, amenity, facility, concession or favour of any description and any loan, fee, reward, advantage or gift, or any other thing obtained as a result of the corrupt misuse or abuse of public funds or property, other than a casual gift;

"Investigation officer" means the person appointed under section *nineteen*;

"local authority" shall have the meaning assigned to it in the Local Government Act.

Cap. 281

"parastatal" means any company, association, statutory corporation, body or board or any institution of learning, in which the State has a financial interest;

"principal" includes an employer, beneficiary under a trust, and a trust

estate as though it were a person, and any person beneficiary interested in the estate of a deceased person as though the estate were a person, and, in relation to a public officer, a public body;

"private body" means any person or organisation not being a public body, a voluntary organisation, charitable institution, company, partnership or a club;

"public body" means the Government, any ministry or department of the Government, a local authority, parastatal board, council, authority, commission or other body appointed by the Government, or established by or under any written law;

"public officer" means any person who is a member of, or holds office in, or is employed in the service of, a public body, whether such membership, office or employment is permanent or temporary, whole or part-time, paid or unpaid, and "public office" shall be construed accordingly;

"repealed Act" means the Corrupt Practices Act, 1980;

Act No.
14 of 1980

"Secretary" means the person appointed Secretary under section *nineteen*;

"staff" means the staff of the Commission appointed under section *nineteen*;

"senior police officer" means any police officer of or above the rank of Assistant Superintendent; and

"Vice-Chairperson" means the person appointed as Vice-Chairperson under section *seven*.

PART II

THE ANTI-CORRUPTION COMMISSION

4. (1) There is hereby established the Anti-Corruption Commission which shall be a body corporate with perpetual succession and a

The
Anti-Corruption

common seal, capable of suing and being sued in its corporate name, and with power, subject to the provisions of this Act, to do all such things as a body corporate may, by law do or perform.

Commission
Act No.14 of 1980

(2) The First Schedule shall apply to the Commission.

5. The Commission shall not, in the performance of its duties, be subject to the direction or control of any person or authority.

Extent of
Commission's
autonomy

6. (1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Secretary.

Seal of
Commission

(2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson or any other person authorised in that behalf by a resolution of the Commission.

(3) Any document purporting to be under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

7. (1) The Commission shall consist of the following Commissioners:

Composition of
Commission

(a) the Chairperson and

(b) four other persons.

(2) The Commissioners referred to in paragraph (a) and (c) shall be appointed by the President, subject to ratification by the National Assembly.

(3) The Chairperson shall be a person who has held or is qualified to hold high judicial office.

8. (1) A Commissioner referred to in subsection (1) of section *seven* shall be appointed for a term not exceeding three years, subject to

Tenure of office
and vacancy

renewal:

(2) A Commissioner may resign upon giving one month's notice in writing to the President.

(3) The Office of a Commissioner shall become vacant-

(a) if the Commissioner is absent without reasonable excuse from three consecutive meetings of the Commission of which the Commissioner has had notice;

(b) if the Commissioner becomes bankrupt;

(c) if the Commissioner becomes insane or is declared to be of unsound mind; and

(d) upon the Commissioner's death.

9. (1) The functions of the Commission shall be to-

Functions of
Commission

(a) prevent and take necessary and effective measures for the prevention of corruption in public and private bodies, including, in particular, measures for-

(i) examining the practices and procedures of public and private bodies in order to facilitate the discovery of corrupt practices and secure the revision of methods of work or procedures which in the opinion of the Commission, may be prone or conducive to corrupt practices;

(ii) advising public bodies and private bodies on ways and means of preventing corrupt practices, and on changes in methods of work or procedures of such public bodies and private bodies compatible with the effective performance of their duties, which the Commission considers necessary to reduce the likelihood of the occurrence of corrupt practices:

(iii) disseminating information on the evil and dangerous effects of corrupt practices on society; and

(iv) enlisting and fostering public support: against corrupt practices.

(b) receive and investigate complaints of alleged or suspected corrupt practices, and, subject to the directions of the Director of Public Prosecutions, prosecute-

(i) offences under this Act; and

(ii) such other offence under any other written law as may have come to the notice of the Commission during the investigation of an offence under this Act:

Provided that nothing in this paragraph shall be considered as precluding any public prosecutor from prosecuting, subject to the directions of the Director of Public Prosecutions, any offence under this Act which has come to the notice of the police during investigation of an offence under any written law;

(c) investigate any conduct of any public officer which, in the opinion of the Commission may be connected with or conducive to corrupt practices; and

(d) do all such things as are incidental or conducive to the attainment of the functions.

(2) The Commission may refuse to conduct, or may decide to discontinue an investigation where it is satisfied that the complaint or allegation is malicious, trivial, frivolous, vexatious or the particulars accompanying it are insufficient to allow a proper investigation to be conducted and shall indicate accordingly in the report.

(3) The Commission shall, in any case in which it decides not to conduct an investigation, or decides to discontinue an investigation inform the complainant in writing accordingly, and give reasons therefor.

(4) The Commission may in any inquiry make such orders and give such directions as it may consider necessary for the purpose of conducting any investigation.

10. (1) The Commission may depending on the findings made, make Reports and

such recommendation as it considers necessary to the appropriate authority.

recommendation
by Commission

(2) The appropriate authority shall, within thirty days from the date of such recommendation make a report to the Commission, on any action taken by such authority.

11. (1) Subject to the other provisions of this Act, the Commission may regulate its own procedure.

Proceedings of
Commission

(2) The Commission shall meet for the transaction of business at least once every three months at such places and times as the Chairperson may determine.

(3) The Chairperson may at any time call a meeting of the Commission and shall call a special meeting to be held within fourteen days of receipt of a written request addressed to the Chairperson by at least two other Commissioners.

(4) If the urgency of any particular matter does not permit the giving of such notice as is required under subsection (3), a special meeting may be called by the Chairperson, upon giving a shorter notice.

(5) The Chairperson with two other Commissioners shall constitute a quorum at any meeting of the Commission.

(6) There shall preside at any meeting of the Commission-

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice-Chairperson; or

(c) in the absence of both the Chairperson and the Vice-Chairperson, such other Commissioner as the Commissioners present may elect for the purposes of that meeting.

(7) A decision of the Commissioner on any question shall be by a

majority of the Commissioners present and voting at the meeting and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote, in addition to such person's deliberative vote.

(8) The Commission may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of the meeting of the Commission, but such person shall have no vote.

(9) The validity of any proceedings, acts or decisions of the Commission shall not be affected by any vacancy in the membership of the Commission or by any defect in the appointment of any Commissioner or by reason that any person not entitled to do so, took part in the proceedings.

12. (1) The Commission may, for the purpose of performing its functions under this Act, establish such committees as it considers necessary and delegate to any of those committees such of its functions as it considers fit.

Committees

(2) Subject to subsection (1), the Commission may appoint as members of a committee, persons who are, or are not, Commissioners, except that at least one member of a committee shall be a Commissioner.

(3) A person serving as a member of a committee shall hold office for such period as the Commission may determine.

(4) Subject to any specific or general direction of the Commission, a committee may regulate its own procedure.

13. (1) If any person is present at a meeting of the Commission or any committee at which any matter is the subject of consideration, and in which matter that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall as soon as practicable after the commencement of the meeting, declare such interest and shall not, unless the Commission or the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question touching such matter.

Disclosure of
interest

(2) A disclosure of interest made under subsection (1) shall be recorded

in the minutes of the meeting at which it is made.

(3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding five thousand penalty units.

14 (1) A person shall not, without the consent in writing given by, or on behalf of, the Commission, publish or disclose to any person otherwise than in the course of such person's duties, the contents of any documents, communication, or information which relates to, and which has come to such person's knowledge in the course of such person's duties under this Act.

Prohibition of disclosure of information to unauthorised persons

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding ten thousand penalty units or to imprisonment, for a term not exceeding three years, or to both.

(3) If any person having information which to such person's knowledge has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates any such information to any other person, such person shall be guilty of an offence and shall be liable upon conviction, to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

15. (1) No proceedings, civil, or criminal, shall lie against any Commissioner of the Commission, for anything done in the exercise of such person's functions under this Act.

Immunity of Commissioners

(2) Subject to the provisions of this Act, a Commissioner shall not be called to give evidence before any court or tribunal in respect of anything coming to such person's knowledge in the exercise of such person's functions under this Act.

(3) For the avoidance of any doubts, nothing in this section shall protect any Commissioner, for anything done outside the functions of the person's office.

PART III

THE DIRECTORATE OF THE COMMISSION

16. (1) There shall be a Director-General who shall be appointed by the President subject to ratification by the National Assembly. Director-General

(2) The Director-General shall be-

(a) responsible for the management and administration of the Commission;

(b) a full-time officer; and

(c) responsible for the implementation of any matters referred to such Director-General by the Commission.

(3) The Director-General shall attend meetings of the Commission and may address such meetings, but shall have no vote.

(4) A person shall not be qualified to be appointed Director-General unless the person is qualified to be appointed judge of the High Court.

(5) The Director-General shall not, while he holds the office of Director-General, discharge the duties of any other office of emolument in the Republic.

(6) The Director-General may, subject to any specific or general direction of the Commission, make standing orders providing for-

(a) the control, direction and administration of the Commission;

(b) the discipline, training, classification and promotion of officers

of the Commission;

(c) the duties of officers of the Commission; or

(d) such other matters as he may consider necessary or expedient for preventing the abuse of power or neglect of duty by officers or other staff.

17. (1) Subject to subsection (2), a person appointed Director-General shall vacate that office on attaining the age of sixty-five years; Tenure of office of
Director-General

Provided that the Commission may permit a person who has attained that age to continue in office for such period as may be necessary to enable him do anything in relation to proceedings that were commenced before he attained that age.

(2) A person appointed Director-General may be removed from office for inability to perform the function of his office, whether arising from infirmity of body or mind or from any other cause, or for misbehaviour, and shall not be removed except by or in accordance with a resolution passed by the National Assembly pursuant to subsection (2) calling for an investigation into the question of the removal of the Director-General.

(3) If the National Assembly, by resolution supported by the votes of not less than two-thirds of all the members of the National Assembly, resolves that the question of removing the Director-General ought to be investigated, the Speaker of the National Assembly shall send a copy of such resolution to the Chief Justice who shall appoint a tribunal consisting of a chairman and two other persons to inquire into the matter.

(4) The Chairperson and one other member of the tribunal shall be persons who hold or have held high judicial office.

(5) The tribunal shall inquire into the matter and send a report on the facts of that matter to the President and a copy to the National Assembly.

(6) Where a tribunal appointed under subsection (2) advises the President that the Director-General ought to be removed from office for inability as aforesaid or for misbehaviour, the President shall remove the Director-General from office.

(7) If the question of removing the Director-General from office has been referred to a tribunal under subsection (2), the President may suspend him from performing the functions of his office, and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the tribunal advises the President that the Director-General ought to be removed from office.

18. (1) The Commission may appoint a Deputy Director-General on such terms and conditions as it thinks fit:

Appointment of
Deputy
Director-General

Provided that no person shall qualify for appointment as a Deputy Director-General unless he is qualified to be appointed a Judge of the High Court.

(2) If the office of the Director General is vacant or the Director-General is absent from duty or unable for any other reason to perform the functions of his office, the Deputy Director-General shall, save where the Commission otherwise directs, act as Director-General.

(3) If both the Director-General and the Deputy Director-General are absent from duty or unable for any other reason to perform the functions of their office, the Commission shall appoint another person to act as Director-General.

19. (1) The Commission may appoint investigating officers, the Secretary and such other officers of the Commission on such terms and conditions as the Commission may consider necessary to assist the Director-General in the performance of his functions under this Act.

Investigating
officers, Secretary
and other staff of
Commission

(2) The Director-General may, if he is satisfied that it is in the best interest of the Commission, terminate the appointment of any officer of the Commission and shall assign the reasons therefor, subject to any directions by the Commission.

(3) The Commission may engage the services of such advisors and experts as it thinks necessary.

(4) The Secretary, advisors, experts and other members of staff shall on appointment, take an oath or affirmation as set out in the Second Schedule.

20. (1) For the performance of the Commission's functions under this Act, the Director-General may-

Powers of
Director-General

(a) authorise in writing any officer of the Commission to conduct an inquiry or investigation into alleged or suspected offences under this Act;

(b) require any person in charge of any department, office or establishment of the Government, or the head, chairperson, manager or chief executive officer of any public body, to produce or furnish within such time as may be specified by the Director-General, any document or a certified true copy of any document which is in his possession or under his control and which the Director-General considers necessary for the conduct of investigation into alleged or suspected offences under this Act:

Provided that the document is not classified or does not fall under the State Security Act.

Cap. 111

(2) In the performance of his duties under this Act, the Director-General, the Deputy Director-General or an officer, may apply to a judge or a magistrate for a warrant and the judge or the magistrate shall immediately make a decision.

(3) A warrant issued under subsection (2) shall confer on the Director-General, the Deputy Director-General or an officer powers of-

(a) access to all books, records, returns, reports and other documents relating to the work of any Government department, public body or private body;

(b) access at any time to the premises of any Government department, public body or private body, or to any vessel, boat, aircraft or other vehicle whatsoever, and may search such premises or such vessel, boat, aircraft, or other vehicle if he has reason to suspect that any property corruptly acquired has been placed, deposited or concealed therein.

(4) In the exercise of his power to access and search under paragraph (b) of subsection (2), the Director-General, the Deputy Director-General or other officer of the Commission, may use such reasonable force as is necessary and justifiable in the circumstances, and may be accompanied or assisted by such other persons as he considers necessary to assist him to enter into or upon any premises, or upon any vessel, boat, aircraft or other vehicle, as the case may be.

(5) Any person who accompanies or assists the Director-General, the Deputy Director-General or other officer of the Commission to enter into or upon any premises, or upon any vessel, boat, aircraft or other vehicle, as the case may be, shall, during the period of such accompaniment or assistance, enjoy the same immunity as is conferred under section *twenty-six* upon the Director-General, the Deputy Director-General or other officer of the Commission.

21. (1) The Director-General or any officer of the Commission shall after obtaining a court order have powers to investigate any bank account, share account, purchase account, expense account or any other account, or any safe deposit box in any bank.

Special powers of investigation

(2) An order made under section (1) shall be sufficient for the disclosure or production by any person of all or any information, accounts, documents or articles as may be required by the officer of the Commission so authorised.

22. (1) The Director-General, the Deputy Director-General or any officer of the Commission authorised in that behalf by the Director-General may arrest a person without warrant if he reasonably suspects that such person has committed or is about to commit an offence under this Act.

Powers of Commission's officers to arrest

(2) Where a person has been arrested without warrant under subsection

(1) such person may, at any time before appearing, in court, while he is in custody be admitted to bail upon providing surety or sureties sufficient in the opinion of the Director-General, Deputy Director-General or an officer authorised in that behalf by the Director-General to secure his appearance before court or such person may be released upon his own recognisance on such conditions as the officer thinks fit.

(3) A bail bond issued under this section shall be dealt with in accordance with the provisions of the Criminal Procedure Code.

Cap. 88

23. The Director-General may issue to an officer of the Commission an identity card which shall be *prima facie* evidence of the officer's appointment as such.

Identity card

24. (1) The Director-General may, by written notice to a person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed under this Act, or against whom a prosecution for such offence has been instituted, direct that such person shall not dispose of or otherwise deal with any property specified in such notice without the consent of the Director-General.

Restriction on disposal of property, etc.

(2) A notice issued under subsection (1) may be served by delivering it personally to the person to whom it is addressed or may, where the Director-General is satisfied that such person cannot be found, or is not in the Republic, be served on or brought to the knowledge of, such person in such other manner as the Director-General may direct.

(3) A notice issued under subsection (1) shall have effect from the time of service and shall continue in force for a period of twelve months or until cancelled by the Director-General, whichever is earlier.

(4) Any person who, having been served with, or having knowledge of a notice issued under subsection (1), disposes of or otherwise deals with any property specified in the notice other than in accordance with the consent of the Director-General shall be guilty of an offence, and liable, upon conviction, to imprisonment for a term not exceeding ten years or to a fine not exceeding ten thousand penalty units or to both.

(5) Any person aggrieved by a directive contained in a notice issued under subsection (1) may, at any time, apply to the High Court for an order to reverse or vary such directive.

(6) An application under subsection (5) shall give to the Director-General such notice of the day appointed for the hearing of the application as a Judge of the High Court may order.

(7) On the hearing of an application under subsection (5), the High Court may-

(a) confirm the directive;

(b) reverse the directive and consent to the disposal of or other dealing with any property specified in the notice, subject to such terms and conditions as it thinks fit; or

(c) vary the directive as it thinks fit.

25. Section *fourteen* shall apply with necessary modifications to the staff of the Commission.

Prohibition of disclosure or publication of information to unauthorised persons by staff

26. Section *fifteen* shall apply with necessary modifications to the Director-General, Deputy Director-General and other staff of the Commission.

Immunity of Director-General, Deputy Director-General and other staff

27. Any person who-

Obstructing officers of Commission and false reports to Commission

(a) gives or causes to be made false testimony or a false report in any material particular to any matter under investigation;

(b) makes or causes to be made to the Commission a false report of the Commission of any offence under this Act;

(c) misleads the Director-General, the Deputy Director-General or other officers of the Commission by giving any false information, statement or accusation;

(d) insults, interrupts, assaults or otherwise obstructs, resists, hinders or delays the Director-General, any Commissioner or any member of staff in the performance of such person's functions under this Act or in effecting entry into any premises, boat, aircraft or vehicle; or

(e) disobeys any order made under this Act;

shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding ten thousand penalty units, or to imprisonment for a term not exceeding ten years or to both.

28. Any person who pretends that-

Impersonation and
procurement of
Commission's
officer

(a) he is an officer of the Commission or has any of the powers of such officer under this Act, or under any authorisation or warrant issued under this Act; or

(b) he is able to procure an officer of the Commission to do or refrain from doing anything in connection with the duties of such officer;

shall be guilty of an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding seven years, or to a fine not exceeding seven thousand penalty units or to both.

PART IV

OFFENCES, PENALTIES AND

RECOVERY OF GRATIFICATION

29. (1) Any public officer who, by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to any matter or transaction, actual or proposed, with which any public body is or may be concerned, shall be guilty of an offence.

Corrupt practices by or with public officers

(2) Any person who by himself, or by or in conjunction with any other person, corruptly gives, promises or offers any gratification to any public officer, whether for the benefit of that public officer or of any other public officer, as an inducement or reward for doing or forbearing to do, anything in relation to any matter or transaction, actual or proposed, with which any public body is or may be concerned, shall be guilty of an offence.

30. (1) Any public officer who, being concerned with any matter or transaction falling within, or connected with, his jurisdiction, powers, duties or functions, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain for himself or for any other person any gratification in relation to such matter or transaction, shall be guilty of an offence.

Corrupt use of official powers and procuring corrupt use of official powers

(2) Any person who, being concerned with any matter or transaction falling within the scope of authority, or connected with the jurisdiction, powers, duties or functions of any public officer, by himself, or by or in conjunction with any other person, corruptly gives, promises or offers any gratification, whether directly or indirectly, to such public officer either for himself or for any other person, shall be guilty of an offence.

31. (1) Any person who, by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for and having done or forborne to do, any thing in relation to any matter or transaction actual or proposed, with which any private body is or may be concerned, shall be guilty of an offence.

Corrupt transactions by or with private bodies

(2) Any person who, by himself, or by or in conjunction with any other person, corruptly gives, promises or offers any gratification to any person, whether for the benefit of that person or of any other person, as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to any matter or transaction, actual or proposed, with which any private body is or may be concerned. shall be guilty of an offence.

32. (1) Any agent who corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to his principal's affairs or business, or for showing or having shown favour or disfavour to any person in relation to his principal's affairs or business, shall be guilty of an offence.

Corrupt transactions by or with agents

(2) Any person who corruptly gives, promises or offers any gratification to any agent as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to his principal's affairs or business, or for showing or having shown favour or disfavour to any person in relation to his principal's affairs or business, shall be guilty of an offence.

(3) Any person who gives to an agent, or any agent who, with intent to deceive his principal, uses any receipt, account or other document in respect of which the principal is interested or which relates to his principal's affairs or business and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge or belief is intended to mislead the principal, shall be guilty of an offence.

(4) For the purposes of subsections (1) and (2), the permission of a principal to the soliciting, accepting or obtaining of any gratification by his agent shall constitute a valid defence.

33. (1) Any person who being a member of any public body by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any gratification as an

Corruption of members of public bodies in regard to meetings, etc.

inducement or reward for-

(a) his voting or abstaining from voting at any meeting of such public body in favour of or against any measure, matter, resolution or question submitted to such public body; or

(b) his performing or abstaining from performing, or for his aid in procuring, expediting, delaying, hindering or preventing the performance of, any official act by such public body; or

(c) his aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person;

shall be guilty of an offence.

(2) Any person who, by himself or by or in conjunction with any other person, corruptly gives, promises or offers any gratification to a member of any public body in any such circumstances as are referred to in subsection (1), shall be guilty of an offence.

34. (1) Any public officer who directly or indirectly by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any gratification as an inducement or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in-

Gratification for giving assistance, etc., in regard to contracts

(a) the promotion, execution or procurement of-

(i) any contract with a public body or private body for the performance of any work, the provisions of any service, the doing of anything or the supplying of any article, material or substance; or

(ii) any sub-contract to perform any work, provide any service, do anything or supply any article, material or substance required to be performed, provided, done or supplied under any contract with a public body or private body; or

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or sub-contract

as aforesaid;

shall be guilty of an offence.

(2) Any person who corruptly gives, promises or offers any gratification to any public officer as an inducement or reward for or otherwise on account of such public officer giving assistance or using influence in, or having given assistance or used influence in-

(i) the promotion, execution or procurement of; or

(ii) the payment of the price, consideration or other moneys stipulated or otherwise provided for in;

any such contract or sub-contract as is referred to in subsection (1), shall be guilty of an offence.

35. (1) Any person who directly or indirectly by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain from any person for himself or for any other person, any gratification as an inducement or reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for any contract with a public body or private body for the performance of any work, the provision of any service, the doing of anything or the supplying of any article, material or substance, shall be guilty of an offence.

Gratification for
procuring
withdrawal of
tenders

(2) Any person who corruptly gives, promises or offers any gratification to any other person as an inducement or reward for or otherwise on account of the withdrawal of a tender, or the refraining from making of a tender, for such a contract as is referred to in subsection (1), shall be guilty of an offence.

36. (1) Any person who directly or indirectly by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any gratification as an inducement or reward for or otherwise on account of his refraining or having refrained from bidding at any sale by auction conducted by or on behalf of any public body or private body, shall be guilty of an offence.

Gratification in
regard to bidding at
auction sales

(2) Any person who corruptly gives, promises or offers any gratification to any other person as an inducement or reward for or otherwise on account of that other person's refraining or having refrained from bidding at any auction as is referred to in subsection (1), shall be guilty of an offence.

37. (1) The Director-General, the Deputy Director-General or any officer of the Commission authorised in writing by the Director-General may investigate any public officer where there are reasonable grounds to believe that such public officer-

Possession of unexplained property

(a) has abused or misused his office position or authority to obtain property, wealth, advantage or profit directly or indirectly for himself or any other person;

(b) maintains a standard of living above that which is commensurate with his present or past official emoluments;

(c) is in control or possession of pecuniary resources or property disproportionate to his present or past official emoluments; or

(d) is in receipt of the benefit of any services which he may reasonably be suspected of having received corruptly or in circumstances which amount to an offence under this Act.

(2) Any public officer who, after due investigation carried out under subsection (1), is found to-

(a) have misused or abused his office, position, or authority to obtain advantage, wealth, property or profit directly or indirectly;

(b) maintain a standard of living above which is commensurate with his present or past official emoluments;

(c) be in control or possession of pecuniary resources or property disproportionate to his present or past official emoluments; or

(d) be in receipt of the benefit of any services which he may reasonably be suspected of having received corruptly or in circumstances which amount to an offence under this Act;

shall, unless he gives a reasonable explanation, be charged with having, or having had under his control or in his possession of pecuniary resources or property reasonably suspected of having been corruptly acquired, or having misused or abused his office, as the case may be, and shall, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control or into his possession or, as the case may be, how he came to enjoy the benefit of such services, be guilty of an offence.

(3) Where a court is satisfied in proceedings for an offence under subsection (2) that, having regard to the closeness of his relationship to the accused and to other relevant circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused, or acquired such pecuniary resources or property as a gift, or loan without adequate consideration, from the accused, such pecuniary resources or property shall, in the absence of a satisfactory explanation by or on behalf of the accused be deemed to have been under the control or in the possession of the accused.

(4) In this section, "official emoluments" include a pension, gratuity or other terminal benefits.

38. (1) If, in any proceedings for an offence under any section of this Part, it is proved that the accused accepted any gratification believing or suspecting or having reasonable grounds to believe or suspect that the gratification was given as an inducement or reward for or otherwise on account of his doing or forbearing to do, or having done or forborne to do, any act referred to in that section, it shall be no defence that-

Certain matters not to constitute defence

(a) he did not actually have the power, right or opportunity so to do or forbear;

(b) he accepted the gratification without intending so to do or forbear; or

(c) he did not in fact so do or forbear.

(2) If, in any proceedings for an offence under any section of this Part it

is proved that the accused offered any gratification to any other person as an inducement or reward for or otherwise on account of that other person's doing or forbearing to do, or having done or forborne to do, any act referred to in that section, believing or suspecting or having reasonable grounds to believe or suspect that such other person had the power, right or opportunity so to do or forbear, it shall be no defence that such other person had no such power, right or opportunity.

39. Any person who attempts to commit, or who aids, abets or counsels, or conspires with, any person to commit an offence under this Part, shall be guilty of committing that offence and shall be punished accordingly.

Attempts,
conspiracies, etc.,

40. (1) A public officer to whom any gratification is corruptly given, promised or offered shall make a full report of the circumstances of the case to a police officer or an officer of the Commission within twenty-four hours of the occurrence of the event, and if he fails to do so without reasonable cause, he shall be guilty of an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand penalty units or to both.

Public officer's
powers of report,
etc.

(2) Any police officer or officer of the Commission may arrest without warrant any person in respect of whom a report is made under subsection (1).

(3) Any police officer or officer of the Commission may search any person arrested for an offence under this Part and take possession of all articles found upon him which the police officer or officer of the Commission believes upon reasonable grounds to constitute evidence of the commission of an offence by him under this Part:

Provided that a female person shall not be searched except by a female police officer, or female officer of the Commission, or by any female authorised in that behalf by a police officer or officer of the Commission.

41. Any person who is guilty of an offence under this Part shall be liable-

General penalty

(a) upon conviction to imprisonment for a term not exceeding

twelve years;

(b) upon a second or subsequent conviction, to imprisonment for a term of not less than five years but not exceeding twelve years; and

(c) in addition to any other penalty imposed under this Act, to forfeit to the State of any pecuniary resource, property, advantage, profit or gratification received in the commission of an offence under this Act.

42. Where any person is convicted of any offence under this Part, the court shall, in addition to the sentence that it may impose under section *forty-one*, order the convicted person to pay to the rightful owner the amount or value, as determined by the court, of any gratification actually received by him, and such order shall be deemed to form part of the sentence:

Penalty additional to other punishment

Provided that where, after reasonable inquiry, the rightful owner cannot be ascertained or traced, or where the rightful owner is himself implicated in the giving of the gratification, the court shall order that the amount or value thereof shall be paid into the general revenues of the Republic.

43. Any fine imposed under the provisions of this Part and the amount or value of any gratification ordered to be paid under section *forty-two* may be recovered in accordance with the provisions of sections *three hundred and eight* and *three hundred and nine* of the Criminal Procedure Code by distress and sale of the movable and immovable property of the person sentenced.

Recovery of gratification by distress, etc. Cap. 88

44. (1) Where any gratification has been given by any person to or for or on account of an agent in contravention of any provision of this Act, the principal may recover, as a civil debt, the amount or value of such gratification from the agent, and the acquittal of the agent or such person in respect of an offence under this Part shall not operate as a bar to any proceedings for such recovery.

Principal may recover gratification corruptly received by agent

(2) Nothing in subsection (1) shall be deemed to prejudice or affect any right which any principal may have under any written law or rule to recover from his agent any money or property.

45. In any proceedings under this Act, a certificate by a Government Valuation Officer or other specialist valuer with respect to the value of any gratification or of any movable or immovable property shall be sufficient proof of such value, unless the contrary is proved.

Certificate of
Government
Valuation Officer
or other specialist
valuer

PART V

POWERS OF THE DIRECTOR OF PUBLIC PROSECUTIONS

46. (1) No prosecution for an offence under Part IV shall be instituted except by or with the written consent of the Director of Public Prosecutions.

Consent of
Director of Public
Prosecutions

(2) Notwithstanding the provisions of subsection (1), a person may be charged with an offence under Part IV and may be arrested therefor or a warrant for his arrest may be issued and executed, and any such person may be remanded by the Court in custody or on bail notwithstanding that the written consent of the Director of Public Prosecutions to the institution of a prosecution for the offence with which he is charged has not been obtained, but no such person shall be remanded in custody or on bail for a period longer than fourteen days on such charge unless in the meantime the written consent of the Director of Public Prosecutions aforesaid has been obtained.

(3) When a person is brought before a court before the written consent of the Director of Public Prosecutions to the institution of a prosecution against him is obtained, the charge shall be explained to the person accused but he shall not be called upon to plead.

47. If, in the course of any investigation into or proceeding relating to any offence under Part IV, the Director of Public Prosecutions has reasonable grounds to believe that it would assist or expedite such investigation or proceeding, he may, by notice require the Commissioner of Taxes to furnish all information in his possession relating to the affairs of any suspected person and to produce or furnish any document or a certified true copy of any document relating to such

Power of Director
of Public
Prosecutions to
obtain information

suspected person which is in the possession or under the control of the Commissioner of Taxes.

48. (1) If any person, against whom investigations or proceedings for an offence under Part IV are pending, is preparing or about to leave Zambia, whether temporarily or permanently, the Director of Public Prosecutions or any officer authorised by him in that behalf, may apply to any court for an order requiring such person to furnish bail in any sum, or, if he has already been admitted to bail, in such greater sum and on such additional conditions, as the case may be, with or without sureties, and in any such application the court may make such order as it deems fit.

Bail where suspect or accused person about to leave Zambia

(2) Every order made under this section whether originally or on review shall be reviewed within thirty days by the court which made the order.

(3) A right of appeal against an order made under this section shall lie to a higher court.

PART VI

EVIDENCE, PRESUMPTIONS AND OTHER MATTERS

49. (1) Where, in any proceeding under this Act, it is proved that any gratification has been received by any person with the knowledge and acquiescence or consent of the accused person, and the court is satisfied, having regard to his relationship to the accused person or to any other circumstances that such person has received the gratification for or on behalf of the accused person, or otherwise on account of or in connection with the office or duties of the accused person, the gratification in the absence of a satisfactory explanation, shall be presumed to have been received by the accused person.

Presumptions of corrupt intention

(2) Where, in any proceedings for an offence under Part IV, it is proved that any person solicited, accepted or obtained or agreed to accept or attempted to receive or obtain any payment in any of the circumstances

set out in the relevant section under which he is charged, then such payment shall in the absence of a satisfactory explanation be presumed to have been solicited, accepted or obtained or agreed to be accepted, received or obtained corruptly.

(3) For the purposes of subsection (2) "payment" means any corrupt payment, whether in cash or in kind.

50. (1) In any proceedings in respect of an offence under Part IV, the fact that an accused person is in possession, for which he cannot satisfactorily account of pecuniary resources or property disproportionate to his known sources of income or that he had at or about the time of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken into consideration by the court as corroborating the testimony of any witness in such proceedings that the accused person accepted or obtained or agreed to accept or attempted to obtain the gratification and as showing that such gratification was accepted or obtained or agreed to be accepted or attempted to be obtained corruptly as an inducement or reward.

Corroborative evidence of pecuniary resources or property

(2) For the purposes of subsection (1), an accused person shall be deemed to be in possession of pecuniary resources or property, or to have obtained an accretion thereto, notwithstanding that such pecuniary resources or property is held, or such accretion thereto is obtained, by any other person as to whom there is reason to believe, having regard to his relationship to the accused person or to any other circumstances, that he is holding such pecuniary resources or property or has obtained such accretion thereto in trust for, or for or on behalf of, the accused person, or as a gift from him unless the contrary is proved.

51. For the purpose of any proceedings in respect of an offence under Part IV, the court may at any stage of the proceedings direct that any specified fact may be proved at the trial by affidavit with or without the attendance of the deponent for cross examination.

Affidavit evidence

52. (1) In any proceedings for an offence under Part IV, it shall be no defence that any gratification solicited, accepted or obtained or agreed to be accepted, given, offered or promised, is customary in any profession, business, trade, vocation or calling.

Evidence of custom inadmissible

(2) Notwithstanding the provisions of subsection (1), no entertainment or casual gift offered or accepted under such conditions as may be prescribed in regulations made under this Act shall constitute an offence under Part IV.

53. Where any public officer has corruptly solicited, accepted, obtained, or agreed to accept or attempted to receive or obtain any gratification, it shall not be a defence in any trial in respect of an offence under Part IV that-

Absence of power, authority or opportunity, no defence

(a) the appointment, nomination or election of such person or any other person as a public officer was invalid or void; or

(b) such public officer or any other public servant did not have the power, authority or opportunity of doing or of forbearing from doing the act, favour or disfavour to which the gratification related; or

(c) he did not actually do any act, favour or disfavour to induce the gratification, or never had the intention of doing so.

54. (1) The Director of Public Prosecutions may, at any time, with a view to obtaining at a trial the evidence of any person directly or indirectly concerned with or privy to an offence under Part IV, tender, or by writing under his hand, authorise any court named by him to tender, a pardon to such person on condition that he makes a full and true disclosure of all facts or circumstances within his knowledge relating to the offence and to every other person involved in the commission thereof, whether as principal or in any other capacity, together with the delivery up of any document or thing constituting evidence or corroboration of the Commission of the offence by the person to be charged or the accused person, as the case may be.

Tender of pardon

(2) The court shall record in the manner prescribed by the Criminal Procedure Code the evidence on oath of every person accepting a pardon under subsection (1) and shall transmit the record of such evidence to the Attorney-General.

Cap. 88

(3) Every person accepting a tender of pardon under this section shall be examined as a witness at the trial.

(4) Where a person who has accepted a tender of pardon under this section has, either by wilfully concealing anything material to the case, or by giving false evidence, not complied with the condition on which the tender of pardon was made, he may be prosecuted for the offence in respect of which the pardon was tendered or for any other offence of which he appears to have been guilty in connection with the same matter.

(5) A person to whom a tender of pardon has been made under subsection (1), who in the opinion of the court, has made a true and full disclosure of all things as to which he is lawfully examined, shall be entitled to receive a certificate of indemnity under the hand of the Director of Public Prosecutions stating that he has made a true and full disclosure of all things as to which he was examined, and such certificate shall be a bar to all legal proceedings against him in respect of all such things as aforesaid.

55. Where any commission established by or under the Constitution, or appointed under the Inquiries Act, in the course, or upon conclusion, of any proceedings before it, is of the opinion that the conduct of any person appears to constitute an offence under this Act and ought to be inquired into for the purposes of this Act, the commission concerned shall, subject to any prohibition, restriction or restraint imposed upon it by or under the Constitution or any other written law, communicate its opinion to the Director of Public Prosecutions, together with the particulars of the person concerned and such other facts of the case as the Commission may deem necessary.

Corrupt practice
coming to notice of
Commission
Cap. 1
Cap. 41

56. (1) Where, at the conclusion of the trial of a person charged with an offence under Part IV, the court is of the opinion that any person has wilfully, and with intent to harm or injure the accused person in any manner made a false, frivolous or groundless complaint or allegation against him, the court shall certify that opinion in writing and shall transmit it together with a certified copy of the record of the proceedings to the Director of Public Prosecutions.

False, frivolous or
groundless
complaints or
allegations

(2) Any person who, in the opinion of the court certified under subsection (1) has made a false, frivolous or groundless complaint or allegation to the effect that any person has committed or attempted to commit, or aided, abetted or counselled the commission of, or conspired with any other person to commit, any offence under Part IV, shall be

guilty of an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding ten years or to a fine not exceeding ten thousand penalty units, or to both.

57. (1) If, on the trial of any offence under Part IV, it is not proved that the accused is guilty of the offence charged but it is proved that the accused is guilty of some other offence under Part IV, the accused may, notwithstanding the absence of the written consent of the Director of Public Prosecutions in respect of such other offence, be convicted of such other offence, and be liable to be dealt with accordingly.

Alternative conviction and amending particulars

(2) If, on the trial of any person for any offence under Part IV, there is any material variance between the particulars of the offence charged and the evidence adduced in support thereof, such variance shall not, of itself, entitle the accused to an acquittal of the offence charged if, in the opinion of the court, there is *prima facie* evidence of the commission of that offence, and in such a case the court may, notwithstanding the absence of the written consent of the Director of Public Prosecutions in respect of the particulars supported by the evidence adduced, make the necessary amendment to the particulars, and shall thereupon read and explain the same to the accused and the parties shall thereupon be allowed to recall and examine on matters relevant to such amendment any witness who may have been examined and, subject to the provisions of subsection (3), to call any further witness.

(3) If an amendment is made under the provisions of subsection (2) after the prosecution's case is closed, no further witness may be called by the prosecution other than a witness on such matters only as it would, apart from the provisions of this subsection, be permissible to call and put in evidence in rebuttal.

58. In any proceeding for an offence under this Act it shall be a valid defence that the gratification offered or accepted is an entertainment or a casual gift.

Defences

59. (1) In relation to a public officer or a citizen of Zambia, or a person ordinarily resident in Zambia, this Act shall have effect within as well as outside Zambia, and notwithstanding where any offence is committed by such person, he may be dealt with in respect of such offence as if it has been committed within Zambia.

Liability of public officers, citizens of Zambia, etc for offences committed outside Zambia

(2) Any proceedings against any person under this section which would be a bar to subsequent proceedings against such person for the same offence, if such offence had been committed in Zambia, shall be a bar to further proceedings against him, under any written law for the time being in force relating to the extradition of persons, in respect of the same offence outside Zambia.

PART VII

MISCELLANEOUS

60. (1) Subject to the other provisions of this Act, a person who immediately before the appointed date held office as Commissioner of the former Commission established under the repealed Act, shall continue to hold such office as Commissioner for a period of three months.

Savings and
transitional
provisions
Act. No. 14 of
1980

(2) After the period referred to in subsection (1), the Commissioner of the former Commission shall perform the functions and powers of the Director-General of the Commission established under this Act.

(3) Nothing in this Act affects the rights of any person employed by the former Commission immediately before the appointed date.

(4) Notwithstanding section *sixty-six*, all the property, assets, rights, liabilities and obligations of the former Commission existing immediately before the appointed date, shall vest and continue to vest in, or subsist against the Commission, together with the rights, liabilities and obligations arising out of any contract or otherwise as if this Act had not come into force.

(5) Any proceedings or cause of action instituted or pending by or against the former Commission immediately prior to the appointed date, shall continue by or against the Commission as if instituted under this Act.

61. (1) The investigating officers and other employees of the former Commission shall be deemed to be transferred to the Commission from the commencement of this Act. Transfer of staff

(2) The service of the persons referred to in subsection (1) shall be treated as continuous service.

62. The Commission may, by statutory instrument, make rules for the- Rules

(a) appointment, including the power to confirm appointments of persons, to any office in respect of which he is charged with the responsibility under this Act;

(b) disciplinary control of persons holding or acting in such offices;

(c) termination of appointments and the removal of such persons from office;

(d) practice and procedure of the Commission in the exercise of its functions under this Act; and

(e) delegation of its functions or powers.

63. The President may, by statutory instrument and on the recommendation of the Commission make regulations for the better carrying out of the purposes of this Act. Regulations

64. The Corrupt Practices Act, 1980, is hereby repealed. Repeal of Act No. 14 of 1980

FIRST SCHEDULE

(Section 4)

FINANCIAL AND OTHER PROVISIONS

- | | |
|---|--------------------------------|
| <p>1. (1) The funds of the Commission shall consist of such moneys as may-</p> <ul style="list-style-type: none">(a) be appropriated by the Parliament for the purposes of this Act;(b) be paid to the Commission by way of grants or donations; and(c) vest in or accrue to the Commission. <p>(2) The Commission may-</p> <ul style="list-style-type: none">(a) subject to the approval of the President, accept money by way of grants or donations from any source; and(b) subject to the approval of the President, raise by way of loans or otherwise, such money as it may require for the discharge of its functions. <p>(3) There shall be paid from the funds of the Commission-</p> <ul style="list-style-type: none">(a) the salaries, allowances, pensions and loans of the staff;(b) such reasonable travelling, transport and subsistence allowances for the Commissioners and members of any committee of the Commission, when engaged in the business of the Commission; and(c) any other expenses incurred by the Commission in the performance of its functions. | <p>Funds of
Commission</p> |
| <p>2. The financial year of the Commission shall be the period of twelve months ending on 31st December in each year.</p> | <p>Financial
year</p> |
| <p>3. (1) The Commission shall cause to be kept proper books of account and other records relating to its accounts.</p> <p>(2) The accounts of the Commission shall be audited annually by the Auditor-General.</p> <p>(3) The Auditor-General's fees shall be paid by the Commission.</p> | <p>Accounts</p> |
| <p>4. (1) As soon as practicable, but not later than ninety days after the end of the financial</p> | <p>Annual</p> |

year, the Commission shall submit to the President a report concerning its activities during the financial year.

(2) The report referred to in subsection (1) shall include information on the financial affairs of the Commission and there shall be appended to the report-

(a) an audited balance sheet;

(b) an audited statement of income and expenditure; and

(c) such other information as the President may require.

(3) The President shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subsection (1), lay the report before the National Assembly.

SECOND SCHEDULE

(Section 19)

OATH OF SECRETARY OR STAFF OF COMMISSION

I, having been appointed to exercise the functions of Secretary of the Commission/a member of the staff of the Commission, do swear/ affirm that I will not, directly or indirectly, reveal to any unauthorised person or otherwise than in the course or duty the contents or any part of the contents of any document. communication or information whatsoever which may come to my knowledge in the course of my duties as such.

SO HELP ME GOD

**Sworn/Declared before me this day
of..... ,
19.....**

Puisne Judge

**SECTION 63-THE CORRUPT PRACTICES
(DISCLOSURE BY PUBLIC OFFICERS OF INTEREST
IN CONTRACTS AND PROPOSED CONTRACTS)
REGULATIONS.**

Statutory
Instrument
210 of 1987

Regulations by the Commissioner

1. These Regulations may be cited as the Corrupt Practices Disclosure by Public Officers of Interest in Contracts and Proposed (Contracts) *Regulations. Title

*These Regulations are continued in operation by virtue of Section 15 of the Interpretation and General Provisions Act Cap. 2.

2. In these Regulations, unless the context otherwise requires "interested" means interested in a private capacity. Interpretation

3. (1) Subject to Sub-regulation (2), where a public officer is present at any meeting at which a contract or a proposed contract is the subject of consideration and in which contract the public officer or his spouse is directly or indirectly interested, the public officer shall as soon as practicable after the commencement of the meeting, declare the nature of his interest and shall not, unless the meeting otherwise directs, take part in any consideration or discussion of or vote on any question touching upon the contract or proposed contract. Disclosure of interest

(2) In the case of a proposed contract the disclosure required by this regulation to be made by a public officer shall be made at the meeting at which the question of entering into the contract is first taken into consideration, or if the public officer was not at the date of that meeting interested in the proposed contract then at the next meeting held after he became interested.

4. (1) Any public officer who- Offence

(a) fails to disclose any interest required to be disclosed by regulation 3;

(b) in disclosing any such interest makes any statement which he

knows to be false or which he has no reason to believe to be true;

(c) otherwise contravenes regulation 3;

is guilty of an offence and liable upon conviction to a fine not exceeding thirty-eight penalty units or to a term of imprisonment not exceeding three months or to both.

(2) A public officer shall not be guilty of an offence for failing to disclose the interest of his spouse in any contract or proposed contract if he proves to the satisfaction of the court that after the exercise of all due diligence having regard to all the circumstances, he did not know of such interest and had no cause to believe that any such interest existed.

(As amended by Act No. 13 of 1994)

**SECTION 63-THE CORRUPT PRACTICES
(PROHIBITION OF ABUSE OF INFORMATION
OBTAINED IN OFFICIAL CAPACITY)
REGULATIONS.**

Statutory
Instrument
211 of 1987

Regulations by the Commissioner

1. These Regulations may be cited as the Corrupt Practices
(Prohibition of Abuse of Information Obtained in Official Capacity)
*Regulations.

Title

*These Regulations are continued in operation by virtue of Section 15 of
the Interpretation and General Provisions Act Cap. 2.

2. In these Regulations, unless the context otherwise requires, "public
officer" means any person who has held public office at any time since
the coming into force of the Act.

Interpretation

3. These Regulations apply to any information which-

(a) is held by a public officer by virtue of his office;

(b) it would be reasonable to expect a person in the position of the
public office not to disclose except for the proper performance of the
functions of his office; and

(c) the person holding it knows or ought to know is unpublished
tender information in relation to any contract or proposed contract of a

Information to
which Regulations
apply

public body.

4. A public officer holding information to which these Regulations apply or any other person who has obtained any such information directly or indirectly from a public officer whom that person knows or has reasonable cause to believe held the information by virtue of his position as a public officer shall not-

Prohibition of
abuse of
information

(a) deal in any contract or proposed contract to which the information relates and in which a public body is concerned;

(b) counsel or procure any other person to deal in any such contract or proposed contract, knowing or having reasonable cause to believe that the other person would deal in any such contract or proposed contract;

(c) communicate to any other person the information held or as the case may be, obtained by him if he knows or has reasonable cause to believe that that person or some other person would make use of that information for the purpose of dealing in or counselling or procuring any other person to deal in any contract or proposed contract to which the information relates in which a public body is concerned.

5. Any public officer or any other person who contravenes these Regulations is guilty of an offence and liable to a fine not exceeding thirty eight penalty units or to a term of imprisonment not exceeding three months or to both.

Offence

(As amended by Act No. 13 of 1994)

SECTION 63-THE CORRUPT PRACTICES (DISPOSAL OF RECOVERED PROPERTY) REGULATIONS.

Statutory
Instrument
194 of 1986

Regulations by the Commissioner

1. These Regulations may be cited as the Corrupt Practices (Disposal of Recovered Property) *Regulations. Title

*These Regulations are continued in operation by virtue of Section 15 of the Interpretation and General Provisions Act Cap. 2.

2. In these Regulations, unless the context otherwise requires, "recovered property" means any monies, property or thing of any

Interpretation

description which was the subject of, and was recovered during the course of an investigation into, any offence alleged or suspected to have been committed under the Act.

3. (1) Any recovered property which comes into the possession of the Commission shall, subject to the other provisions of these Regulations, vest in the State if such recovered property cannot be returned because-

How recovered property may vest in State

(a) the rightful owner thereof, being the subject of an investigation in respect of an offence alleged or suspected to have been committed by him under the Act, leaves Zambia for the purpose, or apparent purpose, of evading the consequences of such investigation or of the trial of a prosecution brought against him.

(b) the rightful owner or the person in possession thereof absconds; or

(c) the rightful owner cannot be traced or ascertained; or

(d) the person in possession thereof admits his involvements in the alleged corrupt act and agrees to the surrender of such recovered property to the State because of such involvement.

(2) No recovered property shall vest in the State under paragraphs (a), (b) or (c) of sub-regulation (1) unless-

(a) the Commissioner gives, in accordance with these Regulations, notice to the effect that such recovered property is liable to vest in the State if it is not claimed within three months; and

(b) three months after the giving of such notice, such recovered property remains unclaimed.

(3) The notice referred to in sub-regulation (2) shall be deemed to have been duly given if it is published in the *Gazette* and a copy is-

(a) served on the person concerned; or

(b) left at, or posted to, the usual or last known place of abode or business of the person concerned; or

(c) published in a national newspaper if the person concerned is unknown or if his address or whereabouts are unknown.

4. (1) If the Commissioner is of the opinion that any recovered property is subject to speedy or natural decay, or that its immediate sale would be for the benefit of the owner, the Commissioner may, at any time, direct that such property be sold or destroyed:

Recovered
property subject to
decay

Provided that no sale or disposal of any such property shall be ordered without proper permission being first obtained from the court before which such property may be required as evidence.

(2) On the completion of any sale under sub-regulation (1) the right of any person to take legal proceedings for the recovery of the property sold shall cease; but a claim may be established to the proceeds of such sale.

5. All proceeds from the sale or other disposal of any recovery property which vests in the State in accordance with these Regulations shall be paid into the general revenues of the Republic.

Proceeds to be paid
into general
revenues